

Local Government Law News

Salmon P. Chase College of Law ♦ Kentucky Department for Local Government ♦ Northern Kentucky University

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House Bill 810 Upheld By A Unanimous Supreme Court

by
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Department for Local Government

On December 17, 1998, the Kentucky Supreme Court unanimously overturned a decision by the Campbell Circuit Court, dissolved an injunction that prohibited enforcement, and upheld the constitutionality of House Bill 810, which was enacted during the 1998 Kentucky General Assembly.

Mr. Joe Fischer filed the challenge to the constitutionality of the legislation in the Campbell Circuit Court on June 5, 1998. The Attorney General also intervened on behalf of Mr. Fischer. The suit alleged that House Bill 810 violated Sections 27, 28, 29 and 246 of the Kentucky Constitution when the legislation declared that the offices of county judge/executive, county clerk, sheriff, and jailer who operates a full service jail have duties or jurisdiction "co-extensive with the Commonwealth." Mr. Fischer had alleged that such a declaration had the effect of impermissibly encroaching upon the power of the judiciary to determine the constitutionality of statutes.

Pursuant to Section 246 of the Kentucky Constitution, an officer who has jurisdiction or duties co-extensive with the Commonwealth is entitled to be paid in an amount not to exceed the maximum annual rate of \$12,000.00. That dollar amount is brought forward from 1948, the year Section 246 was enacted, to present value under the "rubber dollar theory."

House Bill 810 sets forth a salary schedule for the affected office holders with an annual present dollar value ranging from approximately \$45,400.00 to \$82,600.00, based on the population of the county in which the particular office holder serves and upon the office holder's previous experience in that particular office.

Since the favorable ruling by the Supreme Court, the Department has rapidly moved to implement the new legislation, including a less publicized but equally important portion of House Bill 810 that authorizes training incentives for various elected county officials.

The training provisions are designed to enhance efficiency and professionalism in county government by providing a \$100.00 Training Incentive Fringe Benefit for county judges/executive, county clerks, county sheriffs, county jailers who operate full service jails, and county magistrates and commissioners who complete 40 hours of certified training during the year.

Ms. Ramona Newman, Training Branch Manager, has written an article about the new training incentive program, which is also included in this issue of the Local Government Law News.

Please feel free to contact the Department concerning the implementation of House Bill 810 or any other matter that involves local governments.

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Recent Developments

Chase Local Government Law Center

The Chase Local Government Law Center's Legal Clinical Program for the 1999 Spring Semester is underway. Eighteen law students are participating in the program this semester. Chase College of Law students are interning with local government attorneys from across the Commonwealth. Placements include county attorneys' offices, Commonwealth Attorneys' offices, Tri-County Economic Development Corporation (Tri-ED), the Governor's Office, and the Department for Public Advocacy, Morehead Branch. Students are gaining practical skills in local government law.

One student intern, Misty Miller, is working with KACo on a comprehensive study of sovereign immunity for counties and cities. Her article outlines the history of sovereign immunity and the implication of recent cases on this issue. Anyone interested in obtaining a copy of her article or her outline of sovereign immunity as a defense, please contact our office.

Also, the Law Center and Mike Bennett, a recent Chase graduate, are assisting the Department for Local Government and the Northern Kentucky Area Development District with editing their upcoming publication, "Revenue Manual For Kentucky Cities - 3rd edition". The Law Center will be assisting with the review of chapters on property taxes and occupational license fees. Mr. Bennett will be assisting with the cite editing. The Northern Kentucky Area Development District hopes to have the manual available for cities by late spring.

Finally, the Law Center is concluding its legal research on the Uniform Residential Landlord-Tenant Act for the Statute Reviser. The Law Center surveyed which communities in Kentucky have adopted the URLTA. We would like to thank all the county attorneys, judge-executives, and mayors who took time out of their busy schedule to respond to survey. Your efforts will assist the Legislative Research Commission's Statute Reviser and communities throughout Kentucky.

Salmon P. Chase College of Law News

Kelly Beers, Associate Dean for Enrollment Management

The Salmon P. Chase College of Law Alumni Club, along with the College of Law, hosted the annual Alumni Career Options Day on Saturday, February 20, 1999 in the Moot Court Room. William H. Hawkins, II, a 1978 Chase graduate and partner with Frost and Jacobs, was the keynote speaker. Norton B. Roberts, a 1993 Chase graduate and Cincinnati mediator, coordinate this year's event on behalf of the Alumni Club. David W. Peck, '66, of Rendigs, Fry, Kiely & Dennis, is President of the Alumni Board of Governors. The event was designed to expose Chase students to a

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HB 810 Training Initiative Department for Local Government

by

Ramona Wells Newman

Department for Local Government Training Branch Manager

The 1998 Kentucky General Assembly established a new section of KRS Chapter 64 pertaining to salaries and training of public officials. The purpose of the training incentive program is to develop a more knowledgeable, professional and competent county official by encouraging training in areas relevant to public administration. According to the statute, a \$100 training incentive (fringe) benefit shall be awarded for each 40-hour training unit successfully completed. The statute specifically identifies county judge/executives, magistrates and commissioners, clerks, jailers and sheriffs as eligible for the training incentive (benefit) program. The statute states:

"Each training unit shall be approved and certified by the Department for Local Government. Each unit shall be available to officials in each office based on continuing service in that office."

