

Local Government Law News

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

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DEVELOPMENTS IN FEDERAL LAW

Two recent acts of Congress may reorder traditional practices of local governments. One is the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA).¹ The legislation attempts to protect from burdensome land use regulations the free exercise of religion by a person or group of persons. It also attempts to protect from burdensome rules the free exercise of religion by persons in institutions. The other is the Electronic Signatures in Global and National Commerce Act (ESIGN).² Its primary objective is to establish a uniform national framework for recognition of electronic signatures, contracts, notices, and records.

Religious Land Use and Institutionalized Persons Act

RLUIPA is in part a response by Congress to the 1997 decision of the U.S. Supreme Court in *City of Boerne v. Flores*.³ That case struck down the Religious Freedom Restoration Act of 1993 (RFRA). RFRA was itself a response to an earlier case, *Employment Div., Dept. of Human Resources of Oregon v. Smith*.⁴ In *Smith* the Supreme Court upheld a state law prohibiting all use of peyote, including use for sacramental purposes. Members of the Native American Church objected, arguing that the law impermissibly infringed on their right to the free exercise of their religion. The Supreme Court said that neutral, generally applicable laws that incidentally burden individual religious practices do not violate the Free Exercise Clause of the First Amendment. In reaching its result the court rejected the use of a "compelling government interest" test as the standard by which to judge the state law. Through RFRA Congress tried to use its power under the Fourteenth Amendment to restore that test. In *Flores* the Supreme Court said that Congress had did not have that power. Through RLUIPA Congress tries

to accomplish a similar result using its powers under the spending clause and the commerce clause.

RLUIPA addresses what some people perceive to be the two areas that are the sources of the most numerous and pervasive free exercise problems. These are land use disputes and religious conflicts involving people under the control of others (e.g., prisoners, nursing home patients, or students). Supporters of RLUIPA, a coalition of religious and civil liberties groups, see the act as giving churches and other religious assemblies protection from restrictive land use practices that in their view too often frustrate religious practices.⁵ Opponents of the act, primarily local governments and their associations, see it as a direct blow to local government and an attempt to federalize zoning.⁶

Under RLUIPA "[n]o government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution (A) is in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest."⁷ An example of a regulation to which the provision might apply is a zoning law that zones out all new

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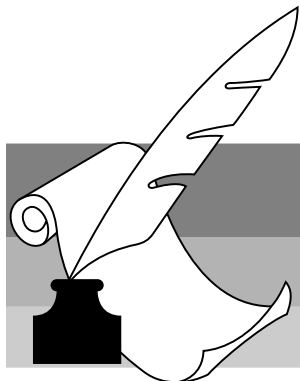
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DIRECTOR'S DESK

Many readers know the Local Government Law Center only through the pages of *Local Government Law News*. Through it the center informs you about cases, statutes, opinions and other developments affecting the laws under which local governments operate. Nevertheless, the center does more than just monitor those changes. I invite you to consider how you might tap the center's other services to your local government's advantage.

When people think of local government, they tend to think of general purpose local governments - counties and cities, for example. However, local government is also school districts, authorities, special districts, and quasi-governmental agencies. The Local Government Law Center exists to serve all these forms.

Similarly, when people think of local government law, they tend to think of the law governing the organization and operation of local government units - home rule, incorporation and annexation, local taxation and finance, etc. But local government law is also about what local governments do, about the goods and services that local governments provide and the people who provide them. Wage and hour laws, civil rights laws, and other laws that constrain local governments, therefore, are as much local government law as are zoning ordinances and other regulations by which local governments constrain others. The work of the Local Government Law Center covers all of local government law.



One of the more popular services offered by the center is its program of technical assistance. If you are moving into an area with which you are not familiar and need to get oriented, you can pick up the telephone and talk to us. If in a familiar area you encounter a situation new to you, you can call us and ask about it. Alternatively, send an e-mail. Our number and address are on the back cover of every issue of *Local Government Law News*.

Another popular program is our research service. Considering an ordinance and want to see examples of similar ordinances? We can do the research. Heard about a new statute passed by Congress or another state? We can find it. Need information for a report or background for a white paper? We can add the resources of a university and a law school to the project.

