2002 KENTUCKY SCHOOL LAWS

Annotated

Complete to November, 2002

KENTUCKY
DEPARTMENT OF EDUCATION
Gene Wilhoit, Commissioner

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FOREWORD

This 2002 Edition of *Kentucky School Laws Annotated* has been published and distributed in accordance with KRS 156.240. It contains those provisions of the Kentucky Constitution and the Kentucky Revised Statutes pertaining to schools and education. In addition, it contains the new laws enacted by the 2002 Regular Session of the Kentucky General Assembly.

Interpretations of the laws which have resulted from court decisions and opinions of the Attorney General are included in notes at the end of sections in the education title. For easy reference, education-related annotations have been selected for sections outside of the education title. In addition, to facilitate research, cross references and citations to other sources are provided.

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

Gene Wilhoit
Commissioner of Education
November, 2002

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CONSTITUTION OF KENTUCKY

BILL OF RIGHTS

SECTION.
5. Right of religious freedom.

§ 5. Right of religious freedom.

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

Cross-References. Freedom of worship, Const., § 1.

Religious instruction in schools, KRS 158.170 to 158.260.

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

Kentucky Law Journal. Comment, Regulation of Fundamentalist Christian Schools: Free Exercise of Religion v. The State's Interest in Quality Education, 67 Ky. L.J. 415 (1978-79).

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

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

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

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

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

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ANALYSIS

3. Schools.
4. —Religious beliefs of school administration.
5. —Compulsory attendance.
6. —Achievement testing.
7. —Maintenance.
8. —Student transportation.
9. —Place of worship.
19. Taxation.

3. Schools.

4. —Religious Beliefs of School Administration.

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

5. —Compulsory Attendance.

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

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

If the legislature wishes to monitor the work of private and parochial schools in accomplishing the constitutional purpose of compulsory education, it may do so by an appropriate standardized achievement testing program, and if the results show that one or more private or parochial schools have failed to reasonably accomplish the constitutional purpose, the Commonwealth may then withdraw approval and seek to close them for they no longer fulfill the purpose of "schools." Kentucky State Bd. for Elementary & Secondary Educ. v. Rudasill, 589 S.W.2d 877 (Ky. 1979), cert. denied, 446 U.S. 938, 100 S. Ct. 2158, 64 L. Ed. 2d 792 (1980).

6. —Achievement Testing.

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

7. —Maintenance.

Contract by school district trustees to maintain sectarian school free of charge from public funds in return for sectarian school teaching common school pupils free of charge was in violation of this section. Williams v. Board of Trustees, 173 Ky. 708, 191 S.W. 507, 1917D L.R.A. 453 (1917).

8. —Student Transportation.

A county fiscal court's resolution which provided approximately 65 percent of the total cost of transporting non-public elementary school students was not unconstitutional where (1) funds were not paid directly to any private or parochial school and were, instead, paid to the individual local board of education operated transportation system of contracted bus and vehicle companies, (2) the benefit provided by the resolu-

tion went directly toward the safety and welfare of elementary age school children and not into the accounts of non-public schools, and (3) the resolution did not establish a tuition ceiling as a requisite to eligibility for the transportation subsidy. Neal v. Fiscal Court, 986 S.W.2d 907 (Ky. 1999).

9. —Place of Worship.

A public school opened with prayer and the reading without comment of passage from King James' translation of the Bible, during which pupils are not required to attend, is not a place of worship, nor are its teachers ministers of religion within the meaning of this section. Hackett v. Brooksville Graded School Dist., 120 Ky. 608, 27 Ky. L. Rptr. 1021, 87 S.W. 792, 117 Am. St. R. 599, 69 L.R.A. 592 (1905).

19. Taxation.

KRS 158.115 authorizing county to use county funds to provide transportation for school children attending school in compliance with compulsory attendance laws, where children did not reside within reasonable walking distance of school and there were no sidewalks upon which they could travel, did not violate this section, notwithstanding that it would authorize transportation of children to parochial schools as well as public schools for it is simply an exercise of police power for the protection of children against the inclemency of weather and hazards of highway traffic. Nichols v. Henry, 301 Ky. 434, 191 S.W.2d 930, 168 A.L.R. 1385 (1945).

LEGISLATIVE DEPARTMENT

SECTION.

55. When laws to take effect — Emergency legislation.
59. Local and special legislation.

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

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

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

§ 59. Local and special legislation.

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

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

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

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

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

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

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

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

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

Ninth: To authorize the adoption or legitimation of children.

Tenth: To grant divorces.

Eleventh: To change the names of persons.

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

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

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

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

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

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

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

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

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

Twenty-first: To regulate the rate of interest.

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

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

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

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

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

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

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

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

Cross-References. Practice in courts of continuous session, KRS ch. 451.

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

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

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

Cited: Sherrard v. Jefferson County Bd. of Educ., 294 Ky. 469, 171 S.W.2d 963 (1942); Cotton v. Walton-Verona Indep. Graded School Dist., 298 Ky. 478, 174 S.W.2d 712 (1943); Board of Educ. v. Board of Educ. of Lexington Indep. School Dist., 250 S.W.2d 1017 (Ky. 1952).

NOTES TO DECISIONS

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5. Classification.
7. —Cities.
8. —Reasonable.
11. —Unreasonable.
25. Taxation.
26. Public property.
42. Schools.
46. General laws.

5. Classification.

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

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

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

7. —Cities.

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

8. —Reasonable.

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

11. —Unreasonable.

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

25. Taxation.

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

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

26. Public Property.

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

42. Schools.

Special acts concerning school districts in towns and cities were repealed by the general law relating to common schools to extent that they were inconsistent with the general law. Hickman College v. Trustees Colored Common School Dist. No. A, 111 Ky. 944, 23 Ky. L. Rptr. 1271, 65 S.W. 20 (1901).

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

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

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

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

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

The fundamental mandate of the Constitution and statutes is that there shall be equality and that all public schools shall

be nonpartisan and nonsectarian. Wooley v. Spalding, 293 S.W.2d 563 (Ky. 1956).

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

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

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

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

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

46. General Laws.

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

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

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

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

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

THE EXECUTIVE DEPARTMENT

SECTION.

OFFICERS FOR THE STATE AT LARGE

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

OFFICERS FOR THE STATE AT LARGE

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

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

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

Compiler's Notes. The General Assembly in 1992 (Acts 1992, ch. 168, § 11) proposed an amendment to the Constitution which amendment was ratified by the voters at the regular election November 3, 1992. Prior to the amendment this section read:

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

Section 19 of Acts 1992, ch. 168 provided: "It is further proposed as a part of this amendment and as a schedule of transitional provisions, for the purposes of this amendment,

and any other provision of the Constitution of Kentucky notwithstanding:

"(1) The Governor; Lieutenant Governor; Treasurer; Auditor of Public Accounts; Attorney General; Secretary of State; Commissioner of Agriculture, Labor and Statistics; Superintendent of Public Instruction; and Railroad Commissioners elected in 1991 shall be ineligible for election to the same office for the succeeding term. Those officers elected in 1995 shall be eligible for election to the next succeeding term.

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

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

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

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

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

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

Cross-References. Attorney general, KRS ch. 15.

Auditor of public accounts, KRS ch. 43.

Commissioner of agriculture, KRS ch. 246.

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

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

Secretary of state, KRS ch. 14.

Superintendent of public instruction, KRS ch. 156.

Treasurer, KRS ch. 41.

Cited: Booth v. Board of Educ., 191 Ky. 147, 229 S.W. 84 (1921).

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

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

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

Compiler's Notes. The General Assembly in 1992 (Acts 1992, ch. 168, § 12) proposed an amendment to the Constitution which amendment was ratified by the voters at the regular election November 3, 1992. Prior to the amendment this section read:

"§ 93. Constitutional state officers not to succeed themselves — Duties — Fees — Inferior state officers — Term. — The Treasurer, Auditor of Public Accounts, Secretary of State, Commissioner of Agriculture, Labor and Statistics, Attorney General, Superintendent of Public Instruction and Register of the Land Office shall be ineligible to re-election for the succeeding four years after the expiration of the term for which they shall have been elected. The duties and responsibilities of these officers shall be prescribed by law, and all fees collected by any of said officers shall be covered into the treasury. Inferior state officers, not specifically provided for in this Constitution, may be appointed or elected, in such manner as may be prescribed by law, for a term not exceeding four years, and until their successors are appointed or elected and qualified."

The General Assembly in 1992 (Acts 1992, ch. 168, § 12) proposed an amendment to the Constitution which amendment was ratified by the voters at the regular election November 3, 1992. Prior to the amendment this section read:

Section 19 of Acts 1992, ch. 168 provided: "It is further proposed as a part of this amendment and as a schedule of transitional provisions, for the purposes of this amendment, and any other provision of the Constitution of Kentucky notwithstanding:

"(1) The Governor; Lieutenant Governor; Treasurer; Auditor of Public Accounts; Attorney General; Secretary of State; Commissioner of Agriculture, Labor and Statistics; Superintendent of Public Instruction; and Railroad Commissioners elected in 1991 shall be ineligible for election to the same office for the succeeding term. Those officers elected in 1995 shall be eligible for election to the next succeeding term.

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

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

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

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

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

"(7) No person holding elective office upon the effective date of this amendment shall have the duration of his current term extended. However, if the next election of any officer not specifically provided for in this section is scheduled to appear

on the ballot in an odd-numbered year, the duration of that term of the officer elected shall be extended for one year. The election for any office subject to the provisions of this subsection shall subsequently be held in even-numbered years."

Cross-References. Fees to be paid into treasury, KRS 41.070.

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

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

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

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

Compiler's Notes. The General Assembly in 1992 (Acts 1992, ch. 168, § 13) proposed an amendment to the Constitution which amendment was ratified by the voters at the regular election November 3, 1992. Prior to the amendment this section read:

"§ 95. Time of election of constitutional state officers. — The election under this Constitution for Governor, Lieutenant Governor, Treasurer, Auditor of Public Accounts, Register of the Land Office, Attorney General, Secretary of State, Superintendent of Public Instruction, and Commissioner of Agriculture, Labor and Statistics, shall be held on the first Tuesday after the first Monday in November, eighteen hundred and ninety-five, and the same day every four years thereafter."

Section 19 of Acts 1992, ch. 168 provided: "It is further proposed as a part of this amendment and as a schedule of transitional provisions, for the purposes of this amendment, and any other provision of the Constitution of Kentucky notwithstanding:

"(1) The Governor; Lieutenant Governor; Treasurer; Auditor of Public Accounts; Attorney General; Secretary of State; Commissioner of Agriculture, Labor and Statistics; Superintendent of Public Instruction; and Railroad Commissioners elected in 1991 shall be ineligible for election to the same office for the succeeding term. Those officers elected in 1995 shall be eligible for election to the next succeeding term.

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

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

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

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

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

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

Cross-References. Time of election of public officers generally, Const., § 148.

§ 96. Compensation of Constitutional State officers.

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

Cross-References. Compensation of constitutional state officers, KRS 64.480.

Maximum limit on salaries, Const., § 246.

SUFFRAGE AND ELECTIONS

SECTION.

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

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

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

Cross-References. How and by whom vacancies filled, Const., § 76; KRS 63.150 to 63.220.

Special election to fill vacancy in general assembly, KRS 118.730.

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

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

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

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

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

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

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

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

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

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

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

Where a person is elected to fill a vacancy for an unexpired term, such person is entitled to take office immediately after his election or as soon thereafter as he receives his certificate of election and qualifies; he would then hold office for the remainder of the unexpired term. OAG 84-244.

NOTES TO DECISIONS

ANALYSIS

5. Appointment.
6. Election.
14. —School board.

5. Appointment.

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

6. Election.

14. —School Board.

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

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

§ 155. School elections not governed by Constitution.

The provisions of Sections 145 to 154, inclusive, shall not apply to the election of school trustees and other common school district elections. Said elections shall be regulated by the General Assembly, except as otherwise provided in this Constitution.

Cross-References. School elections, KRS 160.200 to 160.260.

NOTES TO DECISIONS

Cross-References. The note to Const., § 147 under heading "24. — School Election" reads: "From Const., § 155 as applied to § 147, it was clear that the secret ballot was not intended as requirement in common-school district elections. Moss v. Riley, 102 Ky. 1, 43 S.W. 421 (1897)."

ANALYSIS

1. In general.
2. Bond issuance.
3. School officers.
4. Right to vote.
5. School districts.
6. Time of elections.
7. Corrupt practice act.
8. Filling of vacancies.

1. In General.

Under this section, common school district elections were not required to be held on regular election day. Sisk v. Gardiner, 25 Ky. L. Rptr. 18, 74 S.W. 686 (1903).

This section confers on the Legislature full power to regulate everything relating to the management and control of the common schools of this state. Shields v. Wilkins, 449 S.W.2d 220 (1969).

This section would indicate that Const., §§ 145 to 154 should not apply to school elections. Shields v. Wilkins, 449 S.W.2d 220 (1969).

2. Bond Issuance.

In the absence of statutory limitation, school trustees may submit for election more than once in the same year the question of issuing bonds, even though such issue was previously defeated. McKinney v. Board of Trustees, 144 Ky. 85, 137 S.W. 839 (1911).

A school district bond issue election held on day other than the regular election day provided by law, and at which the vote was viva voce instead of by ballot, was not for those reasons invalid. Smith v. Board of Trustees, 171 Ky. 39, 186 S.W. 927 (1916).

Legislature can confide to school board the power to order and conduct an election on the question of issuance of school bonds without any restriction requiring it to be held on a day of general election. Rogan v. Board of Educ., 192 Ky. 770, 234 S.W. 443 (1921).

3. School Officers.

The Legislature has the liberty to determine everything relating to the management and control of the schools of the state, including the right to determine who may vote for school superintendent and other school officers. Crook v. Bartlett, 155 Ky. 305, 159 S.W. 826 (1913).

4. Right to Vote.

This section confers on the Legislature full power to regulate everything relating to the management and control of the common schools of the state, and the Legislature has the power to give women the right to vote in them. Stuessy v. City of Louisville, 156 Ky. 523, 161 S.W. 564 (1913).

Illiterate women, no less than illiterate men, may exercise their right to vote at school elections. Prewitt v. Wilson, 242 Ky. 231, 46 S.W.2d 90 (1932).

5. School Districts.

The city of Louisville being a school district, an election therein on a tax measure is a school district election, and under the regulation of the General Assembly. Stuessy v. City of Louisville, 156 Ky. 523, 161 S.W. 564 (1913).

6. Time of Elections.

School elections of every character are not required to be held on a regular election day. Clark v. Board of Trustees, 164 Ky. 210, 175 S.W. 359 (1915). See Sisk v. Gardiner, 25 Ky. L. Rptr. 18, 74 S.W. 686 (1903); Weil, Roth & Co. v. Paris, 176 Ky. 841, 197 S.W. 461 (1917).

The Legislature is at liberty to fix the time for regular or general election of school trustees on a day other than the first Tuesday after the first Monday in November. Norton v. Letton, 271 Ky. 353, 111 S.W.2d 1053 (1937).

7. Corrupt Practice Act.

Members of school board, like all other elected county and district officers, are subject to the provisions of the corrupt practice act, KRS 123.030 (repealed). Ridings v. Jones, 213 Ky. 810, 281 S.W. 999 (1926). See Hart v. Rose, 255 Ky. 576, 75 S.W.2d 43 (1934).

Although this section relieved Legislature of necessity of applying corrupt practice measures to schools, it did not forbid Legislature from such application; thus, corrupt practice act could apply to school elections. Hart v. Rose, 255 Ky. 576, 75 S.W.2d 43 (1934).

8. Filling of Vacancies.

The selection of a person to fill a vacancy in a common school district office is synonymous with an election within the meaning of this section. Shields v. Wilkins, 449 S.W.2d 220 (1969).

MUNICIPALITIES

SECTION.

157. Maximum tax rate for cities, counties, and taxing districts.
157b. Adoption of budget required for cities, counties, and taxing districts — Expenditures not to exceed revenues for fiscal year.
158. Maximum indebtedness of cities, counties, and taxing districts — General Assembly authorized to set additional limits and conditions.
165. Incompatible offices and employments.

§ 157. Maximum tax rate for cities, counties, and taxing districts.

The tax rate of cities, counties, and taxing districts, for other than school purposes, shall not, at any time, exceed the following rates upon the value of the taxable property therein: For all cities having a population of fifteen thousand or more, one dollar and fifty cents on the hundred dollars; for all cities having less than fifteen thousand and not less than ten thousand, one dollar on the hundred dollars; for all cities having less than ten thousand, seventy-five cents on the hundred dollars; and for counties and taxing districts, fifty cents on the hundred dollars.

(Amendment, proposed by Acts 1994, ch. 168, § 2, and ratified November 8, 1994.)

Compiler's Notes. The General Assembly in 1994 (Acts 1994, ch. 168, § 2) proposed an amendment to this section, which amendment was ratified by the voters at the regular election November 8, 1994 and became effective November 8, 1994. Prior to this amendment this section read:

"§ 157. Maximum tax rate for cities, counties and taxing districts — Indebtedness exceeding income provided for year not to be incurred without popular vote. — The tax rate of cities, towns, counties, taxing districts and other municipalities, for other than school purposes, shall not, at any time, exceed the following rates upon the value of the taxable property therein, viz: For all towns or cities having a population of fifteen thousand or more, one dollar and fifty cents on the hundred dollars; for all towns or cities having less than fifteen thousand and not less than ten thousand, one dollar on the hundred dollars; for all towns or cities having less than ten thousand, seventy-five cents on the hundred dollars; and for counties and taxing districts, fifty cents on the hundred dollars; unless it should be necessary to enable such city, town, county, or taxing district to pay the interest on, and provide a sinking fund for the extinction of, indebtedness contracted before the adoption of this Constitution. No county, city, town, taxing district, or other municipality, shall be authorized or permitted to become indebted, in any manner or for any purpose, to an amount exceeding, in any year, the income and revenue provided for such year, without the assent of two-thirds of the voters thereof, voting at an election to be held for that purpose; and any indebtedness contracted in violation of this section shall be void. Nor shall such contract

be enforceable by the person with whom made; nor shall such municipality ever be authorized to assume the same."

Section 5 of Acts 1994, ch. 168 provides: "It is further proposed as a part of this amendment and as a transitional provision for the purposes of this amendment, that any contract or legally binding obligation of a local government shall remain unaffected until the contract or obligation is renegotiated or expires."

Cross-References. City taxes, levy of, KRS 91.260 to 91.280, 92.280 to 92.320.

County taxes, levy of, KRS 68.090.

County tax in excess of 50 cents per hundred for maintenance of tubercular institution, KRS 68.090.

Improvements, financing through special assessments, KRS 91A.200 to 91A.290.

School taxes, levy of, KRS 160.460 to 160.477.

Taxation by cities and counties, Const., § 181.

Opinions of Attorney General. By exempting school districts from the scope of application of the act, and by permitting termination by a taxing district on a year-to-year basis of a contractual arrangement with an agency, Acts 1986, ch. 13, which repealed the Tax Increment Act, KRS 99.750, and enacted KRS 99.751, 99.756, 99.761, 99.766 and 99.771 (now see KRS 65.490 et seq.), has remedied the constitutional problems under this section and Const., § 184 that the Supreme Court in Miller v. Covington Development Authority, 539 S.W.2d 1 (Ky. 1976), found with the Tax Increment Act. OAG 86-48.

Cited: City of Lexington v. Board of Educ., 193 Ky. 566, 236 S.W. 1030 (1922).

NOTES TO DECISIONS

Many of the decisions under this section regarding indebtedness were decided prior to the 1994 amendment of this section which deleted that portion of the section prohibiting an entity from becoming indebted in amount exceeding yearly income and revenue. Now see Const., § 157b.

ANALYSIS

8. School purposes.
10. Indebtedness.
13. —Not debts.
15. —Created before Constitution.
18. —Estimation of amount.
19. ——Debts of school boards.
23. —Annexed or merged entities.
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37. —Invalid expenditures.
39. ——Contracts.
45. —Unconstitutional statutes.
46. —Municipality or taxing district.

8. School Purposes.

The tax rate provided for cities and towns of less than 10,000 population applies to an indebtedness for school purposes as well as for strictly municipal purposes. City Council v. Powell, 101 Ky. 7, 16 Ky. L. Rptr. 174, 27 S.W. 1 (1894).

The limitation on indebtedness in this section also applies to debts incurred for school purposes. Commonwealth v. Louisville & N. R.R., 105 Ky. 206, 20 Ky. L. Rptr. 127, 48 S.W. 1092 (1899).

The tax rates of this section do not place a limit on rates that may be levied for school purposes but the debt limit does include indebtedness for school purposes. Walsh v. City of Pineville, 152 Ky. 556, 153 S.W. 1002 (1913).

The limitations imposed by this section have no application to the property tax voted for school purposes under authority of a valid election. Christopher v. Robinson, 164 Ky. 262, 175 S.W. 387 (1915).

The provisions of this section fixing tax rates for other than school purposes were not intended as an exception to the debt limits of Const., § 158, which limits no city, town, county, taxing district and municipality can exceed even for school purposes. Booth v. Board of Educ., 229 Ky. 719, 17 S.W.2d 1013 (1929).

There is no constitutional limitation on tax rates for school purposes. Bell v. Board of Educ., 343 S.W.2d 804 (Ky. 1961).

10. Indebtedness.

13. —Not Debts.

Issuance of bonds by a county board of education was not the creation of a debt in violation of this section where anticipated tax revenues on which the anticipated tax revenues on which the school budget was based were reduced as a result of judicial decisions with respect to methods of computing assessed valuations of certain property. Bell v. Board of Educ., 343 S.W.2d 804 (Ky. 1961).

15. —Created Before Constitution.

This section does not forbid an indebtedness to be incurred where all the necessary steps had been taken pursuant to a statute and prior to the adoption of the Constitution. Ludlow v. Board of Educ., 16 Ky. L. Rptr. 805, 29 S.W. 854 (1895).

18. —Estimation of Amount.

The validity of a note of a board of education given in exchange for warrants previously issued must be determined by the financial status of the school district when the original indebtedness was created. Citizens Bank v. Rowan County Bd. of Educ., 274 Ky. 481, 118 S.W.2d 704 (1938).

19. ——Debts of School Boards.

Where a board of education was authorized by statute to issue bonds and hold an election for approval, the indebtedness is that of the board alone and the debt of the city is not considered in determining when the limits of this section are reached. Rogan v. Board of Educ., 192 Ky. 770, 234 S.W. 443 (1921).

The outstanding indebtedness of a municipality may not be taken into consideration in determining whether a graded school district has reached the constitutional limitation on indebtedness. Fall v. Read, 194 Ky. 135, 238 S.W. 177 (1922). See Dayton v. Board of Educ., 201 Ky. 566, 257 S.W. 1021 (1924).

An indebtedness of a municipality is not to be taken into account in estimating the indebtedness of a school board of the district which covers the same territory. Dayton v. Board of Educ., 201 Ky. 566, 257 S.W. 1021 (1924).

23. —Annexed or Merged Entities.

A county school board would not be permitted to assume the debts of another school district which it had absorbed, assuming such debt would create a total indebtedness in excess of the income for that year. Owsley County Bd. of Educ. v. Owsley County Fiscal Court, 251 Ky. 165, 64 S.W.2d 179 (1933).

This section does not relieve a county school board from liability for a judgment against an independent school district which had been merged with the county district by order of the state board of education. Board of Educ. v. Nelson, 268 Ky. 83, 103 S.W.2d 691 (1937).

A county board of education could be liable for the debts of an independent school district when the district was merged and issue bonds to satisfy the indebtedness, since it was a debt which the board did not voluntarily incur. Bales v. Holt, 270 Ky. 272, 109 S.W.2d 632 (1937).

If the question of incurring an indebtedness and issuing general obligation bonds had been submitted to the voters in accordance with this section and had received the required two-thirds (⅔) vote in favor, then property in the district at

the time the vote was taken would remain liable for the tax required to pay the indebtedness, regardless of the transfer of the property to another school district. Board of Educ. v. Board of Education of Lexington Independent School Dist., 250 S.W.2d 1017 (Ky. 1952).

24. —Approval of Voters.

Under this section county school district has no right to anticipate more than one (1) year's taxes at a time without a two-thirds (⅔) vote of the people. Board of Educ. v. Board of Educ. of Lexington Independent School Dist., 250 S.W.2d 1017 (Ky. 1952).

25. ——Two-thirds Vote.

A prospective indebtedness may be approved by two-thirds (⅔) of the voters voting on the question and it is not necessary to have the assent of two thirds (⅔) of the electorates or two-thirds (⅔) who vote for the candidates in the election. Montgomery County Fiscal Court v. Trimble, 104 Ky. 629, 20 Ky. L. Rptr. 827, 47 S.W. 773, 42 L.R.A. 738 (1898), overruling in part Belknap v. Louisville, 99 Ky. 474, 18 Ky. L. Rptr. 313, 36 S.W. 1118, 59 Am. St. 478, 34 K.L.R. 256 (1896); Owensboro v. Baker, 18 Ky. L. Rptr. 324, 37 S.W. 1129 (1896); McGoodwin v. Franklin, 18 Ky. L. Rptr. 752, 38 S.W. 481 (1896). See Worthington v. Board of Educ., 24 Ky. L. Rptr. 1510, 71 S.W. 879 (1903); Board of Educ. v. City of Winchester, 120 Ky. 591, 27 Ky. L. Rptr. 994, 87 S.W. 768 (1905); Kentucky Light & Power Co. v. James H. Williams & Co., 124 S.W. 840 (1910); Inglehart v. Dawson Springs, 143 Ky. 140, 136 S.W. 210 (1911); Logan v. Gilbert, 151 Ky. 659, 152 S.W. 778 (1913); Fowler v. Oakdale, 158 Ky. 603, 166 S.W. 195 (1914).

32. —Valid Expenditures.

Where a school district employed a contractor to build a schoolhouse and the total price was beyond the amount of funds available, there was no proof that the debt was invalid where there was no contract executed and the builder agreed not to do any more than could be paid from yearly revenue. Cockrell v. Board of Trustees, 237 Ky. 280, 35 S.W.2d 310 (1931).

Payment of increased teachers' salaries from a capital outlay item of the education budget was not improper where it was within the limits and constituted a part of the anticipated revenues. Dunn v. Allen, 308 Ky. 774, 215 S.W.2d 957 (1948).

35. ——Contracts.

A contract by which the board of education sold a school building for a fixed consideration to a corporation organized to purchase the building, with option by the board to lease and rebuy the building but with no obligation to do so, did not require the board to incur an indebtedness in excess of that authorized by this section and Const., § 158, without a vote of the voters thereon. Waller v. Georgetown Bd. of Educ., 209 Ky. 726, 273 S.W. 498 (1925).

A contract between a school corporation and a corporation where the corporation was to build a school to be rented by the city for the term of one (1) year with an option to renew from year to year for a yearly rent within the constitutional debt limit was valid. Kirkpatrick v. City Bd. of Educ., 234 Ky. 836, 29 S.W.2d 565 (1930). See Holman v. Glasgow Graded Common School Dist., 237 Ky. 7, 34 S.W.2d 733 (1931).

Where a lease entered into by a school board was for one (1) year with options to renew on a year-to-year basis, this did not create an indebtedness for more than a year and such yearly rent was not in excess of anticipated revenue; therefore, there was no violation of this section. Davis v. Bd. of Educ., 260 Ky. 294, 83 S.W.2d 34 (1935).

37. —Invalid Expenditures.

Approval of $3,800 for school improvements by the school trustees was improper where the revenue was only $2,800 and the voters had disapproved a bond issue for these improvements. Flanders v. Board of Trustees, 170 Ky. 627, 186 S.W. 506 (1916).

Where the Legislature increased the maximum rate of levy but the board of education did not request the fiscal court to impose this new maximum, then the board was without power to issue bonds to fund a floating indebtedness. Hockensmith v. County Bd. of Educ., 240 Ky. 76, 41 S.W.2d 656 (1931).

A board of education may not fund an indebtedness by issuing bonds when the fiscal court failed to act on the board's request for an additional levy. Downey v. Board of Educ., 243 Ky. 66, 47 S.W.2d 931 (1932).

The mere fact that a school board has exceeded the amount of its realized annual revenue does not violate the constitutional debt limitation where the board stays within the amount of its budget, if its excess expenditure over realized income is within the amount which the board might reasonably have anticipated would be received by it from the tax levy, but where board did not reduce the amount of its budgets, notwithstanding repeated annual experience of failing to realize revenue called for by its budgets, it did not keep its expenditures within required reasonably anticipated amount. Fiscal Court v. Lincoln County Bd. of Educ., 273 Ky. 174, 115 S.W.2d 891 (1937).

A board of education could not validly issue bonds with maturity dates antedating the issuance, thereby making them past due and payable with accumulated interest at the time they are issued. Abbott v. Oldham County Bd. of Educ., 272 Ky. 654, 114 S.W.2d 1128 (1938).

39. ——Contracts.

A contract by which a school district was to pay for the building of a school through the levy of a tax for four (4) years was invalid where the contract was not authorized by the voters. Grady v. Pruit, 111 Ky. 100, 23 Ky. L. Rptr. 506, 63 S.W. 283 (1901).

The acts of school trustees in contracting an indebtedness for the building of a schoolhouse in excess of the revenues, and in levying a tax to pay the debt, are void. Howard v. Trustees, 31 Ky. L. Rptr. 399, 102 S.W. 318 (1907).

A contract by which a board of education agreed to rent of building for seven (7) years at the end of which time the building would be conveyed to the board was invalid as not having been approved by the electorate even though each yearly rental could be paid out of the annual revenue. Billings v. Bankers' Bond Co., 199 Ky. 490, 251 S.W. 643 (1923).

A contract by a board of education to convey property to a private corporation which was in its effect a mortgage of the property is invalid as a creation of indebtedness under this section. Hardin v. Owensboro Educ. Ass'n, 244 Ky. 390, 50 S.W.2d 968 (1932).

A plan to convey property to the fiscal court which would lease the school building to be constructed to the school board for a year-to-year lease with rent sufficient to amortize the mortgage and then reconvey the building to the board was invalid. Fiscal Court v. Board of Educ., 268 Ky. 336, 104 S.W.2d 1103 (1937).

A plan by which a school board was to convey school properties to a nonprofit corporation which would erect a new school building to be leased to the board for a period of years after which the board was to become owner of the property conveyed to the corporation was invalid. Weaks v. Board of Educ., 282 Ky. 241, 137 S.W.2d 1094 (1940).

If a board of education incurs an indebtedness by contracting for construction of a school, and its cost exceeds its income and revenue for the current year, the contract is unenforceable unless it has been approved by two thirds (⅔) of the voters of the area affected. Hacker Bros. Constr. Co. v. Board of Educ., 590 S.W.2d 897 (Ky. Ct. App. 1979).

Where a construction company was attempting to maintain an action on the basis that it had a valid contract with the school board, the contract was unenforceable because the approval of the voters of the county was not obtained, as

required by this section; on the other hand, if the construction company was attempting to maintain the action on the basis that the revenue bond methods provided for in KRS 162.120 to KRS 162.290 were followed, the contract was unenforceable because the only government agency possessing the power and authority to execute such a contract failed to do so. Hacker Bros. Constr. Co. v. Board of Educ., 590 S.W.2d 897 (Ky. Ct. App. 1979).

45. —Unconstitutional Statutes.

The provisions of KRS 162.090, making school bonds the obligation of the city in cases where the city school district embraces the city, cannot constitutionally be applied where the city boundaries extend beyond those of the school district, therefore the bonds constitute obligations of the school district, for which only property within the district may be taxed and for which only voters in the district may vote on the question of issuance of bonds. Board of Educ. v. City of Louisville, 258 S.W.2d 707 (Ky. 1953).

46. —Municipality or Taxing District.

A county is for school purposes a taxing district and a municipality, within the meaning of this section and Const., § 158 limiting indebtedness but permitting issuance of bonds to fund floating indebtedness, but county board of education is not, but is merely an arm through which the taxing district operates. Farson v. County Board of Educ., 100 F.2d 974 (6th Cir. 1939). See First Trust Co. v. County Bd. of Educ., 78 F.2d 114 (6th Cir. 1935).

A board of education is a municipality within the meaning of this section and may not create an indebtedness in excess of revenues without approval of the voters. Brown v. Board of Educ., 108 Ky. 783, 22 Ky. L. Rptr. 483, 57 S.W. 612 (1900).

A county board of education may not assume an illegally created debt incurred by trustees of a school district, as a school district is a "taxing district or other municipality" within the meaning of this section. Scobee v. Board of Educ., 157 Ky. 510, 163 S.W. 472 (1914).

A county board of education is an entity subject to the provisions of this section. Lee v. Board of Educ., 261 Ky. 379, 87 S.W.2d 961 (1935).

§ 157b. Adoption of budget required for cities, counties, and taxing districts — Expenditures not to exceed revenues for fiscal year.

Prior to each fiscal year, the legislative body of each city, county, and taxing district shall adopt a budget showing total expected revenues and expenditures for the fiscal year. No city, county, or taxing district shall expend any funds in any fiscal year in excess of the revenues for that fiscal year. A city, county, or taxing district may amend its budget for a fiscal year, but the revised expenditures may not exceed the revised revenues. As used in this section, "revenues" shall mean all income from every source, including unencumbered reserves carried over from the previous fiscal year, and "expenditures" shall mean all funds to be paid out for expenses of the city, county, or taxing district during the fiscal year, including amounts necessary to pay the principal and interest due during the fiscal year on any debt.

(Adoption proposed by Acts 1994, ch. 168, § 3, and ratified November 8, 1994.)

Compiler's Notes. The General Assembly in 1994 (Acts 1994, ch. 168, § 2) proposed that a new section be added to the Constitution to be numbered as section 157b. Such proposed section was ratified by the voters at the regular election November 8, 1994 and became effective November 8, 1994.

Section 5 of Acts 1994, ch. 168 provides: "It is further proposed as a part of this amendment and as a transitional provision for the purposes of this amendment, that any contract or legally binding obligation of a local government shall remain unaffected until the contract or obligation is renegotiated or expires."

§ 158. Maximum indebtedness of cities, counties, and taxing districts — General Assembly authorized to set additional limits and conditions.

Cities, towns, counties, and taxing districts shall not incur indebtedness to an amount exceeding the following maximum percentages on the value of the taxable property therein, to be estimated by the last assessment previous to the incurring of the indebtedness: Cities having a population of fifteen thousand or more, ten percent (10%); cities having a population of less than fifteen thousand but not less than three thousand, five percent (5%); cities having a population of less than three thousand, three percent (3%); and counties and taxing districts, two percent (2%), unless in case of emergency, the public health or safety should so require. Nothing shall prevent the issue of renewal bonds, or bonds to fund the floating indebtedness of any city, county, or taxing district. Subject to the limits and conditions set forth in this section and elsewhere in this Constitution, the General Assembly shall have the power to establish additional limits on indebtedness and conditions under which debt may be incurred by cities, counties, and taxing districts.

(Amendment proposed by Acts 1994, ch. 168, § 4, and ratified November 8, 1994.)

Compiler's Notes. The General Assembly in 1994 (Acts 1994, ch. 168, § 4) proposed an amendment to this section of the Constitution which was ratified by the voters at the regular election November 8, 1994 and became effective November 8, 1994. Prior to this amendment this section read:

"§ 158. Maximum indebtedness of cities, counties, and taxing districts — Indebtedness authorized or incurred prior to Constitution — The respective cities, towns, counties, taxing districts, and municipalities shall not be authorized or permitted to incur indebtedness to an amount, including existing indebtedness, in the aggregate exceeding the following named maximum percentages on the value of the taxable property therein, to be estimated by the assessment next before the last assessment previous to the incurring of the indebtedness, viz.: Cities of the first and second classes, and of the third class having a population exceeding fifteen thousand, ten per centum; cities of the third class having a population of less than fifteen thousand, and cities and towns of the fourth class, five per centum; cities and towns of the fifth and sixth classes, three per centum; and counties, taxing districts and other municipalities, two per centum: Provided, any city, town, county, taxing district or other municipality may contract an indebtedness in excess of such limitations when the same has been authorized under laws in force prior to the adoption of this Constitution, or when necessary for the completion of and payment for a public improvement undertaken and not completed and paid for at the time of the adoption of this Constitution: And provided further, If, at the time of the adoption of the Constitution, the aggregate indebtedness, bonded or floating, of any city, town, county, taxing district, or other municipality, including that which it has been or may be authorized to contract as herein

provided, shall exceed the limit herein prescribed, then no such city or town shall be authorized or permitted to increase its indebtedness in an amount exceeding two per centum, and no such county, taxing district or other municipality, in an amount exceeding one per centum, in the aggregate upon the value of the taxable property therein, to be ascertained as herein provided, until the aggregate of its indebtedness shall have been reduced below the limit herein fixed, and thereafter it shall not exceed the limit, unless in case of emergency, the public health or safety should so require. Nothing herein shall prevent the issue of renewal bonds, or bonds to fund the floating indebtedness of any city, town, county, taxing district or other municipality.

Section 5 of Acts 1994, ch. 168 provides: "It is further proposed as a part of this amendment and as a transitional provision for the purposes of this amendment, that any contract or legally binding obligation of a local government shall remain unaffected until the contract or obligation is renegotiated or expires."

Cross-References. Issuance of bonds, KRS ch. 66.

Law for borrowing money must specify purpose, Const., § 178.

NOTES TO DECISIONS

Cross-References. See notes to Const., § 157.

Analysis

4. Indebtedness.
10. —Estimation of amount.
12. ——School debts.
16. —Assessment.
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19. ———Judgments.
20. ———Deficits in revenue.
21. ———School debts.
22. —Refunding bonds.
23. —Emergencies.
24. ——Not emergencies.
25. ——Question of fact.
26. —Municipalities and taxing districts.
27. —Delay in bond issue.
28. —Partial invalidity.
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36. —Pleading and proof.

4. Indebtedness.

10. —Estimation of Amount.

12. ——School Debts.

Where a city includes an independent school district which is an independent corporation, the indebtedness of the school district is not to be treated as a part of the city's indebtedness, in determining whether the city has reached its maximum constitutional debt limit, so as to preclude the issuance of further bonds. Ex parte City of Newport, 141 Ky. 329, 132 S.W. 580, 1912C Ann. Cas. 447, 37 L.R.A. (n.s.) 1034 (1910), overruled on other grounds, Ex parte City of Ashland, 256 Ky. 384, 76 S.W.2d 43 (1934).

In estimating the indebtedness of a city in order to determine whether a proposed bond issue would exceed the limits of this section, the bonded indebtedness of the school board is not considered as part of the city's indebtedness. Rash v. City of Madisonville, 148 Ky. 154, 146 S.W. 386 (1912).

An indebtedness of cities of the second class for school purposes is distinct from that of any other municipal corporation or political body, including the school district, and in reckoning the indebtedness thereof to determine whether contemplated school bonds would exceed the city's debt limit, the indebtedness of a school corporation wholly or partially within the city is not to be considered. Coppin v. Board of Educ., 155 Ky. 387, 159 S.W. 937 (1913).

School improvement bonds which were approved by the voters of the city were debts of the city and not of the board of education with respect to the determination of debt limitations of this section. Hager v. Board of Educ., 254 Ky. 791, 72 S.W.2d 475 (1934).

Outstanding bonds of two (2) school districts which were authorized by the voters and which are being taken care of by special taxes are not to be considered in determining whether the contemplated increase in the bonded indebtedness is within the limits of this section. Rowan County Bd. of Educ. v. Citizens Bank, 279 Ky. 413, 130 S.W.2d 832 (1939).

16. —Assessment.

Under this section, the amount of indebtedness which might be incurred by board of education was not controlled by assessment next before election at which bonds were authorized but by assessment next before indebtedness was incurred by issuance and sale of the bonds. Sutherland v. Board of Educ., 209 Ky. 351, 272 S.W. 887 (1925).

The assessed valuation of the property taxable for the support of the county board of education when the bonds are sold determines the constitutional limitation of the debt, but that value is presumed to be the same as the last complete and final assessment. Rowan County Bd. of Educ. v. Citizens Bank, 279 Ky. 413, 130 S.W.2d 832 (1939).

17. —Floating.

18. ——Funding.

19. ———Judgments.

An issue of bonds to fund a judgment debt was valid where evidence showed that the indebtedness incurred for each year plus the total indebtedness for the preceding years was not in excess of the limits of this section. Hundley v. Board of Educ., 265 Ky. 33, 95 S.W.2d 1091 (1936).

20. ———Deficits in Revenue.

A floating debt accumulated over several years from unexpected deficits in revenue and based on obligations assumed pursuant to a fair estimate of revenue was a valid obligation for which bonds could be issued. Lee v. Board of Educ., 261 Ky. 379, 87 S.W.2d 961 (1935).

21. ———School Debts.

Issue of bonds of school district to refund validly created debts was authorized even though the debt did accumulate over a period of years, and the board of education should have paid the preceding year's indebtedness from revenues of the succeeding year. Meade v. Board of Educ., 268 Ky. 71, 103 S.W.2d 701 (1937).

In order to approve a bond issue to fund an indebtedness of a school board, it must be shown that the anticipated revenue of the board is its budgeted revenue. Arrowood v. Board of Educ., 269 Ky. 464, 107 S.W.2d 324 (1937).

A board of education which has kept its expenditures within its budget may fund a floating indebtedness caused by an unexpected failure in its revenue. Ebert v. Board of Educ., 277 Ky. 633, 126 S.W.2d 1111 (1939).

A floating indebtedness of a board of education incurred for valid obligations and within constitutional limits which resulted from deficits in revenue caused by judicial invalidation of certain assessments could be funded by a bond issue. Bell v. Board of Educ., 343 S.W.2d 804 (Ky. 1961).

22. —Refunding Bonds.

A board of education could issue refunding bonds for previous valid bonds as this would create no additional liability. Wilson v. Board of Educ., 226 Ky. 476, 11 S.W.2d 143 (1928).

The issuance of bonds for the purpose of paying or funding other outstanding bonds or other valid indebtedness is not an

increase in the taxing district's indebtedness. Abbott v. Oldham County Bd. of Educ., 272 Ky. 654, 114 S.W.2d 1128 (1938).

Matured interest on bonds validly issued is itself a valid floating indebtedness, and can be refunded. Whitworth v. Breckinridge County Bd. of Educ., 276 Ky. 346, 124 S.W.2d 495 (1939).

23. —Emergency.

24. ——Not Emergencies.

The need to replace a school building destroyed by fire does not constitute an emergency within the meaning of this section. Nelson v. Board of Educ., 213 Ky. 714, 281 S.W. 808 (1926).

25. ——Question of Fact.

Whether a school bond issue was necessitated by an emergency is a question of fact on which the finding of the board of education is not conclusive. Buckner v. Board of Educ., 236 Ky. 768, 34 S.W.2d 236 (1930).

26. —Municipalities and Taxing Districts.

A board of education may not incur an indebtedness in excess of the limitations of this section which are applicable to counties, taxing districts and other municipalities, as the debts are those of the board itself and not part of the city's debt. Sutherland v. Board of Educ., 200 Ky. 23, 252 S.W. 123 (1923).

A board of education which can mandatorily require the fiscal court to make a school levy is a taxing district, and may issue bonds to fund its floating indebtedness. Ebert v. Board of Educ., 277 Ky. 633, 126 S.W.2d 1111 (1939).

28. —Partial Invalidity.

An order for an election to authorize an issue of school district bonds, exceeding the limitation fixed by this section, is not invalid as to the issuance of the legal amount. McKinney v. Board of Trustees, 144 Ky. 85, 137 S.W. 839 (1911).

Where the voters had approved a $50,000 bond issue and $25,000 worth of bonds were issued, the additional amount of bonds cannot later be issued where at the time of the election the assessed property of the district would have supported an issue of only $22,000. Nelson v. Williamsburg Indep. Graded School Dist., 265 Ky. 792, 97 S.W.2d 814 (1936).

34. —Invalid Statutes.

A statute raising the limit of indebtedness which may be incurred by a school district from two percent (2%) to four percent (4%) is unconstitutional. Boll v. Ludlow, 227 Ky. 208, 12 S.W.2d 301 (1928). See Booth v. Board of Educ., 229 Ky. 719, 17 S.W.2d 1013 (1929).

36. —Pleading and Proof.

A petition which merely avers that a floating indebtedness was illegally incurred is insufficient where it states conclusions rather than facts. King v. Christian County Bd. of Educ., 229 Ky. 234, 16 S.W.2d 1053 (1929).

Where a school board's proof in a proceeding to approve a bond issue was inconsistent, the validity of the indebtedness cannot be established. Arrowood v. Board of Educ., 271 Ky. 812, 113 S.W.2d 466 (1938).

§ 165. Incompatible offices and employments.

No person shall, at the same time, be a State officer or a deputy officer or member of the General Assembly, and an officer of any county, city, town, or other municipality, or an employee thereof; and no person shall, at the same time, fill two municipal offices, either in the same or different municipalities, except as may be otherwise provided in this Constitution; but a Notary Public, or an officer of the militia, shall not be ineligible to hold any other office mentioned in this section.

Cross-References. Incompatible offices, Const., §§ 44, 237; KRS 61.080.

Opinions of Attorney General. Membership on the McLean County board of education is not incompatible with the position of teacher of vocational agriculture in Muhlenberg County. OAG 60-901.

Although the positions of county director of pupil personnel and city director of pupil personnel are not incompatible as such, they are incompatible in fact because KRS 159.140(1) requires that a director of pupil personnel must devote his entire time to his duties, which he could not do if he held such positions. OAG 60-1027.

Membership on a board of education is incompatible with the office of magistrate. OAG 61-212.

There is no statutory or constitutional incompatibility between the position of teacher and the office of county commissioner, but there may be a common-law incompatibility. OAG 61-292.

There is no incompatibility between the office of magistrate and driving a school bus for the county board of education under this section or KRS 61.080(1), but there may be a common-law incompatibility. OAG 61-390.

The offices of treasurer of the school board and city clerk are incompatible. OAG 61-823.

The secretary and treasurer of the city board of education and the treasurer of the county board of education were disqualified from serving on the electric plant board. OAG 61-846.

A member of a board of education vacates his office on said board of education when he qualifies and assumes the office of deputy sheriff. OAG 61-942.

One would be prohibited from serving on the county board of health and on the county board of education at the same time, since the two (2) offices are incompatible. OAG 62-617.

Actions taken as a school board member after filing for nomination for the office of sheriff and thus disqualifying himself would be valid until the school board member resigned or was removed from office. OAG 65-211.

A member of the school board who files for nomination for the office of sheriff disqualifies himself from serving on the school board. OAG 65-211.

No constitutional or statutory incompatibility exists between membership on the school board and membership on the municipal housing commission. OAG 66-673.

The office of treasurer of the county board of education and the office or employment of county finance officer are incompatible. OAG 66-754.

A county treasurer may not simultaneously serve also as school (county) treasurer of the board of education. OAG 67-5.

Employment as director of pupil personnel for a district board of education is not incompatible with the position of member on the board of trustees of a public library district. OAG 67-83.

The holding of the position of public schoolteacher and the position of member of the board of county commissioners, at the same time, is not constitutionally nor statutorily incompatible. OAG 67-163.

There is no incompatibility in the holding of the offices of member of the board of education of an independent school district and stenographic reporter for a judicial district. OAG 67-177.

The offices of member of a city independent board of education and member of the county library board are incompatible. OAG 67-186.

The offices of member of the county board of education and member of the county library board of trustees are incompatible. OAG 67-186.

There is no prohibition against a person being a member of the county board of education and at the same time holding a position with the Commonwealth. OAG 68-21.

There is no statutory or constitutional incompatibility against a person holding the position of secretary to the superintendent of the district board of education and at the same time holding the position of secretary-bookkeeper for the head start program of that school district. OAG 68-200.

The office of county school board member is incompatible with employment as county road supervisor. OAG 68-210.

A schoolteacher may at the same time legally serve as an election officer. OAG 68-601.

There is no constitutional or statutory prohibition against a schoolteacher holding the office of magistrate, but a common-law incompatibility would exist. OAG 68-607.

While membership on the council on public higher education, established pursuant to KRS 164.010, would constitute the holding of a state office, membership on a consolidated planning and zoning commission is neither a city, county nor a state office as contemplated by either this section or KRS 61.080, so that no constitutional or statutory incompatibility exists that would prohibit a person from holding both offices at the same time. OAG 69-19.

An employee of the school system may seek and hold the office of county commissioner. OAG 69-94.

A schoolteacher may, at the same time, hold the office of property valuation administrator. OAG 69-158.

There is no incompatibility to prevent a schoolteacher or principal from serving on the county commission. OAG 69-448.

There is no constitutional or statutory provision that prohibits a teacher in the public schools from running for the nomination of city commissioner and serving as such if elected. OAG 69-485.

A department head at a state university not only may become a candidate for the office of city commissioner but also may serve as such. OAG 69-486.

A schoolteacher or principal of a school may at the same time serve on the city commission. OAG 69-519.

The director of pupil personnel for a county board of education may at the same time serve as deputy coroner of that same county. OAG 70-31.

A city elementary school principal may at the same time hold the office of city councilman in a city of the fourth class. OAG 70-183.

An individual can legally serve on the city-county youth commission and at the same time run for and hold membership on the local school board. OAG 70-391.

A member of the municipal housing commission can, at the same time, serve as a member of the local school board. OAG 70-444.

A school board member could not be hired by the county judge to operate, manage or drive a county ambulance. OAG 70-478.

A person can become a candidate for school board membership and at the same time continue to serve on the city commission. OAG 70-558.

A person may not serve on a county board of health and on the board of education at the same time without forfeiting the first office he held. OAG 70-632.

An individual may not at the same time hold the office of school board member and hold employment with a city. OAG 70-663.

There is no constitutional or statutory provision that would prohibit a member of the county board of education from being appointed as a director or member of a water district. OAG 70-723.

There appears to be no constitutional or statutory incompatibility nor any conflict with merit system law in the holding of the office of board member in an independent school district and a position of employment with the Department of Corrections (now Corrections Cabinet). OAG 70-811.

There is no statutory or constitutional incompatibility between being a school principal and serving on the city council. OAG 71-56.

There is no constitutional or statutory incompatibility between holding a position of schoolteacher and holding the office of police judge at the same time. OAG 71-108.

A person could not at the same time serve on the city's park and recreation board and be a member of the local board of education. OAG 72-618.

There is no violation of this section where a member of a city board of aldermen is a part-time paid faculty member of the University of Louisville. OAG 72-654.

Although a school board employee is a state employee, he is not under the merit system as established by KRS chapter 18 (repealed), and neither this section nor KRS 61.080, which define incompatible offices, forbid a school board employee from serving as a city councilman. OAG 73-144.

There is no apparent common law conflict when a magistrate drives a school bus and, as driving a school bus is state employment, and a magistrate is a county officer, there is no constitutional or statutory conflict. OAG 73-212.

An unclassified employee of a state university is eligible to run for and serve on a county school board as there is no general prohibition against holding a state office and state employment at the same time. OAG 74-646.

The treasurer of a county school board is considered a state officer and may not at the same time serve as commissioner of a municipal public utility which office in all probability constitutes a municipal office and, even if not, constitutes municipal employment. OAG 74-707.

No incompatibility exists between the positions of public school teacher and employee of the state racing commission where neither the days nor hours of work required by both conflict. OAG 74-792.

A person may not be a school board member and hold a position on the planning and zoning commission at the same time under this section and KRS 160.180, but until he either resigns or is ousted by the judgment of the court, he is a de facto officer in both agencies and his actions as such are valid. OAG 75-123.

Although there would be no constitutional or statutory provision prohibiting a person from holding the office of magistrate, a county office, and at the same time serving on the county school board staff, which would constitute a form of State employment, there could be a common-law incompatibility since a magistrate must be accessible at all times to persons desiring to serve warrants and to those desiring to bring civil actions. OAG 76-216.

There is no statutory or constitutional incompatibility or conflict of interest between membership on a county school board and employment as a full-time mental health worker for a nonprofit corporation which administers a community mental health program. OAG 76-227.

The mayor of the city of Glasgow can at the same time legally serve as principal of the local school. OAG 76-402.

A person cannot serve as a member of the school board and at the same time hold the position of city manager of a city without violating KRS 61.080 and this section since these sections prohibit a state officer from holding a municipal office or employment. OAG 76-433.

A person who holds the position of director of the city's recreation program could not continue to serve as such and at the same time serve as a member of the local board of education. OAG 76-434.

Inasmuch as the position of maintenance supervisor for a local board of education is a form of state employment, a person would not be prohibited from holding that position and also serving as a member of the county commission. OAG 76-533.

Membership on a county school board and the position of county director of civil defense are incompatible. OAG 76-687.

There is no provision under this section or KRS 61.080 relating to incompatible offices that would prohibit a person from holding a position on a county board of education, which

is a form of state employment, and serving on the fiscal court, which is a county office, nor is there any prohibition against a person serving as a member of a county board of education and as mayor of a fourth class city. OAG 77-8.

An individual who is a member of an independent school board cannot at the same time serve as a member of a county board of health as these positions are incompatible. OAG 77-39.

The position of assistant superintendent of schools, a state office, and the office of magistrate, a county office, are incompatible. OAG 77-129.

The principal of an elementary school, a state employee, can become a candidate for the office of magistrate and if elected continue to retain his position as principal unless there would be some common-law conflict of interest where the individual could not perform the duties of both positions at the same time with care and ability or unless there is some local regulation promulgated by the county board of education prohibiting school employees from becoming candidates for public office without resigning or taking leave of absence. OAG 77-146.

Members of county boards of education are state officers and at the same time the position of state ABC officer is one authorized pursuant to KRS 241.090 and such representatives have full police powers which may or may not place their position in the category of a state officer; and although subsection (1)(d) of KRS 160.180 prohibits a school board member from holding and discharging the duties of any local office or agency under the city or county of his residence, it would not prohibit a school board member from holding employment or an appointive office with the State. OAG 77-245.

A university safety and security officer appointed and holding his position pursuant to KRS 164.950 to 164.980 is a state officer and as a state officer he is precluded by this section and KRS 61.080(1) from serving, at the same time, as either a city officer or a county officer. OAG 77-521.

The holding of the two (2) State officer positions of superintendent of schools and member of a local school board does not by itself present a statutory or constitutional incompatibility, under KRS 61.080 and this section. OAG 78-413.

There is no statutory incompatibility between the offices of assistant commissioners of the Kentucky High School Athletic Association and a county board of education. OAG 78-583.

While nothing in the law prevents an incompatibility between the office of assistant city administrator and candidate for school board, both this section and KRS 61.080 prohibit one from holding a city position and at the same time serving as a school board member, which is a State office. OAG 78-631.

If one is not an employee of a county school board but serves, for example, as an employee of the State Department of Education, there would be no constitutional or statutory conflict under this section and KRS 61.080 since a person can hold two (2) State positions at the same time, whether they be in the form of an office or employment. OAG 78-645.

One may serve as a member of the Bowling Green Board of Education of the Bowling Green Independent School District while at the same time being employed as an administrator of the Bowling Green-Warren County Health Department pursuant to appointment by the joint city-county board of health which is, in turn, approved by the Kentucky Department of Human Resources (now Cabinet for Human Resources), since the joint city-county health department would be considered a hybrid agency not contemplated by the Constitution or statute relating to incompatible offices, namely this section and KRS 61.080. OAG 78-646.

There is nothing under this section or KRS 61.080 that would prohibit an employee of the University of Kentucky Extension Specialist Department, Poultry Division, from holding a State office at the same time (such as the school board position), and this would be true even if the employee was under the State merit system in view of KRS 18.310(4) (now see KRS 18A.140). OAG 78-706.

A person could hold office on the county board of education and at the same time serve as State conservation officer. OAG 78-773.

A person holding the position of membership on the Marshall County Board of Education cannot at the same time serve as city treasurer of Calvert City. OAG 79-1.

This section and KRS 61.080 prohibit a State officer from holding a municipal office at the same time, therefore, no one can hold the office of city attorney and serve as a member of an independent school board at the same time since the two (2) positions are incompatible one with the other. OAG 79-44.

There is no conflict between the positions of superintendent of county schools and a supervisor of a county conservation district. OAG 79-149.

Since a school board member is a state officer, and since a county emergency director is a county employee, this section and KRS 61.080 expressly prohibit one person from holding such office and employment at the same time. OAG 79-319.

The position of county court clerk is a county office under the Constitution, particularly § 99, and a school teacher, part-time or otherwise, is a state employee. OAG 79-459.

There is no constitutional nor statutory prohibition which would inhibit a local board from hiring a county clerk as a substitute teacher. OAG 79-459.

This section and KRS 61.080 prohibit a state officer from holding a county office at the same time; however, there is no prohibition against a state employee holding a county office except where such person is under the state merit system and cannot run for such office, which prohibition would not be applicable with respect to school teachers since they do not come under the state system. OAG 79-459.

The office of city school board member and that of county comptroller are incompatible. OAG 80-92.

This section and KRS 61.080 prohibit a state officer or deputy state officer from holding a county office; however, there is no provision prohibiting a state employee, such as a school principal, who is not under the state merit system from becoming a candidate for a county office, such as a county magistrate, and serving as such at the same time he holds his state position. OAG 80-131.

There is no incompatibility between serving as an employee of the Department of Human Resources (now Cabinet for Human Resources) and as a school board member since both positions are with the state, one being a form of state employment and the other (school board) a state office. OAG 80-505.

A county school teacher can be elected to the office of magistrate without violating this section and KRS 61.080 since a person may hold both state employment such as a school teacher and at the same time hold a county office such as magistrate. OAG 81-13.

The employment of a county attorney as attorney for the county board of education does not violate KRS 61.080 and this section since employment as the school board attorney would be that of an independent contractor rather than an employee, and since such employment would, at most, be a form of state employment rather than constituting a state office. OAG 81-308.

The executive director of the Kentucky Higher Education Authority must be considered a state employee within the meaning of this section and KRS 61.080; the same would be true with respect to his serving as Executive Director to the Kentucky Higher Education Student Loan Corporation pursuant to KRS 164A.050(7). OAG 82-282.

An unpaid city council member who is also employed by the Kentucky Higher Education Assistance Authority as Executive Director, and by virtue of his position as Executive Director of the Kentucky Higher Education Assistance Authority, is also the Executive Director of the Kentucky Higher Education Student Loan Corporation, is holding a municipal

office and state employment, concerning which there is no constitutional or statutory objection. OAG 82-282.

No conflict of interest or incompatibility existed where an auxiliary police officer of a city was at the same time a full-time Instructor-Coordinator of the Department of Training at Eastern Kentucky University; an auxiliary police officer of a city has the same powers as a regular police officer and is, therefore, considered a municipal officer while the position of Instructor-Coordinator for a department at Eastern Kentucky University would at most be considered a form of state employment. Neither this section nor KRS 61.080 prohibits a state employee from holding a municipal office. OAG 83-29.

Membership on a school board constitutes a state office. OAG 83-318.

This section and KRS 61.080 do not prohibit a person from holding a state office and state employment at the same time unless the duties involved are incompatible; thus, the position of a member of the local board of education would not be incompatible with a position as an instructor at the Hazard Area Vocational School since the local board would have no control over the appointment of the instructor. OAG 85-23.

From the standpoint of the incompatible offices provisions of this section of the Kentucky Constitution and KRS 61.080, state officers are not prohibited from holding positions on the boards of directors of the Kentucky Housing Corporation and the Kentucky Higher Education Student Loan Corporation when those officers are holding positions specifically authorized by KRS 198A.030(3) and KRS 164A.050(3), because where a statute provides for the appointment of specifically designated public officers to hold another public office, these public officers hold their second public office in an "ex officio" capacity, which eliminates the possibility of a constitutional or statutory incompatibility. OAG 91-208.

NOTES TO DECISIONS

ANALYSIS

5. Municipal officer.
6. Incompatible offices.
9. Compatible offices.

5. Municipal Officer.

Superintendent and members of board of children's home are city and county employees, not state officers; therefore, they could not be designated as superintendent of schools and board of education of independent school district established at the home, since to do so would violate this section. Williams v. Board for Louisville & Jefferson County Children's Home, 305 Ky. 440, 204 S.W.2d 490 (1947).

6. Incompatible Offices.

The offices of postmaster and school trustee are, under the law, incompatible, and both cannot be held at the same time by the same person. Johnson v. Sanders, 131 Ky. 537, 115 S.W. 772 (1909).

The office of school trustee, a state office, and the office of city councilman or town trustee, which are municipal offices, are incompatible. Middleton v. Middleton, 239 Ky. 759, 40 S.W.2d 311 (1931).

Where a school district trustee subsequently qualified as and assumed the duties of a councilman, he thereby vacated his office as trustee. Middleton v. Middleton, 239 Ky. 759, 40 S.W.2d 311 (1931).

Membership on a county board of education was incompatible with the office of county election commissioner, and a school board member who had accepted the office of county election commissioner vacated his membership on the board by the acceptance of the latter office. Adams v. Commonwealth ex rel. Buckman, 268 S.W.2d 930 (Ky. Ct. App. 1954).

9. Compatible Offices.

A member of the General Assembly was not disqualified by virtue of this office from accepting a contract position to teach school executed with the trustees of a common graded school district. Board of Trustees v. Renfroe, 250 Ky. 644, 83 S.W.2d 27 (1935).

REVENUE AND TAXATION

SECTION.
169. Fiscal year.
170. Property exempt from taxation — Cities may exempt factories for five years.
172A. Assessment of farm land according to value for farm purposes.
179. Political subdivision not to become stockholder in corporation, or appropriate money or lend credit to any person, except for roads or State Capitol.
180. Act or ordinance levying any tax must specify purpose, for which alone money may be used.

§ 169. Fiscal year.

The fiscal year shall commence on the first day of July in each year, unless otherwise provided by law.

Cross-References. Fiscal year for counties, KRS 68.060.
Fiscal year for highway purposes, KRS 176.260.
Fiscal year for school districts, KRS 160.450.

Opinions of Attorney General. School boards and cities are covered by this section, except where otherwise provided by statute. OAG 85-65.

§ 170. Property exempt from taxation — Cities may exempt factories for five years.

There shall be exempt from taxation public property used for public purposes; places of burial not held for private or corporate profit; real property owned and occupied by, and personal property both tangible and intangible owned by, institutions of religion; institutions of purely public charity, and institutions of education not used or employed for gain by any person or corporation, and the income of which is devoted solely to the cause of education, public libraries, their endowments, and the income of such property as is used exclusively for their maintenance; household goods of a person used in his home; crops grown in the year in which the assessment is made, and in the hands of the producer; and real property maintained as the permanent residence of the owner, who is sixty-five years of age or older, or is classified as totally disabled under a program authorized or administered by an agency of the United States government or by any retirement system either within or without the Commonwealth of Kentucky, provided the property owner received disability payments pursuant to such disability classification, has maintained such disability classification for the entirety of the particular taxation period, and has filed with the appropriate local assessor by December 31 of the taxation period, on forms provided therefor, a signed statement indicating continuing disability as provided herein made under penalty of perjury, up to the assessed valuation of sixty-five hundred dollars on said residence and contiguous real property, except for assessment for special benefits. The real property may be held by legal or equitable title, by the entireties,

jointly, in common, as a condominium, or indirectly by the stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years. The exemptions shall apply only to the value of the real property assessable to the owner or, in case of ownership through stock or membership in a corporation, the value of the proportion which his interest in the corporation bears to the assessed value of the property. The General Assembly may authorize any incorporated city or town to exempt manufacturing establishments from municipal taxation, for a period not exceeding five years, as an inducement to their location. Notwithstanding the provisions of Sections 3, 172, and 174 of this Constitution to the contrary, the General Assembly may provide by law an exemption for all or any portion of the property tax for any class of personal property.

(Amendment, proposed Acts 1954, ch. 111, § 1, ratified November, 1955; amendment, proposed Acts 1970, ch. 186, § 1, ratified November, 1971; amendment, proposed Acts 1974, ch. 105, § 1, ratified November, 1975; amendment, proposed Acts 1980, ch. 113, § 1, ratified November, 1981; amendment, proposed Acts 1990, ch. 151, § 1, ratified November, 1990; amendment, proposed Acts 1998, ch. 227, § 1, ratified November, 1998.)