In response to this legislation, the department's training branch has developed a curriculum of courses for these county officials. Initially the program will consist of four areas of learning:

1. Financial Reporting
2. Duties and Responsibilities
3. Personnel
4. Legislative Issues

Included in these areas are topics such as budget preparation, parliamentary procedure, wage and hour laws and the administrative code. A Guidelines and Course Catalog document is being prepared which will list courses already identified for the program and discuss policies and procedures. The document should be available by the end of February. They will be distributed at DLG's County Budget Workshops and will be mailed to each eligible official. The curriculum will be continually expanded as issues and needs dictate. Staff encourages feedback and suggestions regarding the curriculum as the program evolves into a viable training module.

In addition to DLG sponsored and identified workshops, officials may obtain credit for seminars and workshops sponsored by other agencies and associations, as long as the course is relevant to job function and approved *in advance* by the department. DLG will track all hours and certify when an official has reached the 40-hour threshold. At that point, the official is eligible for the \$100 training incentive benefit, paid by the county. The amount actually received by the official will be calculated according to the most recent consumer price index. This same amount is

to be paid by the county every year of the term of office following completion of the 40 hours. It should be noted that an official is under no obligation to participate in the program nor accept the training incentive benefit. However, once the official does opt to participate, the county must pay the benefit to the official, unless s/he rebates the amount to the county.

The Department for Local Government is excited about this new initiative, and hopes officials will take advantage

of opportunities to increase knowledge and improve skills needed to be a successful public administrator. Information about upcoming training events will be available on the department's web page (http://www.state.ky.us/agencies/local_gov/). Questions about the new program should be addressed to the DLG Training Branch staff. Ramona W. Newman, Branch Manager, or Robinil Jameson can be reached by calling toll free 1-899-346-5606 or 502/573-2382.

Megan's Law: Kentucky's Sexual Offender Notification Laws

Tamra Gormley was appointed by Attorney General Albert B. Chandler III in 1996 to serve as Director of the Victims Advocacy Division. She is the first prosecutor to hold this position. Ms. Gormley, a Kentucky native, received her B.A. from Boston College in 1985 and her J.D. from the University of Kentucky College of Law in 1988. Prior to her position with the Office of the Attorney General, she was a felony prosecutor in Lexington, Kentucky for eight years. As a prosecutor, Tamra focused on the prosecution of violent crimes against women and children and prosecuted 112 criminal trials. Ms. Gormley has produced the Kentucky Prosecutors Domestic Violence Policy and Procedure Manual and recently published an article on domestic violence and the workplace in the Kentucky Bar Association's Kentucky Bench and Bar magazine. She has been recognized by state and local organizations for Outstanding Victim Advocacy.

Following a mandate from Congress in provisions of the federal Violent Crime Control and Law Enforcement Act, the Kentucky General Assembly enacted Kentucky's Sexual Offender Notification Laws which will go into effect on January 15, 1999. Specifically, the federal Jacob Wetterling Act requires States to establish effective systems for registering and tracking convicted sex offenders and the federal Megan's Law requires States to release to the community sexual offender information as is necessary to protect the public. The Kentucky General Assembly enacted a three tier risk assessment method for determining who in the public can be notified and the extent of the sexual offender information to be disseminated.

Kentucky's Sexual Offender Notification Laws will apply to offenders who perpetrate both upon children and adult victims. Further, offenders who are actually in prison or who are sentenced on or after January 15, 1999, will be given a risk to reoffend assessment and placed into a category by the sentencing judge of either a low risk to reoffend, a moderate risk to reoffend, or a high risk to reoffend.

The risk to reoffend category into which a sex offender is placed will directly determine who will be notified of his release into a Kentucky community and how much per-

sonal information about the sex offender can be disseminated to that community. It should be noted that if a sex offender moves into Kentucky, regardless of whether that sex offender is currently on supervision to another state or no longer on active supervision, Kentucky's new law does not allow any public notification to the Kentucky community in which the out of state sex offender has chosen to reside. Kentucky's community notification laws are applicable only to sex offenders sentenced or incarcerated on or after January 15, 1999 by a Kentucky court or in a Kentucky prison.

Kentucky's Sexual Offender Notification Laws will apply to offenders who are 18 or older at the time of the offense or any youthful offender who has committed or attempted to commit a sex crime as defined in KRS 17.500. A "sex crime" is defined in KRS 17.500 as any felony in KRS Chapter 510 (Sexual Offenses), incest, unlawful transaction with a minor 1st degree, use of a minor in a sexual performance, and a felony attempt to commit these offenses.