Local government law cuts a wide swath, and it is constantly changing. Newly elected officials and new employees need training, and long-time officials and employees need retraining. If you would like an informational program for your local government, or even for a civic group to which you might belong, we can provide it. Successful local government needs both informed public servants and informed citizens.

churches or that permits churches subject to a special use permit. The law also takes aim at discretionary practices that mask prejudices against particular religious groups. In such cases the burden would be on the government to show that its land use regulation serves a compelling interest.

In addition, under RLUIPA “[n]o government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution . . . even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.”⁸ Examples of practices addressed by this provision include regulations that preclude observance of religious dietary restrictions or restrict the wearing of articles of religious clothing.

The religion clauses of the First Amendment say, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof” The views of the proponents and opponents of PLUIPA reflect the tension inherent in those words. The matter is certain to find its way back to the United States Supreme Court.

Electronic Signatures in Global and National Commerce Act

ESIGN will not necessarily have an immediate impact on local government. It does not require the use of electronic signatures nor does it make everything in electronic format automatically valid and enforceable. It does allow, however, businesses to charge an extra fee to deal with paper. Gradually local governments may find their costs increasing if they cannot keep pace as their suppliers, banks, and other providers of goods and services move away from paper.

ESIGN provides that a signature, contract, or other record relating to a transaction cannot be denied legal effect solely because it is in electronic form.⁹ In addition, a contract cannot be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in the formation of the contract.¹⁰ The provisions place electronic

versions of documents on an equal footing with paper documents.

For those unfamiliar with the term, an electronic signature is a sound, symbol, or process that serves the same function as does a conventional hand-written signature in ink (a “wet” signature in the parlance of e-commerce). An electronic signature could be a name or password typed at the bottom of a document. It could also be a digitized image of an autograph signature, a voiceprint, a retina scan, or any other technique that serves to authenticate a document and attribute it to its “signer.” The legislation expresses no preference for the form of an electronic signature and leaves it to market forces to sort out competing technologies.

Under the Government Paperwork Elimination Act,¹¹ federal agencies must by 2003 implement systems of electronic records and signatures and, where practicable, eliminate most paper records and record keeping requirements. Parts of ESIGN also are directly concerned with the records government agencies, including state agencies, require and maintain.¹² Gradually these practices will put pressures on local governments with respect to their record keeping functions. The act preempts state laws that conflict with ESIGN’s national framework validating electronic records and signatures and requiring technological neutrality.

ESIGN is not an especially ambitious piece of legislation. It intends simply to clear away some existing barriers to the spread of e-commerce. Over the longer term, though, it may change much in the way that the public’s business is done.

1. P. L. 106-274, 114 Stat. 803 (2000).
2. P. L. 106-229, 114 Stat. 464 (2000), the “Electronic Signatures Act.”
3. 521 U.S. 507 (1997).
4. *Employment Div., Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990).
5. Melissa Rogers, *New Act Will Push Local Officials to Look Twice at Burdens on Religion*, <www.bjcpa.org/new311.html>, visited 11/1/2000.
6. Juan Otero, *Religious Land Use and Institutionalized Persons Act Becomes Law*, <www.gmanet.com/govaffairs/nlc/001002.religious.html>, visited 11/1/2000.
7. P.L. 106-274, § 2(a)(1).
8. P.L. 106-274, § 3(a).
9. 15 U.S.C. § 7001(a)(1).
10. 15 U.S.C. § 7002(a)(2).
11. Title VII of P.L. 105-277, 112 State 2681 (1988).
12. 15 U.S.C. § 7004.

DECISIONS OF NOTE



KENTUCKY SUPREME COURT

Attorneys – Disqualification

An Assistant Commonwealth Attorney, then the lead prosecutor in a particular case, left her position to join the firm representing the defendant. After the Commonwealth Attorney moved to disqualify himself, the court appointed a special prosecutor. The special prosecutor then moved to disqualify defense counsel. The trial court denied the motion, but the Supreme Court held that the conflict of interest and appearance of impropriety required the disqualification of the firm joined by the former prosecutor. *Commonwealth v. Maricle*, 10 SW3d 117 (2000).