Compiler's Notes. The General Assembly in 1998 (Acts 1998, ch. 227, § 1) proposed an amendment to this section of the Constitution, which amendment was ratified by the voters at the regular election in November, 1998. Prior to the amendment, the section read: "There shall be exempt from taxation public property used for public purposes; places of burial not held for private or corporate profit; real property owned and occupied by, and personal property both tangible and intangible owned by, institutions of religion; institutions of purely public charity, and institutions of education not used or employed for gain by any person or corporation, and the income of which is devoted solely to the cause of education, public libraries, their endowments, and the income of such property as is used exclusively for their maintenance; household goods of a person used in his home; crops grown in the year in which the assessment is made, and in the hands of the producer; and real property maintained as the permanent residence of the owner, who is sixty-five years of age or older, or is classified as totally disabled under a program authorized or administered by an agency of the United States government or by the railroad retirement system, provided the property owner received disability payments pursuant to such disability classification, has maintained such disability classification for the entirety of the particular taxation period, and has filed with the appropriate local assessor by December 31 of the taxation period, on forms provided therefor, a signed statement indicating continuing disability as provided herein made under penalty of perjury, up to the assessed valuation of sixty-five hundred dollars on said residence and contiguous real property, except for assessment for special benefits. The real property may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by the stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years. The exemptions shall apply only to the value of the real property assessable to the owner or, in case of ownership through stock or membership in a corporation, the value of the proportion which his interest in the corporation bears to the assessed value of the property. All laws exempting or omitting property from taxation other than the property above mentioned shall be void. The General Assembly may authorize any incorporated city or town to exempt manufacturing establishments from municipal taxation, for a period not exceeding five years, as an inducement to their location."

The General Assembly in 1990 (Acts 1990, ch. 151, § 1) proposed an amendment to the Constitution which amendment was ratified by the voters at the regular election in November, 1990. Prior to the amendment this section read:

"§ **170. Property exempt from taxation — Cities may exempt factories for five years** — There shall be exempted from taxation public property used for public purposes; places actually used for for religious worship, with the grounds attached thereto and used and appurtenant to the house of worship, not exceeding one-half acre in cities or towns, and not exceeding two acres in the country; places of burial not held for private or corporate profit, institutions of purely public charity, and institutions of education not used or employed for gain by any person or corporation, and the income of which is devoted solely to the cause of education, public libraries, their endowments, and the income of such property as is used exclusively for their maintenance; all parsonages or residences owned by any religious society, and occupied as a home, or residences owned by any religious society, and occupied as a home, and for no other purpose, by the minister of any religion, with not exceeding one-half acre of ground in towns and cities and two acres of ground in the country appurtenant thereto: household goods of a person used in his home; crops grown in the year in which the assessment is made, and in the hands of the producer; and real property maintained as the permanent residence of the owner, who is sixty-five years of age or older, or is classified as totally disabled under a program authorized or administered by an agency of the United States government or by any retirement system, provided the property owner received disability payments pursuant to such disability classification, has maintained such disability classification for the entirety of the particular taxation period, and has filed with the appropriate local assessor by December 31 of the taxation period, on forms provided therefor, a signed statement indicating continuing disability as provided herein made under penalty of perjury, up to the assessed valuation of sixty-five hundred dollars on said residence and contiguous real property, except for assessment for special benefits. The real property may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by the stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years. The exemptions shall apply only to the value of the real property assessable to the owner or, in case of ownership through stock or membership in a corporation, the value of the proportion which his interest in the corporation bears to the assessed value of the property. All laws exempting or omitting property from taxation other than the property above mentioned shall be void. The General Assembly may authorize any incorporated city or town to exempt manufacturing establishments from municipal taxation, for a period not exceeding five years, as an inducement to their location."

An amendment to this section was also proposed by the 1990 General Assembly (Acts 1990, ch. 150, § 3), was submitted to the voters for ratification or rejection at the regular election in November, 1990, and was defeated.

The General Assembly in 1980 (Acts 1980, ch. 113, § 1) proposed an amendment to this section of the Constitution, which amendment was ratified by the voters at the regular election in November, 1981. Prior to the amendment, the section read: "§ **170. Property exempt from taxation — Cities may exempt factories for five years. —** There shall be exempt from taxation public property used for public purposes; places actually used for religious worship, with the grounds attached thereto and used and appurtenant to the

house of worship, not exceeding one half acre in cities or towns, and not exceeding two acres in the country; places of burial not held for private or corporate profit, institutions of purely public charity, and institutions of education not used or employed for gain by any person or corporation, and the income of which is devoted solely to the cause of education, public libraries, their endowments, and the income of such property as is used exclusively for their maintenance; all parsonages or residences owned by any religious society, and occupied as a home, or residences owned by any religious society, and occupied as a home, and for no other purpose, by the minister of any religion, with not exceeding one half acre of ground in towns and cities and two acres of ground in the country appurtenant thereto; household goods of a person used in his home; crops grown in the year in which the assessment is made, and in the hands of the producer; and real property maintained as the permanent residence of the owner, who is sixty-five years of age or older, up to the assessed valuation of sixty-five hundred dollars on said residence and contiguous real property, except for assessment for special benefits. The real property may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by the stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years. The exemption shall apply only to the value of the real property assessable to the owner or, in case of ownership through stock or membership in a corporation, the value of the proportion which his interest in the corporation bears to the assessed value of the property. All laws exempting or omitting property from taxation other than the property above mentioned shall be void. The general assembly may authorize any incorporated city or town to exempt manufacturing establishments from municipal taxation, for a period not exceeding five years, as an inducement to their location."

Cross-References. Exemption of factories by cities, KRS 91.260, 92.300.

Exempt property to be listed with county tax commissioner, KRS 132.220 (5).

Property not to be exempted by General Assembly, Const., § 3.

Property subject to taxation, KRS 132.190 to 132.210.

Opinions of Attorney General. By virtue of the exemption from taxation granted to institutions of education by this section, county public schools would not be subject to the license tax permitted by KRS 137.115 on the sale of soft drinks or ice cream from the school cafeteria if the income derived from such sales is devoted exclusively to educational purposes. OAG 62-743.

A board of education is not exempt under this section from paying sewer service fees or tolls. OAG 62-1086.

A city has authority to exempt a manufacturing establishment for at least five (5) years from city taxes only as an inducement to its location within the city, but no exemption is permitted from city school taxes. OAG 65-171.

As long as income from property owned by a city and county board of education is used solely for the furtherance of the education process in such city and county, the property is exempt from ad valorem property taxes by the city. OAG 72-44.

A special school building tax is of general benefit to the whole community and is not the type of special benefit contemplated in the homestead amendment and, therefore, cannot be levied on property in the school district entitled to the homestead exemption except on the value in excess of $6,500. OAG 73-733.

The charges for sewer services to a board of education are not an ad valorem tax from which boards of education are exempt but are like tolls or rentals so that a board of education is neither exempt from paying the sewer charges nor entitled to a refund for charges previously paid. OAG 75-598.

NOTES TO DECISIONS

Analysis

26. Educational institutions.
28. —Not exempt.
32. School tax.
33. Gross receipts tax.
43. Sewer user charges.

26. Educational Institutions.

28. —Not Exempt.

A board of education is not exempt under this section from the payment of a state gasoline tax. Board of Educ. v. Talbott, 286 Ky. 543, 151 S.W.2d 42 (1941).

32. School Tax.

A school tax is not municipal taxation within the meaning of this section and an exemption of a manufacturing plant from municipal taxation does not entitle it to exemption from a school tax although such tax had not been collected for a long period. City of Louisville v. Board of Education, 154 Ky. 316, 157 S.W. 379 (1913).

The Louisville Water Co., owned and operated for public use by the city, was exempt from taxation for school tax purposes. Board of Educ. v. Louisville Water Co., 555 S.W.2d 587 (Ky. Ct. App. 1977).

33. Gross Receipts Tax.

Sales by municipalities and by educational and charitable institutions are not exempt from gross receipts taxes. City of Covington v. State Tax Comm'n, 257 Ky. 84, 77 S.W.2d 386 (1934).

Sales to educational and charitable and to state institutions are exempt from gross receipts taxes. City of Covington v. State Tax Comm'n, 257 Ky. 84, 77 S.W.2d 386 (1934).

Sales to municipalities are subject to gross receipts taxes except where the purchases are exclusively for use by purely educational or charitable institutions of the municipality. City of Covington v. State Tax Comm'n, 257 Ky. 84, 77 S.W.2d 386 (1934).

43. Sewer User Charges.

Sewer user charges of a county government for the construction and maintenance of public sanitary sewers were not taxes and the County Board of Education had no constitutional exemption from the payment of such charges by virtue of this section. Board of Educ. v. Lexington-Fayette Urban County Gov't, 691 S.W.2d 218 (Ky. Ct. App. 1985).

172A. Assessment of farm land according to value for farm purposes.

Notwithstanding contrary provisions of Sections 171, 172, or 174 of this Constitution —

The General Assembly shall provide by general law for the assessment for ad valorem tax purposes of agricultural and horticultural land according to the land's value for agricultural or horticultural use. The General Assembly may provide that any change in land use from agricultural or horticultural to another use shall require the levy of an additional tax not to exceed the additional amount that would have been owing had the land been assessed under Section 172 of this Constitution for the current year and the two next preceding years.

The General Assembly may provide for reasonable differences in the rate of ad valorem taxation within

different areas of the same taxing districts on that class of property which includes the surface of the land. Those differences shall relate directly to differences between non-revenue-producing governmental services and benefits giving land urban character which are furnished in one or several areas in contrast to other areas of the taxing district.

(Proposed by Acts 1968, ch. 103, ratified November, 1969.)

§ 179. Political subdivision not to become stockholder in corporation, or appropriate money or lend credit to any person, except for roads or State Capitol.

The General Assembly shall not authorize any county or subdivision thereof, city, town or incorporated district, to become a stockholder in any company, association or corporation, or to obtain or appropriate money for, or to loan its credit to, any corporation, association or individual, except for the purpose of constructing or maintaining bridges, turnpike roads, or gravel roads: Provided, If any municipal corporation shall offer to the Commonwealth any property or money for locating or building a Capitol, and the Commonwealth accepts such offer, the corporation may comply with the offer.

Opinions of Attorney General. If implemented in a school district, the young historians program can be regarded as educational in purpose within the meaning of the constitution. OAG 63-214.

Where not all of the residents of three cities included in an independent school district lived inside the school district and one city had its own tax assessor while two (2) other cities where assessed by the county assessor, the proper tax levying authority for the district was the county fiscal court and the election expense should be borne by the fiscal court. OAG 69-2.

In view of this section, a city cannot legally appropriate funds to assist a women's civic club to construct an amphitheater on land owned by the board of education, a separate public entity. The city could, however, build the amphitheater as a public project, or jointly establish a recreational system with the school district pursuant to KRS 97.010 which could include the amphitheater or, pursuant to the same statute, the city could lease land from the school board to establish a recreational center. OAG 70-514.

An agreement by a board of education to lease unused portions of a television facility owned by it to a private corporation was lawful with the exception of a provision that a part of the consideration for the lease would be an option to purchase up to 10% of the stock of the private corporation, which provision was illegal and void under §§ 177, 179, 184 and 186 of the Kentucky Constitution. OAG 73-418.

For a school district to hold a vendor's lien on the sale of surplus school property would be a prohibited extension of its credit to the purchaser. OAG 77-771.

NOTES TO DECISIONS

ANALYSIS

10. Recreational facilities.
14. Teacher salaries and pensions.
15. Assumption of school debts.

10. Recreational Facilities.

An agreement by a city to lease recreational facilities from a county board of education is not in contravention of this section as long as there is a good faith transaction as opposed to a gift disguised as an arm's-length contract. Sawyer v. Jefferson County Fiscal Court, 392 S.W.2d 83 (Ky. 1965).

14. Teacher Salaries and Pensions.

This section does not prohibit the operation of a municipal teachers' pension system under an enabling act. Board of Educ. v. City of Louisville, 288 Ky. 656, 157 S.W.2d 337 (1941).

An appropriation of funds by a city, to supplement salaries of teachers in independent school district, the boundaries of which coincide with those of the city, violates this section. Board of Educ. v. Corbin, 301 Ky. 686, 192 S.W.2d 951 (1946).

15. Assumption of School Debts.

An assumption by the city of Louisville of a bonded indebtedness of the Louisville independent school district would be the equivalent of lending credit in violation of this section as to the city taxpayers who live outside the boundaries of the school district. Board of Educ. v. City of Louisville, 258 S.W.2d 707 (1953).

§ 180. Act or ordinance levying any tax must specify purpose, for which alone money may be used.

Every act enacted by the General Assembly, and every ordinance and resolution passed by any county, city, town or municipal board or local legislative body, levying a tax, shall specify distinctly the purpose for which said tax is levied, and no tax levied and collected for one purpose shall ever be devoted to another purpose.

Compiler's Notes. The General Assembly in 1996 proposed (Acts 1996, ch. 98, § 1) the amendment of this section. The amendment was ratified by the voters at the regular election in November 1996. Prior to the amendment the section read:

"§ 180. Act or ordinance levying any tax must specify purpose, for which alone money may be used. — The General Assembly may authorize the counties, cities or towns to levy a poll tax not exceeding one dollar and fifty cents per head. Every act enacted by the General Assembly, and every ordinance and resolution passed by any county, city, town or municipal board or local legislative body, levying a tax, shall specify distinctly the purpose for which said tax is levied, and no tax levied and collected for one purpose shall ever be devoted to another purpose."

The 1990 General Assembly, by Acts 1990, ch. 150, § 5, proposed that the Constitution be amended by repealing this section. This amendment was submitted to the voters for ratification or rejection at the regular election in November, 1990, and was defeated.

Cross-References. City poll taxes, KRS 92.280.

County poll taxes, KRS 68.090.

Exemptions from poll tax, KRS 142.020.

Purpose of tax, specification and use for, KRS 68.100, 92.330.

Surplus in special fund may be used for a similar purpose, KRS 68.120.

Opinions of Attorney General. The lending of school property, such as chairs, tables and projectors to various organizations for banquets and similarly related meetings constitutes an indirect, if not direct, use of school property and school funds for other than school purposes and is expressly prohibited by the Constitution. OAG 60-1032.

A board of education may enter into a contract with the county library whereby the library will provide and circulate books to designated schools within the county school district without violating the provisions of this section and Const., § 184. OAG 61-506.

A county board of education may not donate school funds to a town public library which is open to the public as well as school students, because such an appropriation or donation would constitute an expenditure of school funds for other than educational purposes; however, a board of education could enter into a contract with a town public library whereby the latter would agree to furnish books and services to the county school children in return for a certain sum. This would not violate this section and Const., § 184 because the school money expended would be for the direct benefit of only the school children in their district and, therefore, would not include the public generally. OAG 61-879.

A municipality may not erect a water tank on school premises without the consent of the board of education and the payment of fair compensation for the use of school property. OAG 63-1060.

A board of education may not provide and maintain an automobile for the personal use of a school superintendent. OAG 64-130.

A board of education may provide and maintain an automobile for the benefit of the school superintendent while discharging the duties attendant to his office. OAG 64-130.

An independent school district and a city may not cooperate to jointly construct, pay for and own an auditorium-gymnasium on school property, which would be used by the schools for educational purposes and by the city for various public functions. OAG 64-475.

An independent school district can construct an auditorium-gymnasium and, after its completion, use the money which the city wishes to contribute as rent for the times when the building could be leased to the city. OAG 64-475.

An organization may use school buses of an independent school district to transport children to a function if the buses are not being used for school purposes, if reasonable and adequate compensation is paid for their use, if adequate collision insurance is purchased by the organization, and if it will carry liability insurance sufficient to cover the liability of any and all persons who may be concerned, including the members of the local boards of education. OAG 64-630.

A school board has legal authority to purchase liability insurance to cover the liability for sick-leave payments imposed by KRS 161.155. OAG 64-841.

It is legal for a board of education to execute a contract with a local health department to provide preventive medical services. OAG 65-293.

Commingling of state and federal funds by a school would result in their becoming subject to the provisions of both state and federal laws governing their expenditure. OAG 65-625.

A school board may lawfully purchase fire and extended coverage insurance in the form of a package policy even though the premium is not specifically allocable to individual coverages if it does not exceed the rate regularly charged for fire and extended coverage insurance, as approved by the Kentucky department of insurance for such risks. OAG 66-36.

A restriction contained in a declaration of restrictions affecting a 10.44-acre tract proposed as a school site that would require the owner of the tract to pay an assessment that could be used for maintenance of other property in the subdivision would preclude the purchase of the tract as a school site since the payment of the assessment would violate this section and Const., § 184. OAG 67-413.

Public schoolteachers may not, as a part of the duties for which they are compensated by boards of education, be assigned to teach in a private or sectarian school since the effect of such assignment would be to the primary benefit of the private or sectarian school as opposed to a primary benefit to its students or to the common schools and would offend this section and Const., § 184 which restrict school funds to public school purposes and would also offend Const., § 189 which prohibits the use by sectarian schools of funds levied for educational purposes. OAG 68-423.

Expenditures of school funds to provide turnabouts for school buses on private property adjacent to bridges that have been condemned would offend this section and Const., § 184 and would not be a proper school board expenditure. OAG 68-473.

An arrangement whereby a high school constructs a swimming pool on school property to be used by the students during school hours but which would be in the exclusive control of the school booster organization after school hours, which organization would sell pool memberships to the general public with the net proceeds to be paid to the board of education, would be proscribed by this section and Const., § 184. OAG 69-121.

A school board could not grant an easement across school property to the metropolitan sewer district since the easement would not constitute an educational purpose. OAG 69-127.

A lease of school property permitting the construction of a swimming pool on the leased premises would not violate this section or Const., § 184 if the consideration received by the school district would be sufficient to compensate for the lease. OAG 69-290.

Under this section and Const., § 184, the funds of the school board may not properly be expended to pay a portion of the salary of policewomen to patrol intersections on the city streets during school rush hours since this activity involves a service for the general public welfare rather than one which is designed to accomplish an educational purpose. OAG 69-488.

While general tax dollars provided by the state may be used to pay a portion of the costs incurred in operating special education classes for exceptional children, a local board of education is precluded from spending school funds for such purpose even though such an operation is a most laudable and commendable one. OAG 72-86.

A school board may not make a contribution to a park commission which is seeking to accumulate a fund in order to secure matching federal funds for development of a community recreation park. Section 186 of the Constitution prohibits the use of school funds for other than school purposes. This section provides that no tax levied and collected for one purpose shall be used for another. It is therefore unconstitutional for a school board to contribute money for other purposes. OAG 72-95.

Any fee collected by a sheriff in excess of the cost of collecting school funds would constitute a diversion of school funds for other than school purposes in violation of this section and section 184 of the Constitution. OAG 72-277.

Under this section and § 184 of the Constitution it would be invalid for a school board to convey title to its property to a city except for fair market value or to lease the property for less than its fair rental value. OAG 72-376.

Under this section and § 184 of the Constitution a school board may lease unused property provided that the consideration paid by the lessee is the fair rental value of the property. OAG 72-397.

It is proper for a school district to require students to pay the cost of their meals, but if a school district sees fit to do so, it may use school funds to subsidize the school lunch program with the result that the pupils will be paying a price which is less than the cost of supplying their meals. OAG 73-754.

The announcement over a school speaker system or the distribution of notices to children on school property of meetings of an organization of parents to promote a constitutional amendment which would forbid busing of school pupils for the purpose of achieving racial balance in the public schools constitutes an illegal use of school property and improperly interjects political questions into the operation of the public school. OAG 74-118.

Public school teachers may not, as a part of the duties for which compensated by boards of education, be assigned, to teach in a private or sectarian school. OAG 74-331. (Modifying OAG 68-150, OAG 68-585.)

Proposed public relations plan to have administrators of the school system join various service organizations of the community would not be a proper expenditure of school funds and would be unconstitutional under this section and Const., § 184. OAG 74-873.

A school district may not spend funds for street construction and improvement on nonschool property. OAG 75-108.

Public school funds may not be expended to employ persons to control vehicular and pedestrian traffic on public streets or roads in or around school premises. OAG 75-614.

An off-duty constable employed as a school security guard is an employee of the school board which may compensate him for his services. OAG 75-631.

Although the services of school crossing guards are a benefit to school children, the guards do not serve an "educational purpose," and thus school board funds may not be expended to pay the salaries of individuals who patrol intersections on city streets. OAG 76-239.

A county sheriff's fee for collecting school taxes must represent the reasonable cost of collection, as long as the rate does not exceed 4 percent, and the sheriff must document his reasonable costs of collection. OAG 76-251.

The expenses of opening schools to serve as voting places on a presidential election day, as provided by subsection (2) of KRS 117.065, when the schools are mandated to be closed by KRS 2.190 would be so small and incidental as not to be proscribed by Kentucky Constitution, §§ 180, 184, 186. OAG 76-592. Withdrawing OAG 42-363.

The circumstances surrounding the use of schools as voting places, as provided for in subsection (2) of KRS 117.065, may be structured so that there does not exist any unwarranted and impermissible expenditures of public common school money for election purposes. OAG 76-614.

The transfer by a county board of health to a county hospital of a blanket appropriation of a sum of the tax district fund would involve an illegal and unconstitutional transfer of such tax funds, since such blanket appropriation to a hospital, county, city or private, is not permissible under KRS Chapter 212 and this section. OAG 76-753.

Once the sheriff's total fee for collecting school taxes is properly computed the constitutional test of diversion is met since the constitutional diversion occurs no sooner than the reasonable cost of collection is exceeded, regardless of how much the excess is. OAG 78-146.

The payment to the urban county government of 25% for the school tax collection fee paid to the sheriff does not constitute an unlawful diversion of school money. OAG 78-146.

The total cost of collecting school taxes (prior to the 75% and 25% distribution at State level) is strictly constitutional as being an expenditure for school purposes. OAG 78-146.

If school district money in any respect and in any amount is used to transport nonpublic school children the Constitution would be violated. OAG 82-392.

It is not appropriate for the Board of Education to provide transportation for parochial pupils from their homes to the nearest public school, where they do not live within a reasonable walking distance to such school, and for the Board of Education to be reimbursed by either the fiscal court and/or the local parochial school system for the additional cost (if any) to the school system since reimbursement is required to be on a "per capita" basis. OAG 82-392.

It is not constitutionally permissible for the Board of Education to provide transportation for parochial school pupils from their homes to the nearest public schools so long as they do not live within a reasonable walking distance to such school, where transportation from public schools to parochial schools would then be provided either by the fiscal court or the local parochial school system. OAG 82-392.

Where nonpublic school children are transported on public school buses, irrespective of their point of departure, the local school district must be reimbursed on a per capita basis to avoid constitutional violation. The Court of Appeals has sanctioned only the per capita methodology for use in determining the additional transportation costs in transporting such children. OAG 82-392.

KRS 158.115 was the authorizing statute for a contract requiring a fiscal court to reimburse a school district on a straight per capita basis for nonpublic school students who rode public school buses and, absent full reimbursement by the fiscal court to the school board, the expenditure of public school moneys for transporting nonpublic school children would create a constitutional violation under this section as well as other provisions. Therefore, failure by the school board to enforce the contract with the fiscal court would be tantamount to willful neglect of duty and could lead to removal from office. OAG 82-405.

Within reason, school boards are permitted to bear the direct and indirect expenses incurred by teachers and administrators who attend, after prior approval by the board, professional activities and functions; however, school boards are not wholly unfettered in exercising their discretion in approving attendance at sundry professional activities since Const., § 184 and this section require that school funds may be used only for school purposes, the test being whether the expenditure is for an educational purpose rather than whether an activity might be beneficial to education. OAG 83-228.

An expenditure of common school funds or a donation of school property for a public purpose other than for the benefit of public education is not permissible under this section and Const., §§ 184 and 186; therefore, under this section and Const., §§ 184 and 186, any transfer of surplus school buildings to community service organizations must be based on the fair market value of the property. OAG 91-85.

It is still the opinion of the Attorney General's office that OAG 79-107 represents the law of Kentucky and the interpretation of this section and Ky. Const., § 184, and that the expenditure of school funds for school guard crossings is prohibited constitutionally. OAG 92-6.

A reward, offered by the local school board, for the purpose of apprehending the vandals who damaged school property constitutes a proper educational purpose within the meaning of this section and Ky. Const., §§ 184 and 186; the act also falls within the parameters of KRS 160.160 as being necessary in order that the board may accomplish the purposes for which it was created as the resources of each school system are limited, and must be protected. OAG 92-63.

A school board cannot lawfully agree to provide materials paid for with school funds, or provide school funds themselves, whether under an intergovernmental agreement or otherwise, for the construction or maintenance of school bus turnarounds within the meaning of subsection (2) of KRS 178.290. OAG 93-63.

KRS 158.6455 permits a local school council or principal to use school reward money to pay teacher bonuses, and these bonuses are permissible under the Kentucky Constitution because they are "for school purposes." OAG 00-2.

Cited: Talbott v. Kentucky State Bd. of Educ., 244 Ky. 826, 52 S.W.2d 727 (1932).

NOTES TO DECISIONS

Cross-References. See notes to Const., § 184 under "8. Expenditures of Funds" and "9. —Valid:" Grayson County Board of Educ. v. Boone, 452 S.W.2d 371 (Ky. Ct. App. 1970).

ANALYSIS

1. Construction.
2. Application.
3. Poll taxes.
10. Surplus funds.

11. —Educational.
12. Levy.
13. —Valid.
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15. Expenditures.
16. —Valid.
18. Statutes.
19. —Valid.
20. —Invalid.
21. Collection expenses.
22. Liability for improper expenditures.
24. —Repayment of funds.

1. Construction.

This section and sections 184 and 186 of the Kentucky Constitution, when read together, prohibit the diversion of common school funds for purposes other than the maintenance of the public schools of the Commonwealth. Board of Educ. v. Lexington-Fayette Urban County Gov't, 691 S.W.2d 218 (Ky. Ct. App. 1985).

2. Application.

The limitations imposed by this section have no application to the poll tax voted for school purposes under authority of a valid election. Christopher v. Robinson, 164 Ky. 262, 175 S.W. 387 (1915).

This section has no application to poll taxes levied for school purposes. Fiscal Court v. Board of Educ., 294 Ky. 758, 172 S.W.2d 624 (1943).

3. Poll Taxes.

This section refers to poll taxes imposed for purposes other than the maintenance of common schools, and the maximum poll tax for general county purposes does not prevent a similar tax for school purposes, and under the Constitution the legislature may levy whatever taxes, ad valorem or capitation, necessary to provide an efficient system of common schools. McIntire v. Powell, 137 Ky. 477, 125 S.W. 1087 (1910).

10. Surplus Funds.

Where a city collected a greater sum for school purposes than requested by the board of education but within the limitation of the rate of assessment fixed in the statute, amount collected belonged to the school district. Board of Educ. v. City of Newport, 174 Ky. 28, 849, 191 S.W. 871 (1917).

When school bond issue raises more funds than are needed, the application of the excess to the payment of the bonds and interest is not a diversion prohibited by this section. City of Ashland v. Board of Educ., 286 Ky. 69, 149 S.W.2d 728 (1941).

11. —Educational.

A tax levied and collected by a city for school purposes cannot be appropriated by act of the legislature to maintain a public library which is open to the pupils of the common schools only as a part of the general public, and which is not under the control of the board of education or the schools. Board of Educ. v. Board of Trustees, 113 Ky. 234, 24 Ky. L. Rptr. 98, 68 S.W. 10 (1902).

The use of funds collected for educational purposes, common school purposes, and the common school for the maintenance of a recreation plan did not violate this section, as recreational training is a part of the educational function. Dodge v. Jefferson County Board of Educ., 298 Ky. 1, 181 S.W.2d 406 (1944).

A board of education cannot be required to pay an assessment to help build a floodwall because payment would be in violation of this section and Const., § 184. Board of Educ. v. Spencer County Levee, Flood Control & Drainage Dist. No. 1, 313 Ky. 8, 230 S.W.2d 81 (1950).

This section and Const., § 184 must be read together in determining how school funds shall be spent, and the test to be applied in each instance is what constitutes an educational purpose within the meaning of Const., § 184, rather than whether an activity might be beneficial to education. Board of Educ. v. Spencer County Levee, Flood Control & Drainage Dist. No. 1, 313 Ky. 8, 230 S.W.2d 81 (1950).

Revenues from bonds issued and from a special fund created for school buildings may not be used to repair a school stadium. Board of Educ. v. Williams, 256 S.W.2d 29 (Ky. 1953).

12. Levy.

13. —Valid.

A city ordinance providing that all moneys received from licenses shall be paid to the treasurer, placed to the credit of the general revenue fund of the city, and used in defraying current and incidental expenses, except a certain proportion to be paid to the treasurer of the board of education for the use of the public schools of the city, sufficiently complies with this section. Burch v. City of Owensboro, 18 Ky. L. Rptr. 284, 36 S.W. 12 (1896).

14. —Invalid.

A resolution of the trustees of a school district declaring that a property tax of 50 cents on each $100 worth of taxable property should be levied was void as it omitted to state the purpose of the tax. Morrell Refrigerator Car Co. v. Commonwealth, 128 Ky. 447, 32 Ky. L. Rptr. 1383, 108 S.W. 926 (1908). See Fidelity & Guar. Co. v. Board of Educ., 118 Ky. 355, 26 Ky. L. Rptr. 246, 80 S.W. 1191 (1904); Chesapeake, O. & S.W.R.R. v. Commonwealth, 129 Ky. 318, 33 Ky. L. Rptr. 882, 111 S.W. 334 (1908).

15. Expenditures.

16. —Valid.

Identical resolutions of the fiscal court and county school board issued prior to an election ordered under KRS 160.477 to permit the electorate to vote on a proposed special school building tax levy, which resolutions informed the voters the levy was to be used for a school building adequate for the pupils in the locality in grades one through 12, did not amount to a contract to conduct a high school in the new building and a subsequent decision, resulting from a school consolidation plan, to use the new building for a grade school was within the school board's powers and did not constitute a diversion of tax revenues from the purpose for which they were collected. Ewing v. Peak, 266 S.W.2d 300 (Ky. 1954).

The applicability of this section and Ky. Const., Sections 184 and 186 to the issue of whether a sewer user charge can be paid from school funds must be determined by a reasonable interpretation of whether the service or commodity provided is necessary for the maintenance of the public schools and is exclusively for the benefit of the public schools. Sewer user charges imposed upon a county board of education bear a reasonable and rational relationship to the value of the services provided and therefore are exclusively for the benefit of and necessary for the maintenance of the public schools. Board of Educ. v. Lexington-Fayette Urban County Gov't, 691 S.W.2d 218 (Ky. Ct. App. 1985).

18. Statutes.

19. —Valid.

An act involving a school tax levy was valid under this section where the budget section showed every item of school expense for the year as well as the total amount needed to be raised for school purposes by the tax levy. Fiscal Court v. Jefferson County Board of Educ., 196 Ky. 712, 244 S.W. 764 (1922).

An act requiring that the proceeds of a school tax levy should bear the costs of the collection of this levy does not violate this section or Const., § 184. Ross v. Board of Educ., 196 Ky. 366, 244 S.W. 793 (1922).

KRS 158.115 authorizing county to use general funds to supplement school transportation system, including the furnishing of transportation to private, sectarian and parochial

schools, does not violate this section. Nichols v. Henry, 301 Ky. 434, 191 S.W.2d 930 (1945).

Statute authorizing a school board to impose occupational license fees but only after electoral approval is not unconstitutional on the ground that the use of school tax funds to defray the expenses of the election amounts to a diversion of tax revenue from the purpose for which it was collected. Sims v. Board of Educ., 290 S.W.2d 491 (Ky. 1956).

20. —Invalid.

The additional three percent (3%) fee allowed a sheriff for the collection of school taxes by KRS 160.500 violates this section and Const., § 184 as a diversion of tax revenues from the purpose for which levied. Dickson v. Jefferson County Bd. of Educ., 311 Ky. 781, 225 S.W.2d 672 (1949).

A former provision of KRS 134.310 permitting excess of sheriff's commission for collecting school taxes over and above costs of such collection to be applied to the general expenses of the sheriff's office authorizes a diversion of school tax revenues to nonschool purposes and is unconstitutional. Board of Educ. v. Greenhill, 291 S.W.2d 36 (Ky. 1956).

21. Collection Expenses.

Under this section a tax collector's commission may not be paid out of taxes collected for school purposes. City of Winchester v. Board of Educ., 182 Ky. 313, 206 S.W. 492 (1918).

This section is not violated when a reasonable charge is made against a local school tax for its collection. Dickson v. Jefferson County Board of Educ., 311 Ky. 781, 225 S.W.2d 672 (1949).

Retention by sheriff of four percent (4%) of school tax collected was unconstitutional diversion of school funds where evidence indicated one percent (1%) was sufficient to cover cost of collecting school tax and the extra three percent (3%) was to be used by sheriff for general expenses of his office. Board of Educ. v. Wagers, 239 S.W.2d 48 (Ky. 1951).

A sheriff's fee for collecting school taxes must not exceed the cost of such collection. Barren County Board of Educ. v. Edmunds, 252 S.W.2d 882 (Ky. 1952).

Although it may have been that the General Assembly's intent was to create a flat four percent (4%) commission for the county clerks for collecting the taxes, such interpretation would bring subsection (3) of KRS 134.805 into conflict with this section and Const., § 184; therefore, a county clerk may not receive a fee for collecting the school tax which is in excess of his or her actual cost of collection, not exceeding four percent (4%). Benson v. Board of Educ., 748 S.W.2d 156 (Ky. Ct. App. 1988).

The only exception to the constitutional limitations of this section and Const., § 184 prohibiting the use of school funds for anything other than school purposes is the payment by the school board of the reasonable and actual costs of collecting the taxes. Benson v. Board of Educ., 748 S.W.2d 156 (Ky. Ct. App. 1988).

22. Liability for Improper Expenditures.

The fact that a board of education had been enjoined, in suit by taxpayers, from further collection of original tax for bonds was no defense where board had misapplied from sinking fund more than enough to pay the bonds. Board of Educ. v. Highland Cem., 292 Ky. 374, 166 S.W.2d 854 (1942).

24. —Repayment of Funds.

Where a city collected taxes paid in compromise, part of which money was for the public school tax, the city could not withhold the tax from the school system as under this section the city had no power to use such tax money for any other purpose. Cynthiana v. Board of Educ., 21 Ky. L. Rptr. 731, 52 S.W. 969 (1899).

Money paid by a city to a library pursuant to a statute which was found to be in violation of this section may be recovered by the board of education to which the money should properly have been paid. Board of Trustees v. Board of Educ., 25 Ky. L. Rptr. 341, 75 S.W. 225 (1903).

Where school subdistrict used, for general school purposes, the proceeds of a tax levied to pay bonds, which proceeds would have been sufficient to pay bonds in full, bondholders were entitled to judgment requiring school board to pay bonds out of board's general fund, and to levy a tax to pay the balance of the bonds if the amount in the general fund was not sufficient to pay the bonds in full. Board of Educ. v. Highland Cem., 292 Ky. 374, 166 S.W.2d 854 (1942).

EDUCATION

SECTION.

183. General Assembly to provide for school system.
184. Common school fund — What constitutes — Use — Vote on tax for education other than in common schools.
185. Interest on school fund — Investment.
186. Distribution and use of school fund.
187. Race or color not to affect distribution of school fund.
188. Refund of federal direct tax part of school fund — Irredeemable bond.
189. School money not to be used for church, sectarian, or denominational school.

§ 183. General Assembly to provide for school system.

The General Assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the State.

Compiler's Notes. The following amendment was proposed by the 1986 General Assembly (Acts 1986, ch. 36, § 4), was submitted to the voters for ratification or rejection at the regular election in November, 1986 and was defeated:

§ 183. Common schools to be provided for — State board of education — Superintendent of public instruction. — The general assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the state. There shall be a state board of education which shall consist of thirteen (13) members whose duties and qualifications shall be prescribed by statute. The governor shall appoint one (1) board member from each of the seven (7) supreme court districts and six (6) members at large to begin their respective terms on July 1, 1987. Individual appointments shall be subject to confirmation by majority vote of the senate during the first regular, special or organizational session of the general assembly subsequent to the appointment. Appointments not confirmed shall be void and the governor shall make an additional appointment to serve the remainder of the particular term, subject to confirmation by the senate. Of the original thirteen (13) appointments, three (3) shall be for six (6) year terms, two (2) for five (5) year terms, two (2) for four (4) year terms, two (2) for three (3) year terms, two (2) for two (2) year terms, and two (2) for one (1) year terms, at the designation of the governor. Thereafter, at the expiration of each term, a member of the state board of education shall be appointed for a six (6) year term. Board members shall be eligible to serve no more than two (2) consecutive terms. The state board of education shall appoint a superintendent of public instruction, who shall act as executive officer for the board and perform such duties and possess such qualifications as may be provided by the board or by statute. The superintendent shall serve pursuant to an employment contract which may be executed in a maximum term of five (5) years. An individual may, at the pleasure of the board, serve consecutive contractual periods of employment as

superintendent. The superintendent of public instruction shall serve at such salary and allowances as may be fixed by the board and may be removed for cause to be prescribed by law.

Sections 5 and 6 of Acts 1986, ch. 36 read:

"Section 5. It is further proposed as a part of this amendment that the superintendent of public instruction serving in office at the time of the ratification of this amendment, shall continue in office until his elective term shall expire with the first appointed superintendent to take office at the expiration of the elected superintendent's term."

"Section 6. It is further provided as a part of this amendment and as a schedule of transitional provisions for the purposes of this amendment, any other provision of the Constitution of Kentucky to the contrary notwithstanding, that:

1. The first appointments of the members of the State Board of Education shall be confirmed by the Senate in the 1987 organizational session of the General Assembly.

2. The State Board of Education that takes office in July, 1987 shall appoint an acting Superintendent of Public Instruction to take office the first Monday in January, 1988.

3. The terms of board members serving in office on June 30, 1987 shall expire on that date.

4. All statutes relating to the State Board of Education or the Superintendent of Public Instruction in force on the first Monday in January, 1988, as then constituted, not inconsistent therewith, shall remain in full force until altered or repealed by the General Assembly. The provisions of all statutes which are inconsistent with this amendment shall cease on the first Monday in January, 1988."

An amendment was proposed by the 1972 General Assembly (Acts 1972, ch. 129, § 1), was submitted to the voters for ratification or rejection at the regular election in November, 1973 and was defeated.

Cross-References. Schools, KRS chs. 156 to 167.

Uniform system of schools to be maintained, KRS 158.010.

Kentucky Bench & Bar. Prather, Establishing Schools, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 19.

Kentucky Law Journal. Lewis, Jural Rights under Kentucky's Constitution: Realities Grounded in Myth, 80 Ky. L.J. 953 (1992).

Roach, Rule of Men, 81 Ky. L.J. 483 (1992-93).

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

Opinions of Attorney General. The summer school sessions operated by the Louisville and Jefferson County school systems on a tuition basis are not extensions of the regular school term and, consequently, are not in violation of the constitutional or statutory provisions which require a uniform system of common schools to be maintained in the state. OAG 60-1053.

Following the tax rollback, the executive department of state government had the authority and duty to provide supplemental payments to certain schools under the minimum foundation program as would insure the orderly continuation of the common schools program and as would prevent the regression of the program. OAG 70-474.

Although there is a wide disparity of per pupil financial support for education, in view of the recent United States Supreme Court case, San Antonio Independent School District v. Rodriguez, the only way our present system of common schools could be declared unconstitutional as violating this section would be to hold that it is not an "efficient system" and, if there is a better way of school financing, it is not up to the courts but the educators and Legislature to find it. OAG 73-273.

There is no constitutional or legislative requirement that the cost of education to public school pupils must be free and a board of education may require that pupils be charged a reasonable fee for school supplies. OAG 75-619.

A local school board regulation requiring its certified employees to reside in the board district would seem to work against efficiency in operating schools and procurement of teacher personnel so as to violate this section. OAG 82-59.

The purchase of satellite receiving equipment for nonpublic schools through an appropriation by the General Assembly would appear to be educational in purpose and, therefore, would appear to be a constitutionally prohibited expenditure. OAG 89-41.

It is not unconstitutional for the Legislature to require reorganization of the Department of Education, in the course of developing an efficient system of common schools in compliance with this section. OAG 91-66.

Based on the language of this section of the Kentucky Constitution, and on case law interpreting this section, the General Assembly has authorization to create the Office of Education Accountability. OAG 91-222.

The discovery powers set forth in KRS 7.410(2)(d) are broad; however, they relate to the ability of the arm of the Legislature to study the implementation of the Reform Act, and to insure that the General Assembly is successful in creating an "efficient system of common schools," as mandated by this section of the Kentucky Constitution. OAG 91-222.

A school board may not require principals to be residents of the school district. OAG 01-7.

Cited: Davenport v. Cloverport, 72 F. 689 (D. Ky. 1896); Berkley v. Board of Educ., 22 Ky. L. Rptr. 638, 58 S.W. 506 (1900); Pratt v. Breckinridge, 112 Ky. 1, 23 Ky. L. Rptr. 1356, 65 S.W. 136 (1901); Marsee v. Hager, 125 Ky. 445, 31 Ky. L. Rptr. 79, 101 S.W. 882 (1907); James v. State Univ., 131 Ky. 156, 114 S.W. 767 (1908); Prowse v. Board of Educ., 134 Ky. 365, 120 S.W. 307 (1909); Ex parte City of Newport, 141 Ky. 329, 132 S.W. 580, 37 L.R.A. (n.s.) 1034, 1219C Ann. Cas. 447 (1910); Mt. Sterling v. Montgomery County, 152 Ky. 637, 153 S.W. 952, 44 L.R.A. (n.s.) 57 (1913); Larue v. Redmon, 168 Ky. 487, 182 S.W. 622 (1916); Gilbert v. Greene, 185 Ky. 817, 216 S.W. 105 (1919); Shultz v. Ohio County, 226 Ky. 633, 11 S.W.2d 702 (1928); Talbott v. Kentucky State Bd. of Educ., 244 Ky. 826, 52 S.W.2d 727 (1932); Board of Educ. v. Simmons, 245 Ky. 493, 53 S.W.2d 940 (1932); Dean v. Board of Educ., 247 Ky. 553, 57 S.W.2d 477 (1933); Board of Educ. v. Talbott, 261 Ky. 66, 86 S.W.2d 1059 (1935); Wirth v. Board of Educ., 262 Ky. 291, 90 S.W.2d 62 (1935); Board of Educ. v. Talbott, 286 Ky. 543, 151 S.W.2d 42 (1941); Gill v. Board of Educ., 288 Ky. 790, 156 S.W.2d 844 (1941); Commonwealth ex rel. Meredith v. Reeves, 289 Ky. 73, 157 S.W.2d 751 (1942); Board of Educ. v. Corbin, 301 Ky. 686, 192 S.W.2d 951 (1946); Williams v. Board for Louisville & Jefferson County Children's Home, 305 Ky. 440, 204 S.W.2d 490 (1947); Board of Educ. v. Spencer County Levee Flood Control & Drainage Dist., 313 Ky. 8, 230 S.W.2d 81 (1950); Wooley v. Spalding, 365 S.W.2d 323 (Ky. 1962); International Bhd. of Firemen & Oilers, Local 320 v. Board of Educ., 393 S.W.2d 793 (Ky. 1965); Baker v. Strode, 348 F. Supp. 1257 (W.D. Ky. 1971); Carroll v. Board of Educ., 561 F.2d 1 (6th Cir. 1977); Chapman v. Gorman, 839 S.W.2d 232 (Ky. 1992).

NOTES TO DECISIONS

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1. Construction.

This section makes it mandatory upon the general assembly to provide an efficient common school system. Board of Educ. v. McChesney, 235 Ky. 692, 32 S.W.2d 26 (1930). See Commonwealth ex rel. Baxter v. Burnett, 237 Ky. 473, 35 S.W.2d 857 (1931).

This section is as broad as it is possible to frame an authority to the Legislature to deal with the common schools in any way it should desire. City of Louisville v. Board of Educ., 302 Ky. 647, 195 S.W.2d 291 (1946).

Although this section permits the General Assembly to provide, by appropriate legislation, for an efficient system of common schools, such legislation is not appropriate if it contravenes another constitutional provision of equal dignity. Board of Educ. of Jefferson County v. Board of Educ. of Louisville, 472 S.W.2d 496 (Ky. 1971).

The Kentucky Constitution contemplates that public funds shall be expended for public education and the Commonwealth is obliged to furnish every child in this state an education in the public schools, but it is constitutionally proscribed from providing aid to furnish a private education. Fannin v. Williams, 655 S.W.2d 480 (Ky. 1983).

A fair reading of Const., §§ 183-189 compels the conclusion that money spent on education is to be spent exclusively in the public school system, except where the question of taxation for an educational purpose has been submitted to the voters and the majority of the votes cast at the election on the question shall be in favor of such taxation. Fannin v. Williams, 655 S.W.2d 480 (Ky. 1983).

Several conclusions readily appear from a reading of this section. First, it is the obligation, the sole obligation, of the General Assembly to provide for a system of common schools in Kentucky. The obligation to so provide is clear and unequivocal and is, in effect, a constitutional mandate. Next, the school system must be provided throughout the entire state, with no area (or its children) being omitted. The creation, implementation and maintenance of the school system must be achieved by appropriate legislation. Finally, the system must be an efficient one. Rose v. Council for Better Educ., Inc., 790 S.W.2d 186 (Ky. 1989).

2. Power of Legislature.

What the system of education referred to in this section is, or is to be, is left wholly to the discretion of the General Assembly. Prowse v. Board of Educ., 134 Ky. 365, 120 S.W. 307 (1909). See Elliott v. Garner, 140 Ky. 157, 130 S.W. 997 (1910); Madison County Board of Educ. v. Smith, 250 Ky. 495, 63 S.W.2d 620 (1933); Commonwealth v. Griffen, 268 Ky. 830, 105 S.W.2d 1063 (1937).

Cities of the fifth and sixth classes, in the absence of legislative authority, do not have the power under this section to organize by ordinance city school districts independent of the county districts. Allen v. Elkhorn Coal Corp., 208 Ky. 108, 270 S.W. 743 (1925).

The determination of whether legislation providing for the common school system is "appropriate" is a legislative function. Board of Educ. of Louisville v. Board of Educ., 458 S.W.2d 6 (Ky. 1970).

The sole responsibility for providing the system of common schools is that of our General Assembly. The General Assembly must not only establish the system, but it must monitor it on a continuing basis so that it will always be maintained in a constitutional manner. The General Assembly must carefully supervise it, so that there is no waste, no duplication, no mismanagement, at any level. Rose v. Council for Better Educ., Inc., 790 S.W.2d 186 (Ky. 1989).

This section requires the General Assembly to establish a system of common schools that provides an equal opportunity for children to have an adequate education. In no way does this constitutional requirement act as a limitation on the General Assembly's power to create local school entities and to grant to those entities the authority to supplement the state system. Rose v. Council for Better Educ., Inc., 790 S.W.2d 186 (Ky. 1989).

3. State Control.

Public education has always been regarded as a matter of state concern, and the state does not relinquish its control and management of the school system by allowing or requiring the different localities to supplement the state's appropriation of funds by local taxation. City of Louisville v. Commonwealth, 134 Ky. 488, 121 S.W. 411 (1909). See Commonwealth ex rel. Baxter v. Burnett, 237 Ky. 473, 35 S.W.2d 857 (1931).

Every common school in the state, whether located in a city or a rural district, is a state institution, protected, controlled, and regulated by the state, and the fact that the state has appointed agencies such as fiscal courts, school trustees, and municipal bodies to aid it in the collection of taxes for the maintenance of these schools does not deprive them of their state character. Louisville v. Board of Educ., 154 Ky. 316, 157 S.W. 379 (1913). See Moss v. Mayfield (1919), 186 Ky. 330, 216 S.W. 842; Whitt v. Wilson (1925), 212 Ky. 281, 278 S.W. 609; Commonwealth ex rel. Baxter v. Burnett, 237 Ky. 473, 35 S.W.2d 857 (1931).

A provision in a deed of property to a city school board that such property be held for the exclusive use of white male students is void as an unconstitutional attempt to cede away governmental powers by the school board. Board of Education v. Society of Alumni of Louisville Male High Sch., Inc., 239 S.W.2d 931 (Ky. 1951).

4. Common Schools.

City schools, including high schools, are part of the state's common school system. City of Louisville v. Commonwealth, 134 Ky. 488, 121 S.W. 411 (1909). See Whitt v. Wilson, 212 Ky. 281, 278 S.W. 609 (1925).

Graded schools are common schools. Jeffries v. Board of Trustees, 135 Ky. 488, 122 S.W. 813 (1909).

Although county schools and graded common schools are part of common school system, application to graded common school system of laws clearly intended to be applicable only to county schools is not warranted. Sugg v. Board of Trustees, 255 Ky. 356, 74 S.W.2d 198 (1934).

Common schools are public or free schools maintained by the state at public expense, as distinguished from private, parochial or sectarian schools. Sherrard v. Jefferson County Board of Educ., 294 Ky. 469, 171 S.W.2d 963 (1942).

This section places a duty on the General Assembly to establish an efficient common school system free from political influence. KRS 161.164 and 161.990 were enacted by the General Assembly in an effort to comply with this directive. State Bd. for Elementary & Secondary Educ. v. Howard, 834 S.W.2d 657 (Ky. 1992).

5. —Constitutionality of School System.

The Kentucky Supreme Court ruled that Kentucky's entire system of common schools was unconstitutional. That decision applied to the entire sweep of the system—all its parts and parcels; it applied to the statutes creating, implementing and financing the system and to all regulations, etc., pertaining thereto; it covered the creation of local school districts, school boards, and the Kentucky Department of Education to the Minimum Foundation Program and Power Equalization Program; and it covered school construction and maintenance,

teacher certification—the whole gamut of the common school system in Kentucky. Rose v. Council for Better Educ., Inc., 790 S.W.2d 186 (Ky. 1989).

6. Normal Schools.

The state normal schools constitute a part of the common school system of the state, and the object of the Legislature in establishing them was to more fully effect the provisions of this section. James v. State Univ., 131 Ky. 156, 114 S.W. 767 (1908).

In the absence of statutory authority the board of regents of a state normal school could not sell property of the school which held it as an agency of the state. Board of Regents v. Engle, 224 Ky. 184, 5 S.W.2d 1062 (1928).

7. Institutional Schools.

State aid to institutional schools such as Louisville and Jefferson County children's home is not within the scope of this section to Const., § 186. Hodgkin v. Board for Louisville & Jefferson County Children's Home, 242 S.W.2d 1008 (Ky. 1951).

8. Uniform Education.

This section does not require a school district to provide a level of public education exceeding that prescribed by the state board of education as authorized by statute. Major v. Cayce, 98 Ky. 357, 17 Ky. L. Rptr. 967, 33 S.W. 93, 30 L.R.A. 697 (1895).

City revenue from tax on corporations must be apportioned between white and colored schools, for to do otherwise would violate this section. Trustees of Graded Free Colored Schools v. Trustees of Graded Free White Schools, 180 Ky. 574, 203 S.W. 520 (1918).

Operation of two high schools in western part of county and none in eastern part without providing equal and uniform educational opportunities for those in the eastern half is clearly arbitrary, discriminatory, and in violation of this section and KRS 158.010. Wooley v. Spalding, 293 S.W.2d 563 (Ky. 1956).

Uniformity does not require equal classification but it does demand that there shall be substantially uniform system and equal school facilities without discrimination as between different sections of a district or county. Wooley v. Spalding, 293 S.W.2d 563 (Ky. 1956).

9. School Districts.

School districts created in accordance with this section are creatures of the Legislature and Legislature has power to alter them or even do away with them entirely. Board of Education v. Mescher, 310 Ky. 453, 220 S.W.2d 1016 (1949). See Board of Educ. v. Board of Educ. Dist., 250 S.W.2d 1017 (Ky. 1952).

Though a school district possesses some of the attributes of a municipal corporation for some legal purposes, and though a school district is regarded as a political subdivision for some legal considerations, a school district is, nevertheless, an agency of the state subject to the will of the Legislature and existing for one public purpose only — to locally administer the common schools within a particular area subject to the paramount interest of the state. Board of Educ. of Louisville v. Board of Educ., 458 S.W.2d 6 (1970).

10. Boards of Education.

General Assembly may require that members of county board of education have an eighth grade education. Commonwealth ex rel. Meredith v. Norfleet, 272 Ky. 800, 115 S.W.2d 353 (1938).

It is the local boards which hold the substantial decision-making authority in regard to the local concerns for which they are established; although the state does establish guiding rules and policies for the efficient administration of the public schools, being a steward of state education policy does not make the school district an alter ego of the state. Blackburn v. Floyd County Bd. of Educ., 749 F. Supp. 159 (E.D. Ky. 1990).

11. School Elections.

All elections affecting schools are exclusively under the control of the General Assembly, and are not included in the franchise and election articles of the Constitution. Hoskins v. Ramsey, 197 Ky. 465, 247 S.W. 371 (1923).

Under this section the Legislature has the power to regulate school district elections by virtue of which the corrupt practices act applies to such elections. Redings v. Jones, 213 Ky. 810, 281 S.W. 999 (1926).

Statute providing for election by secret ballot of a board of education of each county, was in implementation of this section. Hunter v. Board of Educ., 265 Ky. 162, 96 S.W.2d 265 (1936).

12. School Taxes.

The Legislature is empowered to levy whatever taxes, either ad valorem or capitation, which are necessary to provide an efficient system of common schools throughout the state. McIntire v. Powell, 137 Ky. 477, 125 S.W. 1087 (1910).

Since the imposition of a poll or capitation tax for school purposes is authorized by the Constitution, it is the absolute duty of the fiscal court to levy such a tax, within the statutory limit, at the request of the board of education. Fiscal Court v. Board of Educ., 138 Ky. 98, 127 S.W. 527 (1910).

This section does not authorize Legislature to ignore limitation on indebtedness of two per cent of taxable property. Booth v. Board of Educ., 229 Ky. 719, 17 S.W.2d 1013 (1929).

All taxes imposed for common school purposes are state taxes, although the fund raised by any particular common school tax may be designed to be devoted exclusively to schools located in the territory affected by the tax. Paducah-Illinois R. R. v. Graham, 46 F.2d 806 (W.D. Ky. 1931).

Providing funds by taxation for common schools, and providing for their organization and administration, are inherently legislative in character, and by this section expressly allocated to the legislative department. Paducah-Illinois R. R. v. Graham, 46 F.2d 806 (W.D. Ky. 1931).

13. Assessments for Public Improvements.

In view of this section public school property belonging to a city school board may not be subjected to the payment of an assessment for the original construction of a street. City of Louisville v. Leatherman, 99 Ky. 213, 18 Ky. L. Rptr. 124, 35 S.W. 625 (1896).

The Legislature may not authorize a school district to issue bonds for or assume any obligation to pay for abutting municipal street improvements. Wilson v. Board of Educ., 226 Ky. 476, 115 S.W.2d 143 (1928).

14. Teacher Requirements.

The requirement of a county board of education, exercised under statutory authority, that teachers employed by it have higher educational requirements than are required for a teacher's license does not violate constitutional or statutory requirements of a uniform school system. Daviess County Board of Educ. v. Vanover, 219 Ky. 565, 293 S.W. 1063 (1927).

14. Teacher Retirement.

A board of education regulation compelling retirement of teachers at age 65 was not unconstitutional. Belcher v. Gish, 555 S.W.2d 264 (Ky. 1977).

16. Valid Statutes.

Under this section, that part of the school law authorizing the conversion of a part of a common school district into a graded school district without the consent of a majority of all the patrons of the common school district is constitutional. Elliott v. Garner, 140 Ky. 157, 130 S.W. 997 (1910).

KRS 160.045 does not violate Const., §§ 2, 19, 52, or this section. Board of Educ. v. Board of Educ., 250 S.W.2d 1017 (Ky. 1952).

KRS 160.486 is valid and does not contravene the expressed will of the people contained in this Constitution. Board of

Educ. of City of Louisville v. Board of Educ., 458 S.W.2d 6 (Ky. 1970).

Since the school based council is an authoritative body within the local school district, and the restriction in subdivision (2)(a) of KRS 160.345 prohibiting school district employees or their spouses from serving as parent members on the school based councils directly addresses the appearance of nepotism within that body and is clearly related to the goals of the Legislature to eradicate nepotism within the school districts of the Commonwealth, they are not unconstitutional as a violation of the equal protection clause of the Fourteenth Amendment. Kentucky Dep't of Educ. v. Risner, 913 S.W.2d 327 (Ky. 1996).

17. Prior Statutes.

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

18. Efficient System.

A school system does not cease to be efficient, and thus violate this section, because of court ordered busing for dedesegregation since at the very least "efficient" refers to a system which exists and operates and it must operate in a constitutional manner. Carroll v. Department of Health, Educ. & Welfare, 410 F. Supp. 234 (W.D. Ky. 1976), aff'd, Carroll v. Board of Educ., 561 F.2d 1 (6th Cir. 1977).

The essential, and minimal, characteristics of an "efficient" system of common schools, may be summarized as follows: 1) The establishment, maintenance and funding of common schools in Kentucky is the sole responsibility of the General Assembly. 2) Common schools shall be free to all. 3) Common schools shall be available to all Kentucky children. 4) Common schools shall be substantially uniform throughout the state. 5) Common schools shall provide equal educational opportunities to all Kentucky children, regardless of place of residence or economic circumstances. 6) Common schools shall be monitored by the General Assembly to assure that they are operated with no waste, no duplication, no mismanagement, and with no political influence. 7) The premise for the existence of common schools is that all children in Kentucky have a constitutional right to an adequate education. 8) The General Assembly shall provide funding which is sufficient to provide each child in Kentucky an adequate education. 9) An adequate education is one which has as its goal the development of the seven (7) capacities recited previously. Rose v. Council for Better Educ., Inc., 790 S.W.2d 186 (Ky. 1989).

The Supreme Court considered foreign cases, along with constitutional debates, Kentucky precedents and the opinion of experts in formulating the definition of "efficient" as it appears in this section. Rose v. Council for Better Educ., Inc., 790 S.W.2d 186 (Ky. 1989).

19. Funding.

The present school funding statutes permit local Boards of Education to raise funds through property taxes and permissive taxes such as the utilities tax; base funding and Tier One funding can be produced by a property tax not subject to voter recall and this nonrecallable option enables boards of education to fund schools without relying on permissive taxes; the General Assembly has supplied a mechanism to satisfy base funding, as well as Tier One funding, according to the mandate of this section; and that is all that Rose v. Council for Better Educ., 790 S.W.2d 186 (Ky. 1989) requires. Board of Educ. v. Brooks, 824 S.W.2d 431 (Ky. Ct. App. 1992).

§ 184. Common school fund — What constitutes — Use — Vote on tax for education other than in common schools.

The bond of the Commonwealth issued in favor of the Board of Education for the sum of one million three hundred and twenty-seven thousand dollars shall constitute one bond of the Commonwealth in favor of the Board of Education, and this bond and the seventy-three thousand five hundred dollars of the stock in the Bank of Kentucky, held by the Board of Education, and its proceeds, shall be held inviolate for the purpose of sustaining the system of common schools. The interest and dividends of said fund, together with any sum which may be produced by taxation or otherwise for purposes of common school education, shall be appropriated to the common schools, and to no other purpose. No sum shall be raised or collected for education other than in common schools until the question of taxation is submitted to the legal voters, and the majority of the votes cast at said election shall be in favor of such taxation: Provided, The tax now imposed for educational purposes, and for the endowment and maintenance of the Agricultural and Mechanical College, shall remain until changed by law.

Cross-References. City universities and colleges, KRS ch. 165.

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

Opinions of Attorney General. A board of education has no authority to appropriate money to a fire department, as the benefit to education in this regard would be remote and would not be an expenditure of school funds for educational purposes as required by this section. OAG 60-612.

The county board of education has authority to request the department of highways to allow a water line to be attached to the water main serving the school in order that service may be extended to a subdivision, since there would not be any additional expenditure of school funds for the extension of the water line to the new subdivision, there is no violation of this section. OAG 60-704.

If implemented in a school district the young historians program can be regarded as educational in purpose within the meaning of the Constitution. OAG 63-214.

A board of education may not provide and maintain an automobile for the personal use of a school superintendent. OAG 64-130.

A board of education may provide and maintain an automobile for the benefit of the school superintendent while discharging the duties attendant to his office. OAG 64-130.

A school board has legal authority to purchase liability insurance to cover the liability for sick-leave payments imposed by KRS 161.155. OAG 64-841.

It is legal for a board of education to execute a contract with a local health department to provide preventive medical services. OAG 65-293.

In order for a local school board to have a legal right to spend foundation program funds or revenue raised by local taxation for adults over 21 years of age the program would have to be part of the common school program. OAG 65-410.

Commingling of state and federal funds by a school would result in their becoming subject to the provisions of both state and federal laws governing their expenditure. OAG 65-625.

A school board may lawfully purchase fire and extended coverage insurance in the form of a package policy even though the premium is not specifically allocable to individual coverage if it does not exceed the rate regularly charged for fire and extended coverage insurance, as approved by the Kentucky department of insurance for such risks. OAG 66-36.

A restriction contained in a declaration of restrictions affecting a 10.44 acre tract proposed as a school site that would

require the owner of the tract to pay an assessment that could be used for maintenance of other property in the subdivision would preclude the purchase of the tract as a school site since the payment of the assessment would violate this section. OAG 67-413.

The city council's requiring the board of education to make repairs in the sidewalk in front of the high school would be in direct violation of this section. OAG 68-67.

An expenditure of school funds to help defray the operating costs of the county health department would not be proper. OAG 68-143.

The payment to the city by the board of education of a tap-in fee for connecting to the sewer line would not violate this section or Const., § 186. OAG 68-283.

Expenditures of school funds to provide turnabouts for school buses on private property adjacent to bridges that have been condemned would offend this section and Const., § 180 and would not be a proper school board expenditure. OAG 68-473.

A school board could not grant an easement across school property to the metropolitan sewer district since the easement would not constitute an educational purpose. OAG 69-127.

A lease of school property permitting the construction of a swimming pool on the leased premises would not violate this section or Const., § 180 if the consideration received by the school district would be sufficient to compensate for the lease. OAG 69-290.

Under this section and Const., § 180 the funds of the school board may not properly be expended to pay a portion of the salary of policewomen to patrol intersections on the city streets during school rush hours since this activity involves a service for the general public welfare rather than one which is designed to accomplish an educational purpose. OAG 69-488.

The members of families of employees and/or the dependents of employees may, within the discretion of the board, participate in the various types of group coverage provided the extra cost of the family coverage or dependent coverage is paid by the employee. OAG 70-336.

A lease by a school board of school property at the nominal rental value of $1.00 per year merely on the basis that United Cerebral Palsy would conduct a school on the premises could not be justified per se under Const., §§ 180, 184, and 186. However, if a factual determination were made that a proposed United Cerebral Palsy school would furnish an approved program for the instruction of exceptional children and that such a program was needed by the local school board, the board could execute a lease of property for such a school for the nominal sum of $1.00 per year. OAG 70-805.

Both the value received criterion and the direct benefit criterion must be considered in applying tests to determine whether a particular expenditure is valid under the school purpose restriction. OAG 70-805.

The Kentucky statutes do not authorize the expending of bond proceeds to renovate school buildings presently existing and already acquired. OAG 71-107.

The statutory sections relating to acquisition of existing buildings in KRS chs. 58 and 162 are broad enough to include, by reasonable implication, whatever may be properly spent for the functional adaptation of purchased buildings to school purposes. OAG 71-107.

A school board cannot expend money for the construction of a community center building to be used for educational, recreational, and social community services and health purposes. OAG 71-184.

A local board of education is precluded from expending school funds to pay a portion of the costs incurred by either private or quasi-public nonschool agencies in operating special education classes for exceptional children. OAG 72-86.

An agreement by a board of education to lease unused portions of a television facility owned by it to a private corporation was lawful with the exception of a provision that a part of the consideration for the lease would be an option to purchase up to 10% of the stock of the private corporation, which provision was illegal and void under §§ 177, 179, 184, and 186 of the Constitution. OAG 73-418.

It is proper for a school district to require students to pay the cost of their meals, but if a school district sees fit to do so, it may use school funds to subsidize the school lunch program with the result that the pupils will be paying a price which is less than the cost of supplying their meals. OAG 73-754.

It would be a violation of the Constitution to pay the salary of a parochial schoolteacher from the funds of a public school district. OAG 73-799.