The risk assessment procedure will begin upon conviction of one of the felony sex crimes set out above and within 60 days prior to discharge, release, or parole of a sex offender. During that time period a Sex Offender Risk Assessment will be conducted by a certified provider who must complete a specific training program as established by the Sexual Offender Risk Assessment Advisory Board. Costs of the assessment shall be paid by the offender. The purpose of the Risk Assessment is to assist the sentencing judge in the duties to determine the offender's risk to reoffend, to designate the length of time the offender should be on the state sexual offender registry, and to designate the extent of community notification to be provided upon release.

In making a determination of risk to reoffend, the sentencing court shall review

recommendations of the certified provider, victim statements, and any materials submitted by the sex offender. The basis of the recommendations of the certified provider to the sentencing court will include, in part, the following factors: the offender's criminal history; the nature of the

offense; conditions of release that minimize risk; physical conditions that minimize risk; psychological or psychiatric profiles; recent behavior that indicates an increased risk of recommitting a sex crime; recent threats or gestures against persons or expressions of an intent to commit additional offenses; and review of the victim impact statement.

The scope of community notification and extent of information to be released is outlined below:

Notification-High Risk

- The Sheriff shall notify the following:
 - Law enforcement agency having jurisdiction;
 - Law enforcement agency having jurisdiction at the time of conviction;
 - Victims (as defined in KRS 421.500) who have requested to be notified;
 - KSP, Information Services Center;
 - Any agency, organization, or group serving individuals who have similar characteristics to the previous victims of the offender, if it has filed a request for notification with the sheriff;
- The general public through statewide media outlets and by any other means as technology becomes available.

Notification-High Risk

- The Sheriff shall include in the notification:
 - Offender information as defined in KRS 17.500: Name, age, race, sex, date of birth, height, weight, hair and eye color, aliases used, residence, vehicle registration data, a brief description of the crime or crimes committed, and other information the cabinet determines, by regulation, may be useful in the identification of sex offenders.
 - Any special conditions imposed by the court or the Parole Board.

Notification-Moderate Risk

- The Sheriff shall notify the following:
 - Law enforcement agency having jurisdiction;
 - Law enforcement agency having jurisdiction at the time of conviction;
 - Victims (as defined in KRS 421.500) who have requested to be notified;
 - KSP, Information Services Center;
 - Any agency, organization, or group serving individuals who have similar characteristics to the previous victims of the offender, if it has filed a request for notification with the sheriff;

Notification-Moderate Risk

- Sheriff's notification shall include:
 - the offender's zip code,
 - Offender information as defined in KRS 17.500 Name, Social Security number, age, race, sex, date of birth, height, weight, hair and eye color, aliases used, residence, vehicle registration data, a brief description of the crime or crimes committed, and other information the cabinet determines, by regulation, may be useful in the identification of sex offenders.
 - and any special conditions imposed by the court or the Parole Board;
 - Victims and Organizations may not be told residence, vehicle registration data, or Social Security number.

Notification-Low Risk

- The Sheriff shall notify the following:
 - Law enforcement agency having jurisdiction;
 - Law enforcement agency having jurisdiction at the time of conviction;
 - Victims (as defined in KRS 421.500) who have requested to be notified;
 - KSP, Information Services Center;

NOTE: Schools and other agencies working with children or like victims will not be entitled to notification of sex offenders classified as low risk to recommit.

Notification-Low Risk

- Sheriff's notification shall include:
 - Offender information as defined in KRS 17.500 Name, Social Security number, age, race, sex, date of birth, height, weight, hair and eye color, aliases used, residence, vehicle registration data, a brief description of the crime or crimes committed, and other information the cabinet determines, by regulation, may be useful in the identification of sex offenders.
 - Victims and Organizations may not be told residence, vehicle registration data, or Social Security number.

Before a victim or organization as set out above will be notified of a sex offender moving into their community, the victim and the organization must fill out a request for notification form with the local sheriff. Only in cases of high risk to reoffend assessments will there be blanket community notification and still then victims and organizations will be individually notified only if the notification form has been completed and filed with the local sheriff.

Communities should begin now working with their local sheriffs to ensure that victims and organizations know they must register to receive notification and to assist in the determination of what will be the most effective form of full community notification within the county in which they live.

For more information, contact the Victims Advocacy Division at the Office of the Attorney General (800) 372-2551 or (502) 696-5312, or your local sheriff.

House Bill 568: Changes in the Property Tax Collection Process

Debra Eucker is the Director of the Division of Local Valuation in the Revenue Cabinet's Department of Property Valuation. Debra is also an attorney and prior to her appointment as Director, worked in the Revenue Cabinet's Division of Legal Services where she specialized in property tax matters and related litigation.

During the last legislative session, several significant changes were made to the property tax collection process as a result of the passage of House Bill 568 (known as "the collections bill"). These changes were made so as to ensure a more timely collection of property taxes and a more reliable revenue stream for the state and local taxing districts. These changes in the law affect each and every local official connected with the property tax collection process, the taxing districts and the delinquent taxpayers. Some of the more significant changes are summarized below.