Sovereign Immunity – Board of Claims Act

After her son drowned in a drainage culvert, a mother filed claims against the Natural Resources and Environmental Protection Cabinet. The claims alleged that the Cabinet caused the death by negligent issuance of a permit and negligent enforcement. Finding that the regulations in question “can be enforced in a routine, ministerial manner,” the court decides that their negligent performance can be actionable under the Board of Claims Act (KRS 44.073). The court then instructs how appropriately to compute the damages in cases of comparative negligence where the award is more than the \$100,000 statutory maximum. *Collins v. Commonwealth*, 10 SW3d 122 (2000).

Schools – Insurance

After exiting a school bus and while crossing the street under the protection of the bus’s warning lights, a student was struck and killed by a truck. The school board settled a claim brought against it by the parents of the student. On the date of the accident, the school board had a motor vehicle insurance policy with one insurance company and a general liability insurance policy with a second company. The policies were mutually exclusive. If the accident involved the “use” of the school bus, the motor vehicle policy applies. If not, the general liability policy applies. The court holds that a student is still using a school bus after disembarking as long as the student is crossing the street

under the protection of the bus’s warning lights and stop arm. *Hartford Insurance Companies v. Kentucky School Boards*, 17 SW3d 525 (2000).

Tax Refunds - Statute of Limitations

After a successful challenge of an occupational license fee ordinance, several businesses sued for a refund of taxes paid. The court disagreed with the ruling below that KRS 134.590, Refund of ad valorem taxes or taxes held unconstitutional, governed. Finding no statutory provision applicable, the court used common law principles to determine that a refund is permitted. The court then determined that the refund was governed by the five-year limitations period in KRS 413.120. *Maximum Machine Co., Inc. v. City of Shepherdsville*, 17 SW3d 890 (2000).

Public Servants - Workers’ Compensation

After reporting to his office and picking up his assignments for the day, a field representative arrived early for his first appointment at a bank not yet open. He then drove to a restaurant a short distance away for a cup of coffee. While at the restaurant he slipped, fell, and sustained a serious back injury. Viewing the case as presenting aspects of both a business trip and the personal comfort doctrine, a divided court reverses the decisions of an administrative law judge, the Workers’ Compensation Board, and the Court of Appeals and directs entry of an award. *Meredith v. Jefferson County Property Valuation Administrator*, 19 SW3d 106 (2000).

Schools - Investment Interest

A sheriff held the school taxes he collected in an interest-bearing account until he paid the sums over to the school district. He retained the interest to cover the operating expenses of his office. The school district claimed that the interest was “investment interest” to which it was entitled. The court viewed the role of the sheriff as that of a trustee and found instructive the analysis of the U.S. Supreme Court in a case involving interest on lawyer trust accounts. Coupled with what it saw as the clear directive of section 184 of the Kentucky Constitution regarding the right of boards of education to school tax revenues, the court holds the school boards entitled to the interest. *Marshall v. Commonwealth ex rel. Hatchett*, 20 SW3d 478 (2000).

Sovereign Immunity – Civil Rights Act

In a case involving a claim of gender discrimination, the court considered whether the Commonwealth waived sovereign immunity when it passed the Kentucky Civil Rights Act (KRS Ch. 344). The court held that it did. The statute would amount to “hollow words” if the safeguard against discrimination did not include the right to be free from acts of discrimination committed by the Commonwealth itself, or in its name. *Department of Corrections v. Furr*, 23 SW3d 615 (2000).

KENTUCKY COURT OF APPEALS



Municipal Liability – False Charges

Based on a complaint filed by personnel of a school district, a father was charged with failing to send a child to school and with unlawful transaction with a minor. When ultimately both charges were dismissed, the father filed a malicious prosecution action against school personnel. On an appeal from a jury verdict in the father’s favor, the court ruled that the trial judge should have directed a verdict in favor of the defendants. The prolonged unexcused absence of the child from school was sufficient probable cause to support the directed verdict. *Collins v. Williams*, 10 SW3d 493 (2000).