Since the control of air pollution is for the public benefit, the obtaining of a pollutant permit is a public school purpose and therefore payment of the fee does not violate the Constitution. OAG 74-57.

The announcement over a school speaker system or the distribution of notices to children on school property of meetings of an organization of parents to promote a constitutional amendment which would forbid busing of school pupils for the purpose of achieving racial balance in the public schools constitutes an illegal use of school property and improperly interjects political questions into the operation of the public school. OAG 74-118.

Public school teachers may not, as a part of the duties for which compensated by boards of education, be assigned, to teach in a private or sectarian school. OAG 74-331 (modifying OAG 68-150, and withdrawing OAG 68-585).

Qualified pupils in private schools which are nonsectarian and which do not teach religion are entitled to the benefits of the Title I program. OAG 74-683.

Proposed public relations plan to have administrators of the school system join various service organizations of the community would not be a proper expenditure of school funds and would be unconstitutional under this section and Const., § 180. OAG 74-873.

A public school district cannot be compelled to pay for public improvements nor can it voluntarily use school funds for such purposes. OAG 75-108 and 75-613.

Under this section and § 186 of the Const., school funds may not be expended for the construction of entrances to school property within the rights of way of state highways and the expense of such entrances must be borne by the state department of transportation (now transportation cabinet). OAG 75-362 and 75-613.

Public school funds may not be expended to employ persons to control vehicular and pedestrian traffic on public streets or roads in or around school premises. OAG 75-614.

An off-duty constable employed as a school security guard is an employee of the school board which may compensate him for his services. OAG 75-631.

Although the services of school crossing guards are a benefit to school children, the guards do not serve an "educational purpose," and thus school board funds may not be expended to pay the salary of individuals who patrol intersections on city streets. OAG 76-239.

A county sheriff's fee for collecting school taxes must represent the reasonable cost of collection, as long as the rate does not exceed 4 percent , and the sheriff must document his reasonable costs of collection. OAG 76-251.

Once approval to sell school property as surplus is given by the Superintendent of Public Instruction, there is no legal requirement that a board of education must dispose of the property by public auction or advertisement of sealed bids and the board may establish a price for the land and sell to any purchaser willing and able to meet that price if the figure represents at least the appraised fair market value of the property. OAG 76-291.

A board of education may not participate in defraying the cost of a property reappraisal that was ordered by the Circuit

Court in an action by a private party against the city. OAG 77-299.

The expenses of opening schools to serve as voting places on a presidential election day, as provided by subsection (2) of KRS 117.065, when the schools are mandated to be closed by KRS 2.190 would be so small and incidental as not to be proscribed by Kentucky Constitution, §§ 180, 184, 186. OAG 76-592. Withdrawing OAG 42-363.

Since the requirement that schools not be opened without a custodian is a policy created by school board and not by statute, the circumstances surrounding the use of schools as voting places as provided for in subsection (2) of KRS 117.065 may be structured so that there does not exist any unwarranted and impermissible expenditures of public common school money for election purposes. OAG 76-614.

Since a water system is a necessary appendage to the school building and may relate very closely to the health and welfare of the students, a county board of education could legally spend public common school funds to construct a water line from the school property to an existing water line supply. OAG 76-654.

Once the sheriff's total fee for collecting school taxes is properly computed the constitutional test of diversion is met since the constitutional diversion occurs no sooner than the reasonable cost of collection is exceeded, regardless of how much the excess is. OAG 78-146.

The payment to the urban county government of 25% for the school tax collection fee paid to the sheriff does not constitute an unlawful diversion of school money. OAG 78-146.

The total cost of collecting school taxes (prior to the 75% and 25% distribution at State level) is strictly constitutional as being an expenditure for school purposes. OAG 78-146.

A city ordinance making school crossing guards, who are sworn peace officers with authority to issue citations and place and remove traffic control devices, employees of the school board rather than the city is invalid under KRS 94.360 (repealed), giving a city exclusive control over its streets, KRS 189.336, giving a city exclusive authority to place traffic control devices, and this section requiring school board funds be used only for the purpose of education. OAG 79-107.

The employment of school crossing guards is not an "educational purpose" for which school funds may be expended. OAG 79-107.

The governing body of a city of the second class has authority by ordinance to present the question to its citizens concerning whether they wish to have a seven cents special tax levy to support a community college continued or repealed. OAG 79-503.

An emergency ambulance service for school children and personnel may legally be provided by a contract made between a board of education and a private ambulance service since this is for school purposes and the expenditure would not be prohibited by this section of the Constitution. OAG 81-87.

The present school laws, in light of the Constitution, do not authorize or permit any state-funded extended employment days to be used for vacation or holidays. OAG 82-356.

Within reason, school boards are permitted to bear the direct and indirect expenses incurred by teachers and administrators who attend, after prior approval by the board, professional activities and functions; however, school boards are not wholly unfettered in exercising their discretion in approving attendance at sundry professional activities since Const., § 180 and this section require that school funds may be used only for school purposes, the test being whether the expenditure is for an educational purpose rather than whether an activity might be beneficial to education. OAG 83-228.

It is legal for a board of education to pay salaries and/or expenses — including travel, lodging, and meals for school administrators or teachers to attend business sessions of their respective professional organizations, training and professional improvement meetings conducted by their professional organization and accreditation associations to which their schools or districts belong, and/or lobbying activities conducted by their professional associations. OAG 83-228.

A proposal by the fiscal court to pay a sum equal to 150 percent of the purported "actual cost" of transporting "all" the school children in a school district may not be legally tolerated, since it appears that a purported "actual increase cost" figure for the cost of transporting the nonpublic school children may not be constitutionally determined. OAG 83-294.

Language in budget memorandum recommending and directing that 705 KAR 2:030 Section 8 be amended to change the local district transfer provision from 20% to the established value of the capital outlay component of a foundation unit with difference in the transfer to be used to fund the operational costs of the New Rowan County State Vocational-Technical School and the expanded facilities in Ashland and Elizabethtown is precatory in nature and in light of this section and Const., § 186 cannot be carried out for funds involved, are foundation program funds and not just general funds appropriated for education and using the difference in the transfer amount of funds to support the operational cost of the New Rowan County State Vocational-Technical School and expanded facilities in Ashland and Elizabethtown would be using foundation program funds for nonfoundation purposes. OAG 84-314.

Where one or more school districts initiate a suit to enforce state equalization of school funding within the Commonwealth, interested school districts may contribute reasonable amounts of money from school funds to meet the costs of the suit, including reasonable attorney's fees; such expenditures would, however, have to be made in accordance with appropriate budget considerations. OAG 85-100.

By exempting school districts from the scope of application of the act, and by permitting termination by a taxing district on a year-to-year basis of a contractual arrangement with an agency, Acts 1986, ch. 13 which repealed the Tax Increment Act, KRS 99.750, and enacted KRS 99.751, 99.756, 99.761, 99.766 and 99.771, has remedied the constitutional problems under this section and Const., § 157 that the Supreme Court in Miller v. Covington Development Authority, 539 S.W.2d 1 (Ky. 1976), found with the Tax Increment Act. OAG 86-48.

Any settlement of claims for taxes owed, including interest and penalties, would be a diversion of school fund moneys for a purpose other than that of the common schools. OAG 88-46.

Neither the school nor the tax collector can abate past due interest or penalty on local school taxes paid prior to or after filing suit for collection of the unpaid taxes, penalty, and interest. OAG 88-46.

The purchase of satellite receiving equipment for nonpublic schools through an appropriation by the General Assembly would appear to be educational in purpose and, therefore, would appear to be a constitutionally prohibited expenditure. OAG 89-41.

No existing law prohibits, outright, local districts from showing instructional TV programming with minimal commercials included so long as curricular materials are properly reviewed; if instructional TV programming, with minimal commercials included, is allowed in the public schools, then the two (2) minutes of advertising do not have to be excluded from the six (6) hour day. OAG 90-42.

The state board has the authority to ban any television instruction with commercial advertising if the board determines as a matter of public policy that such should not be utilized in the classroom. The board also has the authority to allow the local boards of education and school councils to decide this matter. OAG 90-42.

The common school fund consists of all sums produced by taxation or otherwise for common school purposes in addition to the interest and dividends of the fund. Those sums are to be spent exclusively on public education. KRS 156.665 (now

repealed) provides that among the duties and responsibilities of the Council for Education Technology is the investment of all funds received by the council for the purpose of carrying out these duties and responsibilities, and accordingly, KRS 42.500 does not apply, as the authority granted to the State Investment Commission is limited by KRS 156.665 (now repealed). OAG 91-39.

Under KRS 168.100, the use of state funds appropriated for educational purpose may be applied by Kentucky Educational Television only for the benefit of public or common schools in order to avoid violation of this section and Const., §§ 171, 186, and 189. Accordingly, KET is required to charge nonstate schools, whether private and nonsectarian or parochial, for services delivered in the process of returning student responses to the KET master computer. OAG 91-71.

An expenditure of common school funds or a donation of school property for a public purpose other than for the benefit of public education is not permissible under this section and Const., §§ 180 and 186; therefore, under this section and Const., §§ 180 and 186, any transfer of surplus school buildings to community service organizations must be based on the fair market value of the property. OAG 91-85.

It is still the opinion of the Attorney General's office that OAG 79-107 represents the law of Kentucky and the interpretation of Ky. Const., § 180 and this section, and that the expenditure of school funds for school guard crossings is prohibited constitutionally. OAG 92-6.

A reward, offered by the local school board, for the purpose of apprehending the vandals who damaged school property constitutes a proper educational purpose within the meaning of this section and Ky. Const., §§ 180 and 186; the act also falls within the parameters of KRS 160.160 as being necessary in order that the board may accomplish the purposes for which it was created as the resources of each school system are limited, and must be protected. OAG 92-63.

A school board cannot lawfully agree to provide materials paid for with school funds, or provide school funds themselves, whether under an intergovernmental agreement or otherwise, for the construction or maintenance of school bus turnarounds within the meaning of subsection (2) of KRS 178.290. OAG 93-63.

KRS 158.6455 permits a local school council or principal to use school reward money to pay teacher bonuses, and these bonuses are permissible under the Kentucky Constitution because they are "for school purposes." OAG 00-2.

Cited: Bank of Cumberland v. Simpson, 25 Ky. L. Rptr. 1227, 77 S.W. 695 (1903); Commonwealth v. Southern Pac. Co., 154 Ky. 41, 156 S.W. 865 (1913); Greene v. Gilbert, 168 Ky. 380, 182 S.W. 202 (1916); Larue v. Redmon, 168 Ky. 487, 182 S.W. 622 (1916); Cassady v. Oldham County, 246 Ky. 773, 56 S.W.2d 368 (1933); Board of Educ. v. Williams, 256 S.W.2d 29 (Ky. 1953); Van Hoose v. Williams, 496 F. Supp. 947 (E.D. Ky. 1980); Marshall v. Commonwealth, 20 S.W.3d 478 (Ky. Ct. App. 2000).

NOTES TO DECISIONS

ANALYSIS

1. Purpose.
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1. Purpose.

It was the intent of this section to prohibit the collection of any taxes to any extent for educational purposes other than in common schools, without a majority vote of the people. Brown v. Board of Educ., 108 Ky. 783, 22 Ky. L. Rptr. 483, 57 S.W. 612 (1900).

2. Construction.

This section is a restriction upon legislative power, not upon municipal indebtedness. Brown v. Board of Educ., 108 Ky. 783, 22 Ky. L. Rptr. 483, 57 S.W. 612 (1900).

This section leaves to the law-making body the determination of what is an efficient educational system, and to that body wide discretion in choosing the method of supplying an efficient system. Dodge v. Jefferson County Bd. of Educ., 298 Ky. 1, 181 S.W.2d 406 (1944).

This section and sections 180 and 186 of the Kentucky Constitution, when read together, prohibit the diversion of common school funds for purposes other than the maintenance of the public schools of the Commonwealth. Board of Educ. v. Lexington-Fayette Urban County Gov't, 691 S.W.2d 218 (Ky. Ct. App. 1985).

3. Application.

The prohibitions of this section apply to local political units as well as to the General Assembly. Pollitt v. Lewis, 269 Ky. 680, 108 S.W.2d 671, 113 A.L.R. 691 (1937).

4. Common School System.

In order for there to be a common school there must be a common school district. Hodgkin v. Board for Louisville & Jefferson County Children's Home, 242 S.W.2d 1008 (Ky. 1951).

Neither the statements of the Court of Appeals nor the pronouncements of the legislature can make an institution a part of the common school system contrary to the mandate of the Constitution. Hodgkin v. Board for Louisville & Jefferson County Children's Home, 242 S.W.2d 1008 (Ky. 1951).

5. Common School Fund.

The income to which the common school fund was entitled was not confined to those sources of revenue provided in a certain statute, but might be supplemented from other sources such as inheritance taxes. Gilbert v. Greene, 185 Ky. 817, 216 S.W. 105 (1919).

Money appropriated for schools immediately becomes part of school fund, although appropriated after tax is levied or collected. Talbott v. Kentucky State Board of Educ., 244 Ky. 826, 52 S.W.2d 727 (1932).

Under this section, the school fund was entitled to the surplus in the county livestock fund, despite the repeal of statute providing for payment of the surplus to the school fund. Board of Educ. v. Tierney, 280 S.W.2d 201 (Ky. 1955).

6. School Taxes.

Under this section, a city could not avoid paying over to the school board the whole amount of taxes collected, on the ground that it went into the sinking fund. City of Louisville v. Louisville School Bd., 17 Ky. L. Rptr. 697, 32 S.W. 406 (1895).

In view of Const., § 180 and this section, where a city collected a greater sum for school purposes than requested by board of education but within limitation of rate of assessment fixed in statute, the total amount collected belonged to the board of education. Board of Educ. v. City of Newport, 174 Ky. 28, 849, 191 S.W. 871 (1917).

Where a city collects taxes for school purposes without insisting upon levy being reduced by amount of unreported resources of board of education, it cannot subsequently so

insist and may not withhold from the school board any portion of the tax levied for school purposes. Board of Educ. v. City of Newport, 174 Ky. 28, 849, 191 S.W. 871 (1917).

A tax levied for the benefit of common schools is a state tax, although it may be levied and collected by municipal county or district agencies. Moss v. Mayfield, 186 Ky. 330, 216 S.W. 842 (1919). See Whitt v. Wilson, 212 Ky. 281, 278 S.W. 609 (1925).

Legislature may provide for efficient school system by directly levying tax which is sufficient when proceeds are distributed pro rata or by raising limit of local school tax rates. Talbott v. Kentucky State Bd. of Educ., 244 Ky. 826, 52 S.W.2d 727 (1932).

Continued collection of seven cents special tax voted in 1937 for a junior college program was not in violation of this section, although the junior college was to be operated by a state university under contract with the school board and the tax would be paid over to a nonprofit corporation created by the school board as its own agency, the school board having option to withdraw from the program of operation of the junior college. Montague v. Board of Educ., 402 S.W.2d 94 (Ky. 1966).

7. —Collection Fees.

Using a portion of a tax collected for purposes of common school education to bear the costs of its collection, does not violate Const., § 180 or this section. Ross v. Board of Educ., 196 Ky. 366, 244 S.W. 793 (1922).

No violence is done to constitutional provisions prohibiting diversion of taxes or school funds when a reasonable charge is made against a local school tax for its collection. Dickson v. Jefferson County Bd. of Educ., 311 Ky. 781, 225 S.W.2d 672 (1949).

The additional three percent (3%) fee allowed the sheriff of Jefferson County for the collection of school taxes by KRS 160.500 violates this section and Const., § 180. Dickson v. Jefferson County Bd. of Educ., 311 Ky. 781, 225 S.W.2d 672 (1949).

A sheriff may not retain for the general expenses of his office from school tax funds any fee in an amount greater than that incurred as an expense of collecting such school tax funds despite statutory authority for a larger fee and the court is required to limit his fee upon such showing. Board of Educ. v. Wagers, 239 S.W.2d 48 (Ky. 1951). See Board of Educ. v. Edmunds, 252 S.W.2d 882 (1952); Board of Educ. v. Greenhill, 291 S.W.2d 36 (Ky. 1956).

The trial court must fix the fee of the sheriff for collecting board of education tax levy at a figure commensurate with the services rendered since a flat percentage fee violates Const., § 180 and this section in those cases where the reasonable cost of collection is less than amount which would be paid the sheriff by the application of the flat percentage to the total amount of taxes collected. Barren County Board of Educ. v. Edmunds, 252 S.W.2d 882 (Ky. 1952).

Although it may have been that the General Assembly's intent was to create a flat four percent (4%) commission for the county clerks for collecting the taxes, such interpretation would bring subsection (3) of KRS 134.805 into conflict with Const., § 180 and this section; therefore, a county clerk may not receive a fee for collecting the school tax which is in excess of his or her actual cost of collection, not exceeding four percent (4%). Benson v. Board of Educ., 748 S.W.2d 156 (Ky. Ct. App. 1988).

The only exception to the constitutional limitations of Const., § 180 and this section prohibiting the use of school funds for anything other than school purposes is the payment by the school board of the reasonable and actual costs of collecting the taxes. Benson v. Board of Educ., 748 S.W.2d 156 (Ky. Ct. App. 1988).

The allocation of the costs of collection of school taxes based on a percentage of revenue collected does not violate this section; such collection costs in no way diminish the constitutional command that school taxes must be appropriated to the common schools and no other purpose. These basic principles were not changed by the adoption of the Kentucky Education Reform Act of 1990. Board of Educ. v. Williams, 930 S.W.2d 399 (Ky. 1996).

8. Expenditure of Funds.

City school board's appropriation for purposes not expressly named in statute must reasonably relate to proper school activities or interests. Board of Educ. v. Simmons, 245 Ky. 493, 53 S.W.2d 940 (1932).

Discretion vested in boards of education to expend school moneys, is subject to constitutional restriction that such expenditures must be for purposes of common school education. Schuerman v. State Bd. of Educ., 284 Ky. 556, 145 S.W.2d 42 (1940).

The determination of proper purposes of common school education is subject to wide and varied opinion and, unless an expenditure is extreme or clearly not for a proper educational purpose, the determination of such purpose is within the discretion of the General Assembly. Board of Educ. v. Talbott, 286 Ky. 543, 151 S.W.2d 42 (1941).

If the taxes are paid, the sum so collected shall not be devoted to any other purpose than school purposes. Dickson v. Jefferson County Board of Educ., 311 Ky. 781, 225 S.W.2d 672 (1949).

This section must be read together with Const., § 180 in determining how school funds must be spent, and the test to be applied in each instances is, what constitutes an educational purpose rather than whether an activity might merely be beneficial to education. Board of Educ. v. Spencer County Levee, Flood Control and Drainage Dist. No. 1, 313 Ky. 8, 230 S.W.2d 81 (1950).

School funds may not be diverted from school purposes. Grayson County Board of Educ. v. Boone, 452 S.W.2d 371 (Ky. 1970).

A fair reading of Const., §§ 183-189 compels the conclusion that money spent on education is to be spent exclusively in the public school system, except where the question of taxation for an educational purpose has been submitted to the voters and the majority of the votes cast at the election on the question shall be in favor of such taxation. Fannin v. Williams, 655 S.W.2d 480 (Ky. 1983).

The Kentucky Constitution contemplates that public funds shall be expended for public education and the Commonwealth is obliged to furnish every child in this state an education in the public schools, but it is constitutionally proscribed from providing aid to furnish a private education. Fannin v. Williams, 655 S.W.2d 480 (Ky. 1983).

9. —Valid.

City and county boards of education may expend reasonable amounts from public school fund to pay membership dues in Kentucky school board association, since maintenance of that association for purposes specified in its Constitution is beneficial to public education in Kentucky. Schuerman v. State Bd. of Educ., 284 Ky. 556, 145 S.W.2d 42 (1940).

Payment of gasoline tax by boards of education does not violate this section. Board of Educ. v. Talbott, 286 Ky. 543, 151 S.W.2d 42 (1941).

The carrying of liability insurance on school buses is an expense incident to a rational program of school transportation, and the requirement of KRS 160.310 that such insurance be carried does not violate this section. Bronaugh v. Murray, 294 Ky. 715, 172 S.W.2d 591 (1943).

Where no accurate time accounting could be made for school tax collection by the sheriff and his employees but the four percent (4%) he retained was not excessive, there was no diversion of school funds in the retention of the four percent (4%). Grayson County Board of Educ. v. Boone, 452 S.W.2d 371 (Ky. 1970).

A county fiscal court's resolution which provided approximately 65 percent of the total cost of transporting non-public elementary school students was not unconstitutional where

(1) funds were not paid directly to any private or parochial school and were, instead, paid to the individual local board of education operated transportation system of contracted bus and vehicle companies, (2) the benefit provided by the resolution went directly toward the safety and welfare of elementary age school children and not into the accounts of non-public schools, and (3) the resolution did not establish a tuition ceiling as a requisite to eligibility for the transportation subsidy. Neal v. Fiscal Court, 986 S.W.2d 907 (Ky. 1999).

10. —Invalid.

The appropriation of any part of a school fund or of the taxes which have been devoted to the purposes of the common school system, to the payment either of general taxation for support of the state government, or of special assessments to pay the cost of street improvements, would be an appropriation thereof to another purpose than that of the school system, forbidden by this section. City of Louisville v. Leatherman, 99 Ky. 213, 35 S.W. 625 (1896). See Kentucky Institution for Educ. of Blind v. City of Louisville, 123 Ky. 767, 30 Ky. L. Rptr. 136, 97 S.W. 402 (1906).

A tax levied and collected by a city for school purposes cannot be appropriated by act of legislature to maintain public library open to pupils of common schools only as a part of general public, and not under control of board of education for common schools. Board of Educ. v. Board of Trustees, 113 Ky. 234, 24 Ky. L. Rptr. 98, 68 S.W. 10 (1902).

State board of education could not purchase free textbooks for schools, where none of state's school fund had been appropriated for that purpose and general fund had been exhausted. State Bd. of Educ. v. Kenney, 230 Ky. 287, 18 S.W.2d 1114 (1929).

The Tax Increment Act, KRS 99.750 to 99.770 (repealed), which permits various taxing districts to release increments expected to be derived by such districts as a result of the undertaking of a renewal or redevelopment project by an urban renewal community agency or authority to be used as a special fund for bond payment is invalid as it violates this section, for money collected for the purposes of education in the common school system cannot be spent for any other purpose. Miller v. Covington Dev. Auth., 539 S.W.2d 1 (Ky. 1976).

If the exclusive purpose of KRS 171.215, which provides that the state must supply textbooks to students in nonpublic schools, is to pay the expenses of children in private schools, Const., § 3 has been directly violated; conversely, if the textbooks also aid in the functioning of the private schools themselves, Const., §§ 171, 186, 189 and this section have been violated. Fannin v. Williams, 655 S.W.2d 480 (Ky. 1983).

KRS 171.215, which provides that the department of libraries (now department for libraries and archives) must supply textbooks without cost to pupils attending nonpublic schools, is unconstitutional in that it directs the expenditure of public funds for educational purposes through nonpublic schools. Fannin v. Williams, 655 S.W.2d 480 (Ky. 1983).

Grants made by fiscal court from county tax revenue by direct payment to certain specified privately-owned schools designated as transportation subsidies violated this section which provides that money cannot be expended for education other than in common schools without a vote of the public, because public money is being expended for the benefit of the private institution rather than providing specifically for the health and safety of all the children. Fiscal Court v. Brady, 885 S.W.2d 681 (Ky. 1994).

11. Assessment for Public Improvements.

Board of education could not be required to pay assessment by county flood and drainage district to build a flood wall notwithstanding board and children in its district would benefit thereby since such expenditure would be for other than educational purposes. Board of Educ. Dist. v. Spencer County Levee, Flood Control & Drainage Dist. No. 1, 313 Ky. 8, 230 S.W.2d 81 (1950).

Even if the money paid by the state as the apportionment of a special improvement benefit assessment against school property is considered money appropriated in aid of education, it is within the legislative discretion to specify the purpose of its use. Robertson v. City of Danville, 291 S.W.2d 816 (Ky. 1956).

KRS 107.010 to 107.220 providing for the financing of public improvement projects by annual assessments on the basis of the assessed values of the benefited properties, does not, by providing that public school properties shall be assessed and that levies against it should be paid from the state treasury out of moneys not otherwise appropriated, violate this section. Robertson v. City of Danville, 291 S.W.2d 816 (Ky. 1956).

12. University of Kentucky.

This section does not prohibit a subsequent, new, statutory appropriation for the support of the Agricultural and Mechanical College. Agricultural & Mechanical College v. Hager, 121 Ky. 1, 27 Ky. L. Rptr. 1178, 87 S.W. 1125 (1905).

Neither the change of the name of the Agricultural & Mechanical College of Kentucky to State University, nor transfer of normal work proper to state normal schools, destroyed its identity as a public corporation and state institution as respects the matter of appropriation therefor. James v. State Univ., 131 Ky. 156, 114 S.W. 767 (1908). See Agricultural & Mechanical College v. Hager, 121 Ky. 1, 27 Ky. L. Rptr. 1178, 87 S.W. 1125 (1905); Marsee v. Hager, 125 Ky. 445, 13 Ky. L. Rptr. 79, 101 S.W. 882 (1907).

The State University and the state normal schools are among the educational institutions for which, under this section, the legislature may make appropriations without submitting the matter to a vote of the people. James v. State Univ., 131 Ky. 156, 114 S.W. 767 (1908). See Agricultural & Mechanical College v. Hager, 121 Ky. 1, 27 Ky. L. Rptr. 1178, 87 S.W. 1125 (1908); Marsee v. Hager, 125 Ky. 445, 31 Ky. L. Rptr. 79, 101 S.W. 882 (1907).

This section has no application to a statute providing that counties may send a number of pupils free of tuition to the State University. Barker v. Crum, 177 Ky. 637, 198 S.W. 211, 1918F L.R.A. 673 (1917).

13. Normal Schools.

Statute establishing a system of state normal schools and appropriating money therefor was not in violation of this section. Marsee v. Harper, 125 Ky. 445, 31 Ky. L. Rptr. 79, 101 S.W. 882 (1907).

14. Institutional Schools.

This section and Const., § 185 do not empower the commissioners of the sinking fund of the Commonwealth to provide funds for reconstruction of building of Industrial College for Colored People destroyed by fire or to authorize the trustees to reconstruct the building at state expense. Rhoads v. Fields, 219 Ky. 303, 292 S.W. 809 (1927).

15. Valid Statutes.

Statute providing that the expenses of the Department of Education, of whatever character, be paid from the common school fund, is not repugnant to this section. Superintendent of Public Instruction v. Auditor of Pub. Accounts, 97 Ky. 180, 17 Ky. L. Rptr. 46, 30 S.W. 404 (1895).

Under this section statute authorizing discounts for prompt payment of taxes including school taxes is not invalid as allowing sums produced by taxation for common schools to be appropriated to other purposes. Board of Educ. v. Sea, 167 Ky. 772, 181 S.W. 670 (1916).

Law providing for an increase of the tax for operating expenses of common schools was valid. Larue v. Redmon, 168 Ky. 487, 182 S.W. 622 (1916).

An act providing for payment of interest on warrants to be issued by the auditor for teachers' salaries did not violate this section. Adams v. Greene, 182 Ky. 504, 206 S.W. 759 (1918).

KRS 212.260 authorizing county health officers to visit schools and inspect premises does not limit or substitute for school board's power to appropriate school funds under the Constitution. Board of Educ. v. Simmons, 245 Ky. 493, 53 S.W.2d 940 (1932).

Statute authorizing a board of education to impose occupational license fees after electoral approval does not violate this section by providing that the necessary expenses of the required election be paid from school funds. Sims v. Board of Educ., 290 S.W.2d 491 (Ky. 1956).

Former statute that authorized public aid to private institutions for the education of exceptional children did not violate this section since it was not the intention of the delegates in adopting this section and Const., § 186 to deny forever the possibility of special educational assistance to those who by no choice of their own are unsuited to the standard programs and facilities of the common school system, the act in question being primarily a welfare rather than an educational measure and the fact that it takes the form of education being immaterial. Butler v. United Cerebral Palsy of Northern Kentucky, Inc., 352 S.W.2d 203 (Ky. 1961).

16. Invalid Statutes.

Legislative act providing for furnishing free transportation to pupils attending private schools violated this section, there being no merit in argument that act provided benefit for children and not for school. Sherrard v. Jefferson County Board of Educ., 294 Ky. 469, 171 S.W.2d 963 (1942).

17. Sewer User Charges.

The applicability of this section and Ky. Const., §§ 180 and 186 to the issue of whether a sewer user charge can be paid from school funds must be determined by a reasonable interpretation of whether the service or commodity provided is necessary for the maintenance of the public schools and is exclusively for the benefit of the public schools. Sewer user charges imposed upon a county board of education bear a reasonable and rational relationship to the value of the services provided and therefore are exclusively for the benefit of and necessary for the maintenance of the public schools. Board of Educ. v. Lexington-Fayette Urban County Gov't, 691 S.W.2d 218 (Ky. Ct. App. 1985).

§ 185. Interest on school fund — Investment.

The General Assembly shall make provision, by law, for the payment of the interest of said school fund, and may provide for the sale of the stock in the Bank of Kentucky; and in case of a sale of all or any part of said stock, the proceeds of sale shall be invested by the Sinking Fund Commissioners in other good interest-bearing stocks or bonds, which shall be subject to sale and reinvestment, from time to time, in like manner, and with the same restrictions, as provided with reference to the sale of the said stock in the Bank of Kentucky.

Cited: Pratt v. Breckinridge, 112 Ky. 1, 23 Ky. L. Rptr. 1356, 65 S.W. 136 (1901); Board of Educ. v. Talbott, 261 Ky. 66, 86 S.W.2d 1059 (1935); Hodgkin v. Board of Louisville & Jefferson County Children's Home, 242 S.W.2d 1008 (Ky. 1951).

NOTES TO DECISIONS

Analysis

1. Escheated property.
2. Industrial college.

1. Escheated Property.

This section does not prevent the legislature from allowing certain localities to make additional provision for the financing of their schools and, consequently, a statute providing that certain categories of property, in case of escheat, shall go to a school district is valid. Commonwealth v. Thomas' Adm'r., 140 Ky. 789, 131 S.W. 797 (1910).

2. Industrial College.

Commissioners of the sinking fund had no authority to provide funds for reconstruction of building of Industrial College destroyed by fire, nor could they authorize trustees of college to do so at expense of state. Rhoads v. Fields, 219 Ky. 303, 292 S.W. 809 (1927).

§ 186. Distribution and use of school fund.

All funds accruing to the school fund shall be used for the maintenance of the public schools of the Commonwealth, and for no other purpose, and the General Assembly shall by general law prescribe the manner of the distribution of the public school fund among the school districts and its use for public school purposes. (Amendment, Acts 1952, ch. 89, approved November, 1953.)

Compiler's Notes. The provision of this section providing for pro rata distribution of school funds was repealed in 1953. Cases which construed this provision are as follows: Louisville School Board v. Superintendent of Public Instruction (1897), 102 Ky. 394, 19 K.L.R. 1350, 43 S.W. 718; Louisville School Board v. McChesney (1900), 109 Ky. 9, 22 K.L.R. 506, 58 S.W. 427; Talbott v. Kentucky State Board of Education (1932), 244 Ky. 826, 52 S.W.2d 727; Board of Education v. Talbott (1935), 261 Ky. 66, 86 S.W.2d 1059; Commonwealth ex rel. Meredith v. Reeves (1941), 289 Ky. 73, 157 S.W.2d 751; Jefferson County Board of Education v. Goheen (1947), 306 Ky. 439, 207 S.W.2d 567; Hodgkin v. Kentucky Chamber of Commerce (1952), 246 S.W.2d 1014.

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

Wintersheimer, State Constitutional Law, 20 N. Ky. L. Rev. 591 (1993).

Opinions of Attorney General. A school board may not make a contribution to a park commission which is seeking to accumulate a fund in order to secure matching federal funds for development of a community recreation park. This section prohibits the use of school funds for other than school purposes. Section 180 provides that no tax levied and collected for one purpose shall be used for another. OAG 72-95.

This section would prohibit a school board from contributing funds to repair a city street which had been damaged by continued use by heavy school buses. OAG 72-514.

An agreement by a board of education to lease unused portions of a television facility owned by it to a private corporation was lawful with the exception of a provision that a part of the consideration for the lease would be an option to purchase up to 10% of the stock of the private corporation, which provision was illegal and void under §§ 177, 179, 184, and 186 of the Constitution. OAG 73-418.

It is proper for a school district to require students to pay the cost of their meals, but if a school district sees fit to do so, it may use school funds to subsidize the school lunch program with the result that the pupils will be paying a price which is less than the cost of supplying their meals. OAG 73-754.

Since the control of air pollution is for the public benefit, the obtaining of a pollutant permit is a public school purpose and payment of the fee does not violate the constitution. OAG 74-57.

Qualified pupils in private schools which are nonsectarian and which do not teach religion are entitled to the benefits of the Title I program. OAG 74-683.

Under Const. § 184 and this section, school funds may not be expended for the construction of entrances to school property within the right of way of a state highway and the expense of such entrances must be borne by the state department of transportation (now transportation cabinet). OAG 75-362.

In view of this section and § 184 of the Const., a board of education may not be compelled to replace or repair a sidewalk abutting one of its schools, nor may it voluntarily expend funds for such purpose, as such would constitute the expenditure of school funds for a nonschool purpose. OAG 75-613.

In view of this section, Const. § 184 and KRS 67A.060, a board of education may not be compelled to, nor may it voluntarily, pay an assessment imposed under KRS 67A.780 for a sanitary sewer benefiting school property. OAG 75-613.

Public school funds may not be expended to employ persons to control vehicular and pedestrian traffic on public streets or roads in or around school premises. OAG 75-614.

An off-duty constable employed as a school security guard is an employee of the school board which may compensate him for his services. OAG 75-631.

Inasmuch as common school funds may only be paid to common school districts, a county school board may not expend public common school funds to transport students attending a nonpublic model school. OAG 76-261.

The expenses of opening schools to serve as a voting place on a presidential election day, as provided by subsection (2) of KRS 117.065, when the schools are mandated to be closed by KRS 2.190 would be so small and incidental as not to be proscribed by Kentucky Constitution, §§ 180, 184, and 186. OAG 76-592. Withdrawing OAG 42-363.

Since the requirement that schools not be opened without a custodian is a policy created by the school board and not by statute, the circumstances surrounding the use of schools as voting places as provided for in subsection (2) of KRS 117.065 may be structured so that there does not exist any unwarranted and impermissible expenditures of public common school money for election purposes. OAG 76-614.

Where four teacher-owned cars were damaged by paint blown by wind from the paint room of a senior high school's agriculture department during the painting of a tractor, the board of education would be immune from liability under the doctrine of sovereign immunity, and since using school board funds for such a purpose would be tantamount to concluding there could be such liability, such an expenditure would be unconstitutional under this section. OAG 80-49.

A county fiscal court may provide snow removal service to the county schools in exchange for the transporting of nonpublic school students, provided that the value of such service is fairly and accurately determined, provisions are made for the payment to the county school system of any balance due, and appropriate procurement laws are followed where applicable; the best method for handling any legitimate exchange of services as outlined would be for the county school system to pay for the service and for the county fiscal court to pay that amount back to the county school system for the transporting of nonpublic school students. OAG 80-390.

The present school laws, in light of the Constitution, do not authorize or permit any state-funded extended employment days to be used for vacation or holidays. OAG 82-356.

Language in budget memorandum recommending and directing that 705 KAR 2:030 Section 8 be amended to change the local district transfer provision from 20% to the established value of the capital outlay component of a foundation unit with difference in the transfer to be used to fund the operational costs of the New Rowan County State Vocational-Technical School and the expanded facilities in Ashland and Elizabethtown is precatory in nature and in light of this section and Const., § 184 cannot be carried out for funds involved, are foundation program funds and not just general funds appropriated for education and using the difference in the transfer amount of funds to support the operational cost of the New Rowan County State Vocational-Technical School and expanded facilities in Ashland and Elizabethtown would be using foundation program funds for nonfoundation purposes. OAG 84-314.

Payment by a board of education for the sabbatical leave of a teacher or superintendent is constitutional so long as the teacher or superintendent agrees to extend at least two (2) years of future services to the school board. OAG 88-29.

No existing law prohibits, outright, local districts from showing instructional TV programming with minimal commercials included so long as curricular materials are properly reviewed; if instructional TV programming, with minimal commercials included, is allowed in the public schools, then the two (2) minutes of advertising do not have to be excluded from the six (6) hour day. OAG 90-42.

The state board has the authority to ban any television instruction with commercial advertising if the board determines as a matter of public policy that such should not be utilized in the classroom. The board also has the authority to allow the local boards of education and school councils to decide this matter. OAG 90-42.

Under KRS 168.100, the use of state funds appropriated for educational purpose may be applied by Kentucky Educational Television only for the benefit of public or common schools in order to avoid violation of this section and Const., §§ 171, 184 and 189. Accordingly, KET is required to charge nonstate schools, whether private and nonsectarian or parochial, for services delivered in the process of returning student responses to the KET master computer. OAG 91-71.

An expenditure of common school funds or a donation of school property for a public purpose other than for the benefit of public education is not permissible under this section and Const., §§ 180 and 184; therefore, under this section and Const., §§ 180 and 184, any transfer of surplus school buildings to community service organizations must be based on the fair market value of the property. OAG 91-85.

A reward, offered by the local school board, for the purpose of apprehending the vandals who damaged school property constitutes a proper educational purpose within the meaning of this section and Ky. Const., §§ 180 and 184; the act also falls within the parameters of KRS 160.160 as being necessary in order that the board may accomplish the purposes for which it was created as the resources of each school system are limited, and must be protected. OAG 92-63.

A school board cannot lawfully agree to provide materials paid for with school funds, or provide school funds themselves, whether under an intergovernmental agreement or otherwise, for the construction or maintenance of school bus turnarounds within the meaning of subsection (2) of KRS 178.290. OAG 93-63.

Cited: Louisville School Bd. v. McChesney, 109 Ky. 9, 22 Ky. L. Rptr. 506, 58 S.W. 427 (1900); Crosley v. Mayfield, 133 Ky. 215, 117 S.W. 316 (1900); Commonwealth v. Southern Pac. Co., 154 Ky. 41, 156 S.W. 865 (1913); Cassady v. Oldham County, 246 Ky. 773, 56 S.W.2d 368 (1933); Board of Educ. v. Williams, 256 S.W.2d 29 (Ky. 1953); Wooley v. Spalding, 293 S.W.2d 563 (Ky. 1956); Van Hoose v. Williams, 496 F. Supp. 947 (E.D. Ky. 1980).

NOTES TO DECISIONS

Analysis

1. Construction.
2. Application.
3. Common school purposes.
4. —Teachers' salaries.
5. —Expenditures.
6. ——Valid.
7. ——Invalid.
8. Distribution of funds.

9. Sewer user charges.
10. Escheated property.
11. Aid for exceptional children.
12. Institutional schools.

1. Construction.

This section and sections 180 and 184 of the Kentucky Constitution, when read together, prohibit the diversion of common school funds for purposes other than the maintenance of the public schools of the Commonwealth. Board of Educ. v. Lexington-Fayette Urban County Gov't, 691 S.W.2d 218 (Ky. Ct. App. 1985).

2. Application.

This section applies exclusively to common school funds levied and collected by the Commonwealth in its sovereign capacity and from the state at large, it has no application to public school funds levied, collected, and raised by subdivisions of the state to supplement the state school fund for their exclusively local purposes, and the state has no right to take charge of such funds and distribute them throughout the state among the common schools. Talbott v. Kentucky State Board of Educ., 244 Ky. 826, 52 S.W.2d 727 (1932). See Cassady v. Oldham County, 246 Ky. 773, 56 S.W.2d 368 (1933).

3. Common School Purposes.

A tax levied for the benefit of common schools is a state tax, although it may be levied and collected by municipal county or district agencies. Moss v. Mayfield, 186 Ky. 330, 216 S.W. 842 (1919). See Whitt v. Wilson, 212 Ky. 281, 278 S.W. 609 (1925).

The definition of the purposes of common school education is necessarily broad and, unless a particular expenditure is clearly outside the reasonable purview of educational activities, the Legislature has a right to declare it to be for such a purpose. Board of Educ. v. Talbott, 286 Ky. 543, 151 S.W.2d 42 (1941).

The courts scrupulously protect school funds from diversion even for laudable purposes. Board of Educ. v. Wagers, 239 S.W.2d 48 (Ky. 1951).

School districts were created by the General Assembly and exist only as a means for the state to carry out the General Assembly's constitutional duty to provide for an efficient system of common schools throughout the state. Calvert Invs., Inc. v. Louisville & Jefferson County Metro. Sewer Dist., 805 S.W.2d 133 (Ky. 1991).

4. —Teachers' Salaries.

An act providing for payment of interest on warrants to be issued by the auditor for teachers' salaries did not violate Const., § 184. Adams v. Greene, 182 Ky. 504, 206 S.W. 759 (1918).

Common school teachers are state employees and as such may receive salaries appropriated by the General Assembly provided by statutes authorized by the constitution and distributed to all teachers of common school within the Commonwealth on a per capita basis. Board of Educ. v. Talbott, 261 Ky. 66, 86 S.W.2d 1059 (1935).

5. —Expenditures.

A fair reading of Const., §§ 183-189 compels the conclusion that money spent on education is to be spent exclusively in the public school system, except where the question of taxation for an educational purpose has been submitted to the voters and the majority of the votes cast at the election on the question shall be in favor of such taxation. Fannin v. Williams, 655 S.W.2d 480 (Ky. 1983).

The Kentucky Constitution contemplates that public funds shall be expended for public education and the Commonwealth is obliged to furnish every child in this state an education in the public schools, but it is constitutionally proscribed from providing aid to furnish a private education. Fannin v. Williams, 655 S.W.2d 480 (Ky. 1983).

6. ——Valid.

Since the terms education, common school purpose and common school system are sufficiently broad enough to encompass recreational training, a county board of education may, under this section and Const., §§ 180 and 184, expend tax funds collected for school purposes for the financing of recreational training. Dodge v. Jefferson County Board of Educ., 298 Ky. 1, 181 S.W.2d 406 (1944).

County board of education was authorized to expend school funds to pay attorney's fees and court costs in defending two (2) cases against them for protection of corporate action and decisions of board for these actions serve a public school purpose. Hogan v. Glasscock, 324 S.W.2d 815 (Ky. 1959).

The extra cost to some school districts for busing as a result of court ordered desegregation does not violate this section since all that is required is that a common formula be used to arrive at distributions, not that distribution to each district be proportionately equal. Carroll v. Department of Health, Educ. & Welfare, 410 F. Supp. 234 (W.D. Ky. 1976), aff'd, Carroll v. Board of Educ., 561 F.2d 1 (6th Cir. 1977).

7. ——Invalid.

School taxes received from the state by a graded common school district cannot be used to purchase a lot or erect or furnish a school building. Crabbe v. Board of Trustees of Graded Common School Dist. No. 24, 132 Ky. 478, 116 S.W. 706 (1909).

Contract between county board of education and sheriff fixing sheriff's fee for collecting school taxes substantially in excess of the cost of collection is invalid as an unconstitutional diversion of school funds. Hager v. McConathy, 269 S.W.2d 725 (Ky. 1954).

If the exclusive purpose of KRS 171.215, which provides that the state must supply textbooks to students in nonpublic schools, is to pay the expenses of children in private schools, Const., § 3 has been directly violated; conversely, if the textbooks also aid in the functioning of the private schools themselves, Const., §§ 171, 184, 189 and this section have been violated. Fannin v. Williams, 655 S.W.2d 480 (Ky. 1983).

KRS 171.215, which provides that the department of libraries (now department for libraries and archives) must supply textbooks without cost to pupils attending nonpublic schools, is unconstitutional in that it directs the expenditure of public funds for educational purposes through nonpublic schools. Fannin v. Williams, 655 S.W.2d 480 (Ky. 1983).

8. Distribution of Funds.

Under this section the distribution of school funds is now left to Legislature discretion, although prior to the constitutional amendment of 1953, deleting the previous per capita clause of this section, the Legislature was thereby limited in the method by which it could distribute funds in aid of education. Robertson v. City of Danville, 291 S.W.2d 816 (Ky. 1956).

9. Sewer User Charges.

The applicability of this section and Ky. Const., sections 180 and 184 to the issue of whether a sewer user charge can be paid from school funds must be determined by a reasonable interpretation of whether the service or commodity provided is necessary for the maintenance of the public schools and is exclusively for the benefit of the public schools. Sewer user charges imposed upon a county board of education bear a reasonable and rational relationship to the value of the services provided and therefore are exclusively for the benefit of and necessary for the maintenance of the public schools. Board of Educ. v. Lexington-Fayette Urban County Gov't, 691 S.W.2d 218 (Ky. Ct. App. 1985).

10. Escheated Property.

This section does not prevent the Legislature from allowing certain localities to make additional provision for the financing of their schools and, consequently, a statute providing that

certain categories of property, in case of escheat, shall go to a school district is valid. Commonwealth v. Thomas' Adm'r, 140 Ky. 789, 131 S.W. 797 (1910).

11. Aid for Exceptional Children.

Former statute that authorized public aid to private institutions for the education of exceptional children did not violate this section since it was not the intention of the delegates in adopting this section and Const., § 184 to deny forever the possibility of special educational assistance to those who by no choice of their own are unsuited to the standard programs and facilities of the common school system, the act in question being primarily a welfare rather than an educational measure and the fact that it takes the form of education being immaterial. Butler v. United Cerebral Palsy of Northern Kentucky, Inc., 352 S.W.2d 203 (Ky. 1961).

12. Institutional Schools.

State aid to institutional schools such as Louisville and Jefferson County children's home is not within the scope of this section and Const., §§ 183-185. Hodgkin v. Board for Louisville & Jefferson County Children's Home, 242 S.W.2d 1008 (Ky. 1951).

Uniformity does not require equal classification but it does demand that there shall be substantially uniform system and equal school facilities without discrimination as between different sections of a district or county. Wooley v. Spalding, 293 S.W.2d 563 (Ky. 1956).

§ 187. Race or color not to affect distribution of school fund.

In distributing the school fund no distinction shall be made on account of race or color.

(Amendment, proposed by Acts 1996, ch. 98, § 2, ratified November, 1996)

Compiler's Notes. The General Assembly in 1996 proposed (Acts 1996, ch. 98, § 2) the amendment of this section. The amendment was ratified by the voters at the regular election in November 1996. Prior to the amendment the section read:

"§ **187. White and colored to share fund without distinction — Separate schools.** — In distributing the school fund no distinction shall be made on account of race or color, and separate schools for white and colored children shall be maintained."

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

NOTES TO DECISIONS

1. Constitutionality.

It was conceded by the state superintendent of public schools that this section was unconstitutional in light of the decision of the United States Supreme Court in the case of Brown v. Board of Educ., 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873, 38 A.L.R.2d 1180 (1954). See Willis v. Walker, 136 F. Supp. 177, 181 (W.D. Ky. 1955).

§ 188. Refund of federal direct tax part of school fund — Irredeemable bond.

So much of any moneys as may be received by the Commonwealth from the United States under the recent act of Congress refunding the direct tax shall become a part of the school fund, and be held as provided in Section 184; but the General Assembly may authorize the use, by the Commonwealth, of moneys so received or any part thereof, in which event a bond shall be executed to the Board of Education for the amount so used, which bond shall be held on the same terms and conditions, and subject to the provisions of Section 184, concerning the bond therein referred to.

Cross-References. Irredeemable bond for University of Kentucky and Kentucky State College, KRS 164.520.

Cited: Talbott v. Kentucky State Bd. of Educ., 244 Ky. 826, 52 S.W.2d 727 (1932); Sherrard v. Jefferson County Bd. of Educ., 294 Ky. 469, 171 S.W.2d 963 (1942).

NOTES TO DECISIONS

1. District School Funds.

District school funds are separate and distinct from the common school fund of the state which prior to the 1953 amendment of Const., § 186 deleting the per capita clause therefrom, was distributed by the state to the various school districts on a per capita basis under Const., § 186 and this section. Commonwealth ex rel. Meredith v. Reeves, 289 Ky. 73, 157 S.W.2d 751 (1941).

§ 189. School money not to be used for church, sectarian, or denominational school.

No portion of any fund or tax now existing, or that may hereafter be raised or levied for educational purposes, shall be appropriated to, or used by, or in aid of, any church, sectarian or denominational school.

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

Opinions of Attorney General. A county board of education was authorized to pay the salaries of teachers at a school within the system even though the buildings of the school were owned by a religious denomination. OAG 60-1217.

Tuition to the Oneida School, a non-public institution, may not be paid by the Perry County board of education. OAG 67-348.

Public school teachers may not, as a part of the duties for which they are compensated by boards of education, be assigned to teach in a private or sectarian school since the effect of such an assignment would be to the primary benefit of the private or sectarian school as opposed to a primary benefit to its students or the common schools and would offend Const., §§ 180 and 184 which restrict school funds to public school purposes, and would offend this section which prohibits the use by sectarian schools of funds levied for educational purposes. OAG 68-423.

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

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

Funds appropriated by the General Assembly for the school lunch programs may be shared by parochial schools without violating this section. OAG 72-422.

As long as a public school corporation receives fair market value for the services it renders and as long as there is no entanglement of the business operation of the corporation

with a parochial school, there is no legal objection to the corporation providing computer service to the parochial school. OAG 73-669.

It would be a violation of the constitution to pay the salary of a parochial schoolteacher from public school district funds. OAG 73-799.

Public school teachers may not, as a part of the duties for which compensated by boards of education, be assigned, to teach in a private or sectarian school. OAG 74-331 (modifying OAG 68-150, and withdrawing OAG 68-585).

This section has no bearing on whether a public school may agree to allow students attending parochial schools to participate on the athletic teams of the public school. OAG 74-650.

A public school may not pay the tuition of a deaf student who attends a catholic school at the parents' election after rejection of the public school's arrangement for the child to be admitted to the Kentucky school for the deaf. OAG 74-660.

Under KRS 168.100, the use of state funds appropriated for educational purpose may be applied by Kentucky Educational Television only for the benefit of public or common schools in order to avoid violation of this section and Const., §§ 171, 184 and 186. Accordingly, KET is required to charge nonstate schools, whether private and nonsectarian or parochial, for services delivered in the process of returning student responses to the KET master computer. OAG 91-71.

Cited: Commonwealth v. Thomas, 119 Ky. 208, 26 Ky. L. Rptr. 1128, 83 S.W. 572, 6 A.L.R. (n.s.) 320 (1904); Shanklin v. Boyd, 146 Ky. 460, 142 S.W. 1041 (1912); Calvary Baptist Church v. Milliken, 148 Ky. 580, 147 S.W. 12 (1912); Jefferson County Bd. of Educ. v. Goheen, 306 Ky. 439, 207 S.W.2d 567 (1948); Kentucky Bldg. Comm'n v. Effron, 310 Ky. 355, 220 S.W.2d 836 (1949); Board of Educ. v. Society of Alumni of Louisville Male High Sch., Inc., 239 S.W.2d 931 (Ky. 1951); City of Ashland v. Calvary Protestant Episcopal Church, 278 S.W.2d 708 (Ky. 1955); Wooley v. Spalding, 293 S.W.2d 563 (Ky. 1956); Van Hoose v. Williams, 496 F. Supp. 947 (E.D. Ky. 1980).

NOTES TO DECISIONS

ANALYSIS

1. Construction.
2. Religious activities prohibited.
3. Prayer in schools.
4. Rental of church property.
5. Private schools.
6. Salary contributions.
7. Transportation to private schools.
8. Textbooks for private schools.
9. Sectarian orphanage.
10. Valid agreements.
11. Invalid agreements.

1. Construction.

The constitution and statutes require that there shall be equality and that all public schools shall be nonpartisan and nonsectarian. Wooley v. Spalding, 293 S.W.2d 563 (Ky. 1956).

A fair reading of Const., §§ 183-189 compels the conclusion that money spent on education is to be spent exclusively in the public school system, except where the question of taxation for an educational purpose has been submitted to the voters and the majority of the votes cast at the election on the question shall be in favor of such taxation. Fannin v. Williams, 655 S.W.2d 480 (Ky. 1983).

The Kentucky Constitution contemplates that public funds shall be expended for public education and the Commonwealth is obliged to furnish every child in this state an education in the public schools, but it is constitutionally proscribed from providing aid to furnish a private education. Fannin v. Williams, 655 S.W.2d 480 (Ky. 1983).

2. Religious Activities Prohibited.

A board of education may be enjoined from distributing sectarian literature in a public school, from expending public school funds for religious or sectarian purposes, from keeping sectarian publications in public school libraries, and from stopping the operation of public school buses on religious holidays, not also legalized as state or national holidays, such activities being in violation of this section and applicable statutes. Wooley v. Spalding, 293 S.W.2d 563 (Ky. 1956).

3. Prayer in Schools.

A prayer offered at the opening of a public school, imploring the aid and presence of the Heavenly Father, looking forward to a heavenly reunion after death, and concluding in Christ's name, is not sectarian, and does not make the school a sectarian school. Hackett v. Brooksville Graded School Dist., 120 Ky. 608, 27 Ky. L. Rptr. 1021, 87 S.W. 792, 69 L.R.A. 592, 117 Am. St. R. 599 (1905).

4. Rental of Church Property.

Rental of school buildings from church by a county school board was not of itself a violation of this section. Rawlings v. Butler, 290 S.W.2d 801, 60 A.L.R.2d 285 (1956).

5. Private Schools.

The term private schools in KRS 157.305 does not include schools outside the state or schools that give sectarian instruction or have any denominational requirements with respect to their teachers or pupils and this section is not violated thereby. Butler v. United Cerebral Palsy of N. Kentucky, Inc., 352 S.W.2d 203 (Ky. 1961).

6. Salary Contributions.

Where members of religious order hired by the state and paid to teach in public schools had taken vow of poverty to religious order and contributed their salaries over living expenses to such order there was no violation of this section although there would be violation if the members were but conduits through which public school funds were channeled to a religious order. Rawlings v. Butler, 290 S.W.2d 801, 60 A.L.R.2d 285 (1956).

7. Transportation to Private Schools.

Statute providing free transportation to pupils attending private schools violated this section, there being no merit in argument that act provided benefit for children and not for school. Sherrard v. Jefferson, 294 Ky. 469, 171 S.W.2d 963 (1942).

Award of 99 percent of fiscal court's transportation subsidy to educational institutions that promoted religious teachings and beliefs, while equivalent support for the public school optional program was withheld violated Const., § 5 and this section. Fiscal Court v. Brady, 885 S.W.2d 681 (Ky. 1994).

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

8. Textbooks for Private Schools.

If the exclusive purpose of KRS 171.215, which provides that the state must supply textbooks to students in nonpublic schools, is to pay the expenses of children in private schools, Const., § 3 has been directly violated; conversely, if the textbooks also aid in the functioning of the private schools themselves, Const., §§ 171, 184, 186 and this section have been violated. Fannin v. Williams, 655 S.W.2d 480 (Ky. 1983).

KRS 171.215, which provides that the department of libraries (now department for libraries and archives) must supply textbooks without cost to pupils attending nonpublic schools, is unconstitutional in that it directs the expenditure of public funds for educational purposes through nonpublic schools. Fannin v. Williams, 655 S.W.2d 480 (Ky. 1983).

9. Sectarian Orphanage.

Acceptance of inmates of Baptist Orphans' Home as students in public schools does not violate this section. Crain v. Walker, 222 Ky. 828, 2 S.W.2d 654 (1928).

10. Valid Agreements.

Where a graded school employed two teachers from a denominational college whose services were donated to the school after a fire at the college had reduced its capacity to use these teachers, there was no invalid arrangement which would authorize the county superintendent to withhold funds from the graded school. McDonald v. Parker, 130 Ky. 501, 33 Ky. L. Rptr. 805, 110 S.W. 810 (1908).

11. Invalid Agreements.

Contract between trustees of common school district and sectarian educational institution, whereby latter agreed to teach common school pupils and trustees agreed to keep buildings in repair out of common school funds, violated this section and Const., § 5. Williams v. Board of Trustees, 173 Ky. 708, 191 S.W. 507, 1917D L.R.A. 453 (1917).

Collateral References. Constitutionality, under state constitutional provision forbidding financial aid to religious sects, of public provision of school bus service for private school pupils. 41 A.L.R.3d 344.

GENERAL PROVISIONS

SECTION.

228. Oath of officers and attorneys.
237. Federal office incompatible with State office.
246. Maximum limit on compensation of public officers.

§ 228. Oath of officers and attorneys.

Members of the General Assembly and all officers, before they enter upon the execution of the duties of their respective offices, and all members of the bar, before they enter upon the practice of their profession, shall take the following oath or affirmation: I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States and the Constitution of this Commonwealth, and be faithful and true to the Commonwealth of Kentucky so long as I continue a citizen thereof, and that I will faithfully execute, to the best of my ability, the office of ..... according to law; and I do further solemnly swear (or affirm) that since the adoption of the present Constitution, I, being a citizen of this State, have not fought a duel with deadly weapons within this State nor out of it, nor have I sent or accepted a challenge to fight a duel with deadly weapons, nor have I acted as second in carrying a challenge, nor aided or assisted any person thus offending, so help me God.

Cross-References. Form of oath altered on pardon of person convicted of dueling, Const., § 240.

Oaths of officers, KRS 62.010 to 62.040.

Opinions of Attorney General. Where five (5) months after taking office school board members had not yet taken the statutory oath of office the board members forfeited their office for failure to qualify within a reasonable time after their election. OAG 61-485.

Where five (5) months after taking office school board members had not yet taken the statutory oath, the state board of education was required to fill the resulting vacancies pursuant to KRS 160.190. OAG 61-485.

Where a full-time student and resident of Kentucky has already been sworn into office as the student body president and assumed student government responsibilities as the student member of a state university board of regents, there is no need for him to take the constitutional oath of office provided for in this section, since subsection (5) of KRS 164.320 only requires that appointed members take the constitutional oath, and student body president is an elective office. OAG 81-172.

§ 237. Federal office incompatible with State office.

No member of Congress, or person holding or exercising an office of trust or profit under the United States, or any of them, or under any foreign power, shall be eligible to hold or exercise any office of trust or profit under this Constitution, or the laws made in pursuance thereof.

Cross-References. Incompatible offices, Const., §§ 44, 165; KRS 61.080.

Opinions of Attorney General. A fourth-class postmaster is a federal officer and a school board member is a state officer, and for one person to hold both offices at the same time is prohibited by this section. OAG 60-813.

A school board member would be eligible to serve where he resigned his federal office of substitute mail carrier after his election but before he qualified for office and assumed his duties as school board member. OAG 65-157.

The position of rural mail carrier is a form of federal employment rather than a federal office and a person who holds such a position is not disqualified by the provisions of this section from serving on the county board of education. OAG 68-191.

An employee of the Blue Grass army activities could, at the same time, serve as a member of the school board without violating this section. OAG 69-438.

Since the offices of school board member and selective service board member are both offices of trust, they are incompatible under the Constitution and cannot be held by a person at the same time. OAG 70-812.

A member of the county board of education cannot also hold the position of postmaster. The offices are incompatible under this section. OAG 72-67.

There is no prohibition against a federal employee serving as a school board member. OAG 72-665.

It would be legal for a person regularly employed by the federal government as a coal mine inspector to be elected and serve at the same time as a member of the school board. OAG 79-491.

NOTES TO DECISIONS

ANALYSIS

3. Incompatibility.
6. Postmaster.

3. Incompatibility.

The incompatibilities set out in this section and Const., § 165 are not exclusive, and common-law incompatibility exists when the public functions to be performed are inconsistent the one with the other and when the nature and duties of the two (2) offices are such as to render it improper from consideration of public policy for one incumbent to retain both.

Knuckles v. Board of Educ., 272 Ky. 431, 114 S.W.2d 511 (1938).

6. Postmaster.

The trial court properly concluded that the postmaster of a fourth-class post office was not a holder of an office of trust or profit within the meaning of this section, and therefore was eligible to serve as a member of a school board. Commonwealth ex rel. Hancock v. Clark, 506 S.W.2d 503 (1974).

§ 246. Maximum limit on compensation of public officers.

No public officer or employee except the Governor, shall receive as compensation per annum for official services, exclusive of the compensation of legally authorized deputies and assistants which shall be fixed and provided for by law, but inclusive of allowance for living expenses, if any, as may be fixed and provided for by law, any amount in excess of the following sums: Officers whose jurisdiction or duties are coextensive with the Commonwealth, the mayor of any city of the first class, and Judges and Commissioners of the Court of Appeals, Twelve Thousand Dollars ($12,000); Circuit Judges, Eight Thousand Four Hundred Dollars ($8,400); all other public officers, Seven Thousand Two Hundred Dollars ($7,200). Compensation within the limits of this amendment may be authorized by the General Assembly to be paid, but not retroactively, to public officers in office at the time of its adoption, or who are elected at the election at which this amendment is adopted. Nothing in this amendment shall permit any officer to receive, for the year 1949, any compensation in excess of the limit in force prior to the adoption of this amendment.

(Amendment, proposed Acts 1948, ch. 172, ratified November, 1949.)

Cross-References. Compensation not to be changed during term, Const., §§ 161, 235.

Compensation of governor, KRS 64.480.

Compensation of public officers, generally, KRS 64.480 to 64.740.

Deductions for neglect of duty, Const., § 235; KRS 61.120 to 61.150.

Opinions of Attorney General. Fees collected from independent school district, drainage board and other municipalities within counties are to be included with other official fees in fixing the limitation on salary of sheriff. OAG 62-56.

NOTES TO DECISIONS

Analysis

39. Public officers.
41. Schools.
43. Statutes.
50. —Schools.
51. Universities.

39. Public Officers.

Where independent initiative is exercised by an officeholder in performing his official duties, he is a public officer subject to the salary limitation of this section, although his functions are subject to general control by some higher authority, such as a board of education. Reynolds v. Board of Educ., 311 Ky. 458, 224 S.W.2d 442 (1949).

41. Schools.

Principals and supervisors employed by a board of education are employees, not public officers, and are not subject to constitutional salary limitation. Schranz v. Board of Educ., 307 Ky. 590, 211 S.W.2d 861 (1948).

School superintendent and assistant school superintendent for business affairs are subject to the constitutional limitation on salaries of public officers. Reynolds v. Board of Educ., 311 Ky. 458, 224 S.W.2d 442 (1949). But see Board of Educ. v. De Weese, 343 S.W.2d 598 (Ky. 1960).

A superintendent of schools is not an officer within the meaning of Const., §§ 161, 235 or this section, since the office of superintendent is a creature of statute and is not named in the Constitution. Board of Educ. v. De Weese, 343 S.W.2d 598 (Ky. 1960). But see Reynolds v. Board of Educ., 311 Ky. 458, 224 S.W.2d 442 (1949).

43. Statutes.

50. —Schools.

Presumption obtained that Legislature fixed Superintendent of Public Instruction's salary at $4,000 with no intention to leave in effect a provision of law for payment of an additional $1,500 for performance of duties of special inspector and examiner of schools, in view of this section. Bell v. Talbott, 252 Ky. 721, 68 S.W.2d 36 (1934).

51. Universities.

The limitations of this section do not apply to a professor of the University of Kentucky. Pardue v. Miller, 306 Ky. 110, 206 S.W.2d 75 (1947).

KENTUCKY REVISED STATUTES

TITLE I

SOVEREIGNTY AND JURISDICTION OF THE COMMONWEALTH

CHAPTER 2

CITIZENSHIP, EMBLEMS, HOLIDAYS, AND TIME

SECTION.

2.040. United States flag to be displayed on public buildings and schools — To be supplied schools.
2.050. Printing or lettering on United States flag, or use for advertising purposes — Exception.
2.060. United States flag not to be used for advertisement.
2.110. Holidays.
2.120. Flag Day.
2.190. Presidential election day.
2.230. Native American Indian Month.
2.245. Retired Teachers' Week.
2.990. Penalty.

2.040. United States flag to be displayed on public buildings and schools — To be supplied schools.

(1) The flag of the United States shall be displayed on the main administration buildings of every public institution, and, during school days, either from the flagstaff or, in inclement weather, within the school building of every schoolhouse.