Sheriffs

- * The sheriff is required to make his books available for settlement by April 30th and commence the tax claim sale process by that date.
- * The sheriff receives a 10% add-on fee for taxes collected from February 1st through the end of the tax claim sale and no longer receives a 6% fee when the bills are collected by the county attorney after the tax claim sale.
- * The sheriff's advertising fee is increased from \$1 to \$5.
- * If a sheriff fails to remit amounts charged against him following the prior year's local settlement, the Revenue Cabinet may issue the subsequent year's tax bills and take over the collection duties and fees.
- * The Revenue Cabinet is authorized to develop and prescribe a uniform accounting/collection software.

County Judge Executives and Fiscal Courts

- * The state settlement will occur before the local settlement and the state will conduct or make arrangements for the local settlement if it has not been initiated by July 1. Both settlements will be completed by September 1 so that a quietus can be issued and the subsequent year's tax bills can be mailed.
- * The County Judge Executive will review settlements. Sheriff's objections to settlements may be appealed to Circuit Court.

PVAs

- * All undeliverable tax bills will be delivered to the PVA by the sheriff for address correction. If the PVA cannot locate the correct address, the undeliverable tax bill will be forwarded to the Revenue Cabinet for review and address check.

County Clerks

- * The County Clerk's fee is increased from 5% to 10% and is now an add-on fee.

Delinquent Property Taxpayers

- * Taxes not paid by January 1 are subject to a 5% penalty rather than a 2% penalty.
- * Prior to the tax claim sale, the Sheriff will collect a 10% add-on fee. After the tax claim sale, the 20% County Attorney's fee and 10% County Clerk's fee become add-ons to the bill.
- * Private purchasers of a certificate of delinquency are required to notify the taxpayer of the purchase within 50 days.

County Attorneys

- * The state and local taxing districts' tax lien has been extended from five to ten years.
- * County Attorneys may have access to Revenue Cabinet databases including income tax refund offsetting capability for tax collection purposes.

Taxing Districts

- * Because the county attorney's fee and clerk's fee are add-on fees to the delinquent tax bill, the taxing districts will realize 100% of the delinquent taxes, penalties and interest due to them regardless of the point or time of collection. Prior to House Bill 568, these fees were deducted from the taxing districts' receipts.
- * The taxing districts will be assured a more timely and reliable revenue stream with the added tax calendar deadlines.
- * Taxing districts will be able to recoup revenues lost as a result of the exoneration of tax bills for unidentifiable properties through rate adjustments in a subsequent year.

The provisions of House Bill 568 became effective in July and are applicable to the 1998 property tax bills. Since

its passage, Revenue Cabinet staff has been meeting with local official groups to advise them of the changes in the law. In addition, sample newspaper advertisements were provided to the sheriffs, along with fliers for enclosure with the property tax bills, which advised taxpayers of the new add-on fees.

While the local taxing districts will benefit from the new add-on fees immediately, the attainment of a timely tax calendar in each county and the realization of a more reliable revenue stream will be a gradual process. While sev-

eral new deadlines have been added to the tax calendar, and the Revenue Cabinet has been given several new enforcement tools, the implementation of these deadlines will necessarily be a gradual one for those counties which are not currently in sync with the tax calendar.

House Bill 568 clearly made significant changes to the property tax collection process. Should you have any questions or comments about these changes, please contact the Division of Local Valuation at (502) 564-8338.

The Government Performance Project

Grading the States

A Management Report Card

by

Katherine Barrett And Richard Greene

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The task of fairly evaluating all 50 states in five areas of management more or less defines the word “daunting.” More than once the team assigned to this project—reporters, researchers and writers at Governing and at Syracuse University’s Maxwell School of Citizenship and Public Affairs—wished the nation had simply stopped growing at 13 colonies. But we kept on measuring, and the report you see before you is the result.

This effort, funded by a grant from the Pew Charitable Trusts, began in 1997, when groups of experts were convened to help develop reasonable criteria for assessing the way each state handles its financial management, capital management, human resources, managing-for-results efforts and information technology. The evaluation process, which started with the construction of a detailed survey instrument, was given a trial run in four states: Ohio, Kansas, Oregon and Florida. One lesson was learned very quickly: Even states that agree to be pilots get testy when confronted with a survey the size of a phone book.

The final survey—streamlined considerably—was sent to all the states in early 1998. Forty-nine of the 50 ultimately completed it. California’s executive branch was the only holdout, forcing researchers to gather the relevant information about that state through a variety of alternative sources.

Governing and the Maxwell School conducted nearly a thousand interviews with sources inside and outside state governments, including budget officers, managers in personnel, information technology and public works agencies, auditors in both the legislative and executive branches, academics, legislative aides, and representatives of govern-

ment research groups. Survey responses were clarified and updated; reams of new information were added; and the special circumstances that make each state unique were taken into account. Only then did the process of grading begin.