Sovereign Immunity – School Board

Plaintiff fell into an uncovered manhole at an elementary school and suffered severe injuries. Conceding that the school board normally enjoyed sovereign immunity, plaintiff argued that its participation in an insurance trust constituted a waiver of immunity. Citing the 1997 *Withers* case, the court holds that participation in an insurance trust cannot constitute a waiver in this case. *Angel v. Harlan County Board of Education*, 14 SW3d 559 (2000).

UNITED STATES SUPREME COURT



Reapportionment - Racial Gerrymandering

White voters challenged their own majority-white legislative district as the product of an unconstitutional racial gerrymander. The shape of the challenged district was influenced by the shape of the majority-black district adjacent to it. The claim was that the unconsti-

tutional use of race in drawing the majority-black district necessarily involved an unconstitutional use of race in drawing the majority-white district. The court held that plaintiffs lacked standing to bring the suit because, under the rule of *U.S. v. Hays*, they had not shown that they had “personally been denied equal treatment.” *Sinkfield v. Kelly*, ___ U.S. ___ (Nov. 27, 2000).

Drug Roadblocks - Illegal Search

The city of Indianapolis set up motor vehicle checkpoints to interdict drugs. At the checkpoints the police checked licenses and registrations and examined motorists for signs of alcohol or drug impairment. A drug-sniffing dog also walked around each vehicle to detect narcotics. The court found that the searches were unreasonable. The primary purpose of the checkpoints was to advance a general interest in crime control. Generally, a seizure must be accompanied by some measure of individualized suspicion. The court did not approve a checkpoint program whose primary purpose was to find evidence of ordinary criminality. *City of Indianapolis v. Edmond*, ___ U.S. ___ (Nov. 28, 2000).

UNITED STATES COURT OF APPEALS (6TH CIR.)



Civil Rights - High School Sports

The Kentucky High School Athletic Association did not sanction fast-pitch softball. In response, female high school athletes sued alleging violations of state and federal constitutions and state and federal statutes. They claimed that the association’s decision put them at a disadvantage for college scholarships when compared with male high school athletes who played baseball. The district court granted summary judgment for the defendants, and the court of appeals affirmed. The plaintiffs claim fails for lack of proof of intentional discrimination. *Horner v. Kentucky High School Athletic Association*, 206 F.3d 685 (2000)

Commerce Clause - Solid Waste

A county awarded an exclusive contract to collect and process municipal solid waste and enacted an ordinance incorporating by reference its agreement with the waste hauler, transforming its provisions into law. Among the provisions the “franchise agreement” ef-

fectively prohibited the use of out-of-state disposal sites. A manufacturer, required by the ordinance to use the franchisee to remove its waste, challenged the ordinance as violating the “dormant” Commerce Clause of the U.S. Constitution. The court agreed and rejected the county’s assertion that it was acting under “market participant” exception. *Huish Detergents, Inc. v. Warren County, Kentucky*, 214 F.3d 707 (2000)

Telecommunications - Substantial Evidence

Based on unsupported allegations of neighbors that a telecommunications tower would endanger their health, the Public Service Commission denied permission to construct the tower. Federal law requires the decision to be supported by substantial evidence, which the court finds lacking here. Generalized concerns do not rise to the level of substantial evidence. The court affirmed the order of the district court directing PSC to issue a Certificate of Public Convenience and Necessity for the tower. *Telespectrum v. Public Service Commission*, 227 F.3d 414 (2000).

IDEA - Attorneys Fees

A school district unilaterally changed the placement of three special education students. After administrative hearings, a hearing officer found that the Individuals with Disabilities Education Act was violated in all three cases. Nine months after the end of administrative proceedings, those representing the students sought to recover attorney’s fees. The IDEA itself places no time limit on the action to recover attorney’s fees. However, the court holds the appropriate period to be thirty days, a period borrowed from Kentucky administrative rules. Plaintiffs, therefore, do not recover. *King v. Floyd County Board of Education*, 228 F.3d 622 (2000)

Teacher Transfers - Due Process

Two teachers were involuntarily transferred to another school within the school district. They alleged that the transfer was in retaliation for the exercise of their First Amendment rights in criticizing the management of their school and in violation of their rights to procedural due process. Calling the question a “close one,” the court finds the causal connection between the speech and the transfers insufficient to support a preliminary injunction. The court also finds the pre-transfer hearing on short notice sufficient to sat-

isfy the requirements of due process. *Leary v. Daeschner*, 228 F.3d 729 (2000)

UNITED STATES COURT OF APPEALS (6TH CIR.)