(2) The flag, with staff or flagpole, shall be provided for every schoolhouse.

(2089i-1, 2089i-2.)

2.050. Printing or lettering on United States flag, or use for advertising purposes — Exception.

(1) Printing or lettering of any kind on the flag of the United States, or the use of the flag for advertising purposes in any manner, is prohibited.

(2) Nothing in this section or in KRS 2.060 shall prohibit a newspaper from publishing a picture of the flag of the United States next to the obituary of a deceased active member or honorably discharged veteran of the United States military service.

(2089i-3, 2089i-4: amend. Acts 1990, ch. 64, § 1, effective July 13, 1990.)

2.060. United States flag not to be used for advertisement.

No person shall in any manner, for exhibition or display, place or cause to be placed upon, or expose or cause to be exposed to public view any flag, standard, colors or ensign of the United States upon which has been placed, or to which is attached, appended, affixed or annexed, any word, figure, mark, picture, design or drawing, or advertisement of any nature; nor shall any person manufacture, sell, expose for sale or to public view or give away or have in possession for sale or to be given away or for use for any purpose, any article of merchandise, or a receptacle for merchandise or thing for carrying or transporting merchandise upon which has been placed a representation of any such flag, standard, colors or ensign, to advertise, call attention to, decorate, mark or distinguish the article on which so placed.

(2089i-5: amend. Acts 1974, ch. 406, § 296, effective January 1, 1975.)

Cross-References. Flag desecration, Penal Code, KRS 525.110.

2.110. Holidays.

(1) The first day of January (New Year's Day), the third Monday of January (Birthday of Martin Luther King, Jr.), the nineteenth day of January (Robert E. Lee Day), the thirtieth day of January (Franklin D. Roosevelt Day), the twelfth day of February (Lincoln's Birthday), the third Monday in February (Washington's Birthday), the last Monday in May (Memorial Day), the third day of June (Confederate Memorial Day, and Jefferson Davis Day), the fourth day of July (Independence Day), the first Monday in September (Labor Day), the second Monday in October (Columbus Day), the eleventh day of November (Veterans Day), the twenty-fifth day of December (Christmas Day) of each year, and all days appointed by the President of the United States or by the Governor as days of thanksgiving, are holidays, on which all the public offices of this Commonwealth may be closed.

(2) No person shall be compelled to labor on the first Monday in September (Labor Day) by any person.

(2089b to 2089g, 2089j: amend. Acts 1946, ch. 5, § 1; 1948, ch. 73, § 1; 1958, ch. 73; 1970, ch. 50, § 1; 1974, ch. 14, § 1; 1974, ch. 176, § 1; 1978, ch. 24, § 1, effective June 17, 1978; 1984, ch. 88, § 1, effective January 1, 1986; 1992, ch. 77, § 17, effective July 14, 1992.)

Cross-References. Act permitted or required to be done under Uniform Commercial Code on holiday to be done on next business day, KRS 355.3-501.

Bank holidays, KRS 287.193.

Process, issuance on holiday, KRS 454.125.

School holidays, KRS 156.160.

Sunday, act directed to be done on, to be done on next day, KRS 446.030.

Sunday work and business prohibited, KRS 436.160.

NOTES TO DECISIONS

5. Qualification of School Trustees.

Where statute required school trustees to meet and qualify

on first Monday in January after their election, qualification by trustees on Tuesday, January 2, because Monday, January 1, was holiday, was sufficient compliance. Jewett v. Matteson, 148 Ky. 820, 147 S.W. 924 (1912).

2.120. Flag Day.
The fourteenth day of June of each year is "Flag Day."
(2089i.)

2.190. Presidential election day.
The Tuesday after the first Monday in November in Presidential election years shall be a state holiday on which all state offices, all schools and all state universities and colleges shall be closed. Any employee who is required to work on said state holiday shall receive compensatory pay or time off.
(Enact. Acts 1972, ch. 188, § 71, effective December 1, 1972; 1992, ch. 77, § 18, effective July 14, 1992.)

2.230. Native American Indian Month.
(1) The month of November of each year shall be observed in Kentucky as "Native American Indian Month" and during this month schools, clubs, and civic and religious organizations are encouraged to recognize the contributions of Native American Indians with suitable ceremony and fellowship designed to promote greater understanding and brotherhood between Native American Indians and the non-Native American Indian people of the Commonwealth of Kentucky.
(2) The Governor shall, prior to the first day of November of each year, issue a proclamation inviting and urging the people of the Commonwealth to observe Native American Indian Month with suitable ceremony and fellowship.
(3) The Kentucky Department of Education, Kentucky Heritage Council, and the Native American Heritage Commission established by Executive Order 96-272 shall, within the limits of funds available for this purpose, make information available to all people of this Commonwealth regarding Native American Indian Month and the observance thereof.
(Enact. Acts 1998, ch. 352, § 1, effective July 15, 1998.)

2.245. Retired Teachers' Week.
The fourth week of May of each year is designated as Retired Teachers' Week. The Governor may annually issue a proclamation designating the fourth week of May as Retired Teachers' Week and calling upon public schools and citizens of the state to observe the occasion and honor the retired teachers of the state.
(Enact. Acts 1986, ch. 35, § 1, effective July 15, 1986.)

2.990. Penalty.
Any person violating any of the provisions of KRS 2.060 shall be fined not more than one hundred dollars ($100) or imprisoned for not more than thirty (30) days, or both.
(2089i-5.)

TITLE II

LEGISLATIVE BRANCH

CHAPTER 7

LEGISLATIVE RESEARCH COMMISSION

SECTION.

OFFICE OF EDUCATION ACCOUNTABILITY

7.410. Office of Education Accountability — Deputy director of LRC to administer — Duties of office — Relations with other entities — Confidentiality of testimony, work products, and records.
7.420. Gathering information.

OFFICE OF EDUCATION ACCOUNTABILITY

7.410. Office of Education Accountability — Deputy director of LRC to administer — Duties of office — Relations with other entities — Confidentiality of testimony, work products, and records.
(1) It is the intent of the General Assembly to provide an efficient system of common schools which shall be operated without waste, duplication, mismanagement, and political influence. The system of schools shall have the goal of providing all students with at least the seven (7) capacities referred to in KRS 158.645.
(2) (a) An Office of Education Accountability is hereby created and shall be under the direction of the Legislative Research Commission and shall be advised and monitored by the Education Assessment and Accountability Review Subcommittee.
(b) The Office of Education Accountability shall be administered by a deputy director appointed by the Legislative Research Commission upon recommendation of the director of the Legislative Research Commission. The deputy director shall have the qualifications set by the Commission. The salary of the deputy director shall be set by the Commission. The Commission shall have exclusive jurisdiction over the employment of personnel necessary to carry out the provisions of this section. The deputy director shall be subject to the direction of and report to the director of the Legislative Research Commission.
(c) The Office of Education Accountability shall have the following duties and responsibilities:
1. Monitor the education system and implementation of the provisions of the Kentucky Education Reform Act of 1990, 1990 Ky. Acts ch. 476, including actions taken and reports issued by the Kentucky Board

of Education, the Education Professional Standards Board, the chief state school officer, the Department of Education, local school districts, and vocational and higher education as affected by the Kentucky Education Reform Act of 1990, 1990 Ky. Acts ch. 476. The monitoring of the education system shall also include periodic reviews of local district and school-based decision making policies relating to the recruitment, interviewing, selection, evaluation, termination, or promotion of personnel. The office shall report any district or school when evidence demonstrates a pattern of exclusionary personnel practices relating to race or sex to the Kentucky Department of Education, which shall then independently investigate facts raised in or associated with the report. The results of the investigation conducted by the department shall be forwarded to the Kentucky Board of Education which shall conduct an investigative hearing on the matter.

2. Establish a Division of School Finance which shall conduct an ongoing review of the finance system. The review shall include an analysis of the level of equity achieved by the funding system and whether adequate funds are available to all school districts; a review of the weights of various education program components, which are to be developed by the Department of Education no later than October 1, 1991. The division shall develop recommendations for the base per pupil funding for the Support Education Excellence in Kentucky Program and a statewide salary schedule. It shall conduct studies of other finance issues identified as needing further study, including a review of the transportation formula required in KRS 157.360. The division shall submit an annual report of its activities, findings, and recommendations to the Education Assessment and Accountability Review Subcommittee. Upon approval of the subcommittee, the annual report shall be forwarded to the Governor, the Legislative Research Commission, and the Kentucky Board of Education no later than October 1 each year.
3. Verify the accuracy of reports of school, district, and state performance by conducting, requesting, or upon approval of the Legislative Research Commission, contracting for periodic program and fiscal audits as necessary. Upon and under the direction of the Education Assessment and Accountability Review Subcommittee, the Office of Education Accountability shall monitor and verify the accuracy of reports of the Department of Education and the Kentucky Board of Education, including but not limited to the annual fiscal conditions of grants, categorical programs, and other educational initiatives set forth by the General Assembly.
4. Investigate allegations of wrongdoing of any person or agency, including but not limited to waste, duplication, mismanagement, political influence, and illegal activity at the state, regional, or school district level which have not been resolved or satisfactorily explained by the local superintendent, local board of education, the chief state school officer, or the Kentucky Board of Education, and make recommendations for legislative action to the Education Assessment and Accountability Review Subcommittee. Upon approval of the subcommittee, recommendations for legislative action shall be forwarded to the Legislative Research Commission. The Office of Education Accountability shall submit to the subcommittee, for each of its regular meetings, a report that summarizes investigative activity initiated pursuant to this subparagraph. The subcommittee may consider each report as it determines and in its discretion. Each report, and the consideration thereof by the subcommittee, shall be exempt from the open records and open meetings requirements contained in KRS Chapter 61.
5. Under the direction of the Education Assessment and Accountability Review Subcommittee, conduct studies, analyze, verify, and validate the state assessment program through other external indicators of academic progress including but not limited to American College Test scores, Scholastic Assessment Test scores, National Assessment of Educational Progress scores, Preliminary Scholastic Assessment Test scores, Advanced Placement Program participation, standardized test scores, college remediation rates, retention and attendance rates, dropout rates, and additional available data on the efficiency of the system of schools and whether progress is being made toward attaining the goal of providing students with the seven (7) capacities as required by KRS 158.645.
6. Make periodic reports to the Education Assessment and Accountability Review Subcommittee as directed by the subcommittee. Upon approval of the subcommittee, the reports shall be forwarded to the Legislative Research Commission.
7. Make periodic reports to the Legislative Research Commission as may be directed by the Commission.
8. Prepare an annual report on the implementation of the provisions of the Kentucky Education Reform Act of 1990, 1990 Ky. Acts ch. 476, including recommenda-

tions for improvement which shall be submitted to the Education Assessment and Accountability Review Subcommittee. Upon approval of the subcommittee, the annual report shall be submitted to the Governor, the Legislative Research Commission, and the Kentucky Board of Education.

(d) The Office of Education Accountability shall have access to all public records and information on oath as provided in KRS 7.110. The office shall also have access to otherwise confidential records, meetings, and hearings regarding local school district personnel matters. However, the office shall not disclose any information contained in or derived from the records, meetings, and hearings that would enable the discovery of the specific identification of any individual who is the focus or subject of the personnel matter.

(e) In compliance with KRS 48.800, 48.950, and 48.955, the Finance and Administration Cabinet and the Governor's Office for Policy and Management shall provide to the Office of Education Accountability access to all information and records, other than preliminary work papers, relating to allotment of funds, whether by usual allotment or by other means, to the Department of Education, local school districts, and to other recipients of funds for educational purposes.

(f) Any state agency receiving a complaint or information which, if accurate, may identify a violation of the Kentucky Education Reform Act of 1990, 1990 Ky. Acts ch. 476, shall notify the office of the complaint or information.

(g) The Office of Education Accountability may contract for services as approved by the Legislative Research Commission pursuant to KRS 7.090(7).

(3) The provisions of KRS 61.878 or any other statute, including Acts of the 1992 Regular Session of the General Assembly to the contrary notwithstanding, the testimony of investigators, work products, and records of the Office of Education Accountability relating to duties and responsibilities under subsection (2) of this section shall be privileged and confidential during the course of an ongoing investigation or until authorized, released, or otherwise made public by the Office of Education Accountability and shall not be subject to discovery, disclosure, or production upon the order or subpoena of a court or other agency with subpoena power.

(Enact. Acts 1990, ch. 476, Pt. II, § 92, effective July 13, 1990; 1990, ch. 518, § 10, effective July 13, 1990; 1992, ch. 270, § 1, effective April 7, 1992; 1994, ch. 296, § 1, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 437, § 1, effective July 14, 2000; 2002, ch. 143, § 1, effective July 15, 2002.)

Legislative Research Commission Note. (9/2/94). By letter of September 2, 1994, the Secretary of the Finance and Administration Cabinet, acting under KRS 48.500, advised the Reviser of Statutes of his determination "that no funds appropriated by the Executive Branch Appropriations Act for the 1995-96 biennium can be identified as having been appropriated for the purpose of implementing Sections 1 to 7 of House Bill No. 616, Chapter (296), Acts of the 1994 Regular Session of the General Assembly." Accordingly, the amendment to this statute contained in 1994 Ky. Acts ch. 296 is void under sec. 3(8) of that Act and has not been codified into the statute.

Compiler's Notes. Acts 1992, ch. 270, § 2 provides: "Section 1(3) of this Act shall be deemed retroactive to July 13, 1990, and shall apply to subpoenas or court orders issued since that date on any matter covered by KRS 7.410."

Opinions of Attorney General. If there is school board opposition to school based decision making (SBDM) the SBDM council could seek assistance from the Office of Education Accountability and if they cannot assist the council, then legal action should be considered to force the school board to comply with the statute; however, that should not be necessary once the statute contains protections within it. OAG 91-24.

Based on the language of Const., § 183 and on case law interpreting this section, the General Assembly has authorization to create the Office of Education Accountability. OAG 91-222.

Superintendents and boards are subject to investigation by legislative agencies, but those agencies, in this case the Office of Education Accountability, may not take enforcement action against them. OAG 91-222.

The activities of the Office of Education Accountability do not violate the separation of powers set forth in Const., §§ 27 and 28. OAG 91-222.

The authority under which superintendents and boards must respond to questions raised in the course of investigation by the Office of Education Accountability is found in this section and KRS 6.905 et seq. OAG 91-222.

The discovery powers set forth in subsection (2)(d) of this section are broad; however, they relate to the ability of the arm of the legislature to study the implementation of the Reform Act, and to insure that the General Assembly is successful in creating an "efficient system of common schools," as mandated by Const., § 183. OAG 91-222.

While the Office of Education Accountability does not have the right to perform the executive functions of regulating and supervising administration of the day to day operations of school districts, the office may study and monitor the implementation of the Kentucky Education Reform Act. OAG 91-222.

Subsection (3) vests virtually unfettered discretion in the Office of Education Accountability to withhold records relating to its duties and responsibilities while an investigation is pending, and after it has concluded; the urgency and importance of this provision is further underscored by the fact that in 1992, the General Assembly elected to make it retroactive to July 13, 1990, and to include an emergency clause making it effective upon passage by the Governor; thus, a teacher's request to have full access to records pertaining to a complaint filed against her was properly denied. OAG 98-ORD-149.

The Office of Education Accountability properly denied a request for access to intra-office memorandum and the identity of an informant, which related to the requester's attempt to hack into or invade the agency's computer system. OAG 99-ORD-96.

Cited: Craig v. Kentucky State Bd. for Elementary & Secondary Educ., 902 S.W.2d 264 (Ky. Ct. App. 1995).

7.420. Gathering information.

As a part of any investigation, study, monitoring, or evaluation pursuant to KRS 7.410, the Office of Education Accountability shall attempt to gather all relevant information before reaching conclusions or making public any findings. This shall include providing an

opportunity for the subject school district, agency, or individual to provide responsive information.
(Enact. Acts 1996, ch. 362, § 3, effective July 15, 1996.)

TITLE III
EXECUTIVE BRANCH

CHAPTER 13A
ADMINISTRATIVE REGULATIONS

SECTION.
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13A.250. Fiscal note.
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13A.310. Repeal or permissive withdrawal of administrative regulation.
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13A.350. Application of chapter.

13A.010. Definitions for chapter.

As used in this chapter, unless the context otherwise requires:

(1) "Administrative body" means each state board, bureau, cabinet, commission, department, authority, officer, or other entity, except the General Assembly and the Court of Justice, authorized by law to promulgate administrative regulations;
(2) "Administrative regulation" means each statement of general applicability promulgated by an administrative body that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any administrative body. The term includes an existing administrative regulation, a new administrative regulation, an emergency administrative regulation, an administrative regulation in contemplation of a statute, the amendment or repeal of an existing administrative regulation, but does not include:
(a) Statements concerning only the internal management of an administrative body and not affecting private rights or procedures available to the public;
(b) Declaratory rulings;
(c) Intradepartmental memoranda not in conflict with KRS 13A.130;
(d) Statements relating to acquisition of property for highway purposes and statements relating to the construction or maintenance of highways; or
(e) Rules, regulations, and policies of the governing boards of institutions that make up the postsecondary education system defined in KRS 164.001 pertaining to students attending or applicants to the institutions, to faculty and staff of the respective institutions, or to the control and maintenance of land and buildings occupied by the respective institutions;
(3) "Adopted" means that an administrative regulation has become effective in accordance with the provisions of this chapter;
(4) "Authorizing signature" means the signature of the head of the administrative body authorized by statute to promulgate administrative regulations;
(5) "Commission" means the Legislative Research Commission;
(6) "Economic impact" means a financial impact on:
(a) Commercial enterprises;
(b) Retail businesses;
(c) Service businesses;
(d) Industry;
(e) Consumers of a product or service; or
(f) Taxpayers;
(7) "Effective" means that an administrative regulation has completed the legislative subcommittee review established by KRS 13A.290, 13A.330, and 13A.331;
(8) "Federal mandate" means any federal constitutional, legislative or executive law or order which requires or permits any administrative body to engage in regulatory activities which impose compliance standards, reporting requirements, recordkeeping, or similar responsibilities upon entities in the Commonwealth;
(9) "Federal mandate comparison" means a written statement containing the information required by KRS 13A.245;
(10) "Filed" means that an administrative regulation, or other document required to be filed by this chapter, has been submitted to the Commission in accordance with this chapter;
(11) "Promulgate" means that an administrative body has approved an administrative regulation for filing with the Commission in accordance with the provisions of KRS Chapter 13A;
(12) "Proposed administrative regulation " means an administrative regulation that an administrative body proposes to promulgate;
(13) "Regulatory impact analysis" means a written statement containing the provisions required by KRS 13A.240;
(14) "Statement of consideration" means that an administrative body must either accept suggestions or recommendations regarding an administrative regulation or issue a concise statement setting forth the reasons for not accepting suggestions or recommendations regarding an administrative regulation;
(15) "Subcommittee" means the Administrative Regulation Review Subcommittee, any other subcommittee of the Legislative Research Commission, an interim joint committee, or a House and Senate standing committee;
(16) "Tiering" means the tailoring of regulatory requirements to fit the particular circumstances surrounding regulated entities.

(Enact. Acts 1984, ch. 417, § 1, effective April 13, 1984; 1986, ch. 89, § 5, effective July 15, 1986; 1990, ch. 516, § 13, effective July 13, 1990; 1994, ch. 410, § 1, effective July 15, 1994; 1996, ch. 180, § 1, effective July 15, 1996; 1997 (1st Ex. Sess.), ch. 1, § 30, effective May 30, 1997; 1998, ch. 38, § 9, effective July 15, 1998; 2000, ch. 288, § 2, effective July 14, 2000; 2000, ch. 406, § 2, effective July 14, 2000.)

Legislative Research Commission Note. (7/14/2000). This section was amended by 2000 Ky. Acts chs. 288 and 406, which do not appear to be in conflict and have been codified together.

Cross-References. Transportation Cabinet, appeal from orders affecting air transportation companies, KRS 183.371.

Agriculture, Department of, appeal from order revoking or suspending license of frozen food locker plant, KRS 221.040.

Airport zoning regulations, enforcement of, KRS 183.873.

Alcoholic beverage administrator, city or county, appeal from to state board, KRS 241.150, 241.200.

Alcoholic Beverage Control Board:
Appeal from, KRS 243.560 to 243.590.
Hearings on appeal to, KRS 243.550.

Apprenticeship agreements, appeal from order of Commissioner of Labor, KRS 343.070.

Apprenticeship agreements, appeal from order of supervisor of apprenticeship to Commissioner of Labor, KRS 343.070.

Board of Boiler and Pressure Vessel Rules, KRS 236.020.

Board of Claims for damage claims, enforcement and review of decisions of, KRS 44.130, 44.140.

Board of Equalization, cities of fifth or sixth class, appeal from, KRS 92.530.

Board of Equalization, cities of first class, appeal from, KRS 91.400.

Board of Equalization, cities of second class, appeal from, KRS 92.440.

Board of tax supervisors, cities of fourth class, appeal from, KRS 92.510.

Board of tax supervisors, cities of third class, appeal from, to city council and to courts, KRS 92.480.
Chiropractic examiners, appeal from KRS 312.160.
County board of elections, appeals from, KRS 116.135.
Drivers' licenses, denial, suspension or revocation of by Transportation Cabinet, appeal from, KRS 186.580.
Embalmers and Funeral Directors, state Board of, appeal from KRS 316.155.
Public Service Commission:
Appeal from, KRS 278.410 to 278.450.
Enforcement of, KRS 278.390.
Engineers, professional, state board of registration for, hearing procedure, KRS 322.200.
Escheated property, appeal by claimant from decision of commissioner of revenue, KRS 393.160.
Extension, director of, KRS 164.625.
Finance and Administration Cabinet, enforcement of orders, KRS 45.142.
Gasoline dealer's license, appeal from revocation by Kentucky Board of Tax Appeals, KRS 138.340.
Grade crossings, overhead and underpass structures, appeal by railroad from order of Department of Highways concerning, KRS 177.190, 177.200.
Grain warehouse, appeal from local board to state board of agriculture, KRS 251.310.
Hairdressers and cosmetologists, Kentucky board of, appeal from, KRS 317A.070.
Health, board of for Louisville and Jefferson County, enforcement of orders of, KRS 212.600.
Insurance, department of, appeals from commissioner's orders or actions, KRS 304.2-370.
Insurance rates of surety or casualty companies, hearings upon disapproval of filings, KRS 304.13-071.
Judicial review of board of tax appeals, KRS 131.370.
Labor, commissioner of, enforcement of subpoenas issued by, KRS 336.060.
Labor, commissioner of, rule as to wages, appeal from, KRS 337.310.
Librarians, state board for certification of, appeal from, KRS 171.300.
Livestock sanitary division, appeal from order denying or revoking permit for hatchery or dealer in chicks or eggs, KRS 257.440.
Medicine, revocation of license to practice, appeal from order of state board of health, KRS 311.595.
Mine, closed by department of mines and minerals, petition to reopen, KRS 352.430.
Motorists' financial responsibility law, court review of orders under, KRS 187.300.
Ohio River Valley Water Sanitation Commission, enforcement of orders, KRS 224.18-715.
Oil wells, appeal from department of mines and minerals, KRS 351.040.
Petty loan companies, denial or revocation of license, appeal from commissioner of banking and securities, KRS 288.500.
Podiatrist's license, appeal, KRS 311.490.
Police and firemen's, cities of fourth and fifth class, dismissal or suspension, appeal from city legislative body, KRS 95.766.
Police and firemen's, cities of second and third class, dismissal or suspension, appeal from city legislative body, KRS 95.460.
Police and firemen's pension fund, trustees of cities of third class, regulations not subject to review, KRS 95.540.
Psychologists, board of examiners of, appeal from revocation or suspension of license by, KRS 319.092.
Public assistance, appeal to appeal board from decision of hearing officer delay in action on or amount of assistance, KRS 205.231.
Railroad commission orders, appeal from, enforcement of, KRS 276.370.
Real estate commission, state, appeal from, KRS 324.200.
Resident agent countersignature law, KRS 304.3-250, 304.3-260.
Revenue Cabinet equalization of assessments by, appeal from, KRS 133.150 to 133.170.
Revenue Cabinet, rulings and findings:
Appeal from to Kentucky board of tax appeals, KRS 131.110.
Enforcement of, KRS 131.990.
Revenue Cabinet, valuation of omitted property by, appeal from, KRS 132.320.
Road and bridge contracts, eligibility to bid upon, appeal from Department of Highways, KRS 176.170.
Securities, division of, appeal from, KRS 292.490.
Soil conservation board of adjustment, appeal from orders of, KRS 262.520.
Soil conservation district board of supervisors, enforcement of land use regulations, KRS 262.430, 262.440, 262.450.
State Board of Accountancy, appeal from, KRS 325.360; enforcement of orders of, KRS 325.400.
State local finance officer, appeal from to county debt commission, KRS 66.300.
Toll bridges and ferries, intrastate; appeal from order of Department of Highways, KRS 280.110.
Unemployment Insurance Commission:
Appeal from, KRS 341.450, 341.460.
Appeal to from referee, KRS 341.200.
Enforcement of orders, KRS 341.200.
Veterinary examiners, state board of, appeal from, KRS 321.360.
Workers' Compensation Board:
Appeal from, KRS 342.281 to 342.300.
Enforcement of orders, KRS 342.305.
Zoning:
Appeal from board of adjustment, KRS 100.347.
Appeal to board of adjustment, KRS 100.261.
Board of adjustment, KRS 100.217.
Comprehensive plan, KRS 100.183, 100.187, 100.191 to 100.197.
Planning commissions, KRS 100.133, 100.137.
Objectives, KRS 100.193.
Planning units, KRS 100.113 to 100.123.
Regulations, KRS 100.203, 100.207.
Federal Vocational Rehabilitation Program, 782 KAR 1:010.
Procedures for hearings, 783 KAR 1:020.
State aid for specific counties, 725 KAR 2:040.

13A.012. Inclusion of osteopaths within references to physicians in administrative regulations.

Any reference in an administrative regulation to "medical doctor," "M.D.," or "physician" shall be deemed to include a doctor of osteopathy or D.O., unless any of those terms is specifically excluded.
(Enact. Acts 2000, ch. 413, § 2, effective July 14, 2000.)

13A.015. Notice of intent to promulgate an administrative regulation — Public hearing.

(1) Except as provided by subsection (7) of this section, prior to the promulgation of an administrative regulation, an administrative body shall, for each administrative regulation it intends to promulgate:
(a) File with the regulations compiler the original and five (5) copies, and, if available, an electronic version of a notice of its intent to pro-

mulgate an administrative regulation for publication in the administrative register; and

(b) Hold a public hearing and receive oral or written comments on the proposed administrative regulation as provided by this section.

(2) Prior to filing a notice of intent to promulgate a new administrative regulation, an administrative body shall obtain from the regulations compiler a number for the new administrative regulation.

(3) The notice of intent shall include:

(a) A statement that the administrative body intends to promulgate an administrative regulation;

(b) The number and the specific subject matter of the proposed administrative regulation;

(c) A statement that the administrative body will hold a public hearing if a public hearing is requested at least ten (10) calendar days prior to the date of the public hearing, in writing, by five (5) persons, or by an administrative body, or by an association having at least five (5) members, provided that a minimum of five (5) persons, or one (1) person representing an administrative body or association, agree to be present at the public hearing:

1. No sooner than the twenty-first day nor later than the last workday of the month in which the notice of intent to promulgate is published in the Administrative Register;

2. At which it will accept oral and written comments from any interested person;

(d) The name, address, telephone number, and facsimile number to whom the written request for a public hearing and written comments shall be sent;

(e) The date, time, and place of the public hearing;

(f) The following information relating to the proposed administrative regulation:

1. The statutory authority for the administrative regulation;

2. A summary of the administrative regulation, including how an existing administrative regulation will be amended by the proposed administrative regulation, if applicable;

3. A statement setting forth the necessity for promulgating the administrative regulation, and a summary of the functions intended to be implemented by the administrative regulation, and, if applicable, the statement required by KRS 13A.245(2)(b);

4. A statement of the benefits expected from the administrative regulation; and

5. How the administrative regulation will be implemented.

(4) (a) An administrative body shall provide a form to be completed and filed by a person who wishes to be notified of the intent of the administrative body to promulgate an administrative regulation.

(b) A copy of the notice of intent shall be mailed:

1. To every person who has filed this form;

2. On the date the notice is published in the Administrative Register.

(5) If a notice of intent is filed to promulgate an administrative regulation in response to a statute enacted or amended by the General Assembly during the two (2) year time period immediately preceding the date the notice of intent is filed, the administrative body shall mail a copy of the notice of intent to the appropriate legislator as determined by this subsection.

(a) If the primary sponsor of the legislation, who shall be the first person listed in the Legislative Record following the bill number, is a current member of the General Assembly at the time the notice of intent is filed, the administrative body shall mail a copy of the notice of intent to the primary sponsor.

(b) If the primary sponsor of the legislation is not a current member of the General Assembly at the time the notice of intent is filed, the administrative body shall mail a copy of the notice of intent to the chair of the appropriate standing or interim joint committee of the General Assembly.

(6) (a) An administrative body shall file the original and five (5) copies of the notice of its intent to promulgate an administrative regulation with the regulations compiler.

(b) The date a notice of intent to promulgate an administrative regulation is published in the Administrative Register shall be governed by the provisions of KRS 13A.050(3) and 13A.150.

(c) A notice of intent shall be typewritten on white paper, size eight and one-half (8-½) by eleven (11) inches, and single-spaced. The first page shall have a two (2) inch top margin. Subsequent pages shall have one (1) inch top, bottom, and side margins. The notice of intent shall be typed in a twelve (12) point font approved by the regulations compiler.

(7) (a) A notice of intent shall not be filed for an emergency administrative regulation that will not be replaced by an ordinary administrative regulation.

(b) If an emergency administrative regulation will be replaced by an ordinary administrative regulation, the notice of intent for the ordinary administrative regulation shall be filed at the same time as the emergency administrative regulation that will be replaced.

(8) If a notice of intent to promulgate an administrative regulation has been filed, a subsequent notice of intent on the same administrative regulation shall not be filed unless the first notice of intent has been withdrawn.

(Enact. Acts 1994, ch. 410, § 3, effective July 15, 1994; 1996, ch. 180, § 2, effective July 15, 1996; 1998, ch. 38, § 1, effective July 15, 1998; 2000, ch. 288, § 1, effective July 14, 2000; 2000, ch. 406, § 23, effective July 14, 2000.)

Legislative Research Commission Note. (7/14/2000). This section was amended by 2000 Ky. Acts chs. 288 and 406, which do not appear to be in conflict and have been codified together.

13A.016. KRS 13A.015 inapplicable to administrative regulation promulgated only for drafting or format requirements.

The provisions of KRS 13A.015 shall not apply to the promulgation of an administrative regulation that is limited to compliance with the drafting and format requirements of KRS 13A.220 and 13A.222.

(Enact. Acts 1994, ch. 410, § 2, effective July 15, 1994.)

13A.017. Consideration of comments from public hearing — Post-hearing filings or notification.

(1) If an administrative body cancels a notice of intent public hearing because it has not received a request for a notice of intent public hearing pursuant to subsection (3) of KRS 13A.015, the administrative body shall immediately notify the regulations compiler in writing and by telephone that it has canceled the notice of intent public hearing.

(2) Following a public hearing on a proposed administrative regulation held pursuant to the provisions of KRS 13A.015, the administrative body shall give consideration to all comments received or made prior to the adjournment of the public hearing, or prior to the cancellation of the public hearing.

(3) The administrative body shall file with the Commission within forty-five (45) days following the date the public hearing was scheduled, a statement:

(a) Identifying the persons who submitted written comments, or attended the public hearing;

(b) Containing a summary of the:

1. Comments received or made at the public hearing; and

2. Its response to the comments; and

(c) In the same format as the statement of consideration required by KRS 13A.280(4).

(4) The administrative body shall provide a copy of the summary to any person who attended the public hearing and requested that a copy of the summary be provided.

(5) The regulations compiler shall transmit a copy of the summary to a legislator upon request.

(6) If the administrative body promulgates an administrative regulation that was the subject of a public hearing required under the provisions of this section and KRS 13A.015, the regulations compiler shall transmit a copy of the summary to a legislator upon request.

(7) If an administrative body determines that it will file an administrative regulation, it shall file the administrative regulation for which a notice of intent was filed within one hundred twenty (120) calendar days of the date on which the notice of intent public hearing was scheduled. If an administrative regulation is not filed within one hundred twenty (120) calendar days of the date on which the notice of intent public hearing was scheduled, the notice of intent shall expire.

(8) If the administrative body determines that it will not file an ordinary administrative regulation for which a notice of intent was filed, it shall notify the regulations compiler of its determination, in writing, within one hundred twenty (120) calendar days of the date on which the notice of intent public hearing was scheduled.

(Enact. Acts 1994, ch. 410, § 4, effective July 15, 1994; 1996, ch. 180, § 3, effective July 15, 1996; 1998, ch. 38, § 2, effective July 15, 1998; 2000, ch. 406, § 3, effective July 14, 2000.)

13A.020. Administrative Regulation Review Subcommittee.

(1) There is hereby created a permanent subcommittee of the Legislative Research Commission to be known as the Administrative Regulation Review Subcommittee. The subcommittee shall be composed of seven (7) members, no more than five (5) of whom shall be members of the same political party. The Legislative Research Commission shall appoint from the membership of the General Assembly, the members of the subcommittee for terms of two (2) years, and the members so appointed shall elect one (1) of their number to serve as chairman. Any vacancy which may occur in the membership of the subcommittee shall be filled by the Legislative Research Commission at its next regularly scheduled meeting after the occurrence of the vacancy.

(2) The subcommittee shall meet monthly at such time and place as the chairman may determine. The members of the subcommittee shall be compensated for attending meetings, as provided in KRS 7.090(2).

(3) Any professional, clerical or other employees required by the subcommittee shall be provided in accordance with the provisions of KRS 7.090(4) and (5).

(Enact. Acts 1984, ch. 417, § 2, effective April 13, 1984.)

13A.030. Duties of subcommittee.

(1) The Administrative Regulation Review Subcommittee shall:

(a) Conduct a continuous study as to whether additional legislation or changes in legislation are needed based on various factors, including, but not limited to, review of new, emergency, and existing administrative regulations, the lack of administrative regulations, and the needs of administrative bodies;

(b) Except as provided by KRS 158.6471 and 158.6472, review and comment upon administrative regulations submitted to it by the Commission;

(c) Make recommendations for changes in statutes, new statutes, repeal of statutes affecting administrative regulations or the ability of administrative bodies to promulgate them; and

(d) Conduct such other studies relating to administrative regulations as may be assigned by the Commission.

(2) The subcommittee may make a nonbinding determination:

(a) That an administrative regulation is deficient because it:

1. Is wrongfully promulgated;
2. Appears to be in conflict with an existing statute;
3. Appears to have no statutory authority for its promulgation;
4. Appears to impose stricter or more burdensome state requirements than required by the federal mandate, without reasonable justification;
5. Fails to use tiering when tiering is applicable;
6. Is in excess of the administrative body's authority; or
7. Appears to be deficient in any other manner;

(b) That an administrative regulation is needed to implement an existing statute; or

(c) That an administrative regulation should be amended or repealed.

(3) The subcommittee may require any administrative body to submit data and information as required by the subcommittee in the performance of its duties under this chapter, and no administrative body shall fail to provide the information or data required.

(Enact. Acts 1984, ch. 417, § 3, effective April 13, 1984; 1986, ch. 89, § 6, effective July 15, 1986; 1994, ch. 410, § 5, effective July 15, 1994; 1998, ch. 598, § 7, effective April 14, 1998; 2000, ch. 406, § 4, effective July 14, 2000.)

13A.032. Effect of finding of deficiency.

A finding of deficiency made in accordance with KRS 13A.030(2)(a) made by a subcommittee shall establish a prima facie case of legislative intent in any action or proceeding in this state in which the validity of an administrative regulation is at issue. Upon such finding, the Legislative Research Commission may institute legal proceedings in Franklin Circuit Court.

(Enact. Acts 1988, ch. 71, § 7, effective July 15, 1988; 1990, ch. 516, § 14, effective July 13, 1990; 2000, ch. 406, § 5, effective July 14, 2000.)

13A.040. Administrative regulations compiler — Duties.

The director of the Legislative Research Commission shall appoint an administrative regulations compiler who shall:

(1) Receive administrative regulations, and other documents required to be filed by the provisions of this chapter, tendered for filing;

(2) Stamp administrative regulations tendered for filing with the time and date of receipt;

(3) Provide administrative and support services to the subcommittee;

(4) Maintain a file of administrative regulations and other documents required to be filed by this chapter, for public inspection, with suitable indexes;

(5) Maintain a file of ineffective administrative regulations;

(6) Maintain a file of material incorporated by reference, including superseded or ineffective material incorporated by reference;

(7) Prepare the Kentucky Administrative Regulations Service;

(8) Upon request, certify copies of administrative regulations and other documents that have been filed with the regulations compiler;

(9) Correct errors that do not change the substance of an administrative regulation, including, but not limited to, typographical errors, errors in format, and grammatical errors;

(10) Refuse to accept for filing administrative regulations, and other documents required to be filed by this chapter, that do not conform to the drafting, format, or filing requirements established by the provisions of KRS Chapter 13A, and notify the administrative body in writing of the reasons for refusing to accept an administrative regulation for filing; and

(11) Perform other duties required by the Commission or by a subcommittee.

(Enact. Acts 1984, ch. 417, § 4, effective April 13, 1984; 1988, ch. 425, § 4, effective July 15, 1988; 1990, ch. 516, § 15, effective July 13, 1990; 1994, ch. 410, § 6, effective July 15, 1994; 1996, ch. 180, § 4, effective July 15, 1996; 1998, ch. 38, § 3, effective July 15, 1998.)

13A.050. Kentucky Administrative Regulations Service — "The Administrative Register" — Publication dates — Certificate of compiler — Fees.

(1) The Legislative Research Commission shall compile, publish, and distribute the administrative regulations filed by administrative bodies. This compilation shall be known as the Kentucky Administrative Regulations Service and shall constitute the official state publication of administrative regulations.

(2) (a) There is hereby created a publication known as "The Administrative Register" to be printed and published on a monthly basis by the Legislative Research Commission for the purpose of giving notice of administrative regulations filed in accordance with this chapter.

(b) Every administrative regulation forwarded to the Legislative Research Commission shall have its complete text printed in the Administrative Register along with the accompanying statements required by KRS 13A.190, 13A.210, 13A.2251(1), 13A.240, 13A.245, 13A.250, and 13A.270.

(c) Within five (5) workdays of the publication of an administrative regulation in the Administrative Register, an administrative body shall:

1. Review the text and accompanying statements of the administrative regulation; and
2. Notify the regulations compiler in writing of errors.

(3) The Administrative Register shall be published the first day of each month and shall include all administrative regulations and notices of intent required by the provisions of KRS 13A.015, received by the Legislative Research Commission by 12 noon, eastern time, on the fifteenth day of the preceding month. When the fifteenth day falls on a

Saturday, Sunday, or holiday the deadline is the workday which immediately precedes the Saturday, Sunday, or holiday.

(4) The compiler shall cause to be prepared a certificate to the effect that the text of the administrative regulations as printed in this service is correct. One (1) copy of the Kentucky Administrative Regulations Service with the original certificate therein shall be maintained in the Office of the Secretary of State. All other copies shall contain a printed copy of the certificate and shall constitute prima facie evidence of the law in all courts and proceedings.

(5) The Commission shall prescribe reasonable fees for subscription to the Kentucky Administrative Regulations Service and the Administrative Register. All fees paid to the Commission for these publications shall be placed in the State Treasury to the credit of a revolving trust or agency fund account, for use by the Legislative Research Commission in carrying out the provisions of this section.

(6) Copies of regulatory impact analysis shall be made available to any interested party upon request to the Legislative Research Commission. The Commission may prescribe reasonable fees for duplication services and all fees paid to the Commission for duplication services shall be placed in the State Treasury to the credit of a revolving trust or agency fund account, for use by the Legislative Research Commission in carrying out the provisions of this subsection.

(Enact. Acts 1984, ch. 417, § 5, effective April 13, 1984; 1994, ch. 410, § 7, effective July 15, 1994; 1996, ch. 180, § 5, effective July 15, 1996.)

13A.060. Exclusive publication by Legislative Research Commission — Copies available to members of General Assembly.

(1) No administrative body other than the Legislative Research Commission shall publish administrative regulations unless permission is granted by the Legislative Research Commission and the administrative regulations are enclosed in a booklet or binder on which the words "informational copy" are clearly stamped or printed.

(2) Copies of the Administrative Register and the Kentucky Administrative Regulations Service shall be provided to a member of the General Assembly only upon the request of the member.

(Enact. Acts 1984, ch. 417, § 6, effective April 13, 1984.)

13A.070. Administrative regulations promulgated by Commission — Assistance to administrative bodies.

(1) The Commission shall promulgate administrative regulations governing the manner and form in which administrative regulations shall be prepared, to the end that all administrative regulations shall be prepared in a uniform manner. The compiler shall refuse to accept for filing any administrative regulation that does not conform to KRS Chapter 13A and the administrative regulations promulgated thereunder.

(2) The Commission shall furnish advice and assistance to all administrative bodies in the preparation of their administrative regulations, and in revising, codifying, and editing existing or new administrative regulations.

(Enact. Acts 1984, ch. 417, § 7, effective April 13, 1984; 2000, ch. 406, § 6, effective July 14, 2000.)

13A.075. Legislative Research Commission may promulgate regulations.

The Legislative Research Commission may promulgate administrative regulations in accordance with the provisions of this chapter. An emergency administrative regulation promulgated by the Legislative Research Commission shall be signed by its co-chairmen.

(Enact. Acts 1990, ch. 516, § 3, effective July 13, 1990.)

13A.080. Inclusion in Administrative Register of notice of review process and procedures for public comment.

Each issue of the Administrative Register shall contain a notice describing the regulation review process and the methods by which the public may comment upon administrative regulations, including the procedure for contacting agencies about public hearings.

(Enact. Acts 1984, ch. 417, § 8, effective April 13, 1984; 1994, ch. 410, § 8, effective July 15, 1994.)

13A.090. Rebuttable presumption of correctness of content of administrative regulations — Judicial notice.

(1) The Commission's authenticated file stamp upon an administrative regulation or publication of an administrative regulation in the Kentucky Administrative Regulations Service or other publication shall raise a rebuttable presumption that the contents of the administrative regulation are correct.

(2) The courts shall take judicial notice of any administrative regulation duly filed under the provisions of this chapter after the administrative regulation has been adopted.

(Enact. Acts 1984, ch. 417, § 9, effective April 13, 1984.)

NOTES TO DECISIONS

1. Improper Subject for Judicial Notice.

Parole eligibility statistics are not a proper subject for judicial notice, are not admissible mitigating evidence, and do not negate the Commonwealth's evidence; therefore, the trial court did not err in finding that "the introduction of specific figures and numbers opens the door to evidence that the statute was not set up for." Abbott v. Commonwealth, 822 S.W.2d 417 (Ky. 1992).

13A.100. Matters which shall be prescribed by administrative regulation.

Subject to limitations in applicable statutes, any administrative body which is empowered to promulgate administrative regulations shall, by administrative regulation prescribe, consistent with applicable statutes:

(1) Each statement of general applicability, policy, procedure, memorandum, or other form of action that implements; interprets; prescribes law or policy; describes the organization, procedure, or practice requirements of any administrative body; or affects private rights or procedures available to the public;
(2) The process for application for license, benefits available or other matters for which an application would be appropriate unless such process is prescribed by a statute;
(3) Fees, except for those exempted in paragraphs (a) through (j), of this subsection, to be charged by the administrative body if such fees are authorized by law and are not set by statute:
  (a) State park room rates;
  (b) Prices for food in restaurants at state facilities;
  (c) Prices for goods at gift shops at state facilities;
  (d) Prices for groceries and other items sold at state facilities;
  (e) Prices charged for state publications;
  (f) Prices charged for rides and amusement activities at state facilities;
  (g) Admission fees to athletic and entertainment events at state facilities;
  (h) Charges for swimming, skiing, horseback riding, and similar recreational activities at state facilities;
  (i) Charges for boat and equipment rentals for recreational purposes at state facilities; and
  (j) Admission fees charged for seminars and educational courses by state administrative bodies;
(4) The procedures to be utilized by the administrative body in the conduct of hearings by or for the administrative body unless such procedures are prescribed by a statute; and
(5) The disciplinary procedures within the jurisdiction of the administrative body unless such procedures are prescribed by statute.

(Enact. Acts 1984, ch. 417, § 10, effective April 13, 1984; 1990, ch. 516, § 16, effective July 13, 1990.)

Legislative Research Commission Note. Acts 1984, ch. 419, effective July 13, 1984, provides:

"§ 1. It is the intent of the General Assembly that the amendment of Section 10 by the Free Conference Committee report to 1984 HB 334 applies only to fees which are governmental in nature charged by state agencies and not to fees and charges which are proprietary in nature.

§ 2. This resolution may be used by a court as an aid in the construction of 1984 HB 334."

Cross-References. Adult Literacy Program fund, 784 KAR 1:010.

Application by recipients of AFDC, 11 KAR 5:120.

Borrower eligibility, 11 KAR 3:015.

Distribution of publications, 11 KAR 4:060.

Dual enrollment under consortium agreement, 11 KAR 5:110.

Eligible program, 11 KAR 3:025.

KTG student eligibility requirements, 11 KAR 5:033.

Maximum loan amounts, 11 KAR 3:035.

Notification of award, 11 KAR 5:150.

Obtaining and repaying a loan, 11 KAR 3:055.

Permissible charges by lenders to borrowers, 11 KAR 3:045.

Provision of instruction for individuals sentenced by a court to participate in educational programs, 785 KAR 1:100.

Records and reports, 11 KAR 5:180.

Refund and repayment policy, 11 KAR 5:170.

State Adult Literacy Program plan, 784 KAR 1:020.

State student incentive grant program eligibility., 11 KAR 5:036.

Student protection fund, 783 KAR 1:030.

13A.110. Prescription of forms and tables.

Subject to limitations in applicable statutes, any administrative body which is empowered to promulgate administrative regulations may, consistent with applicable statutes, prescribe forms and tables for use by the administrative body and for the public in dealing with the administrative body unless the content of such form is prescribed by a statute. Forms that are required to be submitted by a regulated entity shall be included in an administrative regulation. Forms and tables that meet the requirements of KRS 13A.2245 may be incorporated by reference.

(Enact. Acts 1984, ch. 417, § 11, effective April 13, 1984; 1990, ch. 516, § 17, effective July 13, 1990.)

13A.120. Promulgation of administrative regulations — Prohibitions concerning promulgations.

(1) (a) An administrative body may promulgate administrative regulations to implement a statute only when the act of the General Assembly creating or amending the statute specifically authorizes the promulgation of administrative regulations or administrative regulations are required by federal law, in which case administrative regulations shall be no more stringent than the federal law or regulations.
  (b) An administrative body that promulgates an administrative regulation required by federal law or federal regulation shall comply with the provisions of this chapter.
(2) An administrative body shall not promulgate administrative regulations:
  (a) When a statute prohibits the administrative body from promulgating administrative regulations;
  (b) When the administrative body is not authorized by statute to promulgate administrative regulations;
  (c) When a statute prohibits the administrative body from regulation of that particular matter;
  (d) When the administrative body is not authorized by statute to regulate that particular matter;
  (e) When a statute prescribes the same or similar procedure for the matter regulated;
  (f) When a statute sets forth a comprehensive scheme of regulation of the particular matter;
  (g) On any matter which is not clearly within the jurisdiction of the administrative body;
  (h) On any matter which is beyond the statutory authorization of the administrative body to promulgate administrative regulations or which is not clearly authorized by statute; and
  (i) Which modify or vitiate a statute or its intent.

(3) If a statute requires an administrative body or official to submit an administrative regulation to an official or administrative body for review or approval prior to filing the administrative regulation with the commission, the administrative body or official shall not file the administrative regulation without first having obtained the review or approval.
(4) Any administrative regulation in violation of this section or the spirit thereof is null, void, and unenforceable.
(5) No administrative body, other than the Court of Justice, shall issue rules.
(6) No administrative body shall issue standards or by any other name issue a document of any type where an administrative regulation is required or authorized by law.

(Enact. Acts 1984, ch. 417, § 12, effective April 13, 1984; 1986, ch. 499, § 8, effective July 15, 1986; 1990, ch. 516, § 18, effective July 13, 1990; 1994, ch. 410, § 9, effective July 15, 1994; 1996, ch. 180, § 6, effective July 15, 1996.)

13A.125. Restriction of subsequent amendment to pending regulation or regulation with amendment already filed.

Prior to the effective date of a new administrative regulation, or an amended administrative regulation that has been filed with the Legislative Research Commission, an administrative body shall not file subsequent amendments to that administrative regulation unless:
(1) Failure to do so would result in a loss of accreditation, or federal or state funds, or the imposition of another state or federal penalty; or
(2) A court decision, or a federal or state mandate requires immediate implementation of the amendment; or
(3) Conditions warrant the filing of an emergency administrative regulation; or
(4) The amendments are made:
(a) After a public hearing as provided by KRS 13A.280; or
(b) At a subcommittee meeting during which the administrative regulation is reviewed as provided by KRS 13A.290.

(Enact. Acts 1990, ch. 516, § 2, effective July 13, 1990.)

13A.130. Matters prohibited as subject of internal policy, memorandum or other form of action.

(1) An administrative body shall not by internal policy, memorandum, or other form of action:
(a) Modify a statute or administrative regulation;
(b) Expand upon or limit a statute or administrative regulation; and
(c) Except as authorized by the Constitution of the United States, the Constitution of Kentucky or a statute, expand or limit a right guaranteed by the Constitution of the United States, the Constitution of Kentucky, a statute, or an administrative regulation.
(2) Any administrative body memorandum, internal policy, or other form of action violative of this section or the spirit thereof is null, void, and unenforceable.
(3) This section shall not be construed to prohibit an administrative body issuing an opinion or administrative decision which is authorized by statute.

(Enact. Acts 1984, ch. 417, § 13, effective April 13, 1984.)

Cited: Commonwealth Educ. & Humanities Cabinet Dep't of Educ. v. Gobert, 979 S.W.2d 922 (Ky. Ct. App. 1998).

13A.140. Administrative regulations presumed valid — Promulgating administrative body to bear burden of proof in court challenge.

(1) Administrative regulations are presumed to be valid until declared otherwise by a court, but when an administrative regulation is challenged in the courts it shall be the duty of the promulgating administrative body to show and bear the burden of proof to show:
(a) That the administrative body possessed the authority to promulgate the administrative regulation;
(b) That the administrative regulation is consistent with any statute authorizing or controlling its issuance;
(c) That the administrative regulation is not in excess of statutory authority;
(d) That the administrative regulation is not beyond the scope of legislative intent or statutory authority;
(e) That the administrative regulation is not violative of any other applicable statute; and
(f) That the laws and administrative regulations relating to promulgation of administrative regulations were faithfully followed.
(2) It shall be prima facie evidence of compliance with the provisions of this section as to the holding of hearings, statements of consideration, consideration of tiering, local government impact, and fiscal impact to file with the court appropriate citations to the Administrative Register which indicate such compliance.

(Enact. Acts 1984, ch. 417, § 14, effective April 13, 1984.)

13A.150. Specified time for filing.

(1) When any section of this chapter requires that an action be taken at a specified date with regard to filing of items to the Commission, they shall be filed on or before 12 noon, eastern time, on the specified date.
(2) When any section of this chapter requires that an action be taken at a specified date and the specified date falls on a Saturday, Sunday, or holiday, the action shall be taken on or before 12 noon, eastern time, on the working day immediately preceding the Saturday, Sunday, or holiday.

(Enact. Acts 1984, ch. 417, § 15, effective April 13, 1984; 1988, ch. 425, § 5, effective July 15, 1988; 1990, ch. 516, § 19, effective July 13, 1990.)

13A.160. Notice of hearing to compiler when hearing is required before filing of administrative regulations — Publication.

When a statute requires that a hearing be held before an administrative regulation is filed with the Commission the administrative body shall, in addition to the notice required in the statute, notify the administrative regulations compiler not less than forty-five (45) days prior to the date of the hearing of the time, date, place, and subject of the hearing and the administrative regulations compiler shall place the notice in the Administrative Register.

(Enact. Acts 1984, ch. 417, § 16, effective April 13, 1984.)

13A.170. Methods of promulgating administrative regulations.

Three (3) methods of promulgating administrative regulations are authorized:

(1) An ordinary administrative regulation;
(2) An emergency administrative regulation; and
(3) An administrative regulation in contemplation of a statute.

(Enact. Acts 1984, ch. 417, § 17, effective April 13, 1984.)

13A.180. Ordinary administrative regulation defined.

An ordinary administrative regulation is one that is promulgated in the normal manner by an administrative body which does not require that it be placed in effect immediately.

(Enact. Acts 1984, ch. 417, § 18, effective April 13, 1984.)

13A.190. Emergency administrative regulations.

(1) An emergency administrative regulation is one that:
  (a) Must be placed into effect immediately in order to:
    1. Meet an imminent threat to public health, safety, or welfare;
    2. Prevent a loss of federal or state funds;
    3. Meet a deadline for the promulgation of an administrative regulation that is established by state law, or federal law or regulation; or
    4. Protect human health and the environment; and
  (b) 1. Is temporary in nature and will expire as provided in this section; or
    2. Is temporary in nature and will be replaced by an ordinary administrative regulation as provided in this section.

(2) Emergency administrative regulations shall become effective and shall be considered as adopted upon filing. Emergency administrative regulations shall be published in the next Administrative Register.

(3) (a) Except as provided by paragraph (b) of this subsection, emergency administrative regulations shall expire one hundred seventy (170) days after the date of publication or when the same matter filed as an ordinary administrative regulation filed for review is adopted, whichever occurs first.
  (b) If an administrative body extends the public comment period as provided by KRS 13A.270(1), or extends the time for filing a statement of consideration as provided by KRS 13A.280(3), an emergency administrative regulation shall remain in effect for one hundred seventy (170) days after the date of publication plus the number of days extended under the provisions of KRS 13A.270(1) or 13A.280(3), as applicable.

(4) An emergency administrative regulation shall not be renewed for a period of nine (9) months after it has been initially filed. No other emergency administrative regulation that is identical to or substantially the same as the previously filed emergency administrative regulation shall be promulgated.

(5) When an emergency administrative regulation governing the same subject matter governed by an emergency administrative regulation filed within the previous nine (9) months is filed, it shall contain a detailed explanation of the manner in which it differs from the previously filed emergency administrative regulation. The detailed explanation shall be included in the statement of emergency.

(6) Each emergency administrative regulation shall contain a statement of:
  (a) The nature of the emergency;
  (b) The reasons why an ordinary administrative regulation is not sufficient;
  (c) Whether or not the emergency administrative regulation will be replaced by an ordinary administrative regulation;
  (d) If the emergency administrative regulation will not be replaced by an ordinary administrative regulation, the reasons therefor; and
  (e) If applicable, the explanation required by subsection (5) of this section.

(7) An administrative body shall attach the:
  (a) Statement of emergency required by subsection (6) of this section to the front of the original and each copy of a proposed emergency administrative regulation; and
  (b) Regulatory impact analysis, tiering statement, federal mandate comparison, fiscal note, summary of material incorporated by reference if applicable, and other forms or documents required by the provisions of this chapter to the back of the emergency administrative regulation.

(8) If an emergency administrative regulation will not be replaced by an ordinary administrative regulation, the administrative body shall schedule a public hearing pursuant to KRS 13A.270(1). The public hearing information required by KRS 13A.270(2) shall be attached to the back of the emergency administrative regulation.

(9) The statement of emergency shall have a two (2) inch top margin. The number of the emergency administrative regulation shall be typed directly

below the heading "Statement of Emergency." The number of the emergency administrative regulation shall be the same number as the ordinary administrative regulation followed by an "E."

(10) Each executive department emergency administrative regulation shall be signed by the head of the administrative body and countersigned by the Governor prior to filing with the Commission. These signatures shall be on the statement of emergency attached to the front of the emergency administrative regulation.

(11) (a) If an ordinary administrative regulation that was filed to replace an emergency administrative regulation is withdrawn, the emergency administrative regulation shall expire on the date the ordinary administrative regulation is withdrawn.

(b) If an ordinary administrative regulation that was filed to replace an emergency administrative regulation is withdrawn, the administrative body shall inform the regulations compiler of the reasons for withdrawal in writing.

(12) (a) If an emergency administrative regulation, that was intended to be replaced by an ordinary administrative regulation, is withdrawn, the emergency administrative regulation shall expire on the date it is withdrawn.

(b) If an emergency administrative regulation has been withdrawn, the ordinary administrative regulation that was filed with it shall not expire unless the administrative body informs the regulations compiler that the ordinary administrative regulation is also withdrawn.

(c) If an emergency administrative regulation is withdrawn, the administrative body shall inform the regulations compiler of the reasons for withdrawal in writing.

(13) A subcommittee may review an emergency administrative regulation and may recommend to the Governor that the regulation be withdrawn.

(Enact. Acts 1984, ch. 417, § 19, effective April 13, 1984; 1988, ch. 71, § 1, effective July 15, 1988; 1988, ch. 425, § 6, effective July 15, 1988; 1990, ch. 516, § 20, effective July 13, 1990; 1994, ch. 410, § 10, effective July 15, 1994; 1996, ch. 180, § 7, effective July 15, 1996; 2000, ch. 406, § 7, effective July 14, 2000.)

13A.200. Administrative regulation in contemplation of a statute — Procedure.

An administrative regulation in contemplation of a statute provides a means whereby an administrative body may promulgate and file an administrative regulation following the enactment of a statute authorizing or directing its promulgation by the General Assembly and its approval by the Governor or its becoming law without signature but before the effective date subject to the following:

(1) The administrative regulation may be filed any time after signature by the Governor or upon the act becoming law without the Governor's signature but prior to the act's effective date.

(2) The administrative regulation may be reviewed, hearings held, and all other steps taken with regard thereto, except for adoption, prior to the effective date of the statute which authorized or directed its issuance.

(3) All dates and other procedures which apply to an ordinary administrative regulation shall apply to an administrative regulation in contemplation of a statute.

(4) An administrative regulation in contemplation of a statute shall in all other respects be considered as an ordinary administrative regulation.

(Enact. Acts 1984, ch. 417, § 20, effective April 13, 1984; 1994, ch. 410, § 11, effective July 15, 1994.)

13A.210. Tiering of administrative regulations.

(1) When promulgating administrative regulations and reviewing existing ones, administrative bodies shall, whenever possible, tier their administrative regulations to reduce disproportionate impacts on certain classes of regulated entities and to avoid regulating entities that do not contribute significantly to the problem the administrative regulation was designed to address. The tiers, however, must be based upon reasonable criteria and uniformly applied to an entire class. Administrative bodies may use any number of tiers they feel will solve most effectively the problem the administrative regulation addresses. A written statement must be submitted to the Legislative Research Commission explaining why tiering was or was not used.

(2) Administrative bodies may use, but shall not be limited to, the following methods of tiering administrative regulations:

(a) Reduce or modify substantive regulatory requirements;

(b) Eliminate some requirements entirely;

(c) Simplify and reduce reporting and recordkeeping requirements;

(d) Provide exemptions from reporting and recordkeeping requirements;

(e) Reduce the frequency of inspections;

(f) Provide exemptions from inspections and other compliance activities;

(g) Delay compliance timetables; and

(h) Reduce or modify fine schedules for noncompliance.

(3) When tiering regulatory requirements, administrative bodies may use, but shall not be limited to, size and nonsize variables. Size variables include number of citizens, number of employees, level of operating revenues, level of assets, and market shares. Nonsize variables include degree of risk posed to humans, technological and economic ability to comply, geographic locations, and level of federal funding.

(4) When modifying tiers, administrative bodies shall monitor, but shall not be limited to, the following variables:

(a) Changing demographic characteristics;

(b) Changes in the composition of the work force;

(c) Changes in the inflation rate requiring revisions of dollar-denominated tiers;

(d) Changes in market concentration and segmentation;

(e) Advances in technology; and

(f) Changes in legislation.

(5) When tiering administrative regulations for small business concerns, administrative bodies shall use the small business size standards as defined in Section 632 of the Federal Small Business Act and Part 121 of Title Thirteen of the Code of Federal Regulations.

(Enact. Acts 1984, ch. 417, § 21, effective April 13, 1984; 1990, ch. 516, § 21, effective July 13, 1990.)

Compiler's Notes. Section 632 of the federal Small Business Act, referred to in subsection (5) of this section, is compiled as 15 U.S.C. § 632.

13A.220. Compliance with KRS 13A.222 and 13A.224 required — Filing with compiler — Format.

All administrative regulations shall comply with the provisions of KRS 13A.222 and 13A.224.

(1) An administrative body shall file with the regulations compiler:

(a) The original and five (5) copies of an administrative regulation; and

(b) At the same time the original and five (5) copies are filed, an electronic version, if available, of the administrative regulation and required attachments on a diskette or by e-mail in an electronic format approved by the regulations compiler.

(2) The original and each copy of each administrative regulation shall be stapled in the top left corner. The original and the five (5) copies of each administrative regulation shall be grouped together.

(3) An amendment to an administrative regulation shall not be made on a copy of the administrative regulation reproduced from the Kentucky Administrative Regulations Service or the Administrative Register. It shall be a typed original in the format specified in subsection (4) of this section.

(4) The format of an administrative regulation shall be as follows:

(a) An administrative regulation shall be typewritten on white paper, size eight and one-half (8-½) by eleven (11) inches and shall be double-spaced. The first page shall have a two (2) inch top margin. Subsequent pages shall have one (1) inch top, bottom, and side margins. The administrative regulation shall be typed in a twelve (12) point font approved by the regulations compiler. The lines on each page shall be numbered. Pages of an administrative regulation and documents attached to the administrative regulation shall be numbered sequentially. Page numbers shall be centered in the bottom margin of each page. Copies of the administrative regulation may be mechanically reproduced;

(b) The regulations compiler shall place a stamp indicating the date and time of receipt of the administrative regulation in the two (2) inch margin on the first page;

(c) The cabinet, department, and division of the administrative body shall be listed on separate double-spaced lines two (2) inches from the top in the upper left hand corner of the first page. This shall be followed on the next double-spaced line by "(New Administrative Regulation)," "(Amendment)," "(Amended After Hearing)," or "(Repealer)," whichever is applicable.

(d) The notation shall be followed by the number and title of the administrative regulation on the next double-spaced line. The promulgating administrative body shall contact the regulations compiler prior to filing to obtain an administrative regulation number for a new administrative regulation;

(e) On the next double-spaced line following the number and title of an administrative regulation, after the words "RELATES TO:," the administrative body shall list all statutes and other enactments, including any branch budget bills or executive orders, to which the administrative regulation relates or which shall be affected by the administrative regulation. After the words "STATUTORY AUTHORITY:" the administrative body shall list the specific statutes and other enactments, where applicable, authorizing the promulgation of the administrative regulation. Federal statutes and regulations shall be cited in the "RELATES TO:" and "STATUTORY AUTHORITY:" sections as provided by KRS 13A.2261, 13A.2264, 13A.2267; and

(f) Following the citations provided for in paragraph (e) of this subsection, and following the words "NECESSITY, FUNCTION, AND CONFORMITY:" the administrative body shall include a brief statement setting forth the necessity for promulgating the administrative regulation, a summary of the functions intended to be implemented by the administrative regulation, and, if applicable, the statement required by KRS 13A.245(2)(b).

(5) The numbering within the body of an administrative regulation shall be the responsibility of the promulgating body, subject to the authority of the regulations compiler to divide or renumber an administrative regulation. The following format shall be used by the administrative body in the numbering of each administrative regulation. Each section shall begin with the word "Section" followed by an Arabic number, and titles of sections shall be initially capitalized. Subsections shall be designated by an Arabic number in parentheses. Paragraphs shall be designated by lower case letters of the alphabet in parentheses, (e.g., (a), (b), (c), etc.). Subparagraphs shall be designated by an Arabic number followed by a period, (e.g., 1., 2., etc.). Clauses shall be designated by lower case letters of the alphabet followed by a period, (e.g., a., b., c., etc.).