To be sure, state officials were eager to explain why their particular governments shouldn’t be held accountable to the same standards as others. Sometimes it was because their population was too small. Or because it was too large. Or the area was too large. Or, in one case, because they were an island.

But for all the predictability of the protests, the vast majority of sources seemed happy to engage in these conversations. Many were proud of their work, and they wanted attention paid to it. A few even seemed pleased that we would be publicizing their shortcomings—so that their own citizens, budget writers or legislators might take note and try to do something about them. Still others were glad merely to have a conversation with someone genuinely interested in rainy day fund policies, personnel reforms, capital budgeting techniques or the details of standardized information technology.

The people we talked to were hungry for news of innovation in other states. They wanted to hear about Utah’s travel office, which saves the state bundles of cash, and Tennessee’s innovative means of financing information technology, and Kentucky’s aggressive recruitment policies, which include sending scouts to Louisiana and Alabama to pick up potential new state employees. Despite the curiosity, many of our sources were laboring under misconceptions when it came to other states. For example, many were startled to discover that—contrary to the news reported a couple of years ago in the Wall Street Journal—performance measurement efforts in Oregon are alive and well.

The greatest surprise to us was the fact that many states didn’t fit the common wisdom about them. Kentucky may not strike most Americans as a cutting-edge innovator, but its managerial reforms in a variety of areas earned it good grades. Wealthy Connecticut, identified by many as a leader in technology, lags in its own use of computers (and is planning to outsource the whole problem). Louisiana’s gov-

ernment, butt of countless jokes, is a pioneer in its use of performance measurements. Wisconsin, widely considered a laboratory of administrative technique, is a state that seems less prepared than others for unforeseen economic downturns. And West Virginia, long considered a financial backwater, just earned its third Government Finance Officers Association certificate of achievement for financial reporting.

Despite our best efforts and intentions, there's little doubt that some states haven't gotten the grades they deserve—in one direction or the other. The academic and journalistic resources devoted to this project were enormous, but they were not infinite, and we would never claim that the judgments are perfect. The whole process is a mixture of science and art, and the best one can genuinely claim for the result is cautious optimism. That's the bad news. The good news is that this same exercise will be repeated for the states in two years (and for local governments next year). Improvements will be made. Lessons will be learned.

And all of us on both sides will be held accountable.

Report Card: Kentucky

FINANCIAL MANAGEMENT: B+

Kentucky has put in place a wide variety of management initiatives, called Empower Kentucky, that cut across all of state government. But much of the impact will be on finance. By next July, for example, the state will have reworked its entire accounting system to give leaders better information about precisely what it costs to deliver specific services to citizens. This is a very tricky task that involves allocating all sorts of indirect costs.

There have been some very sensible fiscal decisions over the years. Rather than build up hefty year-end balances (which might tempt legislators to cut taxes precipitously), the state has utilized surplus money on one-time expenditures. The state has a rainy day fund at 3.9 percent of general fund expenditures; its statutory goal is 5 percent.

Kentucky has solid, professionally administered cash management. By carefully monitoring its resources, the state believes, it can take a bit of risk, even permitting 10 percent of debt outstanding to be placed into derivatives. The state has a fiscal note requirement for all bills and amendments with potential fiscal impact.

CAPITAL MANAGEMENT: A-

A central body called the Capital Planning Advisory Board, composed of members from all three branches of government, prepares the state capital improvement plan and makes funding recommendations. The plan covers six years and is updated every two years. The first two-year segment of the plan, as amended by the legislature, is adopted as part of the biennial budget.

The state does not have a uniform standard for condition assessment of its facilities, but assessments are done

on a regular basis. For example, universities conduct a biennial review. In the 1998-2000 biennial capital budget, the total requested need for maintenance was \$158 million. Some 82 percent of that was appropriated, which is rather high when compared with other states.

Agencies are given maintenance funds in cash pools and can choose individual projects to pursue without specific approval, as long as the cost is less than \$400,000.

HUMAN RESOURCES: B

Kentucky realizes it does not tend to attract the best and brightest from elsewhere in the country. But unlike other states in similar situations, it has acted on this problem and put proper emphasis on its human resources systems. Exhibit A is the fact that the director of the state's personnel department sits as a member of the governor's executive cabinet.

Personnel is a strong, centralized department here, but it offers a reasonable amount of flexibility to agencies in hiring and recruiting. The state has made significant efforts to retrain employees whose jobs are no longer necessary. Also impressive are the state's recruitment efforts, particularly among minorities. Kentucky recruiters can be found prowling campuses in Alabama, Louisiana and North Carolina to find potential employees.

There are two negatives in this category, however. First, the state still requires that agencies hire from lists of candidates who earned the top five scores on standard tests (though the list can include many more than five people if there are ties.) Second, the state's effort at a pay-for-performance system so thoroughly alarmed employees in 1986 that not only has it never been funded but the evaluation system proved to be utterly worthless. There's some talk about another reform this year.