Feature Report

[Editor’s note: The following case, while arising in Tennessee, should be of interest to all.]

The Putnam Pit is a small, free tabloid and Web page and a self-appointed eye on city government in the city of Cookeville. Over the years its editor made extensive requests for public information from the city. At one point the editor requested a copy of the computer files of outstanding parking tickets issued by the city. The city gave the files to the editor in hard copy, but not in electronic form as requested. Later, the editor asked the city to allow a hyperlink from the city’s Web site to the *The Putnam Pit* Web site. The city denied that request as well. Based on the city’s denial of electronic access to the parking ticket records and refusal to establish the hyperlink, the editor filed an action under 42 U.S.C. § 1983 alleging violations of First Amendment rights.

The court began its analysis by noting that collecting information is an important aspect of the freedom of the press. However, as regards the parking ticket records, a journalist has no greater right to the information than does the public generally. The city had never allowed access to the records in electronic form. Since the paper received the records in hard copy, the court affirmed the trial court’s judgment in favor of the city on the freedom of the press claim. The court found no First Amendment right to government information in a particular form. (State open records laws may confer such a right, but that issue was not before the federal court.)

Several for-profit and not-for-profit organization already had links on the city’s Web site when the paper asked for one, too. The city’s computer operations manager usually made the decision about who could link, and he did so in the absence of any city policy on the subject. The manager knew the paper to be controversial, so when the paper asked to link, the manager referred the matter to the city attorney. The city attorney then established a policy to allow links only to sites that would promote economic development, tourism, and industry. Pursuant to that policy the city

attorney denied the paper a link and directed the manager to remove certain existing links. The paper alleged that this new policy improperly denied it access to a public forum.

A street, sidewalk, or park is an example of a traditional public forum, a place “which by long tradition or by government fiat have been devoted to assembly and debate.” However, government can intentionally open a nontraditional forum for public discourse, which is what the paper said the city had done here with the Web site. However, the court concluded that the Web site was not a public forum.

Even in a nonpublic forum, though, a city may not discriminate based on the viewpoint of the user. The First Amendment requires the city’s regulation of its Web site to be viewpoint neutral. The paper could not be denied a link based solely on its controversial nature. The facts surrounding the development of the city’s policy and its denial of the paper’s request for a link suggested that the city might have impermissibly discriminated against the paper. The appeals court returned the case to the trial court for further proceedings. *The Putnam Pit, Inc. v. City of Cookeville*, 221 F.3d 834 (2000).

U. S. DISTRICT COURT (E. D. KY.; W. D. KY.)



Schools – Establishment of Religion

Three companion cases challenged the posting of the Ten Commandments in school district classrooms and in county courthouses. Neither the initial display of the Ten Commandments alone nor the subsequent display among other documents brought the displays within the parameters of the First Amendment. The assertion that the displays had a secular purpose “believes reason.” *Doe v. Harlan County School District*, 96 F.Supp.2d 667 (E.D.Ky. 2000); *ACLU v. McCreary County*, 96 F.Supp.2d 679 (E.D.Ky. 2000); *ACLU v. Pulaski County*, 96 F.Supp.2d 691 (E.D.Ky. 2000).

Schools - Desegregation

In light of school district’s good faith compliance with desegregation decree over twenty-five years, the court dissolves the decree. Assertions that vestiges of de jure discrimination remain and that latent demographic imbalances would lead to resegregation could

not support continuation of the decree. *Hampton v. Jefferson County Board of Education*, 102 F.Supp.2d 358 (W.D.Ky. 2000).