(6) After the complete text of an administrative regulation, the administrative body shall include the following information:

(a) If the provisions of KRS 13A.120(3) are applicable, a statement that the official or the head of the administrative body has reviewed or approved the administrative regulation; the

signature of such official or head; and the date on which such review or approval occurred;

(b) The authorizing signature of the administrative body promulgating the administrative regulation, and the date on which the administrative body approved the promulgation;

(c) Information relating to public hearings as required by KRS 13A.160 and 13A.270; and

(d) The name, position, address, telephone number, and facsimile number of the contact person of the administrative body. The contact person shall be the person authorized by the head of an administrative body to:

1. Receive information relating to issues raised by the public or by a subcommittee prior to a public meeting of the subcommittee;
2. Negotiate changes in language with a subcommittee in order to resolve such issues; and
3. Answer questions relating to the administrative regulation.

(7) The format for signatures required by paragraphs (a) and (b) of subsection (6) of this section shall be as follows:

(a) The signature shall be placed on a signature line; and

(b) The name and title of the person signing shall be typed immediately beneath the signature line.

(Enact. Acts 1984, ch. 417, § 22, effective April 13, 1984; 1988, ch. 425, § 7, effective July 15, 1988; 1990, ch. 516, § 22, effective July 13, 1990; 1994, ch. 387, § 13, effective July 15, 1994; 1994, ch. 410, § 12, effective July 15, 1994; 1996, ch. 180, § 8, effective July 15, 1996; 1996, ch. 330, § 1, effective July 15, 1996; 1998, ch. 38, § 4, effective July 15, 1998; 2000, ch. 406, § 8, effective July 14, 2000.)

13A.221. Division of subject matter of administrative regulation.

(1) An administrative body shall divide the general subject matter of administrative regulations it promulgates into topics. A separate administrative regulation shall be promulgated for each topic.

(2) An administrative body shall not incorporate all material relating to a general subject matter in one (1) administrative regulation. Material incorporated by reference shall be incorporated by reference in the administrative regulation governing the specific topic to which the material relates.

(3) When an administrative regulation is amended, it shall be amended or repealed, whichever is applicable, to comply with the requirements of KRS Chapter 13A.

(Enact. Acts 1990, ch. 516, § 12, effective July 13, 1990; 2000, ch. 406, § 9, effective July 14, 2000.)

13A.222. Drafting rules.

(1) In a new administrative regulation, there shall be no underlining or bracketing.

(2) In an amendment to an administrative regulation, the new words shall precede the deleted words. Exceptions may be permitted by the regulations compiler. The administrative body shall:

(a) Underline all new words; and

(b) Place the deleted words in brackets and strike through these words.

(3) (a) An administrative regulation shall not be amended by reference to a section only. An amendment shall contain the full text of the administrative regulation being amended.

(b) A section of an administrative regulation shall not be reserved for future use.

(4) In drafting administrative regulations, the administrative body shall comply with the following:

(a) The administrative body shall use plain and unambiguous words that are easily understood by laymen. The administrative body shall avoid ambiguous, indefinite, or superfluous words and phrases;

(b) A duty, obligation, or prohibition shall be expressed by "shall" or "shall not." "Should," "could," or "must" shall not be used. The future tense shall not be expressed by the word "shall." A discretionary power shall be expressed by "may;"

(c) The words "said," "aforesaid," "hereinabove," "hereinafter," "beforementioned," "whatsoever," or similar words of reference or emphasis shall not be used. Where an article may be used, the administrative body shall not use the word "such." It shall not use the expression "and/or" and shall not separate alternatives with a slash. It shall not use contractions. When a number of items are all mandatory, the word "and" shall be used. When all of a number of items are not mandatory, the word "or" shall be used;

(d) Certain words are defined in the Kentucky Revised Statutes. Where applicable, these definitions shall be used. Definitions appearing in the Kentucky Revised Statutes shall not be duplicated in a proposed administrative regulation. A reference shall be made to the chapters and sections of the Kentucky Revised Statutes in which such definitions appear;

(e) If definitions are used, they shall be placed in alphabetical order in the first section of an administrative regulation or in a separate administrative regulation. The section or administrative regulation shall be titled "Definitions." If definitions are placed in the first section of an administrative regulation, the definitions shall govern only the terms in that administrative regulation. If definitions are placed in a separate administrative regulation, that administrative regulation shall be the first administrative regulation of the specific chapter of the Kentucky Administrative Regulations Service to which the definitions apply. The title of the administrative regulation shall also contain the number of the chapter of the Kentucky Administrative Regulations Service to which the definitions apply. In the text of an administrative regulation, the word defined in the definitions section, rather

than the definition, shall be used. Definitions shall be used only:

1. When a word is used in a sense other than its dictionary meaning, or is used in the sense of one of several dictionary meanings;
2. To avoid repetition of a phrase; or
3. To limit or extend the provisions of an administrative regulation;

(f) If a word has the same meaning as a phrase, the word shall be used;

(g) The present tense and the indicative mood shall be used. Conditions precedent shall be stated in the perfect tense if their happening is required to be completed;

(h) The same arrangement and form of expression shall be used throughout an administrative regulation, unless the meaning requires variations;

(i) "If" or "except" shall be used rather than "provided that" or "provided, however." "If" shall be used to express conditions, rather than the words "when" or "where;"

(j) A word importing the masculine gender may extend to females. A word importing the singular number may extend to several persons or things;

(k) An administrative body shall use the phrases specified in this subsection:

Do Not Use:	Use:
And/or	"and" for a conjunctive "or" for a disjunctive
Any and all	either word
As provided in this administrative regulation	—
At the time	when
And the same hereby is	is
Either directly or indirectly	—
Except where otherwise provided	State specific exemption.
Final and conclusive	final
Full force and effect	force or effect
In the event that; In case	if
Is authorized; Is empowered	may
Is defined and shall be construed to mean	means
Is hereby required to	shall
It shall be lawful	may
Latin words	Do not use unless medical or scientific terminology.
Null and void and of no effect	void
Order and direct	either word
Provision of law	law
Until such time as	until
Whenever	if

(l) 1. Unless the authority for an administrative regulation is an appropriation provision that is not codified in the Kentucky Revised Statutes, the specific chapter and section number of the Kentucky Revised Statutes authorizing the promulgation of an administrative regulation shall be cited.

2. a. If an act has not been codified in the Kentucky Revised Statutes at the time an administrative regulation is promulgated, or if the authority is any branch budget bill, the citation shall be as follows: "(year) Ky. Acts ch. (chapter number), sec. (section number)." When an act has been codified, the administrative body shall notify the regulations compiler of the proper citation in writing. Upon receipt of such written notice, the regulations compiler shall correct the citation.

b. For acts of extraordinary sessions, the citation shall be as follows: "(year) (Extra. Sess.) Ky. Acts ch. (chapter number), sec. (section number)." If there is more than one (1) extraordinary session of the General Assembly in the year, the citation shall specify the specific extraordinary session, as follows: "(year) (2d Extra. Sess.) Ky. Acts ch. (chapter number), sec. (section number)."

3. When an act has been codified, the administrative body shall notify the regulations compiler of the proper citation of the Kentucky Revised Statutes in writing. Upon receipt of the written notice, the regulations compiler shall correct the citation.

4. a. If the statutory authority is an appropriation act, the citation shall be as follows: "(year) Ky. Acts ch. (chapter number), Part (part and subpart numbers)."

b. If appropriate, the citation of an appropriation act shall include a citation to the appropriate part of the budget memorandum.

5. If the authority is an executive order, the citation shall be as follows: "EO (year executive order issued)-(number of executive order)."

(m) If the statutory authority is a federal law, the citation shall be the:

1. United States Code (U.S.C.), if it has been codified; or
2. Public Law (Pub. L.) and official session laws, if it has not been codified.

(n) 1. If the statutory authority is a federal regulation codified in the Code of Federal Regulations, the citation shall include the title, part, and section number, as follows: "(title number) C.F.R. (part and section number)."

2. a. If the statutory authority is a federal regulation that has not been codified in the Code of Federal Regulations, the citation shall be to the Federal Register, as follows: "(volume number) Fed. Reg. (page number) (effective date of the federal regulation)

(section of Code of Federal Regulations in which it will be codified)."

b. When the federal regulation is codified, the citation shall be amended to read as provided by subparagraph 1. of this paragraph.

3. a. If the statutory authority is a federal regulation that has been amended, and the amendment is not reflected in the current issue date of the volume of the Code of Federal Regulations in which the federal regulation is codified, the citation shall be to the Federal Register as follows: "(federal regulation that has been amended), (volume number) Fed. Reg. (page number) (effective date of the amendment)."

b. When the amendment is codified in the appropriate volume of the Code of Federal Regulations, the citation shall be amended to read as provided by subparagraph 1. of this paragraph.

(o) Citations of items in the "RELATES TO" paragraph of an administrative regulation shall comply with paragraphs (l), (m), and (n) of this subsection.

(p) An administrative regulation may cite the popular name of a federal or state law if the popular name is accompanied by the citation required by this paragraph.

(Enact. Acts 1988, ch. 425, §§ 1, 2, effective July 15, 1988; 1990, ch. 516, § 23, effective July 13, 1990; 1994, ch. 387, § 14, effective July 15, 1994; 1994, ch. 410, § 13, effective July 15, 1994; 1996, ch. 180, § 9, effective July 15, 1996; 2000, ch. 406, § 10, effective July 14, 2000.)

13A.224. General requirements for incorporation by reference.

No material shall be incorporated by reference unless:

(1) The material incorporated by reference relates only to the specific subject matter governed by an administrative regulation;

(2) The material has been reviewed in detail by the administrative body;

(3) No statute, state or federal regulation prescribes the same or similar procedure, or sets forth a comprehensive scheme of regulation of the subject matter; and

(4) Its incorporation is necessary in order to:

(a) Implement, interpret, or prescribe law or policy authorized or required by statute;

(b) Establish or describe the organization, procedure, or practice requirements authorized or required by statute.

(Enact. Acts 1988, ch. 425, § 3, effective July 15, 1988; 1990, ch. 516, § 24, effective July 13, 1990.)

13A.2245. Incorporation of code or uniform standard by reference.

(1) An administrative body may incorporate by reference a code or uniform standard if a federal or state statute:

(a) Requires an administrative body to implement, or a regulated entity to comply with, the provisions of that code or uniform standard; and

(b) Does not set forth the code or uniform standard, or a comprehensive scheme of regulation.

(2) If a code or uniform standard is adopted with changes by the administrative body, the administrative body shall file with the regulations compiler a:

(a) Copy of the code or uniform standard;

(b) Summary listing the pages upon which changes have been made; and

(c) Detailed summary of the changes and their effect.

The summaries shall be attached to the back of the proposed administrative regulation.

(3) If a federal regulation requires an administrative body to adopt, develop, or implement material of a scientific or technical nature that does not lend itself to the format requirements of KRS Chapter 13A, the administrative body may incorporate such material by reference in an administrative regulation as provided by KRS 13A.2251 and 13A.2255.

(Enact. Acts 1990, ch. 516, § 6, effective July 13, 1990; 2000, ch. 406, § 11, effective July 14, 2000.)

13A.2251. Information required in administrative regulation when incorporating material by reference.

(1) An administrative body shall incorporate material by reference in the last section of an administrative regulation. This section shall include:

(a) The title and edition of the material incorporated by reference placed in quotation marks;

(b) Information on how the material may be obtained; and

(c) A statement that the material is available for public inspection and copying, subject to copyright law, at the main, regional, or branch offices of the administrative body, and the address and office hours of each.

(2) The section incorporating material by reference shall be titled "Incorporation by Reference".

(a) If only one (1) item is incorporated by reference, the first subsection of the section incorporating material by reference shall contain the following statement: "(name and edition date of material incorporated) is incorporated by reference."

(b) If more than one (1) item is incorporated by reference, the first subsection of the section incorporating material by reference shall contain the following statement: "The following material is incorporated by reference: (a) (name and edition date of first item incorporated); and (b) (name and edition date of second item incorporated)."

(c) The second subsection of the section incorporating material by reference shall include the following statement: "This material may be inspected, copied, or obtained, subject to applicable copyright law, at (name of agency, full

address), Monday through Friday, 8:00 a.m. to 4:30 p.m."

(3) A summary of the incorporated material, in detail sufficient to identify the subject matter to which it pertains, shall be attached to an administrative regulation that incorporates material by reference. This summary shall include:
   (a) Relevant programs, statutes, funds, rights, duties, and procedures affected by the material and the manner in which they are affected;
   (b) A citation of the specific state or federal statutes or regulations authorizing or requiring the procedure or policy found in the material incorporated by reference; and
   (c) The total number of pages incorporated by reference.

(4) (a) One (1) copy of the material incorporated by reference shall be filed with the regulations compiler when the administrative regulation is filed.
   (b) Material incorporated by reference shall be placed in a binder. The administrative body shall write, stamp, or type, on the front binder cover and on the first page of the material incorporated by reference, the number of the administrative regulation to which material incorporated by reference pertains, the date on which it is filed, and the citation of each item that is included in the binder.
   (c) If the same material is incorporated by reference in more than one (1) administrative regulation, an administrative body may file one (1) copy of the material in a binder. The numbers of the administrative regulations in which the material is incorporated by reference shall be written, stamped, or typed on the:
      1. Front binder cover; and
      2. First page of the material incorporated by reference.

(Enact. Acts 1990, ch. 516, § 7, effective July 13, 1990; 1994, ch. 410, § 14, effective July 15, 1994; 1996, ch. 180, § 10, effective July 15, 1996; 1998, ch. 38, § 5, effective July 15, 1998; 2000, ch. 406, § 12, effective July 14, 2000.)

13A.2255. Amendment of material previously incorporated by reference.

When an administrative regulation amends material that had been previously incorporated by reference, the amendment shall be accomplished by submission of:

(1) An entire new document in which the amendments have been made but are not reflected in the manner specified in KRS 13A.222(2);
(2) A summary listing the pages upon which changes have been made, and a detailed summary of the changes and their effect. This summary shall be attached to the administrative regulation; and
(3) The page or pages of the document in which changes have been made, with the changes accomplished in the manner specified in KRS 13A.222(2).

(Enact. Acts 1990, ch. 516, § 8, effective July 13, 1990; 1994, ch. 410, § 15, effective July 15, 1994; 2000, ch. 406, § 13, effective July 14, 2000.)

13A.2261. Federal statutes not to be incorporated by reference.

Federal statutes shall not be incorporated by reference. If applicable, they shall be cited in the "RELATES TO" and "STATUTORY AUTHORITY" references in a proposed administrative regulation.

(Enact. Acts 1990, ch. 516, § 9, effective July 13, 1990.)

13A.2264. Incorporation by reference of federal regulation — Prohibitions.

(1) A federal regulation shall not be incorporated by reference or adopted without change if it:
   (a) Requires an administrative body to establish specific or minimum procedures, standards, conditions, restrictions, forms, or fees; or
   (b) Permits the administrative body to impose procedures, standards, conditions, restrictions, forms, or fees that are stricter than, in addition to, or alternatives to those required by the federal regulation.
(2) The administrative body shall promulgate an administrative regulation complying with the federal requirements.
(3) The federal regulation shall be cited in the "RELATES TO" and "STATUTORY AUTHORITY" sections of the administrative regulation promulgated by the administrative body.
(4) The administrative body shall submit a copy of the federal regulation with the administrative regulation in a binder as provided in KRS 13A.2251(4).
(5) If the administrative body imposes procedures, standards, conditions, restrictions, forms, or fees that are stricter than, in addition to, or alternatives to those required by the federal regulation, it shall attach a summary of its action.

(Enact. Acts 1990, ch. 516, § 10, effective July 13, 1990; 1998, ch. 38, § 11, effective July 15, 1998.)

13A.2267. Certain federal regulations prohibited from incorporation — Procedure for submission of federal regulations.

(1) A federal regulation shall not be incorporated by reference if it:
   (a) Imposes specific procedures, standards, conditions, restrictions, forms, or fees on regulated entities;
   (b) Does not require or permit the administrative body to alter the specified procedures, standards, conditions, restrictions, forms, or fees, or to select among alternatives; and
   (c) Requires the administrative body to implement or to enforce such procedures, standards, conditions, restrictions, forms, or fees.
(2) The federal regulation shall be adopted without change and shall be cited in the "RELATES TO" and "STATUTORY AUTHORITY" sections of the administrative regulation.
(3) In a separate section, an administrative regulation shall include a citation of the federal regulation, the effective date of the federal regulation and a statement that the subject matter of the administrative regulation is governed by that federal regulation.

(4) The administrative body shall submit a copy of the federal regulation with the administrative regulation in a binder as provided in KRS 13A.2251(4).
(5) The administrative body shall attach to the administrative regulation a summary of the federal regulation that is adopted without change.
(6) If the federal regulation is amended, the citation of the effective date of the federal regulation shall be amended. The administrative body shall attach to the administrative regulation a summary of the federal regulation, as amended. The administrative body shall submit a copy of the federal regulation, as amended, with the administrative regulation in a binder as provided in KRS 13A.2251(4).
(Enact. Acts 1990, ch. 516, § 11, effective July 13, 1990; 1998, ch. 38, § 12, effective July 15, 1998.)

13A.230. Other material to be filed with compiler.
(1) The administrative body shall attach the following forms to the back of the original and each copy of an administrative regulation:
(a) Regulatory impact analysis;
(b) Tiering statement;
(c) Local mandate impact statement, if the administrative regulation relates to any aspect of local government or any service provided thereby;
(d) Federal mandate comparison, if applicable; and
(e) The summaries provided for in KRS 13A.2261, 13A.2264, and 13A.2267, if applicable.
(2) The forms required by subsection (1) of this section shall be obtained from the regulations compiler.
(Enact. Acts 1984, ch. 417, § 23, effective April 13, 1984; 1986, ch. 89, § 7, effective July 15, 1986; 1988, ch. 425, § 8, effective July 15, 1988; 1990, ch. 516, § 25, effective July 13, 1990; 1994, ch. 410, § 16, effective July 15, 1994.)

13A.240. Regulatory impact analysis.
(1) Every administrative body shall prepare and submit to the Legislative Research Commission an original and five (5) duplicate copies of a regulatory impact analysis for every administrative regulation when it is filed with the Commission. The regulatory impact analysis shall include, but not be limited to, the following information:
(a) A brief narrative summary of:
1. What the administrative regulation does;
2. The necessity of the administrative regulation;
3. How the administrative regulation conforms to the content of the authorizing statutes; and
4. How the administrative regulation currently assists or will assist in the effective administration of the statutes;
(b) If this is an amendment to an existing administrative regulation, a brief narrative summary of:
1. How the amendment will change the existing administrative regulation;
2. The necessity of the amendment to the administrative regulation;
3. How the amendment conforms to the content of the authorizing statutes; and
4. How the amendment to the administrative regulation will assist in the effective administration of the statutes;
(c) The type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation;
(d) An assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment to an existing administrative regulation;
(e) An estimate of how much it will cost to implement this administrative regulation, both initially and on a continuing basis;
(f) The source of the funding to be used for the implementation and enforcement of the administrative regulation;
(g) An assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation or amendment to an existing administrative regulation; and
(h) A statement as to whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees.
(2) The Legislative Research Commission shall review all regulatory impact analyses submitted by all administrative bodies, and prepare a written analysis thereof and of the administrative regulation. The Legislative Research Commission may require any administrative body to submit background data upon which the information required by subsection (1) is based, and an explanation of how the data was gathered.
(Enact. Acts 1984, ch. 417, § 24, effective April 13, 1984; 1994, ch. 410, § 17, effective July 15, 1994; 2000, ch. 406, § 14, effective July 14, 2000.)

13A.245. Agencies to prepare a federal mandate analysis comparing proposed state regulatory standards to federal standards — Relationship between state administrative regulation and federal law or regulation governing a subject matter.
(1) (a) When promulgating administrative regulations and amending existing administrative regulations in response to a federal mandate, an administrative body shall compare its proposed compliance standards with any minimum or uniform standards suggested or contained in the federal mandate.
(b) Such a comparison shall include, in detail, a written determination by the administrative body on whether the proposed state administrative regulation will impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate.

(c) If the administrative body determines that the proposed state administrative regulation imposes additional requirements or responsibilities on the regulated entities than is required by the federal mandate, the administrative body shall include in its comparison analysis a written statement justifying the imposition of stricter standards, requirements, or responsibilities.

(2) (a) Except as provided by paragraph (b) of this subsection, an administrative regulation shall conform to a federal law or regulation governing a subject matter if an administrative body is:

1. Not required by federal law or regulation to promulgate an administrative regulation to comply with a federal law or regulation governing the subject matter; and
2. Required or authorized by state law to promulgate an administrative regulation governing the subject matter.

(b) If the administrative regulation is more stringent than or otherwise differs from the federal law or regulation governing the subject matter, the administrative body shall state in detail in the "NECESSITY, FUNCTION, AND CONFORMITY" paragraph of the administrative regulation the manner in which it is more stringent than or otherwise differs from the federal law or regulation, and the reasons therefor.

(Enact. Acts 1986, ch. 89, § 8, effective July 15, 1986; 1996, ch. 330, § 2, effective July 15, 1996.)

13A.250. Fiscal note.

(1) Each administrative body which promulgates an administrative regulation which relates to any aspect of local government or any service provided thereby shall prepare and submit with the administrative regulation a fiscal note.

(2) The form of the fiscal note shall be determined by the Commission by administrative regulation.

(3) Any administrative body may request the advice and assistance of the Commission in the preparation of the fiscal note.

(Enact. Acts 1984, ch. 417, § 25, effective April 13, 1984; 1994, ch. 410, § 18, effective July 15, 1994.)

13A.255. Notice of ordinary administrative regulation proposing to establish or increase fees.

(1) Within five (5) working days of the filing of an ordinary administrative regulation that proposes to establish or increase fees, except those fees exempted by KRS 13A.100(3), an administrative body shall mail a notice containing the information required by subsection (2) of this section, to each state association, organization, or other body representing a person or entity affected by the administrative regulation.

(2) The notice shall include the following information:

(a) The name of the administrative body that filed the proposed administrative regulation;

(b) A statement that the administrative body has promulgated an administrative regulation that establishes or increases fees;

(c) A summary of the administrative regulation that includes:

1. The amount of each fee being established;
2. The amount of any increases to any fees previously established; and
3. The necessity for the establishment or increase in the fees;

(d) A statement that a person or entity may contact the administrative body for additional information;

(e) The time, date, and place of the scheduled public hearing; and

(f) The name, address, and telephone number of the contact person for the administrative body.

(Enact. Acts 2000, ch. 406, § 1, effective July 14, 2000.)

13A.270. Public hearing — Notice — When notification of regulations compiler required.

(1) (a) Except as provided by paragraph (c) of this subsection, following publication in the Administrative Register of the text of an administrative regulation, the administrative body shall, unless authorized to cancel the hearing pursuant to subsection (4) of this section, hold a hearing, open to the public, on the administrative regulation.

(b) The public hearing shall not be held before the twenty-first day or later than the last workday of the month in which the administrative regulation is published in the Administrative Register.

(c) If an administrative body anticipates a significant number of public comments, it may extend the public comment period for up to fifteen (15) days by notifying the commission in writing on or before 12 noon of the scheduled public hearing date.

(2) Each administrative regulation shall state:

(a) The place, time, and date of the scheduled public hearing;

(b) The manner in which interested persons shall submit their:

1. Notification of attending the public hearing; and
2. Written comments;

(c) That notification of attending the public hearing shall be transmitted to the administrative body no later than five (5) workdays prior to the date of the scheduled public hearing; and

(d) The name, position, address, and telephone and facsimile numbers of the person to whom a notification and written comments shall be transmitted.

(3) Persons desiring to be heard at the hearing shall notify the administrative body in writing as to their desire to appear and testify at the hearing not less than five (5) workdays before the scheduled date of the hearing.

(4) The administrative body shall immediately notify the regulations compiler by telephone and by letter if:

(a) No written notice of intent to attend the public hearing is received by the administrative body at least five (5) workdays before the scheduled hearing, and it chooses to cancel the public hearing; or

(b) No written notice of intent to attend the public hearing is received by the administrative body at least five (5) workdays before the scheduled hearing; it has cancelled the public hearing; and it has received written or oral statements that shall be considered.

(5) Upon receipt from interested persons of their intent to attend a public hearing, the administrative body shall notify the regulations compiler by telephone and by letter that the public hearing shall be held.

(6) Every hearing shall be conducted in such a manner as to guarantee each person who wishes to offer comment a fair and reasonable opportunity to do so, whether or not such person has given the notice contemplated by subsection (3) of this section. No transcript need be taken of the hearing, unless a written request for a transcript is made, in which case the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. This section shall not preclude an administrative body from making a transcript or making a recording if it so desires.

(7) Nothing in this section shall be construed as requiring a separate hearing on each administrative regulation. Administrative regulations may be grouped at the convenience of the administrative body for purposes of hearings required by this section.

(Enact. Acts 1984, ch. 417, § 27, effective April 13, 1984; 1988, ch. 425; § 9, effective July 15, 1988; 1994, ch. 410, § 19, effective July 15, 1994; 1996, ch. 180, § 11, effective July 15, 1996.)

13A.280. Statement of consideration — Amendment — Format — Information required — Publication.

(1) Following the scheduled hearing date, the administrative body shall give consideration to all written and oral comments received by adjournment of the scheduled public hearing, or by the close of business on the scheduled public hearing date if the public hearing was not held.

(2) The administrative body shall then file with the commission on or before 12 noon, eastern time, on the fifteenth day following the scheduled hearing date the statement of consideration relating to the administrative regulation.

(3) (a) Except as provided by paragraph (b) of this subsection, if the administrative regulation is amended as a result of the hearing or written or oral comments received, the administrative body shall forward the items specified in paragraph (c) of this subsection to the regulations compiler by noon on the fifteenth day following the hearing.

(b) If an administrative body has received a significant number of public comments, it may extend the time for filing the statement of consideration for up to thirty (30) days by notifying the Commission in writing on or before 12 noon of the fifteenth day following the public hearing. The administrative body shall file with the Commission on or before 12 noon, eastern time, no later than the forty-fifth day following the public hearing date the items specified in paragraph (c) of this subsection.

(c) 1. The original and five (5) copies of the administrative regulation indicating any amendments in the original wording resulting from the hearing, or resulting from written or oral comments received at the hearing or otherwise;

2. The original and five (5) copies of the statement of consideration as required by subsection (2) of this section, attached to the back of the original and each copy of the administrative regulation; and

3. The regulatory impact analysis, tiering statement, federal mandate comparison, or fiscal note on local government. These documents shall reflect changes resulting from amendments made after the public hearing.

(4) The format for the statement of consideration shall be as follows:

(a) The statement shall be typewritten on white paper, size eight and one-half (8-½) by eleven (11) inches. Copies of the statement may be mechanically reproduced;

(b) The statement of consideration shall have a two (2) inch top margin.

(c) The heading of the statement shall consist of the words "STATEMENT OF CONSIDERATION RELATING TO" followed by the number of the administrative regulation that was the subject of the public hearing and the name of the promulgating administrative body. The heading shall be centered. This shall be followed by the words "Not Amended After Hearing" or "Amended After Hearing," whichever is applicable;

(d) If a hearing has been held the heading is to be followed by:

1. A statement setting out the date, time and place of the hearing;

2. A list of those attending the hearing or who have submitted written comments and the organization, agency, or other entity represented, if applicable; and

3. The name and title of the representative of the promulgating administrative body;

(e) If a hearing has not been held, but written or oral comments have been received:

1. A list of those who have submitted written or oral comments and the organization, agency, or other entity represented, if applicable; and

2. The name and title of the representative of the promulgating administrative body responding to the written or oral comments;

(f) Following the general information, the promulgating administrative body shall summarize the written and oral comments received and the response of the promulgating administrative body. Each subject commented upon shall be summarized in a separate numbered paragraph. Each numbered paragraph shall contain two (2) subsections:
1. Subsection (a) shall be labeled "Comment," shall identify the name of the person, and the organization represented if applicable, who made the comment, and shall contain a summary of the comment; and
2. Subsection (b) shall be labeled "Response" and shall contain the response to the comment by the promulgating administrative body;

(g) Following the summary and comments, the promulgating administrative body shall summarize the statement and the action taken by the administrative body as a result of the public hearing;

(h) If the promulgating administrative body amends the administrative regulation after a public hearing at which there were no participants other than administrative body personnel, this fact shall be noted in the statement; and

(i) If administrative regulations were considered as a group at a public hearing, one (1) statement of consideration may include the group of administrative regulations. If a comment relates to one (1) or more of the administrative regulations in the group, the summary of the comment and response shall specify each administrative regulation to which it applies.

(5) (a) If the administrative regulation is not amended as a result of the public hearing, or written or oral comments received, the administrative body shall file the original and five (5) copies of the statement of consideration as required by subsection (2) of this section with the regulations compiler by noon on the fifteenth day following the hearing.

(b) If the statement of consideration is not forwarded to the regulations compiler at least ten (10) working days prior to a meeting of the Administrative Regulation Review Subcommittee, the administrative regulation shall be deferred to the next regularly scheduled meeting of the subcommittee.

(6) If the administrative regulation is amended pursuant to subsection (3) of this section the full text of the administrative regulation shall be published in the Administrative Register. The administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee after such publication.

(7) If requested, copies of the statement of consideration shall be made available by the promulgating administrative body to persons attending the hearing or submitting comments.

(Enact. Acts 1984, ch. 417, § 28, effective April 13, 1984; 1988, ch. 425, § 10, effective July 15, 1988; 1990, ch. 516, § 26, effective July 13, 1990; 1994, ch. 410, § 20, effective July 15, 1994; 1996, ch. 180, § 12, effective July 15, 1996; 1998, ch. 38, § 6, effective July 15, 1998; 2000, ch. 406, § 15, effective July 14, 2000.)

13A.290. Review by Administrative Regulation Review Subcommittee — Review by subject-matter subcommittee or standing committee.

(1) Except as provided by KRS 158.6471 and 158.6472, within forty-five (45) days after publication of an administrative regulation in "The Administrative Register," or within forty-five (45) days of the receipt of a statement of consideration, the Administrative Regulation Review Subcommittee shall meet to review the administrative regulation.

(2) The meetings shall be open to the public.

(3) Public notice of the time, date, and place of the Administrative Regulation Review Subcommittee meeting shall be given in the Administrative Register.

(4) A representative of the administrative body promulgating the administrative regulation under consideration shall be present to explain the administrative regulation and to answer questions thereon. If a representative of the administrative body with authority to amend the administrative regulation is not present at the subcommittee meeting, the administrative regulation shall be deferred to the next regularly scheduled meeting of the subcommittee.

(5) Following the meeting and before the next regularly scheduled meeting of the Commission, the Administrative Regulation Review Subcommittee shall forward to the Commission its findings, recommendations, or other comments it deems appropriate in writing. The Administrative Regulation Review Subcommittee shall also forward to the Commission its findings, recommendations, or other comments it deems appropriate on an existing administrative regulation it has reviewed. One (1) copy thereof shall be sent to the promulgating agency. The Administrative Regulation Review Subcommittee's findings shall be published in the Administrative Register.

(6) (a) After review by the Administrative Regulation Review Subcommittee, the Commission shall, at its next regularly scheduled meeting, assign the matter to:
1. A subcommittee of appropriate jurisdiction over the subject matter; or
2. During a session of the General Assembly, the House of Representatives and Senate standing committees of appropriate jurisdiction over the subject matter.

(b) Upon notification of the assignment by the Commission, the legislative subcommittee to which the matter is assigned shall notify the regulations compiler:
1. Of the date, time, and place of the meeting at which it will consider the matter; or
2. That it will not meet to consider the matter.

(7) Within thirty (30) days of the assignment, the subcommittee shall hold a public meeting during which the regulation shall be reviewed. If the thirtieth day of the assignment falls on a Saturday, Sunday, or holiday, the deadline for review shall be the workday following the Saturday, Sunday, or holiday. The subcommittee may also review an existing administrative regulation and make a determination as provided by KRS 13A.030(2) and (3). Notice of the time, date, and place of the meeting shall be placed in the legislative calendar.

(8) Except as provided in subsection (9) of this section, a subcommittee shall be empowered to make the same nonbinding determinations and to exercise the same authority as the Administrative Regulation Review Subcommittee.

(9) During a session of the General Assembly, standing committees of the Senate and House of Representatives shall agree in order to amend an administrative regulation or to find an administrative regulation deficient pursuant to KRS 13A.030(2) and (3) by:

(a) Meeting separately; or

(b) Meeting jointly. If the standing committees meet jointly, it shall require a majority vote of Senate members voting and a majority of House members voting in order to take action on the administrative regulation.

(10) (a) Upon adjournment of the meeting at which a legislative subcommittee has considered an administrative regulation pursuant to subsection (7) of this section, the subcommittee shall inform the regulations compiler of its findings, recommendations, or other action taken on the administrative regulation.

(b) Following the meeting and before the next regularly scheduled meeting of the Commission, the subcommittee shall forward to the Commission its findings, recommendations, or other comments it deems appropriate in writing. One (1) copy thereof shall be sent to the promulgating agency. The subcommittee's findings shall be published in the Administrative Register.

(Enact. Acts 1984, ch. 417, § 29, effective April 13, 1984; 1988, ch. 71, § 2, effective July 15, 1988; 1988, ch. 425, § 11, effective July 15, 1988; 1990, ch. 516, § 27, effective July 13, 1990; 1994, ch. 410, § 21, effective July 15, 1994; 1996, ch. 180, § 13, effective July 15, 1996; 1998, ch. 598, § 8, effective April 14, 1998; 2000, ch. 406, § 16, effective July 14, 2000.)

13A.300. Request by promulgating agency or a subcommittee to defer consideration of proposal — Deferral prohibited without agency request — Consideration of deferred administrative regulation.

(1) The administrative body which has promulgated an administrative regulation may request at a meeting of a subcommittee that consideration of the administrative regulation be deferred by the subcommittee. Upon receipt of the request, the subcommittee may defer consideration of the administrative regulation.

(2) A subcommittee may request that consideration of an administrative regulation be deferred by the promulgating administrative body. Upon receipt of the request, the promulgating administrative body may agree to defer consideration of the administrative regulation.

(3) Except as provided in subsections (1) and (2) of this section, neither the promulgating administrative body, the Commission, nor a subcommittee shall defer any action which is required to be taken pursuant to this chapter.

(4) An administrative regulation that has been deferred shall be placed on the agenda of the next scheduled meeting of the subcommittee that is reviewing the administrative regulation. The subcommittee shall consider the administrative regulation as if it had met all other requirements of filing. Repromulgation shall not be required in such cases.

(Enact. Acts 1984, ch. 417, § 30, effective April 13, 1984; 1988, ch. 71, § 3, effective March 16, 1988; 1988, ch. 425, § 13, effective July 15, 1988; 1990, ch. 516, § 28, effective July 13, 1990; 1994, ch. 410, § 22, effective July 15, 1994; 1996, ch. 180, § 14, effective July 15, 1996; 2000, ch. 406, § 17, effective July 14, 2000.)

13A.310. Repeal or permissive withdrawal of administrative regulation.

(1) An administrative regulation, once adopted, cannot be withdrawn but shall be repealed if it is desired that it no longer be effective.

(2) An administrative regulation, once adopted, cannot be suspended but shall be repealed if it is desired to suspend its effect.

(3) (a) An administrative regulation shall be repealed only by the promulgation of an administrative regulation that:

1. Is titled "Repeal of (state number of administrative regulation to be repealed)";
2. Contains the reasons for repeal in the "NECESSITY, FUNCTION, AND CONFORMITY" paragraph;
3. Includes in the body of the administrative regulation, a citation to the number and title of the administrative regulation or regulations being repealed; and
4. Meets the filing and formatting requirements of KRS 13A.220.

(b) On the effective date of an administrative regulation that repeals an administrative regulation, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation from the Kentucky Administrative Regulations Service.

(c) An administrative body may repeal more than one (1) administrative regulation in an administrative regulation promulgated pursuant to paragraph (a) of this subsection if the administrative regulations being repealed are con-

tained in the same chapter of the Kentucky Administrative Regulations Service.

(4) An ordinary administrative regulation may be withdrawn by the promulgating agency at any time prior to its adoption. An ordinary administrative regulation that has been found deficient may be withdrawn by the promulgating agency at any time prior to receipt by the regulations compiler of the determination of the Governor made pursuant to KRS 13A.330 to 13A.331. If an ordinary administrative regulation is withdrawn, the administrative body shall inform the regulations compiler of the reasons for withdrawal in writing.

(5) Once an ordinary administrative regulation is withdrawn it shall not be reinstated, except by repromulgation as a totally new matter.

(Enact. Acts 1984, ch. 417, § 31, effective April 13, 1984; 1988, ch. 71, § 4, effective July 15, 1988; 1990, ch. 516, § 29, effective July 13, 1990; 1994, ch. 410, § 23, effective July 15, 1994; 1996, ch. 180, § 15, effective July 15, 1996; 1998, ch. 38, § 7, effective July 15, 1998; 2000, ch. 406, § 18, effective July 14, 2000.)

13A.312. Actions required when authority over a subject matter is transferred to another administrative body.

(1) If authority over a subject matter is transferred to another administrative body by statute or by executive order during the interim between regular sessions of the General Assembly, the administrative body:

(a) From which authority has been transferred shall repeal the existing administrative regulations governing the subject matter;

(b) That has been granted authority over the subject matter shall promulgate administrative regulations governing the subject matter;

(2) Agencies promulgating administrative regulations to comply with paragraphs (a) and (b) of subsection (1) of this section shall file the repeal and the new administrative regulation at the same time.

(3) Administrative regulations repealed under the provisions of this subsection shall be repealed as provided by KRS 13A.310(3).

(Enact. Acts 1996, ch. 180, § 20, effective July 15, 1996.)

13A.315. Mandatory withdrawal of administrative regulation prior to review by legislative subcommittee — Effect of noncompliance with chapter — Withdrawal of deficient administrative regulation upon Governor's determination.

(1) An administrative regulation shall be withdrawn and shall not be reviewed by a legislative subcommittee if:

(a) It has not been reviewed or approved by the official or administrative body with authority to review or approve;

(b) An item is not filed on or before a deadline specified by this chapter; or

(c) The administrative body has failed to comply with the provisions of this chapter governing the filing of administrative regulations, public hearings, and the statement of consideration.

(2) An administrative regulation which has not complied with all the provisions of this chapter and any regulations promulgated under this chapter shall be considered procedurally defective and void.

(3) (a) An administrative regulation that has been found deficient by a subcommittee shall be withdrawn immediately by the promulgating administrative body if, pursuant to KRS 13A.330 or 13A.331, the Governor has determined that it shall be withdrawn.

(b) The promulgating administrative body shall notify the regulations compiler in writing and by telephone that it is withdrawing an administrative regulation governed by the provisions of this subsection.

(c) The written withdrawal of an administrative regulation governed by the provisions of this subsection shall be made in a letter to the regulations compiler in the following format: "Pursuant to (KRS 13A.330(2)(b) or 13A.331(2)(b)), the Governor has determined that (administrative regulation number and title) shall be (withdrawn, or withdrawn and amended to conform to the finding of deficiency, as applicable). The (name of promulgating administrative body) withdraws (administrative regulation number and title)."

(d) An administrative regulation governed by the provisions of this subsection shall be considered withdrawn upon receipt by the regulations compiler of the written withdrawal.

(Enact. Acts 1990, ch. 516, § 1, effective July 13, 1990; 1994, ch. 410, § 24, effective July 15, 1994; 1998, ch. 350, § 1, effective July 15, 1998; 2000, ch. 406, § 24, effective July 14, 2000.)

13A.320. Amendment of administrative regulation during meeting of subcommittee or public meeting.

(1) (a) An administrative body may amend an administrative regulation at a subcommittee meeting with the consent of the subcommittee. A subcommittee may amend an administrative regulation at a subcommittee meeting with the consent of the administrative body.

(b) An administrative regulation shall not be amended at a public meeting of a subcommittee unless the amendment concerns an issue that was related to the administrative regulation filed with the Legislative Research Commission and was:

1. Considered at the public hearing; or
2. Raised pursuant to a written comment received by the administrative body pursuant to KRS 13A.280(1); or
3. Raised by the subcommittee.

(c) Nothing in this chapter shall be construed to require its resubmission or refiling or other action. The administrative regulation may be adopted as amended.

(d) Subsequent to its adoption, the administrative regulation shall be published in the Administrative Register, unless all amendments to the administrative regulation that were made at a meeting of a subcommittee:
1. Relate only to the format and drafting requirements of KRS 13A.220(5) and 13A.222(4)(b), (c), (i), (j), and (k); and
2. Do not alter the intent, meaning, conditions, standards, or other requirements of the administrative regulation.

(e) If the amendments to an administrative regulation made at a meeting of a subcommittee meet the requirements of paragraph (d) of this subsection, the regulations compiler shall publish a notice in the Administrative Register that the administrative regulation was amended at a subcommittee meeting only to comply with the format and drafting requirements of this chapter.

(2) When an administrative body intends to amend an administrative regulation at a meeting of the subcommittee, the following requirements shall be met:
(a) Amendments offered by the administrative body to resolve issues raised by a subcommittee prior to its meeting shall be approved by the head of the administrative body.
(b) Amendments initiated by the administrative body shall be contained in a letter to the subcommittee. The letter shall:
1. Identify the administrative body;
2. State the number and title of the administrative regulation;
3. Be dated;
4. Be filed with the regulations compiler at least five (5) workdays prior to the meeting of the subcommittee; and
5. Comply with the format requirements in paragraphs (c) and (d) of this subsection.
(c) On separate lines, the amendment shall be identified by the number of the:
1. Page;
2. Section, subsection, paragraph, subparagraph, as appropriate; and
3. Line.
(d) 1. If a word or phrase, whether or not underlined, is to be deleted, the amendment shall identify the word or phrase to be deleted and state that it is to be deleted. If a word or phrase is to be replaced by another word or phrase, the amendment shall specify the word or phrase that is to be deleted and shall specify the word or phrase that is to be inserted in lieu thereof.
2. If new language is to be inserted, the amendment shall state that it is to be inserted, and the new language shall be underlined.
3. If the amendment consists of no more than four (4) words, the words shall be placed between quotation marks. If the amendment consists of more than four (4) words, the amendment shall be indented and not placed between quotation marks.
4. If a section, subsection, paragraph, subparagraph, clause, or subclause is to be deleted in its entirety, the amendment shall identify it and state that it is deleted in its entirety, whether or not it contains underlined or bracketed language.

(3) An administrative body shall submit twenty (20) copies of an amendment to an administrative regulation to the regulations compiler prior to the subcommittee meeting at which the amendment will be considered.

(Enact. Acts 1984, ch. 417, § 32, effective April 13, 1984; 1988, ch. 71, § 5, effective July 15, 1988; 1988, ch. 425, § 12, effective July 15, 1988; 1990, ch. 516, § 30, effective July 13, 1990; 1994, ch. 410, § 25, effective July 15, 1994; 1996, ch. 180, § 16, effective July 15, 1996; 1998, ch. 38, § 10, effective July 15, 1998.)

13A.330. Adoption and effective date of administrative regulation — Governor's determination after finding of deficiency.

The provisions of this section shall apply to administrative regulations that are assigned pursuant to KRS 13A.290(6)(a)1.

(1) An administrative regulation that has not been found deficient by a legislative subcommittee shall be considered as adopted and shall become effective:
(a) Upon adjournment on the day a subcommittee meets to consider the administrative regulation pursuant to KRS 13A.290(7) if:
1. The administrative regulation is on the agenda of the subcommittee meeting;
2. A quorum of the subcommittee is present; and
3. The subcommittee:
a. Considers the administrative regulation; or
b. Fails to consider the administrative regulation and fails to agree to defer its consideration of the administrative regulation; or
(b) If a subcommittee fails to meet within thirty (30) days of assignment of an administrative regulation as provided in KRS 13A.290(7), or does not place the administrative regulation on the agenda of a meeting held within thirty (30) days of the referral of the administrative regulation to it by the Commission, at the expiration of the thirty (30) day period.

(2) If an administrative regulation has been found deficient by a legislative subcommittee, the legislative subcommittee shall transmit to the Governor:
(a) A copy of its finding of deficiency and other findings, recommendations, or comments it deems appropriate; and
(b) A request that the Governor determine whether the administrative regulation shall:
1. Be withdrawn;

2. Be withdrawn and amended to conform to the finding of deficiency; or
3. Become effective pursuant to the provisions of this section notwithstanding the finding of deficiency.

(3) If an administrative regulation has been found deficient by a legislative subcommittee, the legislative subcommittee shall transmit copies of its transmittal to the Governor to the regulations compiler.

(4) The Governor shall transmit his determination to the Commission and the regulations compiler.

(5) An administrative regulation that has been found deficient by a legislative subcommittee shall be considered as adopted and become effective after:

(a) 1. The subcommittee of appropriate jurisdiction to which an administrative regulation was assigned pursuant to KRS 13A.290(6) has:
a. Considered the administrative regulation;
b. Failed to consider the administrative regulation and failed to agree to defer its consideration of the administrative regulation; or
c. Failed to meet within thirty (30) days of such assignment; and

2. The regulations compiler has received the Governor's determination; that the administrative regulation shall become effective pursuant to the provisions of this section notwithstanding the finding of deficiency; or

(b) The legislative subcommittee that found the administrative regulation deficient subsequently determines that the administrative regulation is not deficient, provided that this determination was made prior to receipt by the regulations compiler of the Governor's determination.

(Enact. Acts 1984, ch. 417, § 33, effective April 13, 1984; 1988, ch. 71, § 6, effective July 15, 1988; 1990, ch. 516, § 31, effective July 13, 1990; 1994, ch. 410, § 26, effective July 15, 1994; 1996, ch. 180, § 17, effective July 15, 1996; 1996, ch. 269, § 1, effective July 15, 1996; 1998, ch. 38, § 8, effective July 15, 1998; 1998, ch. 350, § 2, effective July 15, 1998; 2000, ch. 406, § 19, effective July 14, 2000.)

13A.331. Administrative regulations assigned to standing committees of the General Assembly during a legislative session.

The provisions of this section shall apply to administrative regulations that are assigned pursuant to KRS 13A.290(6)(a)2.

(1) An administrative regulation that has not been found deficient by both standing committees shall be considered as adopted and shall become effective:

(a) Upon adjournment on the day the second standing committee meets to consider the administrative regulation pursuant to KRS 13A.290 if:
1. The administrative regulation is on the agenda of the standing committee meeting;
2. A quorum of the standing committee is present;
3. The standing committee:
a. Considers the administrative regulation; or
b. Fails to consider the administrative regulation and fails to agree to defer its consideration of the administrative regulation; and
4. Pursuant to KRS 13A.290(9), the decision of the standing committee to amend the administrative regulation is the same as the decision of the corresponding standing committee of the other chamber to amend the administrative regulation;

(b) Upon adjournment on the day the standing committee meeting jointly meets to consider the administrative regulation pursuant to KRS 13A.290 if:
1. The administrative regulation is on the agenda of the joint standing committee meeting;
2. A quorum of the joint standing committee is present;
3. The joint standing committee meeting:
a. Considers the administrative regulation; or
b. Fails to consider the administrative regulation and fails to agree to defer its consideration of the administrative regulation; or

(c) If a standing committee fails to meet within thirty (30) days of assignment of an administrative regulation as provided in KRS 13A.290, or does not place the administrative regulation on the agenda of a meeting held within thirty (30) days of the referral of the administrative regulation to it by the Commission, at the expiration of the thirty (30) day period.

(2) If an administrative regulation has been found deficient by both standing committees, or by the standing committees meeting jointly, the standing committees, or the standing committees meeting jointly shall transmit to the Governor:

(a) A copy of its finding of deficiency and other findings, recommendations, or comments it deems appropriate; and

(b) A request that the Governor determine whether the administrative regulation shall:
1. Be withdrawn;
2. Be withdrawn and amended to conform to the finding of deficiency; or
3. Become effective pursuant to the provisions of this section notwithstanding the finding of deficiency.

(3) If an administrative regulation has been found deficient by the standing committees or by the standing committees meeting jointly, the standing committees or standing committees meeting jointly shall transmit copies of its transmittal to the Governor to the regulations compiler.

(4) The Governor shall transmit his determination to the Commission and the regulations compiler.

(5) An administrative regulation that has been found deficient by the Administrative Regulation Review Subcommittee, the standing committees or by the standing committees meeting jointly shall be considered as adopted and become effective after:

(a) 1. The standing committees of appropriate jurisdiction to which an administrative regulation was assigned pursuant to KRS 13A.290 has:

a. Considered the administrative regulation;

b. Failed to consider the administrative regulation and failed to agree to defer its consideration of the administrative regulation; or

c. Failed to meet within thirty (30) days of such assignment; and

2. The regulations compiler has received the Governor's determination that the administrative regulation shall become effective pursuant to the provisions of this section notwithstanding the finding of deficiency; or

(b) The subcommittee, standing committees, or standing committees meeting jointly that found the administrative regulation deficient subsequently determines that the administrative regulation is not deficient, provided that this determination was made prior to receipt by the regulations compiler of the Governor's determination.

(Enact. Acts 2000, ch. 406, § 22, effective July 14, 2000.)

13A.333. Expiration of deficient regulations.

(1) If an administrative regulation is found deficient by a legislative subcommittee under the provisions of KRS Chapter 13A during a regular session of the General Assembly, it shall expire on adjournment of that regular session of the General Assembly.

(2) If an administrative regulation is found deficient by a legislative subcommittee under the provisions of KRS Chapter 13A during the interim between regular sessions of the General Assembly, it shall expire on adjournment of the next succeeding regular session of the General Assembly.

(3) The provisions of this section shall apply to all administrative regulations found deficient.

(4) If deferral of an administrative regulation at the request of an administrative body would result in its adoption after adjournment of a regular session of the General Assembly, it shall expire on adjournment of that regular session of the General Assembly.

(5) (a) An administrative body may prepare legislation proposing the enactment of the provisions of an administrative regulation found deficient by a subcommittee.

(b) Prior to the convening of the General Assembly in regular session, it shall notify the regulations compiler in writing of its intent to prepare legislation.

(c) It shall submit such legislation to the Legislative Research Commission.

(d) The proposed legislation may be introduced by any member of the General Assembly.

(6) (a) An administrative body shall be prohibited from promulgating an administrative regulation that is identical to or substantially the same as an administrative regulation which has expired pursuant to subsections (1), (2), and (4) of this section. This prohibition shall be effective for a two (2) year period running from the date of expiration of the administrative regulation.

(b) An administrative regulation shall be determined to be identical to or substantially the same as an administrative regulation that expired if it is deficient in the same manner as the administrative regulation that expired because it was found deficient.

(c) An administrative regulation shall not be determined to be identical to or substantially the same as an administrative regulation that expired if:

1. It contains the identical or substantially similar language or provisions that gave rise to the finding of deficiency of the expired administrative regulation; and

2. The identical or substantially similar language or provisions that gave rise to the finding of deficiency of the expired administrative regulation are required by state law, or federal law or regulation, or court decision.

(Enact. Acts 1990, ch. 516, § 4, effective July 13, 1990; 1996, ch. 180, § 18, effective July 15, 1996; 2000, ch. 406, § 20, effective July 14, 2000.)

13A.335. Reasons deficient regulation shall not expire.

(1) An administrative regulation found deficient by a subcommittee shall not expire if:

(a) A subsequent amendment of that administrative regulation is filed with the Commission by the administrative body;

(b) The subcommittee that found the administrative regulation deficient approves a motion that the subsequent amendment corrects such deficiency; and

(c) Any subcommittee that reviews the administrative regulation under the provisions of KRS Chapter 13A finds that the administrative regulation is not deficient.

(2) An administrative regulation found deficient by the Administrative Regulation Review Subcommittee shall not expire if:

(a) The administrative regulation is amended to correct the deficiency at a meeting of the subcommittee to which it was assigned by the Commission;

(b) That subcommittee does not determine that the administrative regulation is deficient for any other reason; and

(c) The Administrative Regulation Review Subcommittee approves a motion that the defi-

ciency has been corrected and that the administrative regulation should not expire.

(3) An administrative regulation found deficient by a subcommittee shall not expire if the subcommittee:
   (a) Reconsiders the administrative regulation and its finding of deficiency; and
   (b) Approves a motion that the administrative regulation is not deficient.

(4) (a) If an existing administrative regulation has been amended and found deficient by a subcommittee, it shall not expire if the:
      1. Administrative regulation was found deficient due to the amendment;
      2. Promulgating administrative body has withdrawn the proposed amendment of the existing administrative regulation; and
      3. Regulations compiler has not received the Governor's determination pursuant to KRS 13A.330 or 13A.331.
   (b) If an administrative regulation has been found deficient by a subcommittee, the regulations compiler shall add the following notice to the administrative regulation: "This administrative regulation shall expire on adjournment of the next regular session of the General Assembly." This notice shall be the last section of the administrative regulation.
   (c) If an administrative regulation has been found deficient by a subcommittee, subsequent amendments of that administrative regulation filed with the Commission shall contain the notice provided in paragraph (b) of this subsection.
   (d) If an administrative regulation that has been found deficient by a subcommittee has been amended and determined not to be deficient under the provisions of this section, the regulations compiler shall delete the notice required by paragraph (b) of this subsection.

(Enact. Acts 1990, ch. 516, § 5, effective July 13, 1990; 1996, ch. 180, § 19, effective July 15, 1996; 1998, ch. 350, § 3, effective July 15, 1998; 2000, ch. 406, § 21, effective July 14, 2000.)

13A.337. Legislative finding — Certain administrative regulations void — Prohibition against promulgating substantially similar regulations — Judicial review.

(1) The General Assembly finds that certain administrative regulations, as evidenced by the records of the Legislative Research Commission, including but not limited to the Kentucky Administrative Regulations Service and the Administrative Register of Kentucky, were found deficient on or after July 15, 1988, and either expired prior to or upon adjournment of the 2001 General Assembly, or were scheduled to expire upon adjournment of the 2002 Regular Session of the General Assembly, under the provisions of KRS Chapter 13A as existing before the issuance of the Opinion and Order of the Franklin Circuit Court in Patton v. Sherman et al., Civil Action No. 01-CI-00660, entered January 11, 2002.

(2) Contrary provisions of any section of the Kentucky Revised Statutes notwithstanding, the administrative regulations identified in subsection (1) of this section shall be null, void, and unenforceable, as follows:
   (a) Those administrative regulations identified in subsection (1) of this section which expired prior to or upon adjournment of the 2001 Regular Session of the General Assembly under the provisions of KRS Chapter 13A existing before the issuance of the court order referenced in subsection (1) of this section shall be null, void, and unenforceable as of their recorded date of expiration, according to the records of the Legislative Research Commission. Administrative bodies and regulated persons and entities have relied on the assumption that these administrative regulations have previously expired; therefore, this subsection shall have the retroactive effect necessary to implement its provisions; and
   (b) Those administrative regulations identified in subsection (1) of this section due to expire upon adjournment of the 2002 Regular Session of the General Assembly, under the provisions of KRS Chapter 13A existing before the issuance of the court order referenced in subsection (1) of this section, shall be null, void, and unenforceable on March 27, 2002.

(3) Contrary provisions of any section of the Kentucky Revised Statutes notwithstanding, an administrative body shall be prohibited from promulgating an administrative regulation that is identical to or substantially the same as any administrative regulation identified in subsection (1) of this section for a period beginning on January 11, 2002, and concluding upon adjournment of the 2003 Regular Session of the General Assembly. This subsection shall have the retroactive effect necessary to implement its provisions.

(4) The Legislative Research Commission may file an action in the Franklin Circuit Court for judicial review to determine if any administrative regulation is lawfully promulgated in accordance with the laws and Constitution of the Commonwealth of Kentucky.

(Enact. Acts 2002, ch. 76, § 1, effective March 27, 2002.)

13A.350. Application of chapter.

(1) The provisions of this chapter shall apply to all grants of authority to promulgate administrative regulations and no administrative regulation shall be promulgated or adopted unless in conformity with the provisions of this chapter.

(2) The provisions of this chapter shall apply to all other acts passed by the 1984 Session of the General Assembly.

(3) Any grant of authority for an administrative body to promulgate rules or standards is repealed, unless authorized by this chapter.

(4) Any grant of authority for an administrative body to promulgate administrative regulations which is in conflict with the provisions of this chapter shall be repealed to the extent that it conflicts with the provisions of this chapter, regardless of whether the grant of authority is broader than that contained in this chapter.
(5) Any existing statute and any act passed by the 1984 Session of the General Assembly which is in conflict with the provisions of this chapter is repealed to the extent of the conflict.

(Enact. Acts 1984, ch. 417, § 35, effective April 13, 1984.)

CHAPTER 13B

ADMINISTRATIVE HEARINGS

SECTION.

13B.005. Short title for KRS 13B.005 to 13B.170.
13B.010. Definitions for chapter.
13B.020. Application of chapter — Exemptions.
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13B.130. Official record of hearing.
13B.140. Judicial review of final order.
13B.150. Conduct of judicial review.
13B.160. Judicial appeal.
13B.170. Administrative regulations.

13B.005. Short title for KRS 13B.005 to 13B.170.

KRS 13B.005 to 13B.170 shall be named the Albert Jones Act of 1994.

(Enact. Acts 1994, ch. 382, § 21, effective July 15, 1994.)

Cross-References. Administrative hearing procedures for determination of residency status, 13 KAR 2:070.

Determination of residency status for admission and tuition assessment purposes, 13 KAR 2:045.

Notice of action and administrative appeal, 908 KAR 2:170.

13B.010. Definitions for chapter.

As used in this chapter, unless the context requires otherwise:

(1) "Administrative agency" or "agency" means each state board, bureau, cabinet, commission, department, authority, officer, or other entity in the executive branch of state government authorized by law to conduct administrative hearings.
(2) "Administrative hearing" or "hearing" means any type of formal adjudicatory proceeding conducted by an agency as required or permitted by statute or regulation to adjudicate the legal rights, duties, privileges, or immunities of a named person.
(3) "Party" means:
  (a) The named person whose legal rights, duties, privileges, or immunities are being adjudicated in the administrative hearing;
  (b) Any other person who is duly granted intervention in an administrative hearing; and
  (c) Any agency named as a party to the adjudicatory proceeding or entitled or permitted by the law being enforced to participate fully in the administrative hearing.
(4) "Agency head" means the individual or collegial body in an agency that is responsible for entry of a final order.
(5) "Recommended order" means the whole or part of a preliminary hearing report to an agency head for the disposition of an administrative hearing.
(6) "Final order" means the whole or part of the final disposition of an administrative hearing, whenever made effective by an agency head, whether affirmative, negative, injunctive, declaratory, agreed, or imperative in form.
(7) "Hearing officer" means the individual, duly qualified and employed pursuant to this chapter, assigned by an agency head as presiding officer for an administrative hearing or the presiding member of the agency head.
(8) "Division" means the Division of Administrative Hearings in the Office of the Attorney General created pursuant to KRS 15.111.

(Enact. Acts 1994, ch. 382, § 1, effective July 15, 1996; 1996, ch. 318, § 1, effective July 15, 1996.)

Compiler's Notes. Acts 1994, ch. 382, § 20 provided that this section "shall become effective on the normal effective date for legislation enacted by the 1996 Regular Session of the General Assembly."

Cross-References. Student appeals process, 11 KAR 4:030.

13B.020. Application of chapter — Exemptions.

(1) The provisions of this chapter shall apply to all administrative hearings conducted by an agency, with the exception of those specifically exempted under this section. The provisions of this chapter shall supersede any other provisions of the Kentucky Revised Statutes and administrative regulations, unless exempted under this section, to the extent these other provisions are duplicative or in conflict. This chapter creates only procedural rights and shall not be construed to confer upon any person a right to hearing not expressly provided by law.
(2) The provisions of this chapter shall not apply to:
  (a) Investigations, hearings to determine probable cause, or any other type of information gathering or fact finding activities;
  (b) Public hearings required in KRS Chapter 13A for the promulgation of administrative regulations;
  (c) Any other public hearing conducted by an administrative agency which is nonadjudicatory in nature and the primary purpose of

which is to seek public input on public policy making;

(d) Military adjudicatory proceedings conducted in accordance with KRS Chapter 35;

(e) Administrative hearings conducted by the legislative and judicial branches of state government;

(f) Administrative hearings conducted by any city, county, urban-county, charter county, or special district contained in KRS Chapters 65 to 109, or any other unit of local government operating strictly in a local jurisdictional capacity;

(g) Informal hearings which are part of a multilevel hearing process that affords an administrative hearing at some point in the hearing process if the procedures for informal hearings are approved and promulgated in accordance with subsections (4) and (5) of this section;

(h) Limited exemptions granted for specific hearing provisions and denoted by reference in the text of the applicable statutes or administrative regulations;

(i) Administrative hearings exempted pursuant to subsection (3) of this section;

(j) Administrative hearings exempted, in whole or in part, pursuant to subsections (4) and (5) of this section; and

(k) Any administrative hearing which was commenced but not completed prior to July 15, 1996.

(3) The following administrative hearings are exempt from application of this chapter in compliance with 1994 Ky. Acts ch. 382, sec. 19:

(a) Finance and Administration Cabinet

1. Higher Education Assistance Authority

a. Wage garnishment hearings conducted under authority of 20 U.S.C. sec. 1095a and 34 C.F.R. sec. 682.410

b. Offset hearings conducted under authority of 31 U.S.C. sec. 3720A and sec. 3716, and 34 C.F.R. sec. 30.33

(b) Cabinet for Health Services

1. Office of Certificate of Need

a. Certificate-of-need hearings and licensure conducted under authority of KRS Chapter 216B

b. Licensure revocation hearings conducted under authority of KRS Chapter 216B

(c) Cabinet for Families and Children

1. Department for Community Based Services

a. Supervised placement revocation hearings conducted under authority of KRS Chapter 630

2. Department for Disability Determination Services

a. Disability determination hearings conducted under authority of 20 C.F.R. sec. 404

(d) Justice Cabinet

1. Department of State Police

a. State Police Trial Board disciplinary hearings conducted under authority of KRS Chapter 16

2. Department of Corrections

a. Parole Board hearings conducted under authority of KRS Chapter 439

b. Prison adjustment committee hearings conducted under authority of KRS Chapter 197

c. Prison grievance committee hearings conducted under authority of KRS Chapters 196 and 197

3. Department of Juvenile Justice

a. Supervised placement revocation hearings conducted under KRS Chapter 635

(e) Labor Cabinet

1. Department of Workers' Claims

a. Workers' compensation hearings conducted under authority of KRS Chapter 342

(f) Natural Resources and Environmental Protection Cabinet

1. Department for Surface Mining Reclamation and Enforcement

a. Surface mining hearings conducted under authority of KRS Chapter 350

2. Department for Environmental Protection

a. Wild River hearings conducted under authority of KRS Chapter 146

b. Water resources hearings conducted under authority of KRS Chapter 151

c. Water plant operator and water well driller hearings conducted under authority of KRS Chapter 223

d. Environmental protection hearings conducted under authority of KRS Chapter 224

(g) Kentucky Occupational Safety and Health Review Commission

1. Occupational safety and health hearings conducted under authority of KRS Chapter 338

(h) Public Protection and Regulation Cabinet

1. Board of Claims

a. Liability hearings conducted under authority of KRS Chapter 44

2. Public Service Commission

a. Utility hearings conducted under authority of KRS Chapters 74, 278, and 279

(i) Cabinet for Workforce Development

1. Department for Employment Services

a. Unemployment Insurance hearings conducted under authority of KRS Chapter 341

(j) Secretary of State

1. Registry of Election Finance

a. Campaign finance hearings conducted under authority of KRS Chapter 121

(k) State universities and colleges

1. Student suspension and expulsion hearings conducted under authority of KRS Chapter 164

2. University presidents and faculty removal hearings conducted under authority of KRS Chapter 164

3. Campus residency hearings conducted under authority of KRS Chapter 164
4. Family Education Rights to Privacy Act hearings conducted under authority of 20 U.S.C. sec. 1232 and 34 C.F.R. sec. 99
5. Federal Health Care Quality Improvement Act of 1986 hearings conducted under authority of 42 U.S.C. sec. 11101 to 11115 and KRS Chapter 311.