MANAGING FOR RESULTS: B

In addition to evaluation programs by inter-branch boards and task forces, an elected auditor of public accounts conducts performance audits of state programs. The legislative branch has a Program Review and Investigations Committee, which conducts its own evaluations.

Outcome measures are used in most public-policy areas that are financed through the general fund, but the state is still struggling with some data-collection problems. The state's planning is coordinated by the Kentucky Long-Term Research Center, which updates a vision document every two years, with 25 long-term societal goals, including subsets of objectives and outcome measures. Data accuracy is not checked across the board, though it is examined in performance audits.

There are numerous ways in which planning and measurement have helped Kentucky make better decisions. Reforms in criminal justice legislation—driven in many states by the latest gory headline—were made here on the basis of predetermined goals and state needs.

INFORMATION TECHNOLOGY: C+

Kentucky has recently instituted a solid multi-year technology planning process. It has a dedicated \$175 million technology trust fund, to be used for projects that can reimburse the fund through clear monetary savings.

The state's accounting and purchasing information systems aren't yet integrated. Many agencies use their own, and while some systems are electronic, purchasing is still a manual process in many cases. Agency managers can make speedy purchases of commodity items through state-negotiated contracts, but larger projects require line-item approval by the General Assembly, and easily get ensnared in a cumbersome procurement process that can take eight months or more.

The Empower Kentucky reengineering initiatives will make an enormous difference in IT. Many future technol-

ogy efforts will be required to promise cost benefits, and cabinet secretaries will be asked to sign a commitment to deliver those savings. The only real problem is that projects not connected with an Empower Kentucky initiative are under no such obligation.

AVERAGE GRADE: B

GOVERNOR

Paul E. Patton (Democrat, took office 1995)

LEGISLATURE

House—66 Democrats, 34 Republicans

Senate—20 Democrats, 18 Republicans

OAG Opinions

Opinions of the Attorney General are legal opinions that the Attorney General's Office provides to public officials. These opinions clarify Kentucky law for public officials, and represent the official position of the Attorney General's Office. Although these opinions do not have the force of law, they are persuasive and may be cited in court.

OAGs are called formal opinions. The Attorney General's Office may also issue letters to public officials providing informal advice or information. These letters do not receive the same review as OAGs, and are not considered legal authority. Therefore, this newsletter will not publish informal opinion letters.

Following is an overview of selected formal OAGs issued from October 1, 1998 to February 28, 1999, which discuss local government issues. Portions are reprinted directly from the OAGs. If you would like a copy of a complete OAG, please contact our office.

OAG 98-13:

Issue: Kentucky Law Enforcement Foundation Program; KRS 15.420, 70.010, 70.030, and 431.005

Requested by: Ted Collins, Franklin County Sheriff; Phillip Sturgill, Boyd County Sheriff; Stan Scott, Calloway County Sheriff; Merle Edlin, LaRue County Sheriff; Bobby Hammons, Scott County Sheriff; Harold E. Tingle, Shelby County Sheriff; Randy K. Clark, Trigg County Sheriff; and John Coyle, Woodford County Sheriff

Date: October 7, 1998

Synopsis: The 1998 General Assembly made sheriffs and deputies eligible for KLEFP. The sheriffs asked what criteria deputy sheriffs must meet for eligibility. The Attorney General opined that the only criteria a deputy sheriff must meet is that he/she be sworn and full time. An Executive Branch agency may not impose any other crite-

ria. Such non-statutory criteria would violate the clear intent of the statute.

OAG 99-1:

Issue: Whether Kentucky pharmacies and pharmacists may fill prescriptions written by out-of-state practitioners licensed in their home state but not licensed in Kentucky; KRS 217, 218A and 315

Requested by: Robin Fields Kinney, General Counsel, Cabinet for Economic Development

Date: January 12, 1999

Synopsis: "The Attorney General's opinion is requested on whether Kentucky Revised Statutes, Chapters 217, 218A or 315 prohibit pharmacies or pharmacists licensed in Kentucky from filling prescriptions written by out-of-state practitioners who are not licensed in Kentucky, but duly licensed in their home state. Such a prohibition serves Kentucky's legitimate interest in regulating controlled substances for the health, safety and welfare of its citizens. However, this prohibition obstructs uniform federal regulation of commerce in controlled substances, and excessively burdens interstate commerce. For these reasons, Kentucky pharmacies and pharmacists may fill prescriptions written by practitioners licensed in Kentucky, their home state, or under the Federal Controlled Substances Act."

Open Meeting Decisions and Open Records Decisions

The Office of the Attorney General issues opinions on open meeting complaints and open records complaints.

These opinions review citizens' complaints that a public agency improperly denied review of public documents or access to an open meeting. These opinions are legally binding. Pursuant to KRS 61.880, if these opinions are not appealed within thirty (30) days, the opinions have the effect and force of law.