Paramedic - Reasonable Accommodation

A paramedic, needing to seek treatment for alcohol abuse and suicidal inclinations, took medical leave. After treatment, the medical director of the county EMS would not allow the employee to practice under the director’s medical authority. The employee sought an accommodation under the Americans with Disabilities Act to return to work as an emergency medical technician. The court holds that the employee failed to show that the accommodation was objectively reasonable because it did not remedy the fact that the medical director had withdrawn authorization to practice as a paramedic. Without that authorization, the employee was not otherwise qualified to hold his position. *Hagan v. Anderson County Fiscal Court*, 105 F.Supp.2d 612 (E.D.Ky. 2000)

Zoning - Americans with Disabilities Act

A clinic operator’s initial attempt to open a methadone clinic was thwarted by the city. The city cut short the operator’s second attempt by amending the zoning ordinance to prohibit such clinics in any zone in the city. Reasoning that the potential clients of the clinic are “persons with disabilities” for purposes of the Americans with Disabilities Act, the court finds the city in violation of the ADA. The blanket exclusion of all methadone clinics from the city was discriminatory on its face and void. *MX Group, Inc. v. City of Covington*, 106 F.Supp.2d 914 (E.D.Ky. 2000).



COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 00-40
AUGUST 18, 2000

RE: Are PVAs subject to local codes of ethics?

DECISION: No.

This opinion is in response to your June 29, 2000, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the August 18, 2000, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You are the Property Valuation Administrator ("PVA") in Jessamine County. You have been asked to file a statement of financial disclosure by the Commission, as well as by the Jessamine County Fiscal Court. You ask if you are required to file both. You also ask whether you are subject to the Executive Branch Code of Ethics or the county code of ethics.

In Advisory Opinions 92-10 and 93-24 . . . , the Commission concluded that PVAs are state officials and are subject to the state Executive Branch Code of Ethics. Thus, PVAs are subject to the requirement in KRS 11A.050(1) that requires state officials to file a statement of financial disclosure with the Commission.

Additionally, in Advisory Opinion 97-14 . . . , the Commission stated the PVAs must comply with the Executive Branch Code of Ethics and may not choose to comply with an ethics code adopted by a local governing body instead.

The enabling statute for local codes of ethics, KRS 65.003(1) provides:

(1) The governing body of each city and county, including urban-counties and charter counties, shall adopt, by ordinance, a code of ethics which shall apply to all elected officials of the city or county, and to appointed officials and employees of the city or county government as specified in the code of ethics. The elected officials of a city or county to which a code of ethics shall apply include the mayor, county judge/executive, members of the governing body, county clerk, county attorney, sheriff, jailer, coroner, surveyor, and constable but do not include members of any school board. Candidates for the city and county elective offices specified in this subsection shall comply with the annual financial disclosure statement filing requirements contained in the code of ethics.

Such statutory language does not include the PVA as an elected city or county official. Thus, the Commission concludes that a PVA is not subject to a local code of ethics and is not required to file a statement of financial disclosure for a local ethics commission, but must file a statement with the Commission.



LOCAL GOVERNMENT ON THE INTERNET: A SAMPLING OF SITES OF INTEREST TO LOCAL GOVERNMENT

Many well-known sites on the Internet have valuable information for local governments. One example is that of the Library of Congress (<http://lcweb.loc.gov/>). The home page provides access to the library's collections and research services and to the THOMAS legislative information service. A resource page entitled State and Local Government is at (<http://lcweb.loc.gov/global/state/>). What follows is a sampling of other sites, described as much as possible in the site's own words. Be mindful that this is only a sampling and makes no pretense to being comprehensive. Neither does inclusion here imply endorsement by the Local Government Law Center of the editorial content of the sites.

Govspot.com (<http://www.govspot.com/>). "GovSpot.com is a non-partisan government information portal designed to simplify the search for the best and most relevant government information online. This free resource offers a high-utility collection of top government and civic resources hand-selected by our editorial team for their quality, content utility." Its local government page (<http://www.govspot.com/categories/localgovernment.htm>) links to city and county pages around the country.