(4) Any administrative hearing, or portion thereof, may be certified as exempt by the Attorney General based on the following criteria:
(a) The provisions of this chapter conflict with any provision of federal law or regulation with which the agency must comply, or with any federal law or regulation with which the agency must comply to permit the agency or persons within the Commonwealth to receive federal tax benefits or federal funds or other benefits;
(b) Conformity with the requirement of this chapter from which exemption is sought would be so unreasonable or so impractical as to deny due process because of undue delay in the conduct of administrative hearings; or
(c) The hearing procedures represent informal proceedings which are the preliminary stages or the review stages of a multilevel hearing process, if the provisions of this chapter or the provisions of a substantially equivalent hearing procedure exempted under subsection (3) of this section are applied at some level within the multilevel process.

(5) The Attorney General shall not exempt an agency from any requirement of this chapter until the agency establishes alternative procedures by administrative regulation which, insofar as practical, shall be consistent with the intent and purpose of this chapter. When regulations for alternative procedures are submitted to the Administrative Regulation Review Subcommittee, they shall be accompanied by the request for exemption and the approval of exemption from the Attorney General. The decision of the Attorney General, whether affirmative or negative, shall be subject to judicial review in the Franklin Circuit Court within thirty (30) days of the date of issuance. The court shall not overturn a decision of the Attorney General unless the decision was arbitrary or capricious or contrary to law.

(6) Except to the extent precluded by another provision of law, a person may waive any procedural right conferred upon that person by this chapter.

(Enact. Acts 1994, ch. 382, § 2, effective July 15, 1996; 1996, ch. 318, § 2, effective July 15, 1996; 1998, ch. 426, § 63, effective July 15, 1998; 1998, ch. 538, § 12, effective April 13, 1998; 2000, ch. 14, § 2, effective July 14, 2000.)

Legislative Research Commission Note. (7/15/98). This section was amended by 1998 Ky. Acts chs. 426 and 538. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 538, which was a nonrevisory Act, prevails under KRS 7.136(3).

Compiler's Notes. Acts 1994, ch. 382, § 20 provided that this section "shall become effective on the normal effective date for legislation enacted by the 1996 Regular Session of the General Assembly."

13B.030. Powers of agency head — Hearing officers.

(1) An agency head may exercise all powers conferred on an agency relating to the conduct of administrative hearings, and he may delegate conferred powers to a hearing officer or a member of a collegial body that serves as an agency head, or he may delegate conferred powers to a hearing officer to conduct an administrative hearing before a hearing panel, reserving the authority to render a recommended order to that panel. An agency head may not, however, delegate the power to issue a final order unless specifically authorized by statute, or unless disqualified in accordance with KRS 13B.040(2).

(2) (a) In securing hearing officers as necessary to conduct administrative hearings under the jurisdiction of the agency, an agency may:
1. Employ hearing officers;
2. Contract with another agency for hearing officers; or
3. Contract with private attorneys through personal service contract.

(b) An agency may secure hearing officers pursuant to subsection (2)(a)3. of this section only if the Attorney General has first determined that the Attorney General's Office cannot provide the needed hearing officers to the agency. If the Attorney General determines that the Attorney General's Office can provide the needed hearing officers to the agency, the agency shall use the hearing officers provided by the Attorney General's Office. The expenses incurred by the Attorney General's Office in providing the hearing officers to the agency shall be paid to the Attorney General's Office by the agency in the following manner:
1. The amount to be paid by the agency to the Attorney General's Office shall be established by vouchers submitted by the Attorney General's Office to the agency which shall be promptly paid by the agency, at the beginning of, at the end of, or at any time during the provision of the hearing officers by the Attorney General's Office.
2. The expenses to be paid to the Attorney General's Office shall be calculated according to the amount of time spent by the salaried hearing officers of the Attorney General's Office in providing the services. The charge for time spent shall not exceed twenty-five percent (25%) more than the amount allowed for a sole practitioner under personal service contract. The Attorney General may require payment in advance of the provision of the requested services based on his calculation of the amount of time that will be spent by the salaried hearing officers of the Attorney

General's Office in providing the services. The agency shall be reimbursed for any overpayment at the conclusion of the provision of services by the Attorney General's Office.

(3) A hearing officer shall possess and meet qualifications as the Personnel Cabinet and the employing agency, with the advice of the division, may find necessary to assure competency in the conduct of an administrative hearing. The qualifications in this subsection shall not, however, apply to a member of a board, commission, or other collegial body who may serve as a hearing officer in his capacity as a member of the collegial body.

(4) All hearing officers, including members of collegial bodies who serve as hearing officers, shall receive training necessary to prepare them to conduct a competent administrative hearing. The training shall pertain to the conduct of administrative hearings generally and to the applications of the provisions of this chapter, specifically. The division shall establish by administrative regulation minimum standards concerning the length of training, course content, and instructor qualifications. Required training shall not exceed eighteen (18) classroom hours for initial training and six (6) classroom hours per year for continuing training. Actual training may be conducted by an agency or any other organization, if the training program offered has been approved by the division as meeting minimum standards.

(Enact. Acts 1994, ch. 382, § 3, effective July 15, 1996; 1996, ch. 318, § 3, effective July 15, 1996; 1998, ch. 154, § 4, effective July 15, 1998.)

Compiler's Notes. Acts 1994, ch. 382, § 20 provided that this section "shall become effective on the normal effective date for legislation enacted by the 1996 Regular Session of the General Assembly."

13B.040. Qualifications of hearing officer.

(1) A person who has served as an investigator or prosecutor in an administrative hearing or in its preadjudicative stage shall not serve as hearing officer or assist or advise a hearing officer in the same proceeding. This shall not be construed as preventing a person who has participated as a hearing officer in a determination of probable cause or other equivalent preliminary determination from serving as a hearing officer in the same proceeding.

(2) (a) A hearing officer, agency head, or member of an agency head who is serving as a hearing officer shall voluntarily disqualify himself and withdraw from any case in which he cannot afford a fair and impartial hearing or consideration. Any party may request the disqualification of a hearing officer, agency head, or member of the agency head by filing an affidavit, upon discovery of facts establishing grounds for a disqualification, stating the particular grounds upon which he claims that a fair and impartial hearing cannot be accorded. A request for the disqualification of a hearing officer shall be answered by the agency head within sixty (60) days of its filing. The request for disqualification and the disposition of the request shall be a part of the official record of the proceeding. Requests for disqualification of a hearing officer shall be determined by the agency head. Requests for disqualification of a hearing officer who is a member of the agency head shall be determined by the majority of the remaining members of the agency head.

(b) Grounds for disqualification of a hearing officer shall include, but shall not be limited to, the following:

1. Serving as an investigator or prosecutor in the proceeding or the preadjudicative stages of the proceeding;
2. Participating in an ex parte communication which would prejudice the proceedings;
3. Having a pecuniary interest in the outcome of the proceeding; or
4. Having a personal bias toward any party to a proceeding which would cause a prejudgment on the outcome of the proceeding.

(Enact. Acts 1994, ch. 382, § 4, effective July 15, 1996; 1996, ch. 318, § 4, effective July 15, 1996; 1998, ch. 279, § 1, effective July 15, 1998.)

Compiler's Notes. Acts 1994, ch. 382, § 20 provided that this section "shall become effective on the normal effective date for legislation enacted by the 1996 Regular Session of the General Assembly."

13B.050. Notice of administrative hearing.

(1) In any administrative hearing, the agency shall conduct the hearing as soon as practicable and shall give notice of the hearing to the parties not less than twenty (20) days in advance of the date set for the hearing, unless otherwise required by federal law. An agency shall make reasonable effort to schedule a hearing on a date that is convenient to the parties involved.

(2) The notice required by subsection (1) of this section shall be served on the parties by certified mail, return receipt requested, sent to the last known address of the parties, or by personal service, with the exception of notices of Personnel Board hearings and all board orders which may be served by first-class mail. Service by certified mail shall be complete upon the date on which the agency receives the return receipt or the returned notice.

(3) The notice required by this section shall be in plain language and shall include:

(a) A statement of the date, time, place, and nature of the hearing;

(b) The name, official title, and mailing address of the hearing officer;

(c) The names, official titles, mailing addresses, and, if available, telephone numbers of all parties to the hearing, including the counsel or representative of the agency;

(d) A statement of the factual basis for the agency action along with a statement of issues in-

volved, in sufficient detail to give the parties reasonable opportunity to prepare evidence and argument;

(e) A reference to the specific statutes and administrative regulations which relate to the issues involved and the procedure to be followed in the hearing;

(f) A statement advising the person of his right to legal counsel;

(g) A statement of the parties' right to examine, at least five (5) days prior to the hearing, a list of witnesses the parties expect to call at the hearing, any evidence to be used at the hearing and any exculpatory information in the agency's possession; and

(h) A statement advising that any party who fails to attend or participate as required at any stage of the administrative hearing process may be held in default under this chapter.

(4) If an agency decides not to conduct an administrative hearing in response to a petition, the agency shall notify the petitioner of its decision in writing, with a brief statement of the agency's reasons and any administrative review available to the petitioner.

(Enact. Acts 1994, ch. 382, § 5, effective July 15, 1996; 1996, ch. 318, § 5, effective July 15, 1996; 1998, ch. 425, § 1, effective July 15, 1998.)

Compiler's Notes. Acts 1994, ch. 382, § 20 provided that this section "shall become effective on the normal effective date for legislation enacted by the 1996 Regular Session of the General Assembly."

13B.060. Petition for intervention.

(1) The hearing officer shall grant a petition for intervention if:

(a) The petitioner has a statutory right to initiate the proceeding in which he wishes to intervene; or

(b) The petitioner has an interest which is or may be adversely affected by the outcome of the proceeding.

(2) The hearing officer may grant intervention after consideration of the following factors and a determination that intervention is in the interests of justice:

(a) The nature of the issues;

(b) The adequacy of representation of the petitioner's interest which is provided by the existing parties to the proceeding;

(c) The ability of the petitioner to present relevant evidence and argument; and

(d) The effect of intervention on the agency's ability to implement its statutory mandate.

(3) Unless otherwise required by federal law, a petition for intervention shall be filed and copies mailed to all parties named in the notice of the hearing, at least fourteen (14) days before the hearing. The parties to the hearing shall have seven (7) days within which to file any response they may have to the petition to intervene. If a petitioner qualifies for intervention under subsection (2) of this section, the hearing officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

(b) Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

(c) Requiring two (2) or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

(4) The hearing officer, at least three (3) days before the hearing, shall issue an order granting or denying each pending petition for intervention, specifying any conditions, and briefly stating the reasons for the order. The hearing officer shall promptly give notice of an order granting, denying, or modifying intervention to the petitioner for intervention and to all parties.

(Enact. Acts 1994, ch. 382, § 6, effective July 15, 1996; 1996, ch. 318, § 6, effective July 15, 1996.)

Compiler's Notes. Acts 1994, ch. 382, § 20 provided that this section "shall become effective on the normal effective date for legislation enacted by the 1996 Regular Session of the General Assembly."

13B.070. Prehearing conference — Mediation and informal settlement procedures.

(1) A hearing officer may convene and conduct a prehearing conference upon reasonable notice to all parties to explore jurisdictional matters, mediation and settlement possibilities, preparation of stipulations, clarification of issues, rulings on witnesses, taking of evidence, issuance of subpoenas and orders, and other matters that will promote the orderly and prompt conduct of the hearing.

(2) Upon conclusion of a prehearing conference, the hearing officer shall issue a prehearing order incorporating all matters determined at the prehearing conference. If a prehearing conference is not held, the hearing officer may issue a prehearing order, based on the pleadings, to regulate the conduct of the hearing.

(3) Except to the extent precluded by another provision of law, mediation or informal settlement of matters that may make unnecessary more elaborate proceedings under this chapter is encouraged. Agencies that employ informal settlement procedures shall establish by administrative regulation the specific procedures to be used. This subsection shall not be construed, however, as requiring any party to settle a matter pursuant to informal procedures when the right to an administrative hearing is conferred.

(Enact. Acts 1994, ch. 382, § 7, effective July 15, 1996; 1996, ch. 318, § 7, effective July 15, 1996; 1998, ch. 261, § 1, effective July 15, 1998.)

Compiler's Notes. Acts 1994, ch. 382, § 20 provided that this section "shall become effective on the normal effective date for legislation enacted by the 1996 Regular Session of the General Assembly."

Cross-References. Student appeals process, 11 KAR 4:030.

13B.080. Conduct of hearing.

(1) A hearing officer shall preside over the conduct of an administrative hearing and shall regulate the course of the proceedings in a manner which will promote the orderly and prompt conduct of the hearing. When a prehearing order has been issued, the hearing officer shall regulate the hearing in conformity with the prehearing order.

(2) The hearing officer, at appropriate stages of the proceedings, shall give all parties full opportunity to file pleadings, motions, objections, and offers of settlement. The hearing officer, at appropriate stages of the proceedings, may give all parties full opportunity to file briefs, proposed findings of fact and conclusions of law, and proposed recommended or final orders. The original of all filings shall be mailed to the agency, and copies of any filed item shall be served on all parties and the hearing officer by mail or any other means permitted by law or prescribed by agency administrative regulation. The agency shall when it is received stamp the time and date upon a document.

(3) The hearing officer may issue subpoenas and discovery orders when requested by a party or on his own volition. When a subpoena is disobeyed, any party may apply to the Circuit Court of the judicial circuit in which the administrative hearing is held for an order requiring obedience. Failure to comply with an order of the court shall be cause for punishment as a contempt of the court.

(4) To the extent necessary for the full disclosure of all relevant facts and issues, the hearing officer shall afford all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted by limited grant of intervention or a prehearing order.

(5) Any party to an administrative hearing may participate in person or be represented by counsel. In informal proceedings, a party may be represented by other professionals if appropriate and if permitted by the agency by administrative regulation.

(6) If a party properly served under KRS 13B.050 fails to attend or participate in a prehearing conference, hearing, or other stage of the administrative hearing process, or fails to comply with the orders of a hearing officer, the hearing officer may adjourn the proceedings and issue a default order granting or denying relief as appropriate, or may conduct the proceedings without the participation of the defaulting party, having due regard for the interests of justice and the orderly and prompt conduct of the proceedings. A default order shall be considered a recommended order and shall be processed as provided in KRS 13B.110.

(7) A hearing officer may conduct all or part of an administrative hearing, or a prehearing conference, by telephone, television, or other electronic means, if each party to the hearing has an opportunity to hear, and, if technically feasible, to see the entire proceeding as it occurs, and if each party agrees.

(8) An administrative hearing shall be open to the public unless specifically closed pursuant to a provision of law. If an administrative hearing is conducted by telephone, television, or other electronic means, and is not closed, public access shall be satisfied by giving the public an opportunity, at reasonable times, to hear or inspect the agency's record.

(Enact. Acts 1994, ch. 382, § 8, effective July 15, 1996; 1996, ch. 318, § 8, effective July 15, 1996.)

Compiler's Notes. Acts 1994, ch. 382, § 20 provided that this section "shall become effective on the normal effective date for legislation enacted by the 1996 Regular Session of the General Assembly."

13B.090. Findings of fact — Evidence — Recording of hearing — Burdens of proof.

(1) In an administrative hearing, findings of fact shall be based exclusively on the evidence on the record. The hearing officer shall exclude evidence that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this Commonwealth. Hearsay evidence may be admissible, if it is the type of evidence that reasonable and prudent persons would rely on in their daily affairs, but it shall not be sufficient in itself to support an agency's findings of facts unless it would be admissible over objections in civil actions.

(2) All testimony shall be made under oath or affirmation. Any part of the evidence may be received in written form if doing so will expedite the hearing without substantial prejudice to the interests of any party. The hearing officer may make a recommended order in an administrative hearing submitted in written form if the hearing officer determines there are no genuine issues of material fact in dispute and judgment is appropriate as a matter of law.

(3) Any party shall have the right to inspect, at least five (5) days prior to the hearing, a list of all witnesses every other party expects to call at the hearing, and the available documentary or tangible evidence relating to an administrative hearing either in person or by counsel. Copies of documentary evidence may be obtained upon the payment of a fee, except documents protected from disclosure by state or federal law. Nothing in this section shall be construed as giving a party the right to examine or copy the personal notes, observations, or conclusions of the agency staff, unless exculpatory in nature, nor shall it be construed as allowing access to the work product of counsel for the agency. Conditions for examining and copying agency records, fees to be charged, and other matters pertaining to access to these records shall be governed by KRS 61.870 to 61.884. To the extent required by due process, the hearing officer may

order the inspection of any records excluded from the application of KRS 61.870 to 61.884 under KRS 61.878 that relate to an act, transaction, or event that is a subject of the hearing, and may order their inclusion in the record under seal.

(4) Objections to evidentiary offers may be made by any party and shall be noted in the record.

(5) The hearing officer may take official notice of facts which are not in dispute, or of generally-recognized technical or scientific facts within the agency's specialized knowledge. The hearing officer shall notify all parties, either before or during the hearing, or in preliminary reports or otherwise, of any facts so noticed and their source. All parties shall be given an opportunity to contest facts officially noticed.

(6) The agency shall cause all testimony, motions, and objections in a hearing to be accurately and completely recorded. Any person, upon request, may receive a copy of the recording or a copy of the transcript, if the hearing has been transcribed, at the discretion of the agency, unless the hearing is closed by law. The agency may prepare a transcript of a hearing or a portion of a hearing upon request but the party making the request shall be responsible for the transcription costs. The form of all requests and fees charged shall be consistent with KRS 61.870 to 61.884.

(7) In all administrative hearings, unless otherwise provided by statute or federal law, the party proposing the agency take action or grant a benefit has the burden to show the propriety of the agency action or entitlement to the benefit sought. The agency has the burden to show the propriety of a penalty imposed or the removal of a benefit previously granted. The party asserting an affirmative defense has the burden to establish that defense. The party with the burden of proof on any issue has the burden of going forward and the ultimate burden of persuasion as to that issue. The ultimate burden of persuasion in all administrative hearings is met by a preponderance of evidence in the record. Failure to meet the burden of proof is grounds for a recommended order from the hearing officer.

(Enact. Acts 1994, ch. 382, § 9, effective July 15, 1996; 1996, ch. 318, § 9, effective July 15, 1996.)

Compiler's Notes. Acts 1994, ch. 382, § 20 provided that this section "shall become effective on the normal effective date for legislation enacted by the 1996 Regular Session of the General Assembly."

13B.100. Prohibited communications.

(1) Unless required for the disposition of ex parte matters specifically authorized by statute, a hearing officer shall not communicate off the record with any party to the hearing or any other person who has a direct or indirect interest in the outcome of the hearing, concerning any substantive issue, while the proceeding is pending.

(2) The prohibition stated in subsection (1) shall not apply to:

(a) Communication with other agency staff, if the communication is not an ex parte communication received by staff; and

(b) Communication among members of a collegial body or panel which by law is serving as a hearing officer.

(3) If an ex parte communication occurs, the hearing officer shall note the occurrence for the record, and he shall place in the record a copy of the communication, if it was written, or a memorandum of the substance of the communication, if it was oral.

(Enact. Acts 1994, ch. 382, § 10, effective July 15, 1996.)

Compiler's Notes. Acts 1994, ch. 382, § 20 provided that this section "shall become effective on the normal effective date for legislation enacted by the 1996 Regular Session of the General Assembly."

13B.110. Recommended order.

(1) Except when a shorter time period is provided by law, the hearing officer shall complete and submit to the agency head, no later than sixty (60) days after receiving a copy of the official record of the proceeding, a written recommended order which shall include his findings of fact, conclusion of law, and recommended disposition of the hearing, including recommended penalties, if any. The recommended order shall also include a statement advising parties fully of their exception and appeal rights.

(2) If an extension of time is needed by the hearing officer to complete and submit his recommended order to the agency head, the hearing officer shall show good cause to the agency head, in writing, and based upon substantial proof, that an extension of time is needed.

(3) If the agency head, after a showing of good cause, grants the hearing officer an extension of time:

(a) The extension shall not exceed thirty (30) days from the date the extension was granted;

(b) The statement granting the extension shall be included in the record of the hearing; and

(c) Notice of the extension shall be sent to all parties.

(4) A copy of the hearing officer's recommended order shall also be sent to each party in the hearing and each party shall have fifteen (15) days from the date the recommended order is mailed within which to file exceptions to the recommendations with the agency head. Transmittal of a recommended order may be sent by regular mail to the last known address of the party.

(5) The provisions of this section shall not apply in an administrative hearing where the hearing officer conducts the hearing in the presence of the agency head who renders a decision without the recommendation of the hearing officer.

(Enact. Acts 1994, ch. 382, § 11, effective July 15, 1996; 1996, ch. 318, § 10, effective July 15, 1996.)

Compiler's Notes. Acts 1994, ch. 382, § 20 provided that this section "shall become effective on the normal effective

date for legislation enacted by the 1996 Regular Session of the General Assembly."

13B.120. Final order.

(1) In making the final order, the agency head shall consider the record including the recommended order and any exceptions duly filed to a recommended order.

(2) The agency head may accept the recommended order of the hearing officer and adopt it as the agency's final order, or it may reject or modify, in whole or in part, the recommended order, or it may remand the matter, in whole or in part, to the hearing officer for further proceedings as appropriate.

(3) The final order in an administrative hearing shall be in writing and stated in the record. If the final order differs from the recommended order, it shall include separate statements of findings of fact and conclusions of law. The final order shall also include the effective date of the order and a statement advising parties fully of available appeal rights.

(4) Except as otherwise required by federal law, the agency head shall render a final order in an administrative hearing within ninety (90) days after:

(a) The receipt of the official record of the hearing in which there was no hearing officer submitting a recommended order under KRS 13B.110; or

(b) The hearing officer submits a recommended order to the agency head, unless the matter is remanded to the hearing officer for further proceedings.

(5) Unless waived by the party, a copy of the final order shall be transmitted to each party or to his attorney of record in the same manner as provided in KRS 13B.050.

(6) This section shall not apply to disposition pursuant to KRS 13B.070(3).

(7) If, pursuant to statute, an agency may review the final order of another agency, the review is deemed to be a continuous proceeding as if before a single agency. The final order of the first agency is treated as a recommended order and the second agency functions as though it were reviewing a recommended order in accordance with this section.

(Enact. Acts 1994, ch. 382, § 12, effective July 15, 1996; 1996, ch. 318, § 11, effective July 15, 1996.)

Compiler's Notes. Acts 1994, ch. 382, § 20 provided that this section "shall become effective on the normal effective date for legislation enacted by the 1996 Regular Session of the General Assembly."

13B.125. Emergency action — Hearing — Appeal.

(1) An agency may take emergency action affecting the legal rights, duties, privileges or immunities of named persons without a hearing only if duly authorized by statute to so act. If an agency takes emergency action, the agency shall conduct an emergency hearing in accordance with the provisions of this section.

(2) An agency head or an official of an agency duly authorized by law to summarily act in emergency situations may issue an emergency order to stop, prevent, or avoid an immediate danger to the public health, safety, or welfare. The emergency order shall contain findings of fact and conclusions of law upon which the agency bases the emergency order. The agency shall give notice of the emergency order to all affected parties as is practicable under the circumstances, and notice shall be served in the same manner as provided in KRS 13B.050(2). The emergency order is effective when received by the affected party or his representative.

(3) Any person required to comply with an emergency order issued under subsection (2) of this section may request an emergency hearing to determine the propriety of the order. The agency shall conduct an emergency hearing within ten (10) working days of the request for hearing. The agency shall give all affected parties reasonable notice of the hearing and to the extent practicable shall conduct the hearing in conformity with this chapter. The hearing on the emergency order may be conducted by a hearing officer qualified in accordance with KRS 13B.040. Within five (5) working days of completion of the hearing, the agency or hearing officer shall render a written decision affirming, modifying, or revoking the emergency order. The emergency order shall be affirmed if there is substantial evidence of a violation of law which constitutes an immediate danger to the public health, safety, or welfare.

(4) The decision rendered under subsection (3) of this section shall be a final order of the agency on the matter, and any party aggrieved by the decision may appeal to Circuit Court in the same manner as provided in KRS 13B.140.

(Enact. Acts 1996, ch. 318, § 12, effective July 15, 1996.)

13B.130. Official record of hearing.

In each administrative hearing, an agency shall keep an official record of the proceedings which shall consist of:

(1) All notices, pleadings, motions, and intermediate rulings;

(2) Any prehearing orders;

(3) Evidence received and considered;

(4) A statement of matters officially noticed;

(5) Proffers of proof and objections and rulings thereon;

(6) Proposed findings, requested orders, and exemptions;

(7) A copy of the recommended order, exceptions filed to the recommended order, and a copy of the final order;

(8) All requests by the hearing officer for an extension of time, and the response of the agency head;

(9) Ex parte communications placed upon the record by the hearing officer; and

(10) A recording or transcript of the proceedings.

(Enact. Acts 1994, ch. 382, § 13, effective July 15, 1996.)

Compiler's Notes. Acts 1994, ch. 382, § 20 provided that this section "shall become effective on the normal effective date for legislation enacted by the 1996 Regular Session of the General Assembly."

13B.140. Judicial review of final order.

(1) All final orders of an agency shall be subject to judicial review in accordance with the provisions of this chapter. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

(2) A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within the agency whose action is being challenged, and within any other agency authorized to exercise administrative review.

(3) Within twenty (20) days after the service of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the official record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. The court may require or permit subsequent correction or additions to the official record. If the court requests a transcript of proceedings that have not been transcribed, the cost of the transcription shall be paid by the party initiating the appeal, unless otherwise agreed to by all parties.

(4) A petition for judicial review shall not automatically stay a final order pending the outcome of the review, unless:
   (a) An automatic stay is provided by statute upon appeal or at any point in the administrative proceedings;
   (b) A stay is permitted by the agency and granted upon request; or
   (c) A stay is ordered by the Circuit Court of jurisdiction upon petition.

(Enact. Acts 1994, ch. 382, § 14, effective July 15, 1996; 1996, ch. 318, § 13, effective July 15, 1996.)

Compiler's Notes. Acts 1994, ch. 382, § 20 provided that this section "shall become effective on the normal effective date for legislation enacted by the 1996 Regular Session of the General Assembly."

13B.150. Conduct of judicial review.

(1) Review of a final order shall be conducted by the court without a jury and shall be confined to the record, unless there is fraud or misconduct involving a party engaged in administration of this chapter. The court, upon request, may hear oral argument and receive written briefs.

(2) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the final order or it may reverse the final order, in whole or in part, and remand the case for further proceedings if it finds the agency's final order is:
   (a) In violation of constitutional or statutory provisions;
   (b) In excess of the statutory authority of the agency;
   (c) Without support of substantial evidence on the whole record;
   (d) Arbitrary, capricious, or characterized by abuse of discretion;
   (e) Based on an ex parte communication which substantially prejudiced the rights of any party and likely affected the outcome of the hearing;
   (f) Prejudiced by a failure of the person conducting a proceeding to be disqualified pursuant to KRS 13B.040(2); or
   (g) Deficient as otherwise provided by law.

(Enact. Acts 1994, ch. 382, § 15, effective July 15, 1996.)

Compiler's Notes. Acts 1994, ch. 382, § 20 provided that this section "shall become effective on the normal effective date for legislation enacted by the 1996 Regular Session of the General Assembly."

13B.160. Judicial appeal.

Any aggrieved party may appeal any final judgment of the Circuit Court under this chapter to the Court of Appeals in accordance with the Kentucky Rules of Civil Procedure.

(Enact. Acts 1994, ch. 382, § 16, effective July 15, 1996.)

Compiler's Notes. Acts 1994, ch. 382, § 20 provided that this section "shall become effective on the normal effective date for legislation enacted by the 1996 Regular Session of the General Assembly."

13B.170. Administrative regulations.

(1) An agency shall have authority to promulgate administrative regulations that are necessary to carry out the provisions of this chapter.

(2) Nothing in this chapter shall be construed to prohibit an agency from enacting administrative hearing procedures by administrative regulations which are supplemental to the provisions of this chapter.

(Enact. Acts 1994, ch. 382, § 17, effective July 15, 1996.)

Compiler's Notes. Acts 1994, ch. 382, § 20 provided that this section "shall become effective on the normal effective date for legislation enacted by the 1996 Regular Session of the General Assembly."

Cross-References. Appeal procedures, 782 KAR 1:040. Set off of authority claims, 11 KAR 4:050. Student appeals process, 11 KAR 4:030.

CHAPTER 15

DEPARTMENT OF LAW

SECTION.

OFFICER CERTIFICATION AND TRAINING

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OFFICER CERTIFICATION AND TRAINING

15.380. Officers required to be certified — Officers permitted to be certified — Exemptions.

(1) The following officers employed or appointed as full-time, part-time, or auxiliary officers, whether paid or unpaid, shall be certified:
   (a) State Police officers, but for the commissioner of the State Police;
   (b) City, county, and urban-county police officers;
   (c) Deputy sheriffs, except those identified in KRS 70.045 and 70.263(3);
   (d) State or public university safety and security officers appointed pursuant to KRS 164.950;
   (e) School security officers employed by local boards of education who are special law enforcement officers appointed under KRS 61.902;
   (f) Airport safety and security officers appointed under KRS 183.880;
   (g) Department of Alcoholic Beverage Control field representatives and investigators appointed under KRS 241.090; and
   (h) Division of Insurance Fraud Investigation investigators appointed under KRS 304.47-040.

(2) The requirements of KRS 15.380 to 15.404 for certification may apply to all state peace officers employed pursuant to KRS Chapter 18A and shall, if adopted, be incorporated by the Department of Personnel for job specifications.

(3) Additional training in excess of the standards set forth in KRS 15.380 to 15.404 for all peace officers possessing arrest powers who have specialized law enforcement responsibilities shall be the responsibility of the employing agency.

(4) The following officers may, upon request of the employing agency, be certified by the council:
   (a) Deputy coroners;
   (b) Deputy constables;
   (c) Deputy jailers;
   (d) Deputy sheriffs under KRS 70.045 and 70.263(3);
   (e) Officers appointed under KRS 61.360;
   (f) Officers appointed under KRS 61.902, except those who are school security officers employed by local boards of education;
   (g) Private security officers;
   (h) Employees of a correctional services division created pursuant to KRS 67A.028 and employees of a metropolitan correctional services department created pursuant to KRS 67B.010 to 67B.080; and
   (i) Investigators employed by the Division of Charitable Gaming in accordance with KRS 238.510.

(5) The following officers shall be exempted from the certification requirements but may upon their request be certified by the council:
   (a) Sheriffs;
   (b) Coroners;
   (c) Constables;
   (d) Jailers;
   (e) Racing Commission security officers employed under KRS 230.240; and
   (f) Commissioner of the State Police.

(6) Federal peace officers cannot be certified under KRS 15.380 to 15.404.

(Enact. Acts 1998, ch. 606, § 99, effective December 1, 1998; 2000, ch. 374, § 18, effective July 14, 2000; 2000, ch. 447, § 7, effective July 14, 2000; 2000, ch. 480, § 3, effective July 14, 2000; 2002, ch. 132, § 1, effective July 15, 2002.)

15.382. Minimum qualifications for certification.

A person certified after December 1, 1998, under KRS 15.380 to 15.404 shall, at the time of becoming certified, meet the following minimum qualifications:

(1) Be a citizen of the United States;
(2) Be at least twenty-one (21) years of age;
(3) Be a high school graduate or have successfully completed a General Education Development (G.E.D.) examination;
(4) Possess a valid license to operate a motor vehicle;
(5) Be fingerprinted for a criminal background check;
(6) Not have been convicted of any felony;
(7) Not be prohibited by federal or state law from possessing a firearm;
(8) Have received and read the Kentucky Law Enforcement Officers Code of Ethics as established by the council;
(9) Have not received a dishonorable discharge, or general discharge under other than honorable conditions if having served in any branch of the armed forces of the United States;

(10) Have passed a medical examination as defined by the council by administrative regulation to determine if he can perform peace officer duties as determined by a validated job task analysis. However, if the employing agency has its own validated job task analysis, the person shall pass the medical examination, appropriate to the agency's job task analysis, of the employing agency. All agencies shall certify passing medical examination results to the council, which shall accept them as complying with KRS 15.315 to 15.510;

(11) Have passed a drug screening test administered or approved by the council by administrative regulation. A person shall be deemed to have passed a drug screening test if the results of the test are negative for the use of an illegal controlled substance or prescription drug abuse. Any agency that administers its own test that meets or exceeds this standard shall certify passing test results to the council, which shall accept them as complying with KRS 15.315 to 15.510;

(12) Have undergone a background investigation established or approved by the council by administrative regulation to determine suitability for the position of a peace officer. If the employing agency has established its own background investigation that meets or exceeds the standards of the council, as set forth by administrative regulation, the agency shall conduct the background investigation and shall certify background investigation results to the council, which shall accept them as complying with KRS 15.315 to 15.510;

(13) Have been interviewed by the employing agency;

(14) Not have had certification as a peace officer permanently revoked in another state;

(15) Have taken a psychological suitability screening administered or approved by the council by administrative regulation to determine the person's suitability to perform peace officer duties as determined by a council validated job task analysis. However, if the employing agency has its own validated job task analysis, the person shall take that agency's psychological examination, appropriate to the agency's job task analysis. All agencies shall certify psychological examination results to the council, which shall accept them as complying with KRS 15.315 to 15.510;

(16) Have passed a physical agility test administered or approved by the council by administrative regulation to determine his suitability to perform peace officer duties as determined by a council validated job task analysis. However, if the employing agency has its own validated job task analysis, the person shall take the physical agility examination of the employing agency. All agencies shall certify physical agility examination results to the council, which shall accept them as demonstrating compliance with KRS 15.315 to 15.510; and

(17) Have taken a polygraph examination administered or approved by the council by administrative regulation to determine his suitability to perform peace officer duties. Any agency that administers its own polygraph examination as approved by the council shall certify the results that indicate whether a person is suitable for employment as a peace officer to the council, which shall accept them as complying with KRS 15.315 to 15.510.

(Enact. Acts 1998, ch. 606, § 100, effective December 1, 1998; 2000, ch. 480, § 4, effective July 14, 2000; 2002, ch. 132, § 2, effective July 15, 2002.)

15.384. Cost of council administered tests — Waiver.

(1) The council shall administer the physical agility, polygraph, psychological, and drug screen tests at cost for those agencies requesting council-administered tests. Agencies may petition the council for waiver of the costs of these tests upon a showing of undue financial hardship.

(2) An agency may, at its own expense, administer its own physical agility, polygraph, psychological, medical, and drug screen tests, as well as additional tests.

(Enact. Acts 1998, ch. 606, § 101, effective December 1, 1998.)

15.386. Certification categories — Status of certification.

The following certification categories shall exist:

(1) "Precertification status" means that the officer is currently employed or appointed by an agency and meets or exceeds all those minimum qualifications set forth in KRS 15.382, but has not successfully completed a basic training course, except those officers covered by KRS 15.400. Upon the council's verification that the minimum qualifications have been met, the officer shall have full peace officer powers as authorized under the statute under which he was appointed or employed. If an officer fails to successfully complete a basic training course within one (1) year of employment, his or her enforcement powers shall automatically terminate.

(2) "Certification status" means that unless the certification is in revoked status or inactive status, the officer is currently employed or appointed by an agency and has met all training requirements. The officer shall have full peace officer powers as authorized under the statute under which he was appointed or employed.

(3) (a) "Inactive status" means that unless the certification is in revoked status:

1. The person has been separated on or after December 1, 1998, from the agency by which he was employed or appointed and has no peace officer powers; or
2. The person is on military active duty for a period exceeding three hundred sixty-five (365) days.

(b) The person may remain on inactive status. A person who is on inactive status and who returns to a peace officer position shall have certification status restored if he or she has successfully completed a basic training course approved and recognized by the council, has not committed an act for which his or her certified status may be revoked pursuant to

KRS 15.380 to 15.404 and successfully completes in-service training as prescribed by the council, as follows:

1. No more than forty (40) hours if the person has been on inactive status for a period of less than three (3) years, and the person was not in training deficiency status at the time of separation; or
2. No more than eighty (80) hours if the person has been on inactive status for a period of three (3) years or more, or the person was in training deficiency status at the time of separation.

(4) "Training deficiency status" means that unless the certification is in revoked status or inactive status, the officer is currently employed or appointed by an agency and has failed to meet all in-service training requirements. The officer's enforcement powers shall automatically terminate, and he or she shall not exercise peace officer powers in the Commonwealth until he or she has corrected the in-service training deficiency.

(5) "Revoked status" means that the officer has no enforcement powers and has been separated from an enforcement agency for any one (1) of the following reasons:

(a) Failure to meet or maintain training requirements;
(b) Willful falsification of information to obtain or maintain certified status;
(c) Certification was the result of an administrative error;
(d) Plea of guilty to, conviction of, or entering of an Alford plea to any felony;
(e) Prohibition by federal or state law from possessing a firearm.

(6) "Denied status" means that a person does not meet the requirements to achieve precertification status or certification status.

(7) The design of a certificate may be changed periodically. When a new certificate is produced, it shall be distributed free of charge to each currently certified peace officer.

(Enact. Acts 1998, ch. 606, § 102, effective December 1, 1998; 2000, ch. 480, § 6, effective July 14, 2000; 2002, ch. 132, § 3, effective July 15, 2002.)

15.388. Report on certification status for newly employed officer — Training of person in precertification status — Issuance or denial — Right of appeal — Transfer.

(1) Within five (5) working days of employment or appointment, the chief executive officer of the employing agency, or his designee, shall file a report with the council certifying that the newly employed officer is certified or meets or exceeds the precertification qualifications of KRS 15.382.

(2) If the person is certified, the council shall continue certified status.

(3) If the person is on inactive status, the council shall upgrade to certified status unless the certification is revoked or denied as provided by KRS 15.380 to 15.404.

(4) If the person is not certified and not on inactive status, but has successfully completed a basic training course approved and recognized by the council, the council shall designate the person as being in certified status unless the certification is revoked or denied as provided by KRS 15.380 to 15.404.

(5) If the person is not certified and not on inactive status, and has not successfully completed a basic training course approved and recognized by the council, the council shall designate the person as being in precertification status.

(6) A person who is in precertification status shall, upon successful completion of the required basic training, be certified unless he has committed an act that would result in revocation of his certificate in which case he shall be denied certification.

(7) A person who is denied certified status under this section shall have the same right of appeal as a person who has been revoked under KRS 15.380 to 15.404.

(8) If the certified officer has successfully completed the basic training required by KRS 15.404 and transfers from a peace officer position from a current employer to a peace officer position for another employer, and both employers have, at least ten (10) working days prior to the effective date of the transfer, notified the council in writing of the transfer, the council shall maintain the officer in certified status.

(Enact. Acts 1998, ch. 606, § 103, effective December 1, 1998; 2000, ch. 480, § 7, effective July 14, 2000; 2002, ch. 132, § 4, effective July 15, 2002.)

15.390. Appeal upon denial of precertification.

Any person who is aggrieved by a determination by the employing agency or by the council that he fails to meet the requirements for precertification status may:

(1) If the determination was made by the employing agency, appeal the decision in the same manner as other employment appeals within the agency, if an appeals procedure has been established by the employing agency; or

(2) If the determination was made by the council, appeal the decision to the local Circuit Court having jurisdiction over the employing agency.

(Enact. Acts 1998, ch. 606, § 104, effective December 1, 1998.)

15.392. Report on separation from service — Action by council.

(1) Within ten (10) working days from separation from service, the chief executive officer of the employing agency or his designee shall file with the council a summary report that provides the relevant information about the person's separation from service.

(2) If the person has been separated for any reason justifying revoked or denied status pursuant to KRS 15.386, the council shall revoke the person's certification.

(3) If the person has been separated for any other reason other than death, or one justifying revoked or denied status pursuant to KRS 15.386; and

(a) The person has successfully completed basic training at a school certified or recognized by the council, the council shall place the certification on inactive status; or
(b) The person has not successfully completed basic training at a school certified or recognized by the council, the certification shall lapse.
(4) If the person has been separated due to death, the certification shall be retired.
(5) The employing agency's findings of fact and evidentiary conclusions shall be deemed final. The council shall be limited only to revoking the certification.
(6) The council shall not accept or hear complaints.
(Enact. Acts 1998, ch. 606, § 105, effective December 1, 1998; 2002, ch. 132, § 5, effective July 15, 2002.)

15.394. Declaratory judgment action if agency job task analysis deemed invalid.

(1) If the council believes an agency's job task analysis to be insufficient or erroneous, the council shall file a declaratory action in Franklin Circuit Court to declare the job task analysis invalid.
(2) Until the job task analysis has been declared invalid and all appeals have been exhausted, the council shall accept the agency's job task analysis.
(Enact. Acts 1998, ch. 606, § 106, effective December 1, 1998.)

15.396. Effect if agency knowingly employs or appoints persons who fail to meet requirements of KRS 15.380 to 15.404.

(1) An agency may be required to pay for all training received by a person from the Department of Criminal Justice Training or any other facility approved by the Kentucky Law Enforcement Council if the agency knowingly employs or appoints a person to be an officer of any type as enumerated in KRS 15.380 and if that person fails to achieve certified status as required by KRS 15.380 to 15.404.
(2) The agency shall be denied participation in the Kentucky Law Enforcement Foundation Program Fund if the agency knowingly employs or appoints a person to be an officer of any type as enumerated in KRS 15.380 and if that person:
(a) Fails to meet those minimum qualifications set forth in KRS 15.402;
(b) Fails to achieve certified status as required by KRS 15.380 to 15.404; or
(c) Fails to maintain the minimum training requirements set forth in KRS 15.404.
(3) An agency that is in violation of subsection (1) or (2) of this section may be relieved of the associated penalty upon:
(a) Termination of the officer who is the source of the violation; or
(b) Correction of the officer's deficiency.
(Enact. Acts 1998, ch. 606, § 107, effective December 1, 1998; 2000, ch. 480, § 8, effective July 14, 2000; 2002, ch. 132, § 6, effective July 15, 2002.)

15.398. Statutory provisions not superseded by KRS 15.380 to 15.404.

The following Kentucky Revised Statutes and any administrative regulations promulgated thereunder affecting those peace officers required to be certified pursuant to KRS 15.380 to 15.404 shall not be superseded by the provisions of KRS 15.380 to 15.404, and in all instances the provisions of all statutes specified below shall prevail:
(1) KRS Chapter 16, relating to Kentucky State Police Officers;
(2) KRS Chapter 70, relating to sheriffs, and deputy sheriffs;
(3) KRS Chapter 78, relating to county police;
(4) KRS Chapters 15 and 95, except for KRS 95.955, relating to city and urban-county police;
(5) KRS Chapter 183, relating to airport safety and security officers;
(6) KRS Chapter 164, relating to State Universities and Colleges; Regional Education and Archaeology officers;
(7) KRS Chapter 18A, relating to all state peace officers;
(8) KRS 241.090, relating to Department of Alcoholic Beverage Control field representatives and investigators;
(9) KRS 304.47-040, relating to Division of Insurance Fraud Investigators; and
(10) Any other statutes affecting peace officers not specifically cited herein.
(Enact. Acts 1998, ch. 606, § 108, effective December 1, 1998; 2002, ch. 132, § 7, effective July 15, 2002.)

Legislative Research Commission Note. (7/15/2002). The Reviser of Statutes has renumbered the subsections of this statute under the authority of 7.136(1)(a).

15.400. Effect of KRS 15.380 to 15.404 on officers employed before or after December 1, 1998 — Exception to Open Records Act.

(1) The effective date of KRS 15.380 to 15.404 shall be December 1, 1998. All peace officers employed as of December 1, 1998, shall be deemed to have met all the requirements of KRS 15.380 to 15.404 and shall be granted certified status as long as they remain in continuous employment of the agency by which they were employed as of December 1, 1998, or shall have successfully completed an approved basic training course approved and recognized by the Kentucky Law Enforcement Council pursuant to KRS 15.440(1)(d) when seeking employment with another law enforcement agency.
(2) Any peace officers employed after December 1, 1998, shall comply with all minimum standards specified in KRS 15.380 to 15.404. Persons newly employed or appointed after December 1, 1998, shall have one (1) year within which to gain certified status or they shall lose their law enforcement powers.
(3) The Open Records Act notwithstanding, the person's home address, telephone number, date of birth, Social Security number, background investigation, medical examination, psychological exami-

nation, and polygraph examination conducted for any person seeking certification pursuant to KRS 15.380 to 15.404 shall not be subject to disclosure.

(Enact. Acts 1998, ch. 606, § 109, effective December 1, 1998; 2002, ch. 132, § 8, effective July 15, 2002; 2002, ch. 137, § 2, effective July 15, 2002.)

Legislative Research Commission Note. (7/15/2002). This section was amended by 2002 Ky. Acts chs. 132 and 137, which do not appear to be in conflict and have been codified together.

15.402. Additional requirements by employing agency.

No provisions of KRS 15.380 to 15.404 shall preclude an appointing or employing agency from having requirements that are in excess of or in addition to any requirements specified by KRS 15.380 to 15.404 or an administrative regulation promulgated under KRS 15.380 to 15.404.

(Enact. Acts 1998, ch. 606, § 110, effective December 1, 1998; 2002, ch. 132, § 9, effective July 15, 2002.)

15.404. Basic training and in-service training for peace officers.

(1) Any peace officers employed or appointed after December 1, 1998, who have not successfully completed basic training at a school certified or recognized by the Kentucky Law Enforcement Council, shall within one (1) year of their appointment or employment, successfully complete at least six hundred forty (640) hours of basic training at a school certified or recognized by the Kentucky Law Enforcement Council.

(2) All peace officers with active certification status shall successfully complete forty (40) hours of annual in-service training that has been certified or recognized by the Kentucky Law Enforcement Council, that is appropriate to the officer's rank and responsibility and the size and location of his department.

(3) In the event of extenuating circumstances beyond the control of an officer that prevent the officer from completing the basic or in-service training within the time specified in subsections (1) and (2) of this section, the commissioner of the department or his or her designee may grant the officer an extension of time, not to exceed one hundred eighty (180) days in which to complete the training.

(4) Any peace officer who fails to successfully complete basic training within the specified time periods, including extensions, shall lose his or her law enforcement powers and his or her precertification status shall lapse. Any peace officer who fails to successfully complete in-service training within the specified time periods, including extensions, shall lose his or her law enforcement powers and his or her certification status shall be changed to training deficiency status. When a peace officer is deficient in required training, the commissioner of the department or his or her designee shall notify the council, which shall notify the peace officer and his or her agency.

(5) An officer who has lost his or her law enforcement powers due solely to his or her failure to meet the in-service training requirements of this section may regain his or her certification status and law enforcement powers upon successful completion of the training deficiency.

(Enact. Acts 2000, ch. 480, § 5, effective July 14, 2000; 2002, ch. 132, § 10, effective July 15, 2002.)

CHAPTER 15A

JUSTICE CABINET

SECTION.

15A.065. Department of Juvenile Justice — Powers and duties — Advisory board.
15A.067. Division of Program Services — Access to educational records — Screening and education of incarcerated youth — Information on educational status and need — Division of Placement Services.

15A.065. Department of Juvenile Justice — Powers and duties — Advisory board.

(1) The Department of Juvenile Justice shall be headed by a commissioner and shall develop and administer programs for:

(a) Prevention of juvenile crime;

(b) Identification of juveniles at risk of becoming status or public offenders and development of early intervention strategies for these children, and, except for adjudicated youth, participation in prevention programs shall be voluntary;

(c) Providing educational information to law enforcement, prosecution, victims, defense attorneys, the courts, the educational community, and the public concerning juvenile crime, its prevention, detection, trial, punishment, and rehabilitation;

(d) The operation of or contracting for the operation of postadjudication treatment facilities and services for children adjudicated delinquent or found guilty of public offenses or as youthful offenders;

(e) The operation or contracting for the operation, and the encouragement of operation by others, including local governments, volunteer organizations, and the private sector, of programs to serve predelinquent and delinquent youth;

(f) Utilizing outcome-based planning and evaluation of programs to ascertain which programs are most appropriate and effective in promoting the goals of this section;

(g) Conducting research and comparative experiments to find the most effective means of:

1. Preventing delinquent behavior;
2. Identifying predelinquent youth;
3. Preventing predelinquent youth from becoming delinquent;
4. Assessing the needs of predelinquent and delinquent youth;

5. Providing an effective and efficient program designed to treat and correct the behavior of delinquent youth and youthful offenders;
6. Assessing the success of all programs of the department and those operated on behalf of the department and making recommendations for new programs, improvements in existing programs, or the modification, combination, or elimination of programs as indicated by the assessment and the research; and

(h) Seeking funding from public and private sources for demonstration projects, normal operation of programs, and alterations of programs.

(2) The Department of Juvenile Justice may contract, with or without reimbursement, with a city, county, or urban-county government, for the provision of probation, diversion, and related services by employees of the contracting local government.

(3) The Department of Juvenile Justice may contract for the provision of services, treatment, or facilities which the department finds in the best interest of any child, or for which a similar service, treatment, or facility is either not provided by the department or not available because the service or facilities of the department are at their operating capacity and unable to accept new commitments. The department shall, after consultation with the Finance and Administration Cabinet, promulgate administrative regulations to govern at least the following aspects of this subsection:

(a) Bidding process; and
(b) Emergency acquisition process.

(4) The Department of Juvenile Justice shall develop programs to:

(a) Ensure that youth in state-operated or contracted residential treatment programs have access to an ombudsman to whom they may report program problems or concerns;
(b) Review all treatment programs, state-operated or contracted, for their quality and effectiveness; and
(c) Provide mental health services to committed youth according to their needs.

(5) (a) The Department of Juvenile Justice shall have an advisory board appointed by the Governor, which shall serve as the advisory group under the Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. No. 93-415, as amended, and which shall provide a formulation of and recommendations for meeting the requirements of this section not less than annually to the Governor, the Justice Cabinet, the Department of Juvenile Justice, the Cabinet for Families and Children, the Interim Joint Committees on Judiciary and on Appropriations and Revenue of the Legislative Research Commission when the General Assembly is not in session, and the Judiciary and the Appropriations and Revenue Committees of the House of Representatives and the Senate when the General Assembly is in session. The advisory board shall develop program criteria for early juvenile intervention, diversion, and prevention projects, develop statewide priorities for funding, and make recommendations for allocation of funds to the Commissioner of the Department of Juvenile Justice. The advisory board shall review grant applications from local juvenile delinquency prevention councils and include in its annual report the activities of the councils. The advisory board shall meet not less than quarterly.

(b) The advisory board shall be chaired by a private citizen member appointed by the Governor and shall serve a term of two (2) years and thereafter be elected by the board. The members of the board shall be appointed to staggered terms and thereafter to four (4) year terms. The membership of the advisory board shall consist of no fewer than fifteen (15) persons and no more than thirty-three (33) persons who have training, experience, or special knowledge concerning the prevention and treatment of juvenile delinquency or the administration of juvenile justice. A majority of the members shall not be full-time employees of any federal, state, or local government, and at least one-fifth (1/5) of the members shall be under the age of twenty-four (24) years at the time of appointment. On July 15, 2002, any pre-existing appointment of a member to the Juvenile Justice Advisory Board and the Juvenile Justice Advisory Committee shall be terminated unless that member has been reappointed subsequent to January 1, 2002, in which case that member's appointment shall continue without interruption. The membership of the board shall include the following:

1. Three (3) current or former participants in the juvenile justice system;
2. An employee of the Department of Juvenile Justice;
3. An employee of the Cabinet for Families and Children;
4. A person operating alternative detention programs.
5. An employee of the Department of Education;
6. An employee of the Department of Public Advocacy;
7. An employee of the Administrative Office of the Courts;
8. A representative from a private nonprofit organization with an interest in youth services.
9. A representative from a local juvenile delinquency prevention council.
10. A member of the Circuit Judges Association;
11. A member of the District Judges Association;
12. A member of the County Attorneys Association;
13. A member of the County Judge/Executives Association;

14. A person from the business community not associated with any other group listed in this paragraph;
15. A parent not associated with any other group listed in this paragraph;
16. A youth advocate not associated with any other group listed in this paragraph;
17. A victim of a crime committed by a person under the age of eighteen (18) not associated with any other group listed in this paragraph;
18. A local school district special education administrator not associated with any other group listed in this paragraph;
19. A peace officer not associated with any other group listed in this paragraph; and
20. A college or university professor specializing in law, criminology, corrections, psychology, or similar discipline with an interest in juvenile corrections programs.

(c) Failure of any member to attend three (3) meetings within a calendar year shall be deemed a resignation from the board. The board chair shall notify the Governor of any vacancy and submit recommendations for appointment.

(6) The Department of Juvenile Justice shall, in cooperation with the Department of Public Advocacy, develop a program of legal services for juveniles committed to the department who are placed in state-operated residential treatment facilities and juveniles in the physical custody of the department who are detained in a state-operated detention facility, who have legal claims related to the conditions of their confinement involving violations of federal or state statutory or constitutional rights. This system may utilize technology to supplement personal contact. The Department of Juvenile Justice shall promulgate an administrative regulation to govern at least the following aspects of this subsection:

(a) Facility access;
(b) Scheduling; and
(c) Access to residents' records.

(Enact. Acts 1996, ch. 358, § 1, effective July 15, 1996; 1998, ch. 426, § 70, effective July 15, 1998; 1998, ch. 538, § 4, effective April 13, 1998; 2002, ch. 59, § 2, effective July 15, 2002; 2002, ch. 263, § 1, effective July 15, 2002.)

Legislative Research Commission Note. (7/15/2002). This section was amended by 2002 Ky. Acts chs. 59 and 263. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 263, which was last enacted by the General Assembly, prevails under KRS 446.250.

15A.067. Division of Program Services — Access to educational records — Screening and education of incarcerated youth — Information on educational status and need — Division of Placement Services.

(1) As used in this section, "facility" means any of the facilities specified in KRS 15A.200 operated by a political subdivision of the Commonwealth of Kentucky and juvenile detention facilities operated by the Commonwealth of Kentucky for the care of juveniles alleged to be delinquent or adjudicated delinquent.

(2) (a) There is established within the Department of Juvenile Justice a Division of Program Services that shall be responsible for ensuring the delivery of appropriate educational programs to incarcerated youth. Each facility shall provide educational services to youth ordered by the court to remain in the juvenile detention facility.

(b) Any other statutes to the contrary notwithstanding, the Department of Juvenile Justice shall have access to all educational records, public or private, of any juvenile in a facility or program or informal adjustment authorized by law.

(c) The Division of Program Services shall ensure that all incarcerated youth be provided appropriate screening and educational programs as follows:

1. For students identified before incarceration as having an educational disability, the Division of Program Services shall make specially designed instruction and related services available as required by Kentucky Board of Education administrative regulations applicable to students with disabilities.
2. For students incarcerated for more than fourteen (14) days, the division shall ensure that appropriate screening is provided to all youth. Screening shall include but not be limited to seeking the juvenile's educational record.
3. For students incarcerated for more than thirty (30) days, the division shall ensure that all youth are provided an appropriate education.

(d) The Department of Juvenile Justice shall be responsible for providing, in its contracts with private juvenile detention facilities and county jails, the specific obligations of those entities to provide educational services to incarcerated juveniles consistent with this section, including funding provisions.

(e) The Department of Education and all local school district administrators shall cooperate with officials responsible for the operation of juvenile detention facilities and with the Division of Program Services to ensure that all documents necessary to establish educational status and need shall follow the students who are being held in these facilities so the students can be afforded educational opportunities.

1. Upon disposition by the juvenile court that an adjudicated juvenile shall stay in a juvenile detention facility for any period of time, the facility shall notify the juvenile's last resident school district of the student's whereabouts.

2. Within five (5) days after the juvenile is released, the Division of Program Services shall notify the district in which the student will reside of the youth's release and educational status and forward any educational records.

(g) The Department of Juvenile Justice shall, after consultation with the Department of Education, promulgate an administrative regulation for the effective implementation of this section.

(3) There is established within the Department of Juvenile Justice a Division of Placement Services that shall be responsible for the management, policy direction, and coordination of all matters relating to the classification, evaluation, and placement of juveniles committed to or detained by the department. The division shall also be responsible for the transportation of juveniles committed to or detained by the department. If the division places a juvenile in a county other than the county of adjudication or sentencing, then the division shall be responsible for notifying a department caseworker in the county of placement of this fact. The division shall also notify the district court in the county of placement of the juvenile's complete offense record.

(Enact. Acts 1996, ch. 358, § 64, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 606, § 3, effective July 15, 1998; 2000, ch. 8, § 1, effective July 14, 2000; 2000, ch. 534, § 3, effective July 14, 2000; 2001, ch. 64, § 2, effective June 21, 2001; 2002, ch. 257, § 1, effective July 15, 2002.)

CHAPTER 17

PUBLIC SAFETY

SECTION.

CRIMINAL RECORDS AND STATISTICS

17.125. Agency sharing of records maintained on juvenile in facility, program, or informal adjustment — Confidentiality — Provision of records — Exception — Violation.

MISSING CHILD INFORMATION CENTER

17.470. Notification to registrar of vital statistics, chief state school officer, and schools of child's disappearance and subsequent recovery.

CRIMINAL RECORDS AND STATISTICS

17.125. Agency sharing of records maintained on juvenile in facility, program, or informal adjustment — Confidentiality — Provision of records — Exception — Violation.

(1) The following agencies shall, subject to restrictions imposed by state or federal law, disclose and share with each other all information they maintain on a juvenile in a facility or program or informal adjustment authorized by law:

(a) All sheriff's offices, police departments, and any other law enforcement agency;

(b) All Commonwealth's attorneys and county attorneys;

(c) The Attorney General;

(d) All jails and juvenile detention facilities, public and private;

(e) All courts and clerks of courts;

(f) The Administrative Office of the Courts;

(g) All departments within the Justice Cabinet; and

(h) All departments within the Cabinet for Families and Children and the Cabinet for Health Services.

(2) Except as provided in this section, all information shared by agencies specified above shall be subject to applicable confidentiality disclosure, redisclosure, and access restrictions imposed by federal or state law.

(3) All public or private elementary or secondary schools, vocational or business schools, or institutions of higher education shall provide all records specifically requested in writing, and pertaining to status offenders, public offenders, youthful offenders, juveniles remanded to detention, and any juvenile convicted by a court, to any of the agencies listed in subsection (1) of this section. The records or information provided pursuant to this subsection shall be subject to:

(a) Access or other restrictions imposed by federal or state law;

(b) All confidentiality restrictions imposed by federal or state law; and

(c) All disclosure and redisclosure restrictions imposed by federal or state law.

(4) Any request for records, the provision of records, the sharing of records, the disclosure of records, or the redisclosure of records shall be done for official purposes only, on a bona fide need to know basis, and only in connection with a legitimate investigation, prosecution, treatment program, or educational program.

(5) Information and records relating to pending litigation in Circuit Court, District Court, or a federal court and information and records relating to an ongoing investigation are not subject to disclosure or sharing under this section.

(6) Obtaining or attempting to obtain a record relating to a minor or by sharing or attempting to share a record relating to a minor with an unauthorized person is a violation of this section.

(Enact. Acts 1998, ch. 606, § 10, effective July 15, 1998.)

MISSING CHILD INFORMATION CENTER

17.470. Notification to registrar of vital statistics, chief state school officer, and schools of child's disappearance and subsequent recovery.

(1) Upon receipt of a report of a missing child who was born in the Commonwealth, the Justice Cabinet, through the Kentucky Missing Child Information Center, shall notify within forty-eight (48) hours

the state registrar of vital statistics for the Commonwealth of the disappearance of such child and shall provide to the state registrar identifying information about the missing child.

(2) If the Justice Cabinet has reason to believe that a missing child has been enrolled in a specific Kentucky elementary or secondary school, it shall notify the chief state school officer who shall notify the last such known school as to the child's disappearance.

(3) Upon learning of the recovery of a missing child, the Justice Cabinet shall notify the state registrar and the chief state school officer who shall notify any school previously notified of the child's disappearance.

(Enact. Acts 1986, ch. 72, § 1, effective July 15, 1986; 1992, ch. 27, § 2, effective March 2, 1992.)

CHAPTER 18A

STATE PERSONNEL

SECTION.

HEALTH COVERAGE

18A.225. Health and dental care insurance coverage — Emergency during calendar year 2001 — Requirements of prospective carriers — Analysis of carrier coverage data — Agency's termination of participation — Provision of amount of employer contribution — Lapse of excess flexible spending account funds — Appeal of formulary change — Retiree's participation — Mail-order drug option coverage — Hearing aid coverage for minors — Access to certain services in contiguous counties — Study of variation.

18A.226. Group Health Insurance Board — Members — Duties.

18A.227. Flexible benefits plan for employees and retirees.

18A.2286. Continuation coverage for member retired for disability.

HEALTH COVERAGE

18A.225. Health and dental care insurance coverage — Emergency during calendar year 2001 — Requirements of prospective carriers — Analysis of carrier coverage data — Agency's termination of participation — Provision of amount of employer contribution — Lapse of excess flexible spending account funds — Appeal of formulary change — Retiree's participation — Mail-order drug option coverage — Hearing aid coverage for minors — Access to certain services in contiguous counties — Study of variation.

(1) (a) The term "health maintenance organization" for the purposes of this section means a health maintenance organization as defined in KRS 304.38-030 or as a nonprofit hospital, medical-surgical, dental, and health service corporation, which has been licensed by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board or its successor agency and issued a certificate of authority by the Department of Insurance as a health maintenance organization or as a nonprofit hospital, medical-surgical, dental, and health service corporation and which is qualified under the requirements of the United States Department of Health, Education and Welfare except as provided in subsection (2) of this section; and

(b) The term "employee" for purposes of this section means:

1. Any person, including an elected public official, who is regularly employed by any department, board, agency, or branch of state government; or by a public postsecondary educational institution; or by any city, urban-county, charter county, county, or consolidated local government, whose legislative body has opted to participate in the state-sponsored health insurance program pursuant to KRS 79.080; and who is either a contributing member to any one (1) of the retirement systems administered by the state, including but not limited to the Kentucky Retirement Systems, Kentucky Teachers' Retirement System, the Legislators' Retirement Plan, or the Judicial Retirement Plan; or is receiving a contractual contribution from the state toward a retirement plan; or, in the case of a public postsecondary education institution, is an individual participating in an optional retirement plan authorized by KRS 161.567;
2. Any certified or classified employee of a local board of education;
3. Any person who is a present or future recipient of a retirement allowance from the Kentucky Retirement Systems, Kentucky Teachers' Retirement System, the Legislators' Retirement Plan, or the Judicial Retirement Plan, except that a person who is receiving a retirement allowance and who is age sixty-five (65) or older shall not be included, with the exception of persons covered under KRS 61.702(4)(c), unless he or she is actively employed pursuant to subparagraph 1. of this paragraph; and
4. Any eligible dependents and beneficiaries of participating employees and retirees who are entitled to participate in the state-sponsored health insurance program.

(2) (a) The secretary of the Finance and Administration Cabinet, upon the recommendation of the secretary of the Personnel Cabinet, shall procure, in compliance with the provisions of KRS 45A.080, 45A.085, and 45A.090, from one (1) or more health insurance companies or from one (1) or more health maintenance organiza-

tions authorized to do business in this state, a policy or policies of group health care coverage, that may include but not be limited to health maintenance organization (HMO), preferred provider organization (PPO), point of service (POS), and exclusive provider organization (EPO) benefit plans encompassing all or any class or classes of employees. With the exception of employers governed by the provisions of KRS Chapters 16, 18A, and 151B, all employers of any class of employees or former employees shall enter into a contract with the Personnel Cabinet prior to including that group in the state health insurance group. The contracts shall include but not be limited to designating the entity responsible for filing any federal forms, adoption of policies required for proper plan administration, acceptance of the contractual provisions with health insurance carriers or third-party administrators, and adoption of the payment and reimbursement methods necessary for efficient administration of the health insurance program. Health insurance coverage provided to state employees under this section shall, at a minimum, contain the same benefits as provided under Kentucky Kare Standard as of January 1, 1994, and shall include a mail-order drug option as provided in subsection (14) of this section. All employees and other persons for whom the health care coverage is provided or made available shall annually be given an option to elect health care coverage through a self-funded plan offered by the Commonwealth or, if a self-funded plan is not available, from a list of coverage options determined by the competitive bid process under the provisions of KRS 45A.080, 45A.085, and 45A.090 and made available during annual open enrollment.

(b) The policy or policies shall be approved by the commissioner of insurance and may contain the provisions he approves, whether or not otherwise permitted by the insurance laws.