99-OMD-6

In re: Joey Roberts/Bowling Green – Warren County Regional Airport Board

Date: January 13, 1999

Issue: Whether the Bowling Green – Warren County Regional Airport Board violated the Open Meetings Act at its October 20, 1998, regular meeting when it went into executive session pursuant to KRS 61.810(1)(c).

Synopsis: Joey Roberts, executive director of Kentucky Citizens Accountability Project, submitted an open meetings complaint to the chair of the Airport Board. The complaint alleged that the Airport Board's closed session regarding a new owner/operator refueling policy and a storm damage insurance settlement violated the Open Meetings Act.

The Airport Board stated that it received written notice by pilots demanding reconsideration of the refueling policy and threatening litigation. With regard to the storm damage insurance settlement, legal negotiations reached an impasse, and legal strategy for the negotiation talks took place at the closed meeting. The Attorney General opined that both matters related to legal strategy and litigation. Therefore, the closed session was proper.

98-ORD-189

In re: The Big Sandy News/ FIVCO Area Development District

Date: December 2, 1998

Issue: Whether FIVCO ADD properly denied Big Sandy News' request for lists of Lawrence County residents receiving free taps to a current sewer project.

Synopsis: FIVCO denied access to the names of those receiving free taps, stating that they need a court order to release the information. FIVCO stated the list was basically a list of low to moderate-income residents. However, FIVCO failed to state which exemption to the Open Records Act applied and required the court order.

The Attorney General opined that the agency has the burden of proof in sustaining a denial of an open records request. Although public records containing personal information may implicate privacy issues, the public's interest in assuring proper administration of the free sewer tap program outweighs the privacy interest in this case. This decision outlines individual privacy rights under the Open Records Act.

98-ORD-196

In re: Robert Lee Kemper/Jefferson County, Kentucky, Division of Environmental Health and Protection

Date: December 10, 1998

Issue: Whether the Division properly denied Mr. Kemper's request for all complaints made to the Division against his property and the names of the complainants

Synopsis: The Division provided copies of the complaints but redacted the names of the complainants to protect their privacy. Mr. Kemper stated the complaints were false and that he needed the complainants' names to end the harassment. The Attorney General stated that although Mr. Kemper's purpose for the names may be compelling, the purpose for any open records request is not relevant.

99-ORD-3

In re: John H. McCracken/City of Bowling Green

Date: January 5, 1999

Issue: Whether the City properly denied Mr. McCracken's request for records relating to his client and two other individuals regarding evaluation of candidates for Deputy Chief of Police

Synopsis: Mr. McCracken requested copies of Chief Gary Brown's notes used in evaluating candidates for Deputy Chief. The City denied the request, arguing the notes were "preliminary notes, memoranda and recommendations that are not subject to the Open Records Act".

The Attorney General held that, generally, KRS 61.878 authorizes the nondisclosure of preliminary notes used in formulating a formal recommendation. However, the notes must be disclosed when a public agency employee makes the request, and the notes relate to him. KRS 61.878 is the "exception to the exceptions" to the Act, and gives public employees the right to review all records relating to them.

99-ORD-10

In re: The Lexington Herald-Leader/Pulaski County 911 Center

Date: January 15, 1999

Issue: Whether the Pulaski County 911 Center violated the Open Records Act in responding to the *Herald-Leader's* request for a copy of "all 911 tape recorded conversations related to the Nov. 15 fatal accident involving Jason Watts, Arthur Steinmetz and Christopher Block"

Synopsis: Read in conjunction with 99-ORD-11. The 911 Center responded that it could not meet the newspaper reporter's request. The 911 Center stated is a central dispatch agency and not part of any agency. Therefore, all tapes are the property of the responding agency. Any

Open Records requests must be processed through the responding agency. The 911 Center forwarded the request to the Pulaski County Sheriff's Department, the investigating agency, for a response.

Although the Attorney General held that the Sheriff Department's nondisclosure of the tapes was proper, the 911 Center's policy of deferring Open Records requests is improper. Pursuant to 98-ORD-100, a public agency which prepares, owns, uses, possesses or retains a public record is not exempt from the Open Records Act simply because the records are in the custody of another agency. Therefore, the Attorney General held that the 911 Center may not defer its duties. It must within three working days of receipt of the request, decide whether to honor the request and notify the person making the request.

99-ORD-11

In re: The Lexington Herald-Leader/Pulaski County Sheriff

Date: January 15, 1999

Issue: Whether the Pulaski County Sheriff violated the Open Records Act in responding to the Herald-Leader's request for a copy of "all 911 tape recorded conversations related to the Nov. 15 fatal accident involving Jason Watts, Arthur Steinmetz and Christopher Block" and its request for the incident report relating to that accident.

Synopsis: The Attorney General held that the Sheriff properly withheld the 911 tapes because it related to the ongoing criminal prosecution. However, that exception did not apply to the accident report in its entirety. The Sheriff denied access to the records, pursuant to KRS 61.878. An indictment resulted from the accident, and release of the records could harm the prosecution and the defendant's right to a fair and impartial trial.