University of Michigan Documents Center (<http://www.lib.umich.edu/libhome/Documents.center/>). "The Documents Center is a central reference and referral point for government information, whether local, state, federal, foreign or international. Its web pages are a reference and instructional tool for government, political science, statistical data, and news." The site has much information useful to local governments outside Michigan.

National City Government Resource Center (<http://www.geocities.com/CapitolHill/1389/>). "This website serves as a collection of city-related URL's from throughout the United States. For ease of reference, these internet sites have been broken down into the following categories: General City Links, Functional City Links, Regional City Links, and Other City-related Links for those sites that do not fit neatly into these categories. . . . Additional sections were recently added titled National Think Tank Links, Elections and Voting, Capitols on the Internet, and Employment Opportunities. These links include respected nation-wide research institutions, resources for elections and voting, state capitols with websites, and free on-line municipal employment resources."

Local Government Institute (<http://www.lgi.org/index.htm>). "Established in 1987, the Local Government Institute (LGI) is an independent nonprofit organization dedicated to improving the quality of local government." The site includes "the Local Government RFP Network, your online source of professional services procurement information in local government."

U.S. State & Local Gateway (<http://www.statelocal.gov/>). "This web site was developed to give state and local government officials and employees easy access to federal information in ways that make sense to you."

Bureau of Governmental Research Research Links (<http://www.bgr.org/links.htm>). "BGR is a non-profit, citizen-supported, independent research organization dedicated to informed public policy making and the effective use of public resources in the New Orleans Metropolitan Area. BGR also focuses on state and national public policy issues which affect the metropolitan area. Since its founding in 1932, BGR has completed over 1,500 studies, reports or position papers in the areas of municipal finance, governmental structure, metropolitan cooperation, collective bargaining, city charter provisions, tax proposals, civil service, procurement, public bid law procedures, and other aspects of local and state government."

National Civic League (<http://www.ncl.org/>). "National Civic League (NCL) is a 107-year-old nonpartisan, nonprofit organization headquartered in Denver. Best known for the annual All-America City Awards, NCL also works directly with communities to foster cross-sector collaboration and grass roots problem solving."

In addition, most major local government associations have Internet sites. At the national level these include the National Association of Counties (<http://www.naco.org/>), the National League of Cities (<http://www.nlc.org/>), the United States Conference of Mayors (<http://www.usmayors.org/uscm/>), and the International City/County Management Association (<http://icma.org/go.cfm>).

Do you know of a particularly useful site for local government? Share it with us and we will share it with your colleagues by adding it to our site, Chase Local Government Law Center (<http://access.nku.edu/localgov/>).

OPINIONS OF THE ATTORNEY GENERAL

SUMMARIES OF SELECTED FORMAL OPINIONS OF THE ATTORNEY GENERAL

OAG 00-5

Subject: The Delegation Doctrine under Sections 27 and 28 of the Kentucky Constitution.

Syllabus: The General Assembly's failure to provide clear meaning in Section 4 of House Bill 389 violates Sections 27 and 28 of the Kentucky Constitution.

Synopsis: In response to questions from the Kentucky Judicial Form Retirement System about section 4 of House Bill 389, the Attorney General opines that the law is unconstitutional. The bill improperly delegates legislative power in violation of Kentucky Constitution sections 27 and 28. The legislature's attempt to increase members' pension benefits is, therefore, unsuccessful. Consequently, says the opinion, the questions posed are moot.

OAG 00-6

Subject: Deputy sheriffs carrying concealed deadly weapons out of their counties on off-duty business without a permit.

Syllabus: Deputy sheriffs may not carry concealed deadly weapons out of their counties on off-duty business without a permit.

Synopsis: KRS 527.020 prescribes who may carry a concealed deadly weapon without a permit. Included within the section are peace officers in the discharge of their official duties and police officers. Off-duty deputy sheriffs do not fall into those or any other category in the statute.

SUMMARIES OF SELECTED OPEN RECORDS DECISIONS

00-ORD-91

A private corporation is a public agency for purposes of the Open Records Act only if it derives at least 25% of its funds from state or local authority funds. Medicare and Medicaid funds do not constitute state or local funds when determining whether an entity receives the threshold 25%. Therefore, the Attorney General finds, a particular nonprofit hospital is not a public agency subject to the Open Records Act.