(c) Any carrier bidding to offer health care coverage to employees shall agree to provide coverage to all members of the state group, including active employees and retirees and their eligible covered dependents and beneficiaries, within the county or counties specified in its bid. Furthermore, any carrier bidding to offer health care coverage to employees shall also agree to rate all employees as a single entity, except for those retirees whose former employers insure their active employees outside the state-sponsored health insurance program.

(d) Any carrier bidding to offer health care coverage to employees shall agree to provide enrollment, claims, and utilization data to the Commonwealth in a format specified by the Personnel Cabinet with the understanding that the data shall be owned by the Commonwealth; to provide data in an electronic form and within a time frame specified by the Personnel Cabinet; and to be subject to penalties for noncompliance with data reporting requirements as specified by the Personnel Cabinet. The Personnel Cabinet shall take strict precautions to protect the confidentiality of each individual employee; however, confidentiality assertions shall not relieve a carrier from the requirement of providing stipulated data to the Commonwealth.

(e) The Personnel Cabinet shall develop the necessary techniques and capabilities for timely analysis of data received from carriers and, to the extent possible, provide in the request-for-proposal specifics relating to data requirements, electronic reporting, and penalties for noncompliance. The Commonwealth shall own the enrollment, claims, and utilization data provided by each carrier and shall develop methods to protect the confidentiality of the individual. The Personnel Cabinet shall include in the October annual report submitted pursuant to the provisions of KRS 18A.226 to the Governor, the General Assembly, and the Chief Justice of the Supreme Court, an analysis of the financial stability of the program, which shall include but not be limited to loss ratios, methods of risk adjustment, measurements of carrier quality of service, prescription coverage and cost management, and statutorially required mandates. If state self-insurance was available as a carrier option, the report also shall provide a detailed financial analysis of the self-insurance fund including, but not limited to, loss ratios, reserves, and reinsurance agreements.

(f) If any agency participating in the state-sponsored employee health insurance program for its active employees terminates participation and there is a state appropriation for the employer's contribution for active employees' health insurance coverage, then neither the agency nor the employees shall receive the state-funded contribution after termination from the state-sponsored employee health insurance program.

(g) Any funds in flexible spending accounts that remain after all reimbursements have been processed shall be transferred to the credit of the state-sponsored health insurance plan's appropriation account.

(h) Each entity participating in the state-sponsored health insurance program shall provide an amount at least equal to the state contribution rate for the employer portion of the health insurance premium. For any participating entity that used the state payroll system, the employer contribution amount shall be equal to but not greater than the state contribution rate.

(3) The secretary of the Finance and Administration Cabinet, upon the recommendation of the secretary of the Personnel Cabinet, may procure from one (1) or more dental insurance companies, one (1) or more nonprofit hospital, medical-surgical, den-

tal, and health service corporations organized under Subtitle 32 of KRS Chapter 304, or one (1) or more prepaid dental plan organizations organized under Subtitle 43 of KRS Chapter 304, a policy or policies of group dental insurance or prepaid dental plan coverage encompassing all or any class or classes of employees. All employees for whom the dental insurance or prepaid dental plan coverage is provided shall annually be given an option to elect either standard dental insurance coverage or coverage by a prepaid dental plan. The policy or policies shall be approved by the commissioner of insurance and may contain the provisions he approves, whether or not otherwise permitted by the insurance laws. It is intended that either dental insurance or prepaid dental plan coverage may be made available for employees, except that the procuring of each is permissive.

(4) The premiums may be paid by the policyholder:
   (a) Wholly from funds contributed by the employee, by payroll deduction or otherwise;
   (b) Wholly from funds contributed by any department, board, agency, public postsecondary education institution, or branch of state, city, urban-county, charter county, county, or consolidated local government; or
   (c) Partly from each, except that any premium due for health care coverage or dental coverage, if any, in excess of the premium amount contributed by any department, board, agency, postsecondary education institution, or branch of state, city, urban-county, charter county, county, or consolidated local government for any other health care coverage shall be paid by the employee.

(5) If an employee moves his place of residence or employment out of the service area of a managed health care plan or of a prepaid dental plan, under which he has elected coverage, into either the service area of another managed health care plan or prepaid dental plan or into an area of the Commonwealth not within a managed health care plan service area or prepaid dental plan service area, the employee shall be given an option, at the time of the move or transfer, to change his or her coverage to another health care plan or dental plan.

(6) No payment of premium by any department, board, agency, public postsecondary educational institution, or branch of state, city, urban-county, charter county, county, or consolidated local government shall constitute compensation to an insured employee for the purposes of any statute fixing or limiting the compensation of such an employee. Any premium or other expense incurred by any department, board, agency, public postsecondary educational institution, or branch of state, city, urban-county, charter county, county, or consolidated local government shall be considered a proper cost of administration.

(7) The policy or policies may contain the provisions with respect to the class or classes of employees covered, amounts of insurance or coverage for designated classes or groups of employees, policy options, terms of eligibility, and continuation of insurance or coverage after retirement.

(8) Group rates under this section shall be made available to the disabled child of an employee regardless of the child's age if the entire premium for the disabled child's coverage is paid by the state employee. A child shall be considered disabled if he has been determined to be eligible for federal Social Security disability benefits.

(9) The health care contract or contracts for employees shall be entered into for a period of not less than one (1) year.

(10) The secretary shall appoint thirty-two (32) persons to an Advisory Committee of State Health Insurance Subscribers to advise the secretary or his designee regarding the state-sponsored health insurance program for employees. The secretary shall appoint, from a list of names submitted by appointing authorities, members representing school districts from each of the seven (7) Supreme Court districts, members representing state government from each of the seven (7) Supreme Court districts, two (2) members representing retirees under age sixty-five (65), one (1) member representing local health departments, two (2) members representing the Kentucky Teachers' Retirement System, and three (3) members at large. The secretary shall also appoint two (2) members from a list of five (5) names submitted by the Kentucky Education Association, two (2) members from a list of five (5) names submitted by the largest state employee organization of nonschool state employees, two (2) members from a list of five (5) names submitted by the Kentucky Association of Counties, two (2) members from a list of five (5) names submitted by the Kentucky League of Cities, and two (2) members from a list of names consisting of five (5) names submitted by each state employee organization that has two thousand (2,000) or more members on state payroll deduction. The advisory committee shall be appointed in January of each year and shall meet quarterly.

(11) Notwithstanding any other provision of law to the contrary, the policy or policies provided to employees pursuant to this section shall not provide coverage for obtaining or performing an abortion, nor shall any state funds be used for the purpose of obtaining or performing an abortion on behalf of employees or their dependents.

(12) Interruption of an established treatment regime with maintenance drugs shall be grounds for an insured to appeal a formulary change through the established appeal procedures approved by the Department of Insurance, if the physician supervising the treatment certifies that the change is not in the best interests of the patient.

(13) Any employee who is eligible for and elects to participate in the state health insurance program as a retiree, or the spouse or beneficiary of a retiree, under any one (1) of the state-sponsored retirement systems shall not be eligible to receive the state health insurance contribution toward health care coverage as a result of any other employment for which there is a public employer

contribution. This does not preclude a retiree and an active employee spouse from using both contributions to the extent needed for purchase of one (1) state sponsored health insurance policy for that plan year.

(14) (a) The policies of health insurance coverage procured under subsection (2) of this section shall include a mail-order drug option for maintenance drugs for state employees. Maintenance drugs may be dispensed by mail order in accordance with Kentucky law.

(b) A health insurer shall not discriminate against any retail pharmacy located within the geographic coverage area of the health benefit plan and that meets the terms and conditions for participation established by the insurer, including price, dispensing fee, and copay requirements of a mail-order option. The retail pharmacy shall not be required to dispense by mail.

(c) The mail-order option shall not permit the dispensing of a controlled substance classified in Schedule II.

(15) The policy or policies provided to state employees or their dependents pursuant to this section shall provide coverage for obtaining a hearing aid and acquiring hearing aid-related services for insured individuals under eighteen (18) years of age, subject to a cap of one thousand four hundred dollars ($1,400) every thirty-six (36) months.

(16) If a state employee's residence and place of employment are in the same county, and if the hospital located within that county does not offer surgical services, intensive care services, obstetrical services, level II neonatal services, diagnostic cardiac catheterization services and magnetic resonance imaging services, the employee may select a plan available in a contiguous county that does provide those services, and the state contribution for the plan shall be the amount available in the county where the plan selected is located.

(17) The Personnel Cabinet is encouraged to study whether it is fair and reasonable and in the best interests of the state group to allow any carrier bidding to offer health care coverage under this section to submit bids that may vary county by county or by larger geographic areas.

(Repealed and reenact. 1982, ch. 448, § 45, effective July 15, 1982; 1984, ch. 23, § 1, effective July 13, 1984; 1986, ch. 178, § 1, effective July 15, 1986; 1990, ch. 348, § 3, effective July 13, 1990; 1990, ch. 489, § 8, effective July 13, 1990; 1992, ch. 92, § 3, effective July 14, 1992; 1992, ch. 219, § 1, effective July 14, 1992; 1992, ch. 235, § 1, effective July 14, 1992; 1994, ch. 350, § 1, effective July 15, 1994; 1994, ch. 512, Part 14, § 94, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996; 1996, ch. 371, § 60, effective July 15, 1996; 1998, ch. 82, § 4, effective July 15, 1998; 1998, ch. 154, § 45, effective July 15, 1998; 1998, ch. 515, § 1, effective July 1, 1998; 2000, ch. 438, § 2, effective April 21, 2000; 2001, ch. 70, § 3, effective March 15, 2001; 2002, ch. 67, § 1, effective July 15, 2002; 2002, ch. 106, § 2, effective July 15, 2002; 2002, ch. 275, § 34, effective July 1, 2002; 2002, ch. 345, § 1, effective July 15, 2002; 2002, ch. 351, § 17, effective July 15, 2002; 2002, ch. 352, §§ 1, 4, effective July 15, 2002.)

Legislative Research Commission Note. (7/15/2002). This section was amended by 2002 Ky. Acts chs. 67, 106, 275, 345, 351, and 352. Where these Acts are not in conflict, they have been codified together. Where a conflict exists between Acts ch. 275, sec. 34, and ch. 352, sec. 1, Acts ch. 352, which was last enacted by the General Assembly prevails under KRS 446.250.

Compiler's Notes. This section was formerly compiled as KRS 18.470 (Enact. Acts 1976 (Ex. Sess.), ch. 35, § 2; 1980, ch. 132, § 6, effective July 15, 1980; 1982, ch. 223, § 1, effective July 15, 1982) and was repealed and reenacted as this section by Acts 1982, ch. 448, § 45.

Section 9 of Acts 1992, ch. 235, provides: "The terms of current members on the boards, commissions, and councils treated by statutes amended by this Act shall continue in force. When a vacancy occurs for a member appointed to be the representative of one of the former seven congressional districts, whether by resignation, death, expiration of term, or otherwise, the vacancy shall be filled as follows:

(1) A vacancy from the former First Congressional District shall be filled by an appointee from the current First Supreme Court District.

(2) A vacancy from the former Second Congressional District shall be filled by an appointee from the current Second Supreme Court District.

(3) A vacancy from the former Third Congressional District shall be filled by an appointee from the current Fourth Supreme Court District.

(4) A vacancy from the former Fourth Congressional District shall be filled by an appointee from the current Sixth Supreme Court District.

(5) A vacancy from the former Fifth Congressional District shall be filled by an appointee from the current Third Supreme Court District.

(6) A vacancy from the former Sixth Congressional District shall be filled by an appointee from the current Fifth Supreme Court District.

(7) A vacancy from the former Seventh Congressional District shall be filled by an appointee from the current Seventh Supreme Court District."

18A.226. Group Health Insurance Board — Members — Duties.

(1) To provide quality, affordable health insurance coverage so that the Commonwealth can attract and retain able and dedicated public employees, and to facilitate the need for comprehensive and efficient planning, implementation, and administration of a state employee health insurance program in order to meet this goal, the Kentucky Group Health Insurance Board is created. The board shall be attached to the Personnel Cabinet for administrative purposes only. The board shall consist of thirteen (13) members as follows:

(a) The secretary of the Finance and Administration Cabinet;

(b) The secretary of the Personnel Cabinet;

(c) The state budget director;

(d) The commissioner of education;

(e) The chair of the Advisory Committee of State Health Insurance Subscribers;

(f) The commissioner of insurance, ex officio;

(g) The Auditor of Public Accounts, ex officio;

(h) The Director of the Administrative Office of the Courts, or his designee;

(i) One (1) retired state employee appointed by the Kentucky Retirement Systems, who shall serve an initial term of one (1) year;
(j) One (1) retired teacher appointed by the Teachers' Retirement System, who shall serve an initial term of two (2) years;
(k) One (1) active teacher appointed by the organization with the largest number of teacher members on payroll deduction, who shall serve an initial term of one (1) year;
(l) One (1) active state employee appointed by the organization with the largest number of state employee members on payroll deduction, who shall serve an initial term of two (2) years; and
(m) One (1) active classified education support employee appointed by the organization with the largest number of classified education support employee members on payroll deduction, who shall serve an initial term of one (1) year.

As each appointed member's term expires, the vacancy created shall be filled by the appointing authority for that position for a term of two (2) years. An appointment to fill an unexpired term of an appointed member shall be made by the designated appointing authority for the remainder of the term. Appointed terms shall begin effective October 1.

(2) The members of the board shall elect from among its members a chair and a vice chair.

(3) Regular meetings of the board shall be held at least once every month at a place, day, and time determined by the board. Special meetings of the board shall be held when needed as determined by the chair. If seven (7) or more members of the board request in writing that the chair call a special meeting, the chair shall call a special meeting. The meetings shall operate in accordance with the provisions of the Open Meetings Law under KRS 61.805 to 61.850.

(4) Members of the board shall receive reimbursement for necessary expenses for attendance at official board meetings or public hearings.

(5) The Kentucky Group Health Insurance Board shall:
(a) Engage in analyses and research to identify the factors and parameters that affect the state group health insurance program;
(b) Develop and transmit, by October 1 of each year beginning October 1, 2001, to the Governor, the General Assembly, and the Chief Justice of the Supreme Court, policy recommendations regarding benefit options and management of the state group health insurance program; and
(c) Provide in the first report, due by October 1, 2001, the following:
1. Analysis and discussion of methods used by all other states to provide health insurance benefits to their state group; and
2. Analysis and discussion of the cost, enrollment, claims, and utilization data for calendar year 2000 on the Kentucky state group; and
3. Recommendations including but not limited to appropriate structures for the state contribution rate which shall include recommendations on increasing the state contribution to provide support for dependent coverage, possible methods to mitigate adverse selection, competitive plan designs by type and benefit options, the feasibility of a state self-insurance plan, and strategies for evaluating third-party administrators and vendors.

(Enact. Acts 2000, ch. 438, § 1, effective April 21, 2000; 2002, ch. 158, § 1, effective July 15, 2002.)

18A.227. Flexible benefits plan for employees and retirees.

(1) For purposes of this section, the following definitions shall apply:
(a) "Cafeteria plan" shall mean a flexible benefits plan which meets the requirements of Section 125 of the Federal Internal Revenue Code;
(b) "Employee" shall mean a person, including an elected public official, who is regularly employed by any department, board, agency, or branch of state government, and who is a contributing member to any one (1) of the retirement systems administered by the state;
(c) "Cabinet" shall mean the Personnel Cabinet;
(d) "Change in family status" shall have the same meaning as used in Section 125 of the Internal Revenue Code and regulations promulgated thereunder; and
(e) "Salary reduction contribution" means all employer contributions that are excludable from gross income under the Internal Revenue Code.

(2) As part of the employee benefits provided to state employees under this chapter, the cabinet may develop and make available to eligible employees a flexible benefits plan which meets the requirements for treatment as a cafeteria plan under Section 125 of the Internal Revenue Code. The plan shall be in writing and shall be available on an equal basis to all eligible employees within each county.

(3) Options available under the plan may include, but are not limited to:
(a) Health insurance coverage;
(b) Managed health care coverage;
(c) Catastrophic illness coverage;
(d) Dental insurance;
(e) Term life insurance-accidental, death, or dismemberment;
(f) Vision insurance;
(g) Long term disability insurance;
(h) Long term medical care; and
(i) Any other benefits which may be offered under the provisions of the Internal Revenue Code and which the cabinet determines to be in the best interests of state employees.

(4) Any employee who desires to participate in options offered under the plan, may direct that any options elected shall be funded through payroll deduction. Once an option is chosen, it shall not be changed until the end of the period for which election is made unless the employee experiences a change in

family status, other change of status, or special enrollment rights under the Federal Health Insurance Portability and Accountability Act of 1996 which necessitates a revision of his benefit election.

(5) Any employee contributions required toward the purchase of the selected options shall be made by a salary reduction contribution, to the extent the benefits would be considered to be tax-free under Chapter 1 of the Internal Revenue Code, and by after-tax salary deduction where the elected option is not tax-free.

(Enact. Acts 1990, ch. 395, § 1, effective July 13, 1990; 1994, ch. 350, § 2, effective July 15, 1994; 1998, ch. 154, § 46, effective July 15, 1998; 2000, ch. 438, § 6, effective April 21, 2000; 2002, ch. 352, § 2, effective July 15, 2002.)

Compiler's Notes. Section 125 of the Internal Revenue Code and Chapter 1 of the Internal Revenue Code referred to in this section are compiled as 26 U.S.C., § 125 and 26 U.S.C., § 1 et seq., respectively.

18A.2286. Continuation coverage for member retired for disability.

If the hospital and medical insurance coverage provided under KRS 161.675 contains any limitation for pre-existing conditions, a member of the Teachers' Retirement System who retires for disability under KRS 161.661 shall be offered the right to continue coverage under the self-funded plan until any such limitation has expired. The terms and conditions for continuation of group policies under KRS 304.18-110 shall apply to the continuation coverage offered under this section. Nothing in KRS 304.18-110 shall be construed to prevent the operation of this section.

(Enact. Acts 1990, ch. 348, § 2, effective July 13, 1990.)

TITLE V

MILITARY AFFAIRS

CHAPTER 36

DEPARTMENT OF MILITARY AFFAIRS

SECTION.

MILITARY BURIAL HONOR GUARDS

36.390. Legislative findings on military burial honors — Authority to promulgate administrative regulations.
36.392. Military burial honor guard trust fund.
36.394. Duties of Department of Military Affairs and Department of Veterans' Affairs relating to burial honors.
36.396. Excused absences for secondary school students who participate in Military Burial Honor Guard Program — Incusion in instructional program.

MILITARY BURIAL HONOR GUARDS

36.390. Legislative findings on military burial honors — Authority to promulgate administrative regulations.

(1) The Commonwealth of Kentucky recognizes the need to provide for honorable burials for Kentuckians who have served their state and nation in the Armed Forces. Historically these burial services have been conducted by the active military units in Kentucky, the Kentucky National Guard, the military reserves, and the veterans' service organizations. However, increasing death rates, declining military resources, and an aging membership of veterans' service organizations present the need for new initiatives in support of military burial honors.

(2) To correct this situation, and recognizing the immediate need, the Department of Military Affairs shall oversee a Military Burial Honor Guard Program, in coordination with the Department of Veterans' Affairs, on behalf of the Commonwealth of Kentucky.

(3) The Department of Military Affairs, in consultation with and as a supplement to the Department of Defense, active United States military commands in Kentucky, the Department of Veterans' Affairs, the military reserves, and veterans service organizations, shall implement and administer the provisions of KRS 36.390 to 36.396 through the promulgation of administrative regulations. These regulations shall be in accordance with the provisions of KRS Chapter 13A and shall comply with and supplement the Department of Defense and the Armed Services' guidance.

(Enact. Acts 2000, ch. 378, § 1, effective July 1, 2000.)

36.392. Military burial honor guard trust fund.

(1) There is established and created in the State Treasury a fund entitled the "Miliary Burial Honor Guard Trust Fund" to provide funds to offset the costs of the Military Burial Honor Guard Program. The fund may receive state appropriations, gifts, grants, federal funds, and any other funds both public and private. Moneys deposited in the fund shall be disbursed by the State Treasurer upon the warrant of the Adjutant General or his representative. Any unallocated or unencumbered balances in the fund shall be invested as provided in KRS 42.500(9), and any income earned from the investments along with the unallotted or unencumbered balances in the fund shall not lapse and shall be deemed a trust and agency account and made available solely for the purposes and benefits of the Military Burial Honor Guard Program.

(2) The fund shall be used to support the costs, beyond federal reimbursements, that the Department of Military Affairs and the Department of Veterans' Affairs incur and deem necessary in providing and supporting the personnel and activities of KRS 36.390 to 36.396.

(Enact. Acts 2000, ch. 378, § 2, effective July 1, 2000.)

36.394. Duties of Department of Military Affairs and Department of Veterans' Affairs relating to burial honors.

(1) The Department of Military Affairs shall promulgate administrative regulations to implement the Military Burial Honor Guard Program.

(2) The Department of Military Affairs shall coordinate military burial honors for those who are determined to be eligible by federal and state regulations.

(3) The Department of Veterans' Affairs shall coordinate the Military Burial Honor Guard Program with veterans' service organizations, Kentucky veterans and their dependents, and the United States Department of Veterans Affairs in support of the Department of Military Affairs.

(Enact. Acts 2000, ch. 378, § 3, effective July 1, 2000.)

36.396. Excused absences for secondary school students who participate in Military Burial Honor Guard Program — Incusion in instructional program.

(1) Recognizing the participation of secondary school students in the Military Burial Honor Guard Program, excused absences may be granted by local school boards to students of secondary school JROTC programs or other students who participate in the Military Burial Honor Guard Program. This includes time spent training, traveling, and participating in the Military Burial Honor Guard Program.

(2) Local school boards may also adopt a policy to allow students to participate in the Military Burial Honor Guard Program as a part of the instructional program.

(Enact. Acts 2000, ch. 378, § 4, effective July 1, 2000.)

CHAPTER 38

NATIONAL GUARD

SECTION.

38.470. Student's credit when called into active service.
38.510. Rights, benefits, and protections upon call to active duty.

38.470. Student's credit when called into active service.

If the Kentucky National Guard or Kentucky active militia is called into state active duty by the Governor for any purpose, requiring the service of members who are students in any institution of learning in the state, no teacher, professor, principal, or president of the institution shall discriminate against the student by reason of his absence, but shall credit him with all academic work accomplished to the date of his absence. Students shall be given reasonable time to make up work missed as a result of a call to state active duty.

(2711a-238: amend. Acts 1954, ch. 98, § 25; 1974, ch. 108, § 17; 1992, ch. 307, § 8, effective April 9, 1992.)

38.510. Rights, benefits, and protections upon call to active duty.

Any right, benefit, or protection that may accrue to a member of the Kentucky National Guard under the Federal Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. secs. 501 et seq., as a result of a call to federal active duty service under Title 10 of the United States Code shall be extended to a member of the Kentucky National Guard called to active duty service under Title 32 of the United States Code, or to state active duty by the Governor of the Commonwealth of Kentucky, if the active duty orders are for a period of thirty (30) days or more.

(Enact. Acts 2002, ch. 321, § 1, effective July 15, 2002.)

TITLE VI

FINANCIAL ADMINISTRATION

CHAPTER 41

DEPARTMENT OF THE TREASURY

SECTION.

41.240. Pledge of securities required of depositories — Qualifications for a reduced pledge — Eligible securities and other obligations.

41.240. Pledge of securities required of depositories — Qualifications for a reduced pledge — Eligible securities and other obligations.

(1) (a) Before any bank shall be named as a state depository to receive public funds, it shall either pledge or provide to the State Treasurer, as collateral, securities or other obligations having an aggregate current face value or current quoted market value at least equal to the deposits or provide to the State Treasurer a surety bond or surety bonds in favor of the State Treasurer in an amount at least equal to the deposits, provided, however, that amounts insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation need not be so collateralized. The president or cashier of each depository bank shall submit to the Treasurer and the State Investment Commission a statement subscribed and sworn to by him showing:

1. The face value or current quoted market value of the securities or other obligations pledged or provided as of the time the securities or other obligations are offered as collateral; and
2. The value of surety bonds provided as of the time such surety bonds are provided as collateral.

The valuation of all pledged or provided collateral and the face amount of all surety bonds provided as collateral shall be reported to the State Treasurer and State Investment Com-

mission upon receipt of deposit and within ten (10) days of the close of each quarter after the quarter beginning December 31. Such value with respect to pledged collateral other than surety bonds shall be as of the end of the quarter or the preceding business day and, as to market values, shall be obtained from a reputable bond pricing service. The State Treasurer and Governor may from time to time call for additional collateral to adequately secure the deposits as aggregate face or current market values may require.

(b) No deposit of state collected demand and time funds shall collectively exceed at any time the depository's sum of capital, reserves, undivided profits and surplus or ten percent (10%) of the total deposits of any particular depository, whichever is less. Deposits will be valued at the end of each business day.

(2) (a) As an alternative to paragraph (1)(a) of this section, a Kentucky depository insured by the Federal Deposit Insurance Corporation may either pledge to the State Treasurer, as collateral, securities or other obligations having an aggregate face value or a current quoted market value or provide to the State Treasurer a surety bond or surety bonds in an amount equal to eighty percent (80%) of the value of the state deposit including demand and time accounts, if the depository is determined by the State Investment Commission to have very strong credit with little or no credit risk at any maturity level and the likelihood of short-term unexpected problems of significance is minimal or not of a serious or long-term nature. The value of the state deposit will be determined at the end of the business day of deposit and as of the end of business on the last day of each quarter that funds are so deposited.

(b) Valuation of all pledged or provided collateral and the face amount of surety bonds provided shall be reported to the State Treasurer and the State Investment Commission upon receipt of the state deposit and within ten (10) days of the close of each quarter after the quarter beginning December 31.

(c) Depositories designated as qualified for reduced pledging shall be so recorded in the executive journal.

(d) The State Investment Commission shall determine eligibility for the reduced pledging option based on totally objective and quantifiable measures of financial intermediary performance. The information for such eligibility shall be obtained from publicly available documents. The State Investment Commission shall promulgate the particular criteria of eligibility by regulations issued pursuant to KRS Chapter 13A.

(3) Depositories which do not qualify or do not choose to qualify under subsection (1) or (2) of this section shall not receive state deposits in excess of amounts that are insured by an instrumentality of the United States.

(4) Only the following securities and other obligations may be accepted by the State Treasurer as collateral under this section:

(a) Bonds, notes, letters of credit, or other obligations of or issued or guaranteed by the United States, or those for which the credit of the United States is pledged for the payment of the principal and interest thereof, and any bonds, notes, debentures, letters of credit, or any other obligations issued or guaranteed by any federal governmental agency or instrumentality, presently or in the future established by an Act of Congress, as amended or supplemented from time to time, including, without limitation, the United States government corporations listed in KRS 66.480(1)(c);

(b) Obligations of the Commonwealth of Kentucky including revenue bonds issued by its statutory authorities, commissions, or agencies;

(c) Revenue bonds issued by educational institutions of the Commonwealth of Kentucky as authorized by KRS 162.340 to 162.380;

(d) Obligations of any city of the first, second, and third classes of the Commonwealth of Kentucky, or any county, for the payment of principal and interest on which the full faith and credit of the issuing body is pledged;

(e) School improvement bonds issued in accordance with the authority granted under KRS 162.080 to 162.100;

(f) School building revenue bonds issued in accordance with the authority granted under KRS 162.120 to 162.300, provided that the issuance of such bonds is approved by the Kentucky Board of Education; and

(g) Surety bonds issued by sureties rated in one (1) of the three (3) highest categories by a nationally recognized rating agency.

(5) The State Treasurer shall accept letters of credit issued by federal home loan banks as collateral under this section.

(4693: amend. Acts 1952, ch. 221; 1972, ch. 118, § 1; 1978, ch. 155, § 82, effective June 17, 1978; 1982, ch. 382, § 3, effective July 15, 1982; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 554, § 1, effective July 15, 1998; 2001, ch. 112, § 3, effective June 21, 2001.)

Legislative Research Commission Note. (10/5/90). Pursuant to KRS 7.136(1), KRS Chapter 13A has been substituted for the prior reference to KRS Chapter 13 in this statute. The sections in KRS Chapter 13 were repealed by 1984 Ky. Acts ch. 417, § 36 and KRS Chapter 13A was created in that same chapter of the 1984 Ky. Acts.

Compiler's Notes. The reference to State Board of Elementary and Secondary Education in this section has been changed to Kentucky Board of Education on authority of Acts 1996, ch. 362, § 6, effective July 15, 1996.

Cross-References. Conditions of bond of public depository, recovery on, KRS 62.060 to 62.080.

Federal housing act securities eligible as collateral to secure deposits of public funds, KRS 386.040, 386.050.

State not liable for safe custody of deposits of insurance securities, KRS 304.8-080.

CHAPTER 42

FINANCE AND ADMINISTRATION CABINET

SECTION.
42.024. Division of Material and Procurement Services — Division of Surplus Property — Division of Creative Services.
42.0245. Division of Risk Management.

INVESTMENT COMMISSION

42.500. State Investment Commission — Powers.

42.024. Division of Material and Procurement Services — Division of Surplus Property — Division of Creative Services.

(1) The Division of Material and Procurement Services shall be responsible for the performance of the cabinet's purchasing functions under KRS Chapters 45 and 45A, except those purchasing functions related to the acquisition of interests in real property, and contractual and construction services which are related to and required in connection with the construction, renovation, and repair of state-owned buildings. The Division of Material and Procurement Services shall be responsible for the control of all state-purchased personal property.

(2) The Division of Surplus Property shall be responsible for the disposition of all personal property of the state declared surplus. The division shall be the single state agency of the Commonwealth of Kentucky that may receive, warehouse, and distribute surplus property under the Federal Property and Administrative Services Act of 1949, as amended, and any other federal law relating to the disposal of surplus federal property to the states and political subdivisions within the states. The division shall comply with federal laws and regulations in the administration of surplus property received through federal agencies. The secretary of the Finance and Administration Cabinet may promulgate administrative regulations in accordance with KRS Chapter 13A as necessary to comply with the minimum standards established by federal laws and regulations governing disposal of surplus federal property and to implement subsection (3) of this section.

(3) The Division of Creative Services shall provide photography, multimedia, and graphic service to state government.

(4) The secretary of the Finance and Administration Cabinet may establish, charge, and collect from donees of federal surplus property a fair and reasonable fee or service charge to defray the cost of operating the surplus property disposal program. The fees shall be deposited in a trust and agency account in the State Treasury to the credit of the Division of Surplus Property.

(Enact. Acts 1978, ch. 155, § 50, effective June 17, 1978; 1982, ch. 393, § 23, effective July 15, 1982; 1984, ch. 111, § 33, effective July 13, 1984; 1990, ch. 386, § 1, effective July 13, 1990; 1994, ch. 216, § 6, effective July 15, 1994; 1994, ch. 508, § 10, effective July 15, 1994; 2000, ch. 5, § 3, effective July 14, 2000.)

Legislative Research Commission Note. (7/15/94). This section was amended by 1994 Ky. Acts chs. 216 and 508. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 508, which was last enacted by the General Assembly, prevails under KRS 446.250.

42.0245. Division of Risk Management.

(1) There is established within the Department for Administration in the Finance and Administration Cabinet the Division of Risk Management. The division shall be headed by a director who shall be appointed by the secretary of the Finance and Administration Cabinet subject to the approval of the Governor.

(2) The Division of Risk Management shall:
   (a) Oversee and assist the management of the state fire and tornado insurance fund established in KRS Chapter 56;
   (b) Develop and manage programs of risk assessment and insurance for the protection of state property not covered by the state fire and tornado insurance fund;
   (c) Advise the secretary of the Finance and Administration Cabinet on the fiscal management of programs relating to life insurance, workers' compensation, and health care benefits for state employees;
   (d) Serve as the central clearinghouse for coordinating and evaluating existing and new risk management programs within all state agencies;
   (e) Develop financing techniques for risk protection; and
   (f) Develop and implement other risk management, insurance, and self-insurance programs or other functions and duties as the secretary of the Finance and Administration Cabinet may direct the office to undertake and implement within the general statutory authority and control of the Finance and Administration Cabinet over state property and fiscal affairs of the executive branch of state government, including, but not limited to, those areas pertaining to tort and contractual liability, fidelity, and property risks.

(3) Nothing in this section shall be construed or interpreted as affecting the operation of the employee benefit programs generally administered by the Division of Employee Benefits within the Personnel Cabinet and of the State Risk and Insurance Services programs administered by the Department of Insurance. However, both of those departments shall coordinate the operation of life insurance, workers' compensation, health care benefit programs, and other self-insured programs with the Division of Risk Management.

(4) All cabinets, departments, boards, commissions, and other state agencies shall provide to the Division of Risk Management the technical advice and other assistance the Division of Risk Management

or the secretary of the Finance and Administration Cabinet shall request in the performance of the functions of the division as described in this section.

(5) The secretary of the Finance and Administration Cabinet shall have the power and authority to promulgate administrative regulations pursuant to KRS Chapter 13A for purposes of implementing a risk management program for the executive branch of state government. Any administrative regulations promulgated by the secretary shall be administered by the Division of Risk Management.

(Enact. Acts 1990, ch. 377, § 1, effective July 13, 1990; amend. and redesig. Acts 1994, ch. 116, § 3, effective July 15, 1994; 1994, ch. 216, § 4, effective July 15, 1994; 1998, ch. 82, § 12, effective July 15, 1998; 1998, ch. 154, § 62, effective July 15, 1998; 2001, ch. 164, § 3, effective June 21, 2001.)

Legislative Research Commission Note. (7/15/94). This statute was formerly codified as KRS 42.0192 and was renumbered by the Reviser of Statutes pursuant to KRS 7.136(1)(a) because of changes made by 1994 Ky. Acts ch. 216, sec. 4.

INVESTMENT COMMISSION

42.500. State Investment Commission — Powers.

(1) There shall be a State Investment Commission composed of the Governor who shall be chairman; the State Treasurer who shall be vice chairman and serve as chairman in the absence of the Governor; the secretary of the Finance and Administration Cabinet; and two (2) persons appointed by the Governor.

(2) The individuals appointed by the Governor shall be selected as follows: one (1) to be selected from a list of five (5) submitted to the Governor by the Kentucky Bankers Association, and one (1) to be selected from a list of five (5) submitted to the Governor by the Independent Community Bankers Association.

(3) The State Investment Commission shall meet at least quarterly to review investment performance and conduct other business. This provision shall not prohibit the commission from meeting more frequently as the need arises.

(4) The Governor, State Treasurer, and secretary of the Finance and Administration Cabinet shall each have the authority to designate, by an instrument in writing over his or her signature and filed with the secretary of the commission as a public record of the commission, an alternate with full authority to:

(a) Attend in the member's absence, for any reason, any properly convened meeting of the commission; and

(b) Participate in the consideration of, and vote upon, business and transactions of the commission.

Each alternate shall be a person on the staff of the appointing member or in the employ of the appointing member's state agency or department.

(5) Any designation of an alternate may, at the appointing member's direction:

(a) Be limited upon the face of the appointing instrument to be effective for only a specific meeting or specified business;

(b) Be shown on the face of the appointing instrument to be a continuing designation, for a period of no more than four (4) years, whenever the appointing member is unable to attend; or

(c) Be revoked at any time by the appointing member in an instrument in writing, over his or her signature, filed with the secretary of the commission as a public record of the commission.

(6) Any person transacting business with, or materially affected by, the business of the commission may accept and rely upon a joint certificate of the secretary of the commission and any member of the commission concerning the designation of any alternate, the time and scope of the designation, and, if it is of a continuing nature, whether and when the designation has been revoked. The joint certificate shall be made and delivered to the person requesting it within a reasonable time after it has been requested in writing, with acceptable identification of the business or transaction to which it refers and the requesting person's interest in the business or transaction.

(7) Any three (3) persons who are members of the commission or alternates authorized under subsections (4) and (5) of this section shall constitute a quorum and may, by majority vote, transact any business of the commission. Any three (3) members of the commission may call a meeting.

(8) The provisions of KRS 61.070 shall not apply to members of the commission.

(9) The commission shall have authority and may, if in its opinion the cash in the State Treasury is in excess of the amount required to meet current expenditures, invest any and all of the excess cash in:

(a) Obligations and contracts for future delivery of obligations backed by the full faith and credit of the United States or a United States government agency, including but not limited to:

1. United States Treasury;
2. Export-Import Bank of the United States;
3. Farmers Home Administration;
4. Government National Mortgage Corporation; and
5. Merchant Marine bonds;

(b) Obligations of any corporation of the United States government, including but not limited to:

1. Federal Home Loan Mortgage Corporation;
2. Federal Farm Credit Banks;
   a. Bank for Cooperatives;
   b. Federal Intermediate Credit Banks; and
   c. Federal Land Banks;
3. Federal Home Loan Banks;

4. Federal National Mortgage Association; and
5. Tennessee Valley Authority obligations;

(c) Collateralized or uncollateralized certificates of deposit, issued by banks rated in one (1) of the three (3) highest categories by a nationally recognized rating agency or other interest-bearing accounts in depository institutions chartered by this state or by the United States, except for shares in mutual savings banks;

(d) Bankers acceptances for banks rated in one (1) of the three (3) highest categories by a nationally recognized rating agency;

(e) Commercial paper rated in the highest category by a nationally recognized rating agency;

(f) Securities issued by a state or local government, or any instrumentality or agency thereof, in the United States, and rated in one (1) of the three (3) highest categories by a nationally recognized rating agency;

(g) United States denominated corporate, Yankee, and Eurodollar securities, excluding corporate stocks, issued by foreign and domestic issuers, including sovereign and supranational governments, rated in one (1) of the three (3) highest categories by a nationally recognized rating agency;

(h) Asset-backed securities rated in the highest category by a nationally recognized rating agency; and

(i) Shares of mutual funds, not to exceed ten percent (10%) of the total funds available for investment as described in subsection (9) of this section, each of which shall have the following characteristics:
1. The mutual fund shall be an open-end diversified investment company registered under Federal Investment Company Act of 1940, as amended;
2. The management company of the investment company shall have been in operation for at least five (5) years;
3. At least ninety percent (90%) of the securities in the mutual fund shall be eligible investments pursuant to this section; and

(j) State and local delinquent property tax claims which upon purchase shall become certificates of delinquency secured by interests in real property not to exceed twenty-five million dollars ($25,000,000) in the aggregate. For any certificates of delinquency that have been exonerated pursuant to KRS 132.220(5), the Revenue Cabinet shall offset the loss suffered by the Finance and Administration Cabinet against subsequent local distributions to the affected taxing districts as shown on the certificate of delinquency.

(10) The State Investment Commission shall promulgate administrative regulations for the investment and reinvestment of state funds in shares of mutual funds, and the regulations shall specify:

(a) The long and short term goals of any investment;

(b) The specification of moneys to be invested;

(c) The amount of funds which may be invested per instrument;

(d) The qualifications of instruments; and

(e) The acceptable maturity of investments.

(11) Any investment in obligations and securities pursuant to subsection (9) of this section shall satisfy this section if these obligations are subject to repurchase agreements, provided that delivery of these obligations is taken either directly or through an authorized custodian.

(12) Income earned from investments made pursuant to this section shall accrue to the credit of the investment income account of the general fund, except that interest from investments of excess cash in the road fund shall be credited to the surplus account of the road fund and interest from investments of excess cash in the game and fish fund shall be credited to the game and fish fund, interest earned from investments of imprest cash funds and funds in the trust and revolving fund for each state public university shall be credited to the appropriate institutional account, and interest earned from the investment of funds accumulated solely by means of contributions and gifts shall not be diverted to any purpose other than that stipulated by the donor, when the donor shall have designated the use to which the interest shall be placed. Except as otherwise provided by law, or by the obligations and covenants contained in resolutions and trust indentures adopted or entered into for state bond issues, interest earned from the investment of moneys appropriated to the capital construction accounts, trust and agency accounts, and trust and agency revolving accounts shall accrue to the capital construction investment income account. If the total general fund revenue receipts are less than the total revenue estimates for the general fund under KRS 48.120 and 48.130, the secretary of the Finance and Administration Cabinet, upon the recommendation of the state budget director, may direct the transfer of excess unappropriated capital construction investment income to the general fund investment income account. The amount of the transfer shall not exceed the amount of the shortfall in general fund revenues. If the capital construction investment income is less than that amount appropriated by the General Assembly, the secretary of the Finance and Administration Cabinet may, upon recommendation of the state budget director, direct the transfer of excess unappropriated general fund investment income to the capital construction investment income account. The transfer of general fund investment income revenues to the capital construction investment income account shall be made only when the actual general fund revenues are in excess of the revenue estimates under KRS 48.120 and shall be limited to the amount of the excess general fund revenues. The amount of the transfer shall not exceed the amount of the shortfall in the capital construction fund revenues.

(13) The authority granted by this section to the State

Investment Commission shall not extend to any funds that are specifically provided by law to be invested by some other officer or agency of the state government.

(14) The authority granted by this section to the State Investment Commission shall only be exercised pursuant to the administrative regulations mandated by KRS 42.525.

(15) Each member of the State Investment Commission, with the exception of the Governor, shall post bond for his acts or omissions as a member thereof identical in amount and kind to that posted by the State Treasurer.

(Repealed, reenacted and amended Acts 1982, ch. 382, § 6, effective July 15, 1982; 1982, ch. 300, § 5, effective July 15, 1982; 1982, ch. 450, § 58, effective July 1, 1983; 1984, ch. 324, § 60, effective July 13, 1984; 1986, ch. 408, § 1, effective July 15, 1986; 1988, ch. 368, § 2, effective July 15, 1988; 1990, ch. 277, § 1, effective July 13, 1990; 1990, ch. 291, § 1, effective July 13, 1990; 1990, ch. 294, § 1, effective July 13, 1990; 1996, ch. 101, § 1, effective July 15, 1996; 1997 (1st Ex. Sess.), ch. 4, § 36, effective May 30, 1997; 1998, ch. 209, § 19, effective March 30, 1998.)

Compiler's Notes. This section was formerly compiled as KRS 41.380 (Acts 1952, ch. 86; 1954, ch. 245, § 1, effective June 17, 1954; 1980, ch. 295, § 11, effective July 15, 1980; 1980, ch. 347, § 1, effective January 1, 1982) and was repealed, reenacted and amended as this section by Acts 1982, ch. 382, § 6.

Section 21 of Acts 1998, ch. 209, provided that the 1998 amendments to this section "shall apply for sales of delinquent tax bills made on or after March 1, 1998."

Cross-References. Housing obligations, investment of public funds in, KRS 386.030 to 386.050.

Unemployment compensation administration fund and contingent fund, investment of, KRS 341.296.

Opinions of Attorney General. In view of the fact that the Council for Education Technology has the duty to invest funds appropriated for education technology, the State Investment Commission would not have authority under this section to invest those same funds. OAG 91-39.

CHAPTER 43

AUDITOR OF PUBLIC ACCOUNTS

SECTION.

43.073. Annual audit of school district entity by Auditor or private accountant — Expenses — Review of private audit by Auditor.

43.073. Annual audit of school district entity by Auditor or private accountant — Expenses — Review of private audit by Auditor.

(1) The Auditor of Public Accounts shall be responsible for an annual audit of the funds contained in each school district cooperative, school district consortium, school district corporation, and any other entity formed by school districts in an agreement made pursuant to KRS 65.210 to 65.300, with the cost of the audit to be borne by the audited entity.

(2) A school district cooperative, school district consortium, school district corporation, or other entity formed by school districts in an agreement made pursuant to KRS 65.210 to 65.300 may employ a certified public accountant to audit the books, accounts, and papers of the cooperative, consortium, corporation, or other entity in lieu of the audit required by subsection (1) of this section, if the Auditor of Public Accounts declines in writing to assume responsibility for performing the audit or fails to respond in writing within thirty (30) days of receiving the cooperative's, consortium's, corporation's, or other entity's written notice of its intent to employ a certified public accountant to conduct the audit. The cooperative, consortium, corporation, or other entity shall not enter into any contract with a certified public accountant for an audit unless the Auditor of Public Accounts has declined in writing to assume responsibility for performing the audit or has failed to respond within thirty (30) days of receipt of a written request for an audit.

(3) (a) Any contract with a certified public accountant entered into as a result of the Auditor of Public Accounts either declining to assume responsibility of performing the audit or failing to respond within thirty (30) days of receipt of a written request for an audit shall specify the following:

1. That the certified public accountant shall forward a copy of the audit report and management letters to the Auditor of Public Accounts for review;
2. That the Auditor of Public Accounts shall have the right to review the certified public accountant's work papers before and after the release of the audit; and
3. That after review of the certified public accountant's work papers, if discrepancies are found, the Auditor of Public Accounts shall notify the audited entity of the discrepancies. If the certified public accountant does not correct these discrepancies prior to the release of the audit, the Auditor of Public Accounts may conduct its own audit to verify the findings of the certified public accountant's report.

(b) If an audit verifying the findings of the certified public accountant's report is conducted by the Auditor of Public Accounts, the total audit expense incurred by the audited entity shall be an allowable expenditure and shall be paid by the audited entity to the Auditor of Public Accounts. If the audit conducted by the Auditor of Public Accounts discloses discrepancies in the audit by the certified public accountant, the findings of the Auditor of Public Accounts shall be deemed official for all purposes.

(Enact. Acts 2000, ch. 491, § 1, effective July 14, 2000.)

CHAPTER 44

CLAIMS UPON THE TREASURY

SECTION.

BOARD OF CLAIMS

44.070. Board of Claims — Limitation on damage awards — Hearing officers — Asbestos related claims.

BOARD OF CLAIMS

44.070. Board of Claims — Limitation on damage awards — Hearing officers — Asbestos related claims.

(1) A Board of Claims, composed of the members of the Crime Victims Compensation Board as hereinafter provided, is created and vested with full power and authority to investigate, hear proof, and to compensate persons for damages sustained to either person or property as a proximate result of negligence on the part of the Commonwealth, any of its cabinets, departments, bureaus, or agencies, or any of its officers, agents, or employees while acting within the scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus, or agencies; provided, however, regardless of any provision of law to the contrary, the Commonwealth, its cabinets, departments, bureaus, and agencies, and its officers, agents, and employees, while acting within the scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus, or agencies, shall not be liable for collateral or dependent claims which are dependent on loss to another and not the claimant, damages for mental distress or pain or suffering, and compensation shall not be allowed, awarded, or paid for said claims for damages. Furthermore, any damage claim awarded shall be reduced by the amount of payments received or right to receive payment from workers' compensation insurance, social security programs, unemployment insurance programs, medical, disability or life insurance programs, or other federal or state or private program designed to supplement income or pay claimant's expenses or damages incurred. Any claim against the Commonwealth, its departments, agencies, officers, agents, or employees, or a school district board of education, its members, officers, agents, or employees for damages sustained as the result of exposure to asbestos before, during or after its removal from a facility owned, leased, occupied, or operated by the Commonwealth or a school district board of education shall be brought before the Board of Claims. Except as herein provided, the board shall be independent of all agencies, cabinets, and departments of the Commonwealth except as provided in KRS 44.070 to 44.160.

(2) The board shall be composed of the members of the Crime Victims Compensation Board. The members shall not be entitled to additional compensation for their services on the Board of Claims.

(3) The Governor shall designate a member of the board to serve as chairman for a term of four (4) years. Any vacancy in the chairmanship shall be filled by the Governor. No member shall, at the same time, serve as chairman of the Crime Victims Compensation Board and as chairman of the Board of Claims.

(4) The employees of the Crime Victims Compensation Board, without additional compensation, shall be ex officio employees of the Board of Claims.

(5) Regardless of any provision of law to the contrary, the jurisdiction of the board is exclusive, and a single claim for the recovery of money or a single award of money shall not exceed two hundred thousand dollars ($200,000), exclusive of interest and costs. However, if a single act of negligence results in multiple claims, the total award may not exceed three hundred fifty thousand dollars ($350,000), to be equitably divided among the claimants, but in no case may any claimant individually receive more than two hundred thousand dollars ($200,000).

(6) The Governor shall appoint the necessary number of hearing officers, each of whom shall be an attorney admitted to practice law in Kentucky and shall have practiced law for at least three (3) years. These officers, upon the direction of the chairman or the board, shall conduct hearings, and otherwise supervise the presentation of evidence and perform any other duties assigned to them by the chairman or the board, except that such hearing officers shall not render final decisions, orders, or awards. However, such hearing officers may, in receiving evidence on behalf of the board, make such rulings affecting the competency, relevancy, and materiality of the evidence about to be presented and upon motions presented during the taking of evidence as will expedite the preparation of the case.

(7) The board may at any time recommend the removal of any hearing officer upon filing with the Governor a full written statement of its reasons for such removal.

(8) Upon recommendation to the board by the attorney for the Commonwealth, its cabinet, department, bureau, agency, or employee thereof, that a settlement has been reached between the parties to the claim, and upon approval by the board that the settlement is reasonable for all parties concerned, the agreed judgment or dismissal may be entered accordingly, even without a party's admission to liability.

(Enact. Acts 1946, ch. 189, §§ 1, 3, par. 1; 1950, ch. 50, § 1; 1956 (1st Ex. Sess.), ch. 7, Art. XIII, § 1; 1958, ch. 52, § 1; 1960, ch. 25, § 1; 1972, ch. 234, § 1; 1976, ch. 326, § 2; 1978, ch. 15, § 1, effective June 17, 1978; 1986, ch. 279, § 1, effective July 15, 1986; 1986, ch. 499, § 3, effective July 15, 1986; 2000, ch. 304, § 4, effective July 14, 2000.)

Compiler's Notes. This section was formerly compiled as KRS 176.290.

NOTES TO DECISIONS

6. Governmental Immunity.

The Board of Claims Act, KRS 44.070 to 44.160, is a partial

waiver of the Commonwealth's sovereign immunity. Department of Educ. v. Blevins, 707 S.W.2d 782 (Ky. 1986).

The waiver of sovereign immunity granted by the Board of Claims Act, KRS 44.070 to 44.160, does not exclude a parent's claim for loss of affection and companionship of a minor child as created by KRS 411.135. Department of Educ. v. Blevins, 707 S.W.2d 782 (Ky. 1986).

CHAPTER 45

BUDGET AND FINANCIAL ADMINISTRATION

SECTION.
45.031. Federal funds — State clearinghouse function.

CAPITAL PROJECTS AND BONDS

45.812. Listing of costs relating to issuance of revenue bonds authorized by appropriation of school district.

45.031. Federal funds — State clearinghouse function.

(1) Any department, board, commission, agency, advisory council, interstate compact, corporate body, or instrumentality of the Commonwealth of Kentucky applying for federal funds, aids, loans, or grants shall file a summary notification of the intended application with the Department for Local Government in accordance with the existing A-95 procedures.

(2) When as a condition to receiving federal funds, the Commonwealth of Kentucky is required to match the federal funds, a statement shall be filed with the notice of intent or summary of the application stating:

(a) The amount and source of state funds needed for matching purposes;

(b) The length of time the matching funds shall be required;

(c) The growth of the program;

(d) How the program will be evaluated;

(e) What action will be necessary should the federal funds be canceled, curtailed, or restricted; and

(f) Any other financial and program management data required by the Finance and Administration Cabinet or by law.

(3) Any application for federal funds, aids, loans, or grants which will require state matching or replacement funds at the time of application or at any time in the future, must be approved by the secretary of the Finance and Administration Cabinet, the Legislative Research Commission, and the Chief Justice for their respective branches of government or their designated agents prior to its filing with the appropriate federal agency. Any application for federal funds, aids, loans, or grants which will require state matching or replacement funds at the time of application or at any time in the future, when funds have not been appropriated for that express purpose, must be approved by the General Assembly, if in session. When the General Assembly is not in session, the application shall be reported to and reviewed by the Interim Joint Committee on Appropriations and Revenue, as provided by subsection (4) of KRS 48.500.

(4) When any federal funds, aids, loans, or grants are received by any department, board, commission or agency of the Commonwealth of Kentucky, a report of the amount of funds received shall be filed with the Finance and Administration Cabinet; and this report shall specify the amount of funds which would reimburse an agency for indirect costs as provided for under OMB Circular A-87.

(5) The secretary of the Finance and Administration Cabinet may refuse to issue his warrant for the disbursement of any state or federal funds from the State Treasury as the result of any application which is not approved as provided by this section, or in regard to which the statement or reports required by this section were not filed.

(6) The secretary of the Finance and Administration Cabinet shall be responsible for the orderly administration of this section and for issuing the appropriate guidelines and regulations from each source of fund used.

(Enact. Acts 1982, ch. 450, § 49, effective July 1, 1983; 1994, ch. 508, § 14, effective July 15, 1994; 1998, ch. 69, § 16, effective July 15, 1998.)

CAPITAL PROJECTS AND BONDS

45.812. Listing of costs relating to issuance of revenue bonds authorized by appropriation of school district.

(1) Prior to the issuance of the revenue bonds or notes authorized by an appropriation of the General Assembly, or by or on behalf of any Kentucky school district, the agency, corporation, or school district authorized to issue the bonds or notes shall furnish to the Capital Projects and Bond Oversight Committee and the Interim Joint Committee on Appropriations and Revenue, and make available to the public, a listing of all costs associated, either directly or indirectly, with the issuance of the revenue bonds or notes. The costs shall be itemized as to amount and name of payee, and shall include fees or commissions paid to, or anticipated to be paid to, issuers, underwriters, placement agents and advisors, financial advisors, remarketing agents, credit enhancers, trustees, accountants, and the counsel of all these persons, bond counsel, and special tax counsel, and shall include the economic benefits received or anticipated to be received by any other persons from any source in return for services performed relating to the issuance of the bonds or notes. Changes in amounts or names of payees or recipients, or additions of amounts or names of payees or recipients, to the listing furnished and made available pursuant to this subsection, shall be furnished to the Capital Projects and Bond Oversight Committee and the Interim Joint Committee on Appropriations and Revenue and made available to the public within three (3) days following the change.

(2) The costs required to be furnished under the provisions of subsection (1) of this section shall not

include the payment of wages or expenses to full-time, permanent employees of the Commonwealth of Kentucky.

(Enact. Acts 1992, ch. 295, § 1, effective July 14, 1992.)

CHAPTER 45A

KENTUCKY MODEL PROCUREMENT CODE

SECTION.

KENTUCKY MODEL PROCUREMENT CODE

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KENTUCKY MODEL PROCUREMENT CODE

45A.300. Cooperative purchasing.

(1) Any public purchasing unit may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the acquisition of any supplies, services, or construction with any other public purchasing unit or foreign purchasing activity, in accordance with an agreement entered into between the participants. This cooperative purchasing may include, but is not limited to, joint contracts between public purchasing units and access by local public purchasing units to open-ended state public purchasing unit contracts.

(2) Nothing in this code shall limit any public purchasing unit from selling to, acquiring from, or using any property belonging to another public purchasing unit or foreign purchasing activity independent of the requirements of KRS 45A.070 to 45A.165.

(3) Nothing in this code shall limit or restrict any public purchasing unit from entering into an agreement, independent of the requirements of KRS 45A.045(5) and KRS 45A.070 to 45A.165, with any other public purchasing unit or foreign purchasing activity for the cooperative use of supplies or services.

(4) Any public purchasing unit may enter into an agreement for the joint or common use of warehousing facilities or the lease or common use of capital equipment or facilities with any other public purchasing unit or a foreign purchasing activity subject to the terms as may be agreed upon between the parties.

(5) Nothing in this code shall limit or restrict the ability of local school districts to acquire supplies outside of the public purchasing agreements when the supplies and equipment meeting the same

specifications as the contract items are available at a lower price elsewhere and the purchase does not exceed two thousand five hundred dollars ($2,500).

(6) Nothing in this code shall limit any public purchasing unit from receiving notice of or accepting a price reduction on supplies or equipment when the supplies or equipment are being offered by the vendor with whom a price agreement has been made; the supplies or equipment are being offered in accordance with all terms and conditions that are specified in the price agreement, except those relating to price; and the price reduction is offered to all of the participants in the price agreement. Public purchasing units may accept special price reductions under this subsection even if the reduced price requires the purchase of a specified quantity of units different from the quantity stated in the original price agreement. Price reductions under this subsection shall not be considered to permanently alter the price of the supplies or equipment under the price agreement with the Commonwealth, except where the price reductions are to be made permanent under the express terms of the price agreement and where the purchasing agency which solicited the price agreement determines that the enforcement of those terms serves the best interest of the Commonwealth.

(Enact. Acts 1978, ch. 110, § 60, effective January 1, 1980; 1990, ch. 496, § 28, effective July 13, 1990; 1996, ch. 89, § 1, effective July 15, 1996; 1997 (1st Ex. Sess.), ch. 4, § 31, effective May 30, 1997.)

45A.335. Definitions for terms used in KRS 45A.330 to 45A.340.

As used in KRS 45A.330 to 45A.340 except as may be otherwise indicated by the context:

(1) "Agency" means any of the departments of the state government, and any division, board, bureau, commission or other instrumentality within such department and any independent state authority, commission, instrumentality or agency, but it does not include a school district or other political subdivision nor an authority, commission, instrumentality or agency created pursuant to compact or agreement between or among the state of Kentucky and another state or states;

(2) "Officer or employee" means a member of the boards of trustees, or regents of a state university, except faculty and student members, and a person holding an office, position or employment in an agency, but it does not include other persons who serve without salary and it does not include members or employees of school boards or district boards of education or faculty or staff of state institutions of higher learning or, as used in KRS 45A.340(5), citizen members of boards, commissions or independent state authorities who may receive per diem allowances for attendance at meetings of the boards, commissions or authorities on which they serve;

(3) "Compensation" means any money, thing of value, or financial benefit conferred in return for services rendered or to be rendered, but it does not include the salary or other payment provided by law or appropriation for services rendered in a public office, position or employment.

(Repealed and reenacted Acts 1978, ch. 110, § 67, effective January 1, 1979; 1978, ch. 392, § 2, effective June 17, 1978; 1980, ch. 250, § 7, effective April 9, 1980; 1982, ch. 282, § 3, effective April 2, 1982.)

Legislative Research Commission Note. Pursuant to 1982 Acts Ch. 282, Section 5, this section became effective on April 2, 1982. However, the reason stated therein for the emergency pertains only to Section 3 of the Act and therefore may not be in compliance with Ky. Const., § 55, which requires a reason for the emergency.

Compiler's Notes. This section (Acts 1960, ch. 181, § 2; 1970, ch. 163, § 1) was formerly compiled as KRS 61.094 and was repealed and reenacted as this section by Acts 1978, ch. 110, § 67, effective January 1, 1979.

Opinions of Attorney General. Although KRS 45A.340 prohibits a member of the General Assembly from being a state employee, this section excludes employees of school boards or district boards of education as officers or employees of the state, so a schoolteacher may serve in the State Legislature. OAG 73-99.

Faculty or staff of the state universities are not to be included within the definition of "officer or employee" in subdivision (2) of this section and are likewise excluded from the prohibitions set out in KRS 45A.340 deemed to create conflicts of interest for public officers and employees. Accordingly, no conflict of interest was created where a University of Kentucky faculty member was also a shareholder and director of an architectural firm which occasionally contracted with the University. OAG 82-406.

KRS 446.120, concerning statutory construction, requires the reading of the word "to" in this section to mean in effect "through" so that this section actually defines terms used in KRS 45A.330 through 45A.340. OAG 82-406.

45A.340. Conflicts of interest of public officers and employees.

(1) No officer or employee of the General Assembly, or officer or employee of an agency as defined in KRS 45A.335, shall knowingly receive or agree to receive, directly or indirectly, compensation for any services to be rendered, either by himself or another, in negotiations with the state or an agency for the purchase by the state or an agency of an interest in real property. This section shall not apply to appearances before any court, except that negotiations shall be prohibited as aforesaid at any time.

(2) No officer or employee of an agency or member of a state board or commission, may be in any manner interested, either directly or indirectly, in his own name or in the name of any other person, association, trust, or corporation, in any contract for the performance of any work in the making or letting or administration of which such officer or employee may be called upon to act or vote. No such officer or employee may represent, either as agent or otherwise, any person, association, trust, or corporation, with respect to any application or bid for any contract or work in regard to which such officer or employee may be called upon to act or vote. Nor may any such officer or employee take, solicit, or receive, either directly or indirectly, any money or other thing of value as a gift or bribe or means of influencing his vote or action in his official charac-

ter. Any contract made and procured in violation hereof is void. For the purposes of this section the holding of less than five percent (5%) of the stock of a corporation is not considered an interest.

(3) No officer or employee of the General Assembly or officer or employee of any agency shall, for compensation, appear before an agency as an expert witness.

(4) No officer or employee of the General Assembly, or officer or employee of any agency, shall act as officer or agent for the Commonwealth or any agency in the transaction of any business with himself, or with any corporation, company, association, or firm in which he or his spouse has any interest greater than five percent (5%) of the total value thereof.

(5) No officer or employee of an agency or appointee shall knowingly himself or by his partners or through any corporation which he controls or in which he owns or controls more than ten percent (10%) of the stock, or by any other person for his use or benefit or on his account, undertake, execute, hold, or enjoy, in whole or in part, any contract, agreement, sale, or purchase of the value of twenty-five dollars ($25) or more, made, entered into, awarded or granted by any agency, unless said contract, agreement, sale or purchase was made or let after public notice and competitive bidding.

(6) No officer, employee, or appointee of an agency, including persons who serve without salary or other payment for their services, shall knowingly receive or agree to receive, directly or indirectly, compensation for any services rendered or to be rendered, either by himself or another, in any cause, proceeding, application, or other matter which is before said agency or before the department of state government in which said agency functions.

(7) No member of a board of trustees or regents shall have an interest in any contract with a state university unless such contract shall have been subjected to competitive bidding in compliance with KRS Chapter 45A, unless such trustee or regent shall have been the lowest bidder and unless such trustee or regent shall have first notified in writing the remaining members of the board, and to the newspaper having the largest circulation in the county in which the state university is located, of his intention to bid on such contract.

(Amend. and reenacted Acts 1978, ch. 110, § 68, effective January 1, 1979; 1978, ch. 392, § 2, effective June 17, 1978; 1990, ch. 496, § 29, effective July 13, 1990.)

Legislative Research Commission Note. (7/14/92). The text of subsection (7) of this statute was enacted by 1978 Ky. Acts ch. 392, sec. 2, as subsection (4) of the former KRS 61.094, which was reenacted as KRS 45A.335 by 1978 Ky. Acts ch. 110, sec. 67. In codifying the amendment to KRS 45A.335 in 1982 Ky. Acts ch. 282, sec. 3, the Revisor of Statutes acting under KRS 7.136(1) renumbered the former KRS 45A.335(4) as KRS 45A.340(7).

Compiler's Notes. This section (Enact. Acts 1960, ch. 181, §§ 3 to 9; 1974, ch. 261, § 2; 1976, ch. 206, § 29; 1976, ch. 262, § 17) was formerly compiled as KRS 61.096 and was amended and reenacted as this section by Acts 1978, ch. 110, § 68, effective January 1, 1979.

Cross-References. Abuse of public office, Penal Code, KRS 522.010 to 522.040.

Receiving unlawful compensation, KRS 521.040.

Soliciting unlawful compensation, KRS 521.030.

Opinions of Attorney General. It is a violation of the terms of this statute for a person to serve as chairman of the Kentucky Public Service Commission while he is a partner in a certified public accounting partnership that performs an annual audit of a state university and/or the Kentucky state auditor's office. OAG 70-55.

A faculty member of the University of Louisville may not serve at the same time as a member of the state legislature. OAG 72-442.

A person who is a full or part-time teacher at the university could become a candidate for the office of state representative but could not serve as a member of the state legislature and continue his position with the university. OAG 72-827.

A member of the General Assembly may not at the same time hold a teaching job at a college which is part of the University of Kentucky community college system. OAG 73-8.

An Eastern Kentucky University professor who holds a consultant's license from the Kentucky Department of Insurance, is a member of the Kentucky Insurance Regulatory Board and is a chairholder for insurance studies at Eastern Kentucky University may enter into a personal service contract with the Department of Insurance to revise study manuals for use by applicants for insurance agents' licenses. OAG 80-5.

Former KRS 45A.335(4) (now subsection (7) of this section) is applicable only to contracts executed during the board member's tenure and no conflict of interest exists where the contracts were executed prior to the board member becoming a member of the board of trustees or regents. OAG 80-379.