The Attorney General reviewed the 911 tapes and held that premature disclosure of the information contained in the tapes could harm the criminal prosecution. Therefore, it is excluded from the Open Records Act until the prosecution is completed. However, only the portions of the accident report that are investigative in nature may be withheld. The Sheriff may redact "the text under the 'accident description' portion of the report, the estimated travel speed of the vehicle, the results of the blood alcohol test performed on Mr. Watts, and the diagram of the accident scene." The remainder of the accident report must be disclosed."

Cases of Interest

City of Louisville v. Silcox, Ky.App., 977 S.W.2d 254 (1998):

A city park visitor injured himself when jumping into a creek from a muddy bank. The visitor sued the city. The Court of Appeals held that the city was immune from liability under the Recreational Use Statute. The Court of

Appeals ruled that the \$2 parking fee on each car in the lot did not constitute a "charge", or waiver of the Recreational Use Statute. Therefore, the parking fee did not destroy immunity from liability under the statute.

City of Munfordville v. Sheldon, Ky., 977 S.W.2d 497 (1998):

The Supreme Court in Sheldon set forth the requirements for a due process hearing for discharged non-elected city officials. KRS Chapter 83A permits a mayor to fire a non-elected city official at will, unless another Kentucky statute applies. However, when firing a police chief based upon a citizen's complaint, KRS 15.520 states that the officer is entitled to his due process rights of notice and hearing.

The Supreme Court held that the mayor may discharge "an officer at his or her discretion, so long as the reason behind the discharge does not trigger the hearing requirement of KRS 15.520, or fall into one of the exceptions to the at-will employment doctrine."

If a city receives funds from the law enforcement foundation program pursuant to KRS 15.410 et.seq., the city is required to follow KRS 15.520. If a mayor fires a police chief at-will rather than remove him for cause, a due process hearing is not necessary. However, if the mayor fires the police chief for cause, the police chief may have a due process hearing before the mayor, or executive appointing authority.

This case became final on November 5, 1998.

Commonwealth v. Whitley, Ky., 997 S.W.2d 920 (1998): The

Supreme Court in Whitley traced the history of public officials and First Amendment rights. The Court held that a Uniformed Transportation Cabinet Officer's eight day suspension for stating on the public broadcasting radio frequency that a police shooting of a citizen was murder did not violate the officer's First Amendment rights. The Court held the comments were of minimal importance when balanced against the effective operation of the Cabinet and the protection of citizens. This case became final on November 5, 1998.

Pirschel v. Sorrell, 2 Fsupp2d 930 (E.D.Ky. 1998): The District Court ruled that a school could suspend a student for possession of beer at basketball tournament, a school sponsored activity. A high school student sued the school principal, superintendent, and school board members under §1983 after he was suspended for possessing alcohol at a school basketball tournament. The tournament was not taking place at the student's school, but the student's school was participating in the tournament.

The District Court, Forester, J., held that the student's attendance at the basketball tournament, in which his school was participating, was a school sponsored activity.

This school activity fell within the meaning of state statute concerning grounds for students' suspension or expulsion. Therefore, the school properly suspended the student.

King v. Floyd County Board of Education, 5 Fsupp2d 504 (E.D.Ky. 1998): The District Court, Hood, J., held that disabled students who prevailed under Individuals with Disabilities Education Act could not recover attorney fees for the following: time spent doing basic research needed to familiarize counsel with law in the area, time spent in bringing an injunction proceeding in state court that was voluntarily dismissed with no relief provided, time spent preparing for suit in state court that was never filed, and time spent monitoring administrative hearings after hearings were concluded and could not be changed. Also, the Court adjusted the counsel's hourly rate to coincide with legal experience.

continued from page 2

wide variety of career options, and to foster networking opportunities between students and alumni.

Chase students also had the opportunity to participate in a mock interview program during the month of February. Bernadine C. Topazio, a 1993 Chase graduate, conducted the mock interviews. Ms Topazio served as Director of Human Resources at Cincinnati's Deaconess Hospital for approximately 10 years prior to attending law school. She was in private practice with Graydon, Head & Ritchey from 1994-1996, and has been employed as a Staff Attorney with Fidelity Investments since 1996.

Chase held its first spring on campus interviews in March. This was a great opportunity for law firms that did not interview during the fall on campus interviews, or law firms whose needs changed since the time of the fall interviews, to interview Chase students. For more information, on the spring or fall on campus interview programs, please contact the Career Development Center at (606) 572-5383.

Recent Change of Address or a New Local Official? Please keep us informed.

If you have a new local official in your city, county, or special district, or if you have recently changed your address, please let us know. Simply complete this form and mail it to us at Chase Local Government Law Center, Chase College of Law, 406 Nunn Hall, Highland Heights, Kentucky 41099.

Thank you for helping us keep our records up to date.

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