00-ORD-93

In another opinion involving the "25% rule," this time as applied to a volunteer fire department, the Attorney General finds that the department is a public agency for purposes of the Open Records Law. The fire department here asserts several reasons for its inability to produce the records sought, but none provides a legally sufficient basis upon which to deny the request.

00-ORD-94

An official custodian of records can refuse to permit inspection of public records where clear and convincing evidence shows that repeated requests are intended to disrupt other essential function of the agency. Despite a history suggesting a lack of good faith cooperation on the requester's part, the Attorney General decides that the local government has not yet made its case on the point.

00-ORD-104

Personnel files generally contain a mix of information, some of which is exempt from disclosure under the Open Records Act and some of which is not. Broadly framed requests for personnel files can thus present local governments with difficulty in complying with the request. Because of this, the Attorney General notes, it is incumbent on the requestor to specify the particular

documents wanted. However, when the requestor does so, the local government is obligated to respond to the request. It cannot make a blanket denial that to disclose the records would constitute an unwarranted invasion of personal privacy.

00-ORD-110

A public agency may charge a reasonable fee for making copies of records requested under the Open Records Act. If another statute prescribes a fee, a custodian may charge that fee. In the absence of any other statute, a reasonable fee under the Open Records Act may not exceed the actual cost of reproduction and may not include staff costs.

00-ORD-117

In most circumstances a public agency must provide requested records within three working days. Neither the complexity of the request nor the press of other agency business serves to extend the statutory deadline. The Attorney General reaffirms that “[t]he duty to respond to an open records request, and to afford the requester timely access to the records identified in his request, is, as we have noted, as much a public servant’s legal duty as any other essential function.”

00-ORD-122

A public agency does not violate the Open Records Act when it fails to produce a record that no longer exists. The Open Records Act, however, also relates to the statutes governing a public agency’s records management (KRS Chapter 171). Destroying a record before the applicable retention period expires may be relevant to the penalty provisions of the Open Records Act.

00-ORD-181

The opinion notes “that the privacy interests of public employees who have been disciplined for, or exonerated of charges of, misconduct in the course of their employment is outweighed by the public interest in monitoring agency action.” Here, therefore, records reflecting charges preferred against a police officer are available. Clearing the police officer of the charges does not bring the records within the reach of the provision governing unwarranted invasions of personal privacy.

00-ORD-184

After first concluding that the matter was moot under 40 KAR 1:030(6), the Attorney General criticizes a three month delay in delivering requested records and criticizes as excessive the twenty-five cents per page copy-

ing charges. If an agency charges more than ten cents per page, it bears the burden of showing that the fee is not excessive.

Under KRS 61.880 the Attorney General reviews complaints alleging violations of the Open Records Act and issues written decisions stating whether an agency violated the act. If no party timely appeals the decision, it has the force and effect of law. Copies of the decisions summarized here are available from the Local Government Law Center.

SUMMARIES OF SELECTED OPEN MEETINGS DECISIONS

00-OMD-96

Committees of a public agency can themselves be public agencies for purposes of the Open Meetings Act. Here a committee formed to screen candidates for appointment by a board falls into that category. The fact that the committee had no power of its own to take any action does not protect it. The fact that it discussed public business brings it within the ambit of the Open Meetings Act.

00-OMD-113

The Open Meetings Act allows a public agency to conduct a closed session to discuss “the appointment, discipline, or dismissal of an individual employee.” A public agency may not use this authority to discuss general personnel matters in secret. After reviewing prior decisions involving this exception, the Attorney General holds that discussions not restricted to the imposition of discipline on specific personnel were improper.

00-OMD-146

One reason a public agency may hold closed session is to discuss the acquisition of real estate. The Attorney General here reviews the prior decisions involving this exception to an open meeting and finds that the exception also applies in this instance.

Under KRS 61.846 the Attorney General reviews complaints alleging violations of the Open Meetings Act and issues written decisions stating whether an agency violated the act. If no party timely appeals the decision, it has the force and effect of law. Copies of the decisions summarized here are available from the Local Government Law Center.

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