Faculty or staff of the state universities are not to be included within the definition of "officer or employee" in KRS 45A.335(2) and are likewise excluded from the prohibitions set out in this section deemed to create conflicts of interest for public officers and employees. Accordingly, no conflict of interest was created where a University of Kentucky faculty member was also a shareholder and director of an architectural firm which occasionally contracted with the University. OAG 82-406.

KRS 446.120, concerning statutory construction, requires the reading of the word "to" in KRS 45A.335 to mean in effect "through" so that KRS 45A.335 actually defines terms used in KRS 45A.330 through 45A.340. OAG 82-406.

The Kentucky High School Athletic Association may purchase property from an entity in which the governor is a general partner, without violating this section. OAG 90-27.

Attorney General opined that no statutory conflict of interest exists under this section and KRS 160.180 between the positions of member of the State Board for Elementary and Secondary Education and executive director of the Lincoln Foundation; but it was not possible for the Attorney General to provide a general ruling as to whether a potential conflict of interest may exist at common law. OAG 91-226.

45A.343. Local public agency may adopt provisions of KRS 45A.345 to 45A.460 — Effect of adoption — Contracts required to mandate revealing of violations of and compliance with specified KRS chapters — Effect of nondisclosure or noncompliance.

(1) Any local public agency may adopt the provisions of KRS 45A.345 to 45A.460. No other statutes

governing purchasing shall apply to a local public agency upon adoption of these provisions.

(2) After July 15, 1994, any contract entered into by a local public agency, whether under KRS 45A.345 to 45A.460 or any other authority, shall require the contractor and all subcontractors performing work under the contract to:

(a) Reveal any final determination of a violation by the contractor or subcontractor within the previous five (5) year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341, and 342 that apply to the contractor or subcontractor; and

(b) Be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 that apply to the contractor or subcontractor for the duration of the contract.

(3) A contractor's failure to reveal a final determination of a violation by the contractor of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 or to comply with these statutes for the duration of the contract shall be grounds for the local public agency's:

(a) Cancellation of the contract; and

(b) Disqualification of the contractor from eligibility for future contracts awarded by the local public agency for a period of two (2) years.

(4) A subcontractor's failure to reveal a final determination of a violation by the subcontractor of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 or to comply with these statutes for the duration of the contract shall be grounds for the local public agency's disqualification of the subcontractor from eligibility for future contracts for a period of two (2) years.

(Enact. Acts 1980, ch. 250, § 9, effective April 9, 1980; 1994, ch. 491, § 2, effective July 15, 1994; 1998, ch. 520, § 2, effective July 15, 1998.)

45A.345. Definitions for KRS 45A.343 to 45A.460. As used in KRS 45A.343 to 45A.460, unless the context indicates otherwise:

(1) "Aggregate amount" means the total dollar amount during a fiscal year of items of a like nature, function, and use the need for which can reasonably be determined at the beginning of the fiscal year. Items the need for which could not reasonably be established in advance or which were unavailable because of a failure of delivery need not be included in the aggregate amount.

(2) "Capital cost avoidance" means moneys expended by a local public agency to pay for an energy conservation measure identified as a permanent equipment replacement and whose cost has been discounted by any additional energy and operation savings generated from other energy conservation measures identified in the guaranteed energy savings contract, except that for school districts capital cost avoidance shall also mean moneys expended by the district from one (1) or more of the following sources:

(a) General fund;

(b) Capital outlay allotment under KRS 157.420; and

(c) State and local funds from the Facilities Support Program of Kentucky under KRS 157.440.

(3) "Chief executive officer" means the mayor, county judge/executive, superintendent of schools, or the principal administrative officer of a local public agency, or the person designated by the chief executive officer or legislative body of the local public agency to perform the procurement function.

(4) "Construction" means the process of building, altering, repairing, or improving any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

(5) "Contract" means all types of local public agency agreements, including grants and orders, for the purchase or disposal of supplies, services, construction, or any other item. It includes awards and notices of award; contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job or task orders; leases; letter contracts; and purchase orders. It also includes supplemental agreements with respect to any of the foregoing. It does not include labor contracts with employees of local public agencies.

(6) "Document" means any physical embodiment of information or ideas, regardless of form or characteristic, including electronic versions thereof.

(7) "Established catalogue price" means the price included in the most current catalogue, price list, schedule, or other form that:

(a) Is regularly maintained by the manufacturer or vendor of an item; and

(b) Is either published or otherwise available for inspection by customers; and

(c) States prices at which sales are currently or were last made to a significant number of buyers constituting the general buying public for that item.

(8) "Evaluated bid price" means the dollar amount of a bid after bid price adjustments are made pursuant to objective measurable criteria, set forth in the invitation for bids, which affect the economy and effectiveness in the operation or use of the product, such as reliability, maintainability, useful life, residual value, and time of delivery, performance, or completion.

(9) "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedures set forth in KRS 45A.365.

(10) "The legislative body or governing board" means a council, commission, or other legislative body of a city, consolidated local government, or urban-county; a county fiscal court; board of education of a county or independent school district; board of directors of an area development district or special district; or board of any other local public agency.

(11) "Local public agency" means a city, county, urban-county, consolidated local government, school district, special district, or an agency formed by a

combination of such agencies under KRS Chapter 79, or any department, board, commission, authority, office, or other sub-unit of a political subdivision which shall include the offices of the county clerk, county sheriff, county attorney, coroner, and jailer.

(12) "May" means permissive. However, the words "no person may..." mean that no person is required, authorized, or permitted to do the act prescribed.

(13) "Negotiation" means contracting by either the method set forth in KRS 45A.370, 45A.375, or 45A.380.

(14) "Noncompetitive negotiation" means informal negotiation with one (1) or more vendor, contractor, or individual without advertisement or notice.

(15) "Objective measurable criteria" means sufficient information in the invitation to bid as to weight and method of evaluation so that the evaluation may be determined with reasonable mathematical certainty. Criteria which are otherwise subjective, such as taste and appearance, may be established when appropriate.

(16) "Person" means any business, individual, union, committee, club, or other organization or group of individuals.

(17) "Procurement" means the purchasing, buying, renting, leasing, or otherwise obtaining any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any public procurement, including description of requirements, selection, and solicitation of sources, preparation and award of contract, and all phases of contract administration.

(18) "Request for proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals in accordance with the procedures set forth in KRS 45A.370, 45A.375, 45A.380, or 45A.385.

(19) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

(20) "Responsive bidder" means a person who has submitted a bid under KRS 45A.365 which conforms in all material respects to the invitation for bids, so that all bidders may stand on equal footing with respect to the method and timeliness of submission and as to the substance of any resulting contract.

(21) "Services" means the rendering, by a contractor, of its time and effort rather than the furnishing of a specific end product other than reports which are merely incidental to the required performance of service. It does not include labor contracts with employees of local public agencies.

(22) "Shall" means imperative.

(23) "Specifications" means any description of a physical or functional characteristic of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

(24) "Supplemental agreement" means any contract modification which is accomplished by the mutual action of the parties.

(25) "Supplies" means all property, including but not limited to leases on real property, printing, and insurance, except land or a permanent interest in land.

(26) "Energy conservation measure" means a training program or facility alteration designed to reduce energy consumption or operating costs, and may include one (1) or more of the following:

(a) Insulation of the building structure or systems within the building;

(b) Storm windows or doors, caulking or weatherstripping, multiglazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, additional glazing, reductions in glass area, or other window and door system modifications that reduce energy consumption;

(c) Automated or computerized energy control systems;

(d) Heating, ventilating, or air conditioning system modifications or replacements;

(e) Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable state or local building code for the lighting system after the proposed modifications are made;

(f) Energy recovery systems;

(g) Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;

(h) Energy conservation measures that provide long-term operating cost reductions; or

(i) Any life safety measures that provide long-term operating cost reductions.

(27) "Guaranteed energy savings contract" means a contract for the evaluation and recommendation of energy conservation measures and for implementation of one (1) or more of those measures. The contract shall provide that all payments, except obligations on termination of the contract before its expiration, are to be made over time and the savings are guaranteed to the extent necessary to make payments for the cost of the design, installation, and maintenance of energy conservation measures.

(28) "Qualified provider" means a person or business experienced in the design, implementation, and installation of energy conservation measures and is determined to be qualified by the local public agency. The qualified provider shall be responsible for and shall provide the local public agency with the following information regarding guaranteed energy savings contracts:

(a) Project design and specifications;

(b) Construction management;

(c) Construction;

(d) Commissioning;

(e) On-going services as required;

(f) Measurement and verification of savings for guaranteed energy savings contracts; and

(g) Annual reconciliation statements as provided in KRS 45A.352(8).

(Enact. Acts 1978, ch. 110, § 70, effective January 1, 1980; 1980, ch. 250, § 8, effective April 9, 1980; 1994, ch. 491, § 3, effective July 15, 1994; 1996, ch. 203, § 2, effective July 15, 1996; 1998, ch. 120, § 12, effective July 15, 1998; 1998, ch. 375, § 2, effective July 15, 1998; 2002, ch. 346, § 12, effective July 15, 2002.)

Legislative Research Commission Note. (7/15/98). This section was amended by 1998 Ky. Acts chs. 426 and 538. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 538, which was a nonrevisory Act, prevails under KRS 7.136(3).

Opinions of Attorney General. The Model Procurement Code, KRS Chapter 45A, does not govern any transaction unless there will be an expenditure of a local public agency's funds for either services, supplies or construction; where no school funds, either general account or activity account, are expended in the purchasing of graduation rings, graduation invitations or caps and gowns, the provisions of the Model Procurement Code have no application. OAG 80-108.

If a school district has chosen to operate under the Model Procurement Code, competitive bidding for general liability insurance on buildings and vehicles, etc., is required absent a legitimate, written determination by the local public agency to the contrary; this conclusion is based on the fact that in subdivision (23) of this section, the term "supplies" is defined to include insurance, and that KRS 45A.380(10) authorizes an exemption from competitive bidding by written determination if the "contract is for group life insurance, group health and accident insurance, group professional liability insurance, workers' compensation insurance, and unemployment insurance," an exemption which does not include general liability insurance. OAG 82-170.

There is no conflict between KRS 424.260 and the Model Procurement Code, KRS Ch. 45A, concerning the necessity of school boards taking competitive bids for general liability insurance, since local school districts, as local public agencies, have a choice as to whether to operate with respect to their procurement needs under either the local Model Procurement Code or KRS 424.260. OAG 82-170.

45A.351. Declaration of public policy on preservation of Commonwealth's natural resources through energy efficiency.

Recognizing the need in the Commonwealth to preserve to the greatest extent possible natural resources within the Commonwealth which produce energy for the citizens, businesses, schools, and governments within the Commonwealth, it shall be the policy of the Commonwealth to preserve these natural resources by maximizing the use of energy efficiency measures in the construction, renovation, and maintenance of buildings owned by local public agencies and to encourage local public agencies to incorporate cost-effective energy efficiency measures into their buildings.

(Enact. Acts 1996, ch. 203, § 1, effective July 15, 1996.)

45A.352. Guaranteed energy savings contracts involving local public agencies.

(1) A local public agency may enter into a guaranteed energy savings contract for innovative solutions for energy conservation measures. The local public agency shall submit a request for proposals. The request for proposals for competitive procurement of guaranteed energy savings contracts shall include the following:

(a) The name and address of the governmental unit;

(b) The name, address, title, and phone number of a contact person;

(c) Notice indicating that the local public agency is requesting qualified providers to propose energy conservation measures through a guaranteed energy savings contract;

(d) The following evaluation criteria for assessing the proposals:

1. Construction management capabilities;
2. Technical approach to facilities included;
3. Financial attributes, as defined by total cost of contract and guaranteed savings and provider's financial strength demonstrating ability to fulfill the guarantee term; and
4. Provider's capability, personnel, track record, and demonstrated ability to accomplish the contract;

(e) The date, time, and place where proposals must be received;

(f) Any other stipulations and clarifications the local public agency may require; and

(g) An overview prepared by the local public agency stating goals or objectives specific to facility needs to be considered by the qualified providers who are responding to the request. Detailed scope of construction is not required.

(2) Respondents to the request for proposal shall provide the following:

(a) A detailed list of the proposed energy conservation measures and the guaranteed savings which shall be supported with calculations. Any guaranteed energy and operational savings shall be determined by using one of the measurement and verification methodologies listed in the United States Department of Energy's "Measurement and Verification Guideline for Federal Energy Projects" or in the "North American Energy Measurement and Verification Protocol." If due to existing data limitations or the nonconformance of specific project characteristics, none of the methods listed in either the United States Department of Energy's "Measurement and Verification Guideline for Federal Energy Projects" or in the "North American Energy Measurement and Verification Protocol" is sufficient for measuring guaranteed savings, the qualified provider shall develop an alternate method that is compatible with one (1) of the two (2);

(b) The estimated cost of the proposed energy conservation measures including engineering, construction, commissioning, measurement and verification, annual reconciliation statements, and required on-going services; and

(c) Proposed method and costs of financing.

(3) The value for total cost of the contract minus the calculated savings from the energy conservation measures listed in the qualified provider's pro-

posal, shall be within fifteen percent (15%) of the value for the total cost of the contract minus the calculated savings after the final contract has been negotiated. If the difference between the proposed and the final contract is not within fifteen percent (15%) and the local public agency and the qualified provider are unable to renegotiate the final contract to reconcile the difference between the proposed and final contract values, then the local public agency may:

(a) Stop negotiations with the current qualified provider; and

(b) Select an alternate provider.

(4) The local public agency may, as a component of the request for proposal, solicit and negotiate additional maintenance services for the affected proposed energy conservation measures. Additional services shall be subject to budget appropriations on an annual basis and may be discontinued at any time over the guarantee period with no negative impact to the guaranteed savings contract.

(5) The local public agency shall utilize the request for proposal process to enter into a guaranteed energy savings contract. The local public agency may, at its discretion, utilize a request for qualifications, provided that the local public agency solicits qualification statements from multiple potentially qualified providers. The local public agency shall use the qualification statements to select no fewer than two (2) providers and each provider shall then be subject to the request-for-proposal requirement provided in subsections (1) to (4) of this section.

(6) The local public agency shall select the provider best qualified to meet its needs. The local public agency shall provide public notice of the meeting at which it proposes to award a guaranteed energy savings contract, the name of the parties to the proposed contract, and the purpose of the contract. The public notice shall be made at least ten (10) days prior to the meeting. After reviewing the proposals, a local public agency may enter into a guaranteed energy savings contract with a qualified provider if it finds that the amount it would spend on the energy conservation measures recommended in the proposal would not exceed the amount to be saved in either energy or operational costs plus capital cost avoidance within the term of the contract from the date of installation, if the recommendations in the proposal are followed.

(7) The guaranteed energy savings contract shall include a written guarantee of the qualified provider that either the energy or operational costs savings plus capital cost avoidance will meet or exceed the costs of the energy conservation measures within the term of the contract. The qualified provider shall, on an annual basis, reimburse the local public agency for any shortfall in guaranteed energy savings projected in the contract. A qualified provider shall provide a sufficient bond to the local public agency for the installation and the faithful performance of all the measures included in the contract. The guaranteed energy savings contract may provide for payments over a period of time, not to exceed the term of the contract.

(8) The qualified provider shall provide the local public agency with an annual reconciliation statement. The statement shall disclose any shortfalls or surplus between guaranteed energy and operational savings specified in the guaranteed energy savings contract and actual energy and operational savings incurred during a given guarantee year. The guarantee year shall consist of a twelve (12) month term commencing from the time that the energy conservation measures became fully operational. The qualified provider shall pay the local public agency any short fall in the guaranteed energy and operation savings within thirty (30) days after the total year savings have been determined. If there is a surplus in the actual guaranteed energy and operational savings in a given year, that surplus savings may be carried forward and applied against any possible savings shortfall in the following guarantee year, except that the surplus carried forward is limited to a period not to exceed one (1) year. If the qualified provider pays the local public agency for a short fall in energy or operational savings incurred during a given guarantee year and there is a surplus in energy or operational savings in future guarantee years, the qualified provider shall bill the local public agency for an amount not to exceed the amount of the short fall in the given guarantee year.

(9) The use of capital cost avoidance shall be subject to the following restrictions:

(a) The amount expended shall not exceed fifty percent (50%) of the project cost; and

(b) Capital cost avoidance shall be restricted to payment for permanent equipment replacement as follows:

1. Storm windows or doors, multiglazed windows or doors, additional glazing, and reduction in glass area;
2. Replacement of heating, ventilating, or air conditioning major components or systems;
3. New lighting fixtures where required to achieve Illuminating Engineering Society of North America (IES) standards, provided the existing light fixtures shall have been determined to be obsolete and incapable of achieving IES standards; and
4. Life safety system replacements or upgrades which shall have been determined to be necessary to conform with existing state and local codes and standards.

(10) The chief state school officer shall review, and approve or disapprove projects from local school districts relating to energy conservation measures under a guaranteed energy savings contract, on the basis of the following guidelines:

(a) The project design's compliance with technical, health, and safety standards as required by administrative regulation;

(b) The availability of general funds, capital outlay allotments under KRS 157.420 or local and state funds from the Facilities Support Program of Kentucky as provided by KRS 157.440, for projects that will use capital cost avoidance;

(c) The appropriate use of capital outlay allotments under KRS 157.420, local and state funds from the Facilities Support Program of Kentucky as provided by KRS 157.440, for projects using capital cost avoidance, based on the project's compliance with the district's approved facility plan;
(d) The funding capability of the school district; and
(e) The financing mechanism and proper financing documentation.

(11) The request for proposal as provided in subsections (1) to (4) of this section shall be deemed to satisfy the requirements set out in KRS 162.070, and shall not be subject to an award determination based on the lowest competitive bid or a separate bidding process for each energy conservation measure listed in the proposal.

(Enact. Acts 1996, ch. 203, § 3, effective July 15, 1996; 1998, ch. 375, § 3, effective July 15, 1998.)

45A.353. Extension of guaranteed energy savings contract — Documentation of savings — Lease-purchase agreements — Exemption from debt limitations.

(1) Guaranteed energy savings contracts may extend beyond the fiscal year in which they become effective. The local public agency shall include in its annual budget and appropriations act, for each subsequent fiscal year, any accounts payable under guaranteed energy savings contracts during the fiscal year.

(2) The local public agency shall document the operational and energy cost savings and capital cost avoidance specified in the guaranteed energy savings contract and designate and appropriate that amount for an annual payment of the contract. If the annual energy and operational savings are less than projected under the guaranteed savings contract, the qualified provider shall pay the difference as provided for in KRS 45A.352.

(3) Notwithstanding any other provisions of law to the contrary, a local public agency may finance the installation of energy conservation measures for its buildings through a lease-purchase agreement, bonds, or whichever brings the most economic value to the local public agency, subject to the local public agency's compliance with all other laws regarding approval of plans for additions, alterations, or renovations of its buildings.

(4) The component which is guaranteed as energy savings and as operational savings shall be exempt from current or future debt limitations, except that capital cost avoidance, as defined in KRS 45A.345, shall be limited to current or future debt limitations.

(Enact. Acts 1996, ch. 203, § 4, effective July 15, 1996; 1998, ch. 375, § 4, effective July 15, 1998.)

45A.355. Determinations — Finality.

(1) Every determination required by this code shall be in writing and based upon written findings of the public official making the determination. These determinations and written findings shall be retained in the official contract file.

(2) The determinations required by KRS 45A.345 to 45A.460 shall be final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

(Enact. Acts 1978, ch. 110, § 72, effective January 1, 1980.)

45A.360. Administrative regulations.

(1) A local public agency may adopt regulations, not inconsistent with KRS 45A.345 to 45A.460, governing the following:
(a) Conditions and procedures for delegations of purchasing authority;
(b) Prequalification, suspension, debarment, and reinstatement of prospective bidders;
(c) Modification and termination of contracts;
(d) Conditions and procedures for the purchase of perishables and items for resale;
(e) Conditions, including emergencies, and procedures under which purchases may be made by means other than competitive sealed bids;
(f) Rejection of bids, consideration of alternate bids, and waiver of informalities in offers;
(g) Confidentiality of technical data and trade secrets information submitted by actual and prospective bidders or offerors;
(h) Partial, progressive, and multiple awards;
(i) Supervision of store rooms and inventories, including determination of appropriate stock levels and the management, transfer, sale, or other disposal of government-owned property;
(j) Definitions and classes of contractual services and procedures for acquiring them;
(k) Procedures for the verification and auditing of local public agency procurement records;
(l) Annual reports from those vested with purchasing authority as may be deemed advisable in order to insure that the requirements of this chapter are complied with; and
(m) Such other regulations as may be deemed advisable to carry out the purposes of KRS 45A.345 to 45A.460 or otherwise fulfill the local public agency's procurement responsibilities.

(2) All local public agency ordinances and regulations pertaining to procurement, whether promulgated under KRS 45A.345 to 45A.460 or otherwise, shall be maintained by the local public agency and shall be available to the public upon request at a cost not to exceed the cost of reproduction.

(3) Local school districts may adopt policies, not inconsistent with KRS 45A.345 to 45A.460, governing the conditions and procedures under which purchases of supplies may be made elsewhere. These policies shall include a provision that supplies purchased under this section shall meet any applicable contract specifications and not exceed two thousand five hundred dollars ($2,500).

(Enact. Acts 1978, ch. 110, § 73, effective January 1, 1980; 1980, ch. 250, § 10, effective April 9, 1980; 1996, ch. 89, § 2, effective July 15, 1996.)

Opinions of Attorney General. If a local board of education adopts the provisions of the Model Procurement Code applicable to the state and also adopts a regulation similar to that which has been promulgated by the Department of Finance (now Finance and Administration Cabinet) relating to noncompetitive negotiations, then items for resale such as caps and gowns and graduation invitations may be handled through noncompetitive negotiation. OAG 80-108.

45A.365. Competitive sealed bidding.

(1) All contracts or purchases shall be awarded by competitive sealed bidding, except as otherwise provided by KRS 45A.370 to 45A.385 and for the purchase of wholesale electric power by municipal utilities as provided in KRS 96.901(1).

(2) The invitation for bids shall state that the award shall be made on the basis of the lowest bid price or the lowest evaluated bid price. If the latter is used, the objective measurable criteria to be utilized shall be set forth in the invitation for bids.

(3) Adequate public notice of the invitation for bids shall be given prior to the date set forth for the opening of bids. The notice may include posting on the Internet or publication in a newspaper of general circulation in the local jurisdiction not less than seven (7) days before the date set for the opening of the bids. The public notice shall include the time and place the bids will be opened and the time and place where the specifications may be obtained.

(4) The bids shall be opened publicly at the time and place designated in the invitation for bids. Each bid, together with the name of the bidder, shall be recorded and be open to public inspection. Electronic bid opening and posting of the required information for public viewing shall satisfy the requirements of this subsection.

(5) A contract shall be awarded with reasonable promptness by written notice to the responsive and responsible bidder whose bid is either the lowest bid price or the lowest evaluated bid price.

(6) The local public agency may allow the withdrawal of a bid where there is a patent error on the face of the bid document, or where the bidder presents sufficient evidence, substantiated by bid worksheets, that the bid was based upon an error in the formulation of the bid price.

(Enact. Acts 1978, ch. 110, § 74, effective January 1, 1980; 1998, ch. 120, § 13, effective July 15, 1998; 2000, ch. 510, § 2, effective July 14, 2000.)

45A.370. Competitive negotiation.

(1) A local public agency may contract or purchase through competitive negotiation upon a written finding that:

(a) Specifications cannot be made sufficiently specific to permit award on the basis of either the lowest bid price or the lowest evaluated bid price, including, but not limited to, contracts for experimental or developmental research work, or highly complex equipment which requires technical discussions, and other nonstandard supplies, services, or construction; or

(b) Sealed bidding is inappropriate because the available sources of supply are limited, the time and place of performance cannot be determined in advance, the price is regulated by law, or a fixed price contract is not applicable; or

(c) The bid prices received through sealed bidding are unresponsive or unreasonable as to all or part of the requirements, or are identical or appear to have been the result of collusion; provided each responsible bidder is notified of the intention to negotiate and is given a reasonable opportunity to negotiate, and the negotiated price is lower than the lowest rejected bid by any responsible bidder.

(2) Proposals shall be solicited through public notice pursuant to KRS 45A.365(3) or any other means which can be demonstrated to notify an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirement of the procurement. The request for proposals shall indicate the factors to be considered in the evaluation and the relative importance of each factor.

(3) Written or oral discussions shall be conducted with all responsible offerors who submit proposals determined in writing to be reasonably susceptible of being selected for award. Discussions shall not disclose any information derived from proposals submitted by competing offerors. Discussions need not be conducted:

(a) With respect to prices, where such prices are fixed by law or regulation except that consideration shall be given to competitive terms and conditions; or

(b) Where time of delivery or performance will not permit discussions; or

(c) Where it can be clearly demonstrated and documented from the existence of adequate competition or accurate prior cost experience with that particular supply, service, or construction item that acceptance of an initial offer without discussion would result in fair and reasonable prices and the request for proposal notifies all offerors of the possibility that award may be made on the basis of initial offers.

(4) If discussions pertaining to the revision of the specifications or quantities are held with any potential offeror, all other potential offerors shall be afforded an opportunity to take part in such discussions. A request for proposals based on revised specifications or quantities shall be issued as promptly as possible, shall provide for an expeditious response to the revised requirements and shall be awarded upon the basis of the lowest bid price or lowest evaluated bid price submitted by any responsive and responsible offeror. No discussion shall be conducted with offerors after submission of revised proposals except for a compelling reason as determined in writing by the local public agency. The request for proposals shall state that an award is to be made without discussion except as herein provided.

(5) Award shall be made to the responsible offeror whose proposal is determined in writing to be the

most advantageous to the local public agency based upon the evaluation factors set forth in the request for proposals.

(Enact. Acts 1978, ch. 110, § 75, effective January 1, 1980; 1998, ch. 120, § 14, effective July 15, 1998.)

45A.375. Negotiations after competitive sealed bidding when all bids exceed available funds — Action when no bids received.

(1) In the event that all bids submitted pursuant to competitive sealed bidding under KRS 45A.365 result in bid prices in excess of the funds available for the purchase, and the local public agency determines in writing:
   (a) That there are no additional funds then available from any source so as to permit an award to the lowest responsive and responsible bidder; and
   (b) The best interest of the local public agency will not permit the delay attendant to a resolicitation under revised specifications or revised quantities under competitive sealed bidding as provided in KRS 45A.365; then a negotiated award may be made as set forth in subsections (2) or (3) of this section.

(2) Where there is more than one (1) bidder, competitive negotiations pursuant to KRS 45A.370 shall be conducted with the three (3) (two (2) if there are only two (2)) bidders determined in writing by the local public agency to be the lowest responsive and responsible bidders to the competitive sealed bid invitation. Such competitive negotiations shall be conducted under the following restrictions:
   (a) If discussions pertaining to the revision of the specifications or quantities are held with any potential offeror, all other potential offerors shall be afforded an opportunity to take part in such discussions; and
   (b) A request for proposals, based upon revised specifications or quantities, shall be issued as promptly as possible, shall provide for an expeditious response to the revised requirements, and shall be awarded upon the basis of the lowest bid price or lowest evaluated bid price submitted by any responsive and responsible offeror. No discussion shall be conducted with offerors after submission of proposals except for a compelling reason as determined in writing by the local public agency. The request for proposals shall state that award is to be made without discussions except as herein provided.

(3) Where, after competitive sealed bidding, it is determined in writing that there is only one (1) responsive and responsible bidder, a noncompetitive negotiated award may be made with such bidder in accordance with KRS 45A.380.

(4) Where, after invitation for bids has been made in accordance with KRS 45A.365 and no bids have been received from responsive and responsible bidders, the local public agency may proceed to acquire the supplies, services, or construction by noncompetitive negotiations in accordance with KRS 45A.380.

(Enact. Acts 1978, ch. 110, § 76, effective January 1, 1980; 1980, ch. 250, § 11, effective April 9, 1980.)

45A.380. Noncompetitive negotiation.

A local public agency may contract or purchase through noncompetitive negotiation only when a written determination is made that competition is not feasible and it is further determined in writing by a designee of the local public agency that:

(1) An emergency exists which will cause public harm as a result of the delay in competitive procedures; or
(2) There is a single source within a reasonable geographical area of the product or service to be procured; or
(3) The contract is for the services of a licensed professional, such as attorney, physician, psychiatrist, psychologist, certified public accountant, registered nurse, or educational specialist; a technician such as a plumber, electrician, carpenter, or mechanic; or an artist such as a sculptor, aesthetic painter, or musician, provided, however, that this provision shall not apply to architects or engineers providing construction management services rather than professional architect or engineer services; or
(4) The contract is for the purchase of perishable items purchased on a weekly or more frequent basis, such as fresh fruits, vegetables, fish or meat;
(5) The contract is for replacement parts where the need cannot be reasonably anticipated and stockpiling is not feasible;
(6) The contract is for proprietary items for resale;
(7) In school districts the contract relates to an enterprise in which the buying or selling by students is a part of the educational experience;
(8) The contract or purchase is for expenditures made on authorized trips outside of the boundaries of the local public agency;
(9) The contract is for the purchase of supplies which are sold at public auction or by receiving sealed bids;
(10) The contract is for group life insurance, group health and accident insurance, group professional liability insurance, worker's compensation insurance, and unemployment insurance; or
(11) The contract is for a sale of supplies at reduced prices that will afford a purchase at savings to the local public agency.

(Enact. Acts 1978, ch. 110, § 77, effective January 1, 1980; 1980, ch. 250, § 12, effective April 9, 1980.)

Opinions of Attorney General. Under KRS 424.260 a cafeteria plan of insurance coverage for school teachers need not be bid; under the Model Procurement Code the contract may be noncompetitively negotiated. OAG 83-151.

45A.385. Small purchases.

The local public agency may use small purchase procedures for any contract for which a determination is made that the aggregate amount of the contract does not exceed twenty thousand dollars ($20,000) if small

purchase procedures are in writing and available to the public.
(Enact. Acts 1978, ch. 110, § 78, effective January 1, 1980; 1980, ch. 250, § 13, effective April 9, 1980; 1984, ch. 6, § 2, effective July 13, 1984; 1990, ch. 95, § 2, effective July 13, 1990; 2002, ch. 192, § 1, effective July 15, 2002.)

45A.390. Cancellation.
An invitation for bid, a request for proposal or other solicitation may be canceled, or all bids or proposals may be rejected, if it is determined in writing that such action is in the best interest of the local public agency.
(Enact. Acts 1978, ch. 110, § 79, effective January 1, 1980.)

45A.395. Determination of responsibility — Right of nondisclosure.
(1) A written determination of responsibility of a bidder or offeror shall be made, based on a reasonable inquiry conducted by the local public agency. The unreasonable failure of a bidder or offeror to promptly supply information upon request may be grounds for a determination of nonresponsibility of such bidder or offeror.
(2) A written determination of responsibility of a bidder or offeror shall not be made until the bidder or offeror provides the local public agency with a sworn statement made under penalty of perjury that he has not knowingly violated any provision of the campaign finance laws of the Commonwealth and that the award of a contract to the bidder or offeror will not violate any provision of the campaign finance laws of the Commonwealth. "Knowingly" means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or should have been aware that his conduct is of that nature or that the circumstance exists.
(3) Except as otherwise provided by law, information furnished by a bidder or offeror pursuant to this section may not be disclosed outside of the local public agency without prior written consent of the bidder or offeror.
(Enact. Acts 1978, ch. 110, § 80, effective January 1, 1980; 1992, ch. 288, § 19, effective July 14, 1992.)

45A.400. Prequalification of bidders and offerors.
Suppliers may be prequalified as responsible prospective contractors for particular types of supplies, services, and construction. No supplier shall be prequalified as a responsible prospective contractor until the supplier provides the local public agency with a sworn statement made under penalty of perjury that he has not knowingly violated any provision of the campaign finance laws of the Commonwealth and that the award of a contract to the supplier will not violate any provision of the campaign finance laws of the Commonwealth. "Knowingly" means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or should have been aware that his conduct is of that nature or that the circumstance exists. Solicitation mailing lists of potential contractors of such supplies, services, and construction shall include, but shall not be limited to, such prequalified prospective contractors. Prequalification shall not foreclose a written determination:
(1) Between the time of bid opening or receipt of offers in the making of an award that a prequalified prospective contractor is not responsible; or
(2) That a prospective contractor who is not prequalified at the time of bid opening or receipt of offers is responsible.
(Enact. Acts 1978, ch. 110, § 81, effective January 1, 1980; 1992, ch. 288, § 20, effective July 14, 1992.)

45A.405. Cost or pricing data.
(1) A contractor shall submit cost or pricing data and shall certify that, to the best of his knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a mutually determined specified date prior to the date of:
   (a) Pricing of any negotiated contract where the total contract price is expected to exceed fifty thousand dollars ($50,000), or such lesser amount as may be prescribed by the local public agency; or
   (b) Pricing of any change order or contract modification which is expected to exceed twenty-five thousand dollars ($25,000), or such lesser amount as may be prescribed by the local public agency.
(2) Any contract, change, or modification thereto under which a certificate is required shall contain a provision that the price to the local public agency, including profit or fee, shall be adjusted to exclude any significant sums by which the local public agency finds that such price was increased because the contractor-furnished cost or pricing data which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.
(3) The requirement of this section need not be applied to contracts where the price negotiated is based on adequate price competition, established catalogue or market prices of commercial items sold in substantial quantities to the general public, prices set by law or regulation, or in exceptional cases where it is determined in writing that the requirements of this section may be waived, and the reasons for such waiver are enumerated in the determination.
(Enact. Acts 1978, ch. 110, § 82, effective January 1, 1980.)

45A.410. Inspection of contractor's place of business — Audit of records.
(1) The local public agency may inspect the plant or place of business of a contractor or any subcontractor under any contract awarded or to be awarded by the local public agency.
(2) The local public agency may audit the books and records of any person who has submitted cost or pricing data under KRS 45A.405, at any time until the period of record retention as set forth in subsection (3) of this section shall have expired. The right to audit hereunder shall only extend to those

books and records reasonably connected with cost or pricing data submitted under KRS 45A.420, and such books and records shall be maintained by the contractor or subcontractor for the period specified in subsection (3) of this section.

(3) The local public agency shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed-price type contract, provided, however, that this subparagraph shall not limit the right to audit as set forth in subsection (2) of this section. Such books and records shall be maintained by the contractor for a period of five (5) years from the date of final payment under the prime contract and by the subcontractor for a period of five (5) years from the date of final payment under the subcontract.

(Enact. Acts 1978, ch. 110, § 83, effective January 1, 1980.)

45A.415. Specifications.

(1) The local public agency shall use specifications which assure the maximum practicable competition to meet the agency's needs.

(2) A specification which describes a product which is proprietary to one (1) company may be used only when:

(a) No other kind of specification is reasonably available to describe requirements; and

(b) Such specification includes language which specifically permits an equivalent product to be supplied. Such specification shall include a description of the salient characteristics of the product.

(Enact. Acts 1978, ch. 110, § 84, effective January 1, 1980.)

45A.420. Cooperative purchasing — Price agreements with Commonwealth.

(1) Any local public agency may enter into an agreement for cooperative purchasing with any other local public agency. When the contracting local public agency contracts for supplies, services or construction pursuant to KRS 45A.365, 45A.370, 45A.375, or 45A.380, all other parties to the agreement shall be deemed to have complied with the provisions of those sections.

(2) Nothing in KRS 45A.345 to 45A.990 shall deprive a local public agency from negotiating with vendors for supplies where such supplies are the subject of a price agreement with the Commonwealth of Kentucky provided, however, that no contract executed under this section would authorize a price higher than is contained in the price agreement with the Commonwealth of Kentucky for such specific supplies.

(3) Nothing in KRS 45A.345 to 45A.990 shall deprive a local school district from acquiring supplies outside of price agreements with the Commonwealth of Kentucky if the supplies meet the same specifications as the contract items and the supplies are purchased at a lower price than is contained in the price agreement with the Commonwealth of Kentucky for such specific supplies and the purchase does not exceed two thousand five hundred dollars ($2,500).

(Enact. Acts 1978, ch. 110, § 85, effective January 1, 1980; 1980, ch. 250, § 14, effective April 9, 1980; 1996, ch. 89, § 3, effective July 15, 1996.)

45A.425. Surplus or excess property.

(1) A local public agency may sell or otherwise dispose of any personal property which is not needed or has become unsuitable for public use, or which would be suitable, consistent with the public interest, for some other use.

(2) A written determination as to need of suitability of any personal property of the local public agency shall be made; and such determination shall fully describe the personal property; its intended use at the time of acquisition; the reasons why it is in the public interest to dispose of the item; and the method of disposition to be used.

(3) Surplus or excess personal property as described in this section may be transferred, with or without compensation, to another governmental agency; or it may be sold at public auction or by sealed bids in accordance with KRS 45A.365.

(4) In the event that a local public agency receives no bids for surplus or excess personal property, either at public auction or by sealed bid, such property may be disposed of, consistent with the public interest, in any manner deemed appropriate by the local public agency. In such instances, a written description of the property, the method of disposal, and the amount of compensation, if any, shall be made. Any compensation resulting from the disposal of surplus or excess personal property shall be transferred to the general fund of the local public agency.

(Enact. Acts 1978, ch. 110, § 86, effective January 1, 1980; 1984, ch. 199, § 1, effective July 13, 1984.)

45A.430. Bid bonds.

(1) Bidder security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the local public agency to exceed twenty-five thousand dollars ($25,000). Bidder's security shall be a bond provided by a surety company authorized to do business in this Commonwealth, or the equivalent in cash, in a form satisfactory to the local public agency. Nothing herein prevents the requirement of such bonds on construction contracts under twenty-five thousand dollars ($25,000) when the circumstances warrant.

(2) Bidder's security shall be in an amount equal to at least five percent (5%) of the amount of the bid.

(3) When the invitation for bids requires that bidder security be provided, noncompliance requires that the bid be rejected, provided, however, that the local public agency may set forth by regulation exceptions to this requirement in the event of substantial compliance.

(4) After the bids are opened, they shall be irrevocable for the period specified in the invitation for bids, provided that, if a bidder is permitted to withdraw his bid before award because of a mistake in the

bid as allowed by law or regulation, no action shall be had against the bidder or the bidder's security.

(Enact. Acts 1978, ch. 110, § 87, effective January 1, 1980.)

45A.435. Contract performance and payment bonds.

(1) When a construction contract is awarded in an amount in excess of twenty-five thousand dollars ($25,000), the following bonds shall be furnished to the local public agency, and shall become binding on the parties upon the award of the contract:
   (a) A performance bond satisfactory to the local public agency executed by a surety company authorized to do business in this Commonwealth, or otherwise supplied, satisfactory to the local public agency, in an amount equal to one hundred percent (100%) of the contract price as it may be increased; and
   (b) A payment bond satisfactory to the local public agency, executed by a surety company authorized to do business in this Commonwealth, or otherwise supplied, satisfactory to the local public agency, for the protection of all persons supplying labor and material to the contractor or his subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred percent (100%) of the original contract price.

(2) Nothing in this section shall be construed to limit the authority of the local public agency to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in subsection (1) of this section, including, but not limited to, bonds for the payment of taxes and unemployment insurance premiums.

(Enact. Acts 1978, ch. 110, § 88, effective January 1, 1980.)

45A.440. Bond forms, filings, and copies.

(1) The local public agency may promulgate by regulation the form of the bonds required by KRS 45A.430 and 45A.435, or it may adopt the form established by the state under KRS 45A.180 to 45A.200.

(2) The local public agency shall furnish a certified copy of a bond to any person who requests such and pays the reasonable fee for that copy. The copy shall be prima facie evidence of the contents, execution, and delivery of the original.

(Enact. Acts 1978, ch. 110, § 89, effective January 1, 1980; 1992, ch. 55, § 10, effective July 14, 1992.)

45A.445. Definitions for terms used in KRS 45A.445 to 45A.460.

As used in KRS 45A.445 to 45A.460, unless the context indicates otherwise:

(1) "Conspicuously" shall mean written in such special or distinctive format, print, or manner that a reasonable person against whom it is to operate ought to have noticed it.

(2) "Confidential information" shall mean any information which is available to an employee only because of his status as an employee of the local public agency and is not a matter of public knowledge or available to the public on request.

(3) "Debarment" shall mean the disqualification of a person to receive invitations for bids or requests for proposals, or the award of a contract by the local public agency for a specified period of time.

(4) "Financial interest" shall mean:
   (a) Ownership of any interest or involvement in any relationship from which, or as a result of which, a person has, within the past three (3) years, received or is presently or in the future entitled to receive more than one thousand dollars ($1,000) per year, or its equivalent; or
   (b) Ownership of more than a ten percent (10%) interest in any business; or
   (c) Holding a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

(5) "Gratuity" shall mean a payment, loan, subscription, advance, deposit of money, services, or anything of more than fifty dollars ($50) value, present or promised, unless consideration of substantially equal or greater value is received.

(6) "Immediate family" shall mean a spouse, children, grandchildren, parents, grandparents, brothers and sisters, and such other relatives as designated by the local public agency.

(7) "Official responsibility" shall mean direct administrative or operating authority, whether intermediate or final, either exercisable alone or with others, either personally or through subordinates, to approve, disapprove, or otherwise direct local public agency actions.

(8) "Suspension" shall mean the disqualification of any person to receive invitations for bids or requests for proposals, or to be awarded a contract by a local public agency for a temporary period, pending the completion of an investigation and any legal proceedings that may ensue.

(Enact. Acts 1978, ch. 110, § 90, effective January 1, 1980; 1980, ch. 250, § 15, effective April 9, 1980.)

45A.450. Statement of public policy.

(1) Public employment is a public trust.

(2) It is the policy and purpose of KRS 45A.345 to 45A.460 to promote and balance the object of protecting government integrity and of facilitating the recruitment and retention of personnel needed by local public agencies by prescribing essential restrictions against conflict of interest without creating unnecessary barriers to public service and by facilitating development of fair and competitive access to local public agency purchasing by responsible contractors.

(3) Employees must discharge their duties and responsibilities fairly and impartially. They should also maintain a standard of conduct that will inspire public confidence in the integrity of the government of all local public agencies.

(Enact. Acts 1978, ch. 110, § 91, effective January 1, 1980.)

45A.455. Conflict of interest — Gratuities and kickbacks — Use of confidential information.

(1) It shall be a breach of ethical standards for any employee with procurement authority to participate directly in any proceeding or application; request for ruling or other determination; claim or controversy; or other particular matter pertaining to any contract, or subcontract, and any solicitation or proposal therefor, in which to his knowledge:
   (a) He, or any member of his immediate family has a financial interest therein; or
   (b) A business or organization in which he or any member of his immediate family has a financial interest as an officer, director, trustee, partner, or employee, is a party; or
   (c) Any other person, business, or organization with whom he or any member of his immediate family is negotiating or has an arrangement concerning prospective employment is a party. Direct or indirect participation shall include but not be limited to involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

(2) It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment, in connection with any decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling or other determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract and any solicitation or proposal therefor.

(3) It is a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(4) The prohibition against conflicts of interest and gratuities and kickbacks shall be conspicuously set forth in every local public agency written contract and solicitation therefor.

(5) It shall be a breach of ethical standards for any public employee or former employee knowingly to use confidential information for his actual or anticipated personal gain, or the actual or anticipated personal gain of any other person.

(Enact. Acts 1978, ch. 110, § 92, effective January 1, 1980; 1980, ch. 250, § 16, effective April 9, 1980.)

Opinions of Attorney General. Subsection (1) of this section prohibits involvement in the procurement function by a school employee relative to any item sold to the school by a supply firm with which an immediate family member is involved, presently or prospectively, but this prohibition only acts to restrain the particular employee, not the entire school district employing him; thus, if the employee is not so involved, the district is free to purchase from such a firm. OAG 80-32.

The Model Procurement Code would not prohibit an assistant school principal from submitting a competitive bid to the school board for services as a professional auctioneer. OAG 80-605.

45A.460. Recovery of value of anything transferred or received in breach of ethical standards.

(1) The value of anything transferred or received in breach of the ethical standards of KRS 45A.345 to 45A.990 or regulations or rules issued thereunder by an employee or a nonemployee may be recovered from both the employee and the nonemployee.

(2) Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the local public agency and will be recoverable hereunder from the recipient. In addition, said value may also be recovered from the subcontractor making such kickbacks. Recovery from one (1) offending party shall not preclude recovery against other offending parties.

(Enact. Acts 1978, ch. 110, § 93, effective January 1, 1980.)

45A.465. Definitions for KRS 45A.470.

As used in KRS 45A.470, the words:

(1) "Other individuals with severe disabilities" means an individual or class of individuals with a disability, other than blindness, that constitutes an obstacle to new or continued normal employment.

(2) "Products" means programs, books, tapes, records, processes, packaging, modification, supplies, food, clothing, materials, commodities, equipment of all kinds, and any other article of commerce originally manufactured or assembled or purchased for resale by a qualified nonprofit agency.

(3) "Qualified nonprofit agency for individuals with severe disabilities" means an organization that:
   (a) Is organized and operated in the interest of individuals with severe disabilities; and
   (b) Complies with any applicable occupational health and safety law of the United States and the Commonwealth; and
   (c) In the manufacture or provision of products or services listed or purchased under KRS 45A.470, during the fiscal year employs individuals with severe disabilities for not less than seventy-five percent (75%) of the man hours of direct labor required for the manufacture or provision of the products or services; and
   (d) Is registered and in good standing as a nonprofit organization with the Secretary of State.

(4) "Services" means contractual services; rental services of all kinds; professional, technical, or artistic services; and other personal performance of work by officers, employees, or beneficiaries of a nonprofit agency.
(5) "State agency" means those spending agencies subject to the state purchasing requirements of this code and any regulations promulgated pursuant thereto.

(Enact. Acts 1982, ch. 170, § 1, effective July 15, 1982; 1990, ch. 496, § 30, effective July 13, 1990; 1994, ch. 405, § 9, effective July 15, 1994.)

45A.470. Preference to be given by governmental bodies and political subdivisions in purchasing commodities or services — List of commodities and services — Price range — Negotiation for identical products and services.

(1) All governmental bodies and political subdivisions of this state shall, when purchasing commodities or services, give first preference to the products made by the Department of Corrections, Division of Prison Industries, as required by KRS 197.210. Second preference shall be given to the Kentucky industries for the blind as described in KRS 163.450 to 163.470 through June 30, 2000, and thereafter to any products produced by Kentucky Industries for the Blind, Incorporated or any other nonprofit corporation with which the Department for the Blind contracts under KRS 163.480(2) to further the purposes of KRS Chapter 163 and agencies of individuals with severe disabilities as described in KRS 45A.465.
(2) The Finance and Administration Cabinet shall make a list of commodities and services provided by these agencies and organizations available to all governmental bodies and political subdivisions. The list shall identify in detail the commodity or service the agency or organization may supply and the price.
(3) The Finance and Administration Cabinet shall annually determine the current price range for the commodities and services offered from its experience in purchasing these commodities or services on the open market. The prices quoted by these agencies or organizations shall not exceed the current price range.
(4) The Department for the Blind within the Cabinet for Workforce Development and qualified agencies for individuals with severe disabilities shall annually cause to be made available to the Finance and Administration Cabinet, lists of the products or services available.
(5) If two (2) or more of the agencies or qualified nonprofit organizations wish to supply identical commodities or services, the Finance and Administration Cabinet shall conduct negotiations with the parties to determine which shall be awarded the contract. The decision of the Finance and Administration Cabinet shall be based upon quality of the commodity or service and the ability of the respective agencies to supply the commodity or service within the requested delivery time.

(Enact. Acts 1982, ch. 170, § 2, effective July 15, 1982; 1986, ch. 331, § 13, effective July 15, 1986; 1992, ch. 211, § 10, effective July 14, 1992; 1994, ch. 126, § 4, effective July 15, 1994; 1994, ch. 209, § 8, effective July 15, 1994; 1994, ch. 405, § 10, effective July 15, 1994; 1998, ch. 393, § 1, effective July 15, 1998.)

45A.480. Compliance with workers' compensation insurance and unemployment insurance laws required — Penalty.

(1) No state contract for building, construction, reconstruction, renovation, demolition, or maintenance, or for any activity related to building, construction, reconstruction, renovation, demolition, or maintenance shall be awarded by any agency, department, or office of the Commonwealth of Kentucky or any political subdivision of the Commonwealth of Kentucky to any person until that person shall assure, by affidavit, that all contractors and subcontractors employed, or that will be employed, under the provisions of the contract shall be in compliance with Kentucky requirements for workers' compensation insurance according to KRS Chapter 342 and unemployment insurance according to KRS Chapter 341.
(2) Any person who fails to comply with the assurances required under subsection (1) of this section, upon such finding by a court of competent jurisdiction, shall be fined an amount not to exceed four thousand dollars ($4,000), or an amount equal to the sum of uninsured and unsatisfied claims brought under the provisions of KRS Chapter 342 and unemployment insurance claims for which no wages were reported as required by KRS Chapter 341, whichever is greater.
(3) The penalty imposed in subsection (2) of this section shall be enforced by the county attorney for the county in which the violation occurred.

(Enact. Acts 1990, ch. 174, § 2, effective July 13, 1990.)

45A.485. Certain contracts required to mandate revealing of violations of and compliance with specified KRS chapters — Effect of nondisclosure or noncompliance.

(1) Any state contract awarded under KRS Chapter 45A, 175, 176, 177, or 180 after July 15, 1994, shall require the contractor and all subcontractors performing work under the contract to:
   (a) Reveal any final determination of a violation by their respective company within the previous five (5) year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341, and 342 that apply to the contractor or subcontractor; and
   (b) Be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 that apply to the contractor or subcontractor for the duration of the contract.
(2) A contractor's failure to reveal a final determination of a violation by the contractor of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 or to

comply with these statutes for the duration of the contract shall be grounds for the Commonwealth's:

(a) Cancellation of the contract; and

(b) Disqualification of the contractor from eligibility for future state contracts for a period of two (2) years.

(3) A subcontractor's failure to reveal a final determination of a violation by the subcontractor of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 or to comply with these statutes for the duration of the contract shall be grounds for the Commonwealth's disqualification of the subcontractor from eligibility for future state contracts for a period of two (2) years.

(Enact. Acts 1994, ch. 491, § 1, effective July 15, 1994; 1998, ch. 520, § 1, effective July 15, 1998.)

Recycled Material Content Products

45A.540. Purchase of materials with minimum recycled material content through central stores.

Every county, city, school district, and special district may purchase goods, supplies, equipment, material, and printing which meet the procurement standards for minimum recycled material content through the central stores branch of the Division of Material and Procurement Services in the Finance and Administration Cabinet. Counties, cities, school districts, and special districts which purchase goods, supplies, equipment, material, and printing which meet the procurement standards established pursuant to KRS 45A.520 for minimum recycled material content shall receive a fifty percent (50%) reduction in any administrative fee the central purchasing agency is authorized to charge.

(Enact. Acts 1990, ch. 367, § 9, effective July 13, 1990; 1991 (1st Ex. Sess.), ch. 12, § 57, effective February 26, 1991; 2000, ch. 5, § 8, effective July 14, 2000.)

Miscellaneous Procurement Provisions

45A.605. Finance and Administration Cabinet's authority to enter into contracts for "information highway" for state agencies — Mandatory use — Exceptions — Status as a state agency price contract — Access to contract by certain nonprofit schools, nonprofit organizations, and economic development entities.

(1) As used in this section:

(a) "Information highway" means a communication network for voice, data, and video communications technologies; and

(b) "Agencies of the Commonwealth of Kentucky" includes all authorities; boards; commissions; councils; departments; program cabinets; the Kentucky Lottery Corporation; vocational schools; the Kentucky School for the Deaf; the Kentucky School for the Blind; upon written request of the Chief Justice, the Court of Justice; upon written request of the co-chairmen of the Legislative Research Commission, the General Assembly and the Legislative Research Commission; and upon written request of presidents, state institutions of higher education.

(2) The provisions of any other law notwithstanding, the Finance and Administration Cabinet may enter into one (1) or more contracts, on behalf of agencies of the Commonwealth of Kentucky, with any person, partnership, or corporation that operates an information highway. The information highway shall enable the Commonwealth to benefit from cost-effective telecommunications technologies and shall provide opportunities for the private sector. These opportunities shall include, but not be limited to, the provision of telehealth by licensed health-care providers as provided in KRS Chapters 205, 211, 304.17A, 310, 311, 312, 313, 314, 314A, 315, 319, 319A, 320, 327, 334A, and 335.

(3) Upon implementation, all agencies of the Commonwealth of Kentucky shall obtain all available communications services under contracts executed pursuant to subsection (2) of this section, except as provided under subsection (4) of this section.

(4) The secretary of the Finance and Administration Cabinet may grant exceptions to the mandatory use of the information highway upon good cause shown.

(5) Any contract awarded under subsection (2) of this section shall be deemed, for purposes of KRS 45A.050, a state agency price contract to which all political subdivisions and state-licensed nonprofit institutions of higher education may have access and use on the same terms as agencies of the Commonwealth of Kentucky. In addition, nonprofit schools providing elementary or secondary education and nonprofit health care organizations shall be allowed to have access and use the contract on the same terms as agencies of the Commonwealth of Kentucky. "Nonprofit schools" and "nonprofit health care organizations" mean those schools and health care organizations which have been granted tax-exempt status under the United States Internal Revenue Code.

(6) Any contract awarded under subsection (2) of this section shall be deemed a state agency price contract to which any entity that has been approved for economic development incentives under programs approved and administered by the Kentucky Economic Development Finance Authority may have access and use on the same terms as agencies of the Commonwealth of Kentucky.

(7) Any contract awarded under subsection (2) of this section shall be deemed a state agency price contract to which nonprofit organizations whose exclusive purpose is the delivery of services related to education, economic development, or cultural arts and humanities, may have access and use on the same terms as agencies of the Commonwealth of Kentucky. For the purposes of this section, "non-

profit organizations" means those organizations which have been granted tax-exempt status under Section 501(c)(3) of the United States Internal Revenue Code or those existing education based entities whose purpose is the delivery of services to state school systems, their employees, or their governing organizations and which have been granted tax-exempt status under Section 501(c)(6) of the United States Internal Revenue Code.

(Enact. Acts 1994, ch. 439, § 1, effective July 15, 1994; 1997 (1st Ex. Sess.), ch. 4, § 35, effective May 30, 1997; 2000, ch. 362, § 1, effective July 14, 2000; 2000, ch. 376, § 1, effective July 14, 2000.)

Legislative Research Commission Note. (7/14/2000). This section was amended by 2000 Acts chs. 362 and 376, which do not appear to be in conflict and have been codified together.

Compiler's Notes. Section 501(c)(3) and (6) of the United States Internal Revenue Code, which are referred to in subsection (7), are codified as 26 U.S.C. § 501(c)(3) and (6).

45A.620. Preference to high-calcium foods and beverages in purchasing for school meals.

(1) This section shall apply to any contract entered into by an agency or a business that contracts with a local school board, local school district, or other agency to provide food or meal services.

(2) In addition to any requirements established by the United States Department of Agriculture under the National School Lunch Program, the School Breakfast Program, or other federally supported food service programs, an agency or business that provides food or meal services under contract with a local school board, local school district, or other agency shall give preference in purchasing contracts to high-calcium foods or beverages.

(3) For the purposes of this section, the term "high-calcium foods or beverages" means foods or beverages that contain a higher level of calcium and that are equal to or lower in price than other products of the same type and quality.

(4) Notwithstanding subsection (2) of this section, if the director of a program operated by an agency or business offering food or meal services on behalf of a local school board, local school district, or other agency determines that a high-calcium food or beverage would interfere with the proper treatment and care of an individual receiving services from the program, then the purchasing agent for that institution or business shall not be required to purchase a high calcium-food or beverage for that individual.

(5) A purchasing agent who has entered into a contract with a supplier to purchase food or beverages before July 1, 2002, is not required to purchase high-calcium foods or beverages if purchasing those products would change the terms of the contract.

(Enact. Acts 2002, ch. 168, § 1, effective July 15, 2002.)

Penalties

45A.990. Penalties.

(1) Any violation of KRS 45A.045 shall be deemed a Class D felony.

(2) Any person who violates any of the provisions of KRS 45A.325 shall be guilty of a Class D felony. Any firm, corporation, or association which violates any of the provisions of KRS 45A.325 shall, upon conviction, be fined not less than ten thousand dollars ($10,000) nor more than twenty thousand dollars ($20,000).

(3) Any person who violates any provisions of KRS 45A.330 to 45A.340 shall be guilty of a Class B misdemeanor, and in addition he shall be adjudged to have forfeited any statutory office or employment which he may hold.

(4) Any willful violation of KRS 45A.690 to 45A.725 shall be a Class A misdemeanor.

(5) Any person who willfully violates this code shall be guilty of a Class A misdemeanor.

(6) Any employee or any official of the Commonwealth of Kentucky, elective or appointive, who shall take, receive, or offer to take or receive, either directly or indirectly, any rebate, percentage of contract, money, or other things of value, as an inducement or intended inducement, in the procurement of business, or the giving of business, for, or to, or from, any person, partnership, firm, or corporation, offering, bidding for, or in open market seeking to make sales to the Commonwealth of Kentucky, shall be deemed guilty of a Class C felony.

(7) Every person, firm, or corporation offering to make, or pay, or give, any rebate, percentage of contract, money or any other thing of value, as an inducement or intended inducement, in the procurement of business, or the giving of business, to any employee or to any official of the Commonwealth, elective or appointive, in his efforts to bid for, or offer for sale, or to seek in the open market, shall be deemed guilty of a Class C felony.

(8) Criminal penalties for violations of the laws which are in existence on January 1, 1980, shall not be impaired.

(9) This section shall not apply to any officer or employee of a political subdivision, including a school district, nor to the procurement activities of any such political subdivision unless such political subdivision has elected to operate under KRS 45A.345 through 45A.460.

(Enact. Acts 1978, ch. 110, §§ 69, 94; 1980, ch. 40, § 3, effective March 12, 1980; 1980, ch. 250, § 17, effective April 9, 1980; 1990, ch. 496, § 22, effective July 13, 1990; 1992, ch. 463, § 7, effective July 14, 1992.)

Compiler's Notes. Section 107 of Acts 1978, ch. 110, provided that subsections (1) to (5) of this section would become effective January 1, 1979 and § 108 of Acts 1978, ch. 110, provided that subsections (6) and (7) of this section would become effective January 1, 1980.

Acts 1980, ch. 40, § 3, added a subsection (4) to KRS 45.990 which was identical to subsection (1) of this section. Accordingly, that portion of ch. 40, § 3 has been treated as an amendment to this section.

TITLE VII

PUBLIC PROPERTY AND PUBLIC PRINTING

CHAPTER 56

STATE LANDS AND BUILDINGS

SECTION.

General Provisions

56.030. State, when made grantee or lessee of land.

Property and Buildings Commission

56.440. Definitions for chapter.
56.450. State Property and Buildings Commission — Issuance of revenue bonds.
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56.550. Applicability of KRS 56.440 to 56.540 to certain projects.

General Provisions

56.030. State, when made grantee or lessee of land.

(1) Except as provided in KRS 177.060, 177.070 and 183.120, the Commonwealth shall be named as the grantee of any land given or devised to the state, or partly or wholly paid for out of state funds, and of any land or interest in land conveyed to it or for its use or for the use of any of its agencies or officers.

(2) Except as provided in KRS 183.120, the Commonwealth shall be named as the lessee in all leases for governmental purposes or for the use of the state.

(2337a-2, 2337a-6.)

Cross-References. Airports, acquisition of land for is not governed by this section, KRS 183.771.

Purchase of real estate by state, who to authorize, KRS 45A.045.

Purchase price must be set out in deed, KRS 45.450.

School property, how title taken, KRS 160.160, 162.010, 162.020.

Title to real estate, how taken when revenue bonds are issued, KRS 56.510.

Property and Buildings Commission

56.440. Definitions for chapter.

As used in this chapter, unless the context otherwise requires:

(1) "Commission" means the State Property and Buildings Commission;

(2) "Real estate" includes lands together with improvements thereon and appurtenances thereto;

(3) "Building" includes any structure or improvement upon real estate of a permanent nature and additionally includes any sites, structures, equipment, machinery, or devices for the purpose of establishing, developing, or furthering television or related services in aid of education or in aid of any other proper public functions, whether or not the same would otherwise be legally defined as buildings; but only (except for industrial development projects) if used or to be used by the Commonwealth of Kentucky or one (1) of its departments or agencies (not including independent municipal corporations or political subdivisions);

(4) "Building project" includes the acquisition of any real estate and the acquisition, construction, reconstruction, and structural maintenance of buildings, the installation of utility services, including roads and sewers, and the purchase and installation of equipment, facilities, and furnishings of a permanent nature for buildings; the purchase and installation initially of movable equipment, furnishings, and appurtenances necessary to make a building operable; and for television or related purposes as referred to in subsection (3) of this section, for use by the state government or one (1) of its departments or agencies, not including any independent municipal corporation or political subdivision, or any other capital outlay program authorized by any branch budget bill or other legislation;

(5) "Industrial development project" means and includes the acquisition of any real estate and the construction, acquisition, and installation thereon and with respect thereto of improvements and facilities necessary and useful for the improvement of such real estate for conveyance to or lease to industrial entities to be used for manufacturing, processing, or assembling purposes, including surveys, site tests and inspections, subsurface site work, excavation, removal of structures, roadways, cemeteries, and other surface obstructions, filling, grading and provision of drainage, storm water detention, installation of utilities such as water, sewer, sewage treatment, gas, electricity, communication, and other similar facilities, off-site construction of utility extensions to the boundaries of such real estate, construction and installation of buildings, including buildings to be used for worker training and education, rail facilities, roads, sidewalks, curbs, and other improvements to such real estate necessary to its manufacturing, processing, or assembling use by industrial entities; provided that an industrial entity must have agreed with the commission, prior to the financing of an industrial development project, to develop, in conjunction with such industrial development project, manufacturing, processing, or assembling facilities satisfactory to the commission;

(6) "Industrial entity" means any corporation, partnership, person, or other legal entity, whether domestic or foreign, which will itself or through its subsidiaries and affiliates construct and develop a manufacturing, processing, or assembling facility on the site of an industrial development project financed pursuant to this chapter;

(7) "Incremental taxes" means, for any fiscal year of the Commonwealth, that amount of money which

is equal to all tax revenues received by the Commonwealth, as taxing entity, during such fiscal year in respect of an industrial development project and improvements and equipment thereon and the products thereof, and activities carried out by the occupants and users of such industrial development project, minus an amount equal to all tax revenues received by the Commonwealth, as taxing entity, in respect of the site of the industrial development project and the same type of taxable properties and activities during the fiscal year immediately preceding the fiscal year during which construction of the improvements undertaken by an industrial entity as a result of the financing of such industrial development project commenced. Incremental taxes shall include such tax revenues as state corporate income taxes, state income taxes paid by employees of manufacturing, processing, and assembling facilities developed on the site of an industrial development project, state property taxes, state corporation license taxes, and state sales and use taxes, but shall not include any taxes levied specifically for educational purposes;

(8) "State agency" means any state administrative body, agency, department, or division as defined in KRS 42.005, or any board, commission, institution, or division exercising any function of the state but which is not an independent municipal corporation or political subdivision;

(9) "Cabinet" means the Finance and Administration Cabinet;

(10) "Asbestos" means the asbestiform varieties of: chrysotile (serpentine); crocidolite (riebeckite); amosite (cummingtonite-grunerite); anthophyllite; tremolite; and actinolite;

(11) "Asbestos-containing material" means any material which contains more than one percent (1%) asbestos by weight;

(12) "Friable material" means any material applied onto ceilings, walls, structural members, piping, ductwork, or any other part of the building structure which, when dry, may be crumbled, pulverized, or reduced to powder by hand pressure;

(13) "Meeting" means all gatherings of every kind, including video teleconferences;

(14) "Video teleconference" means one (1) meeting, occurring in two (2) or more locations, where individuals can see and hear each other by means of video and audio equipment; and

(15) "Writing" or "written" shall mean letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 284, effective July 13, 1990; 1994, ch. 387, § 25, effective July 15, 1994; 1998, ch. 120, § 22, effective July 15, 1998.)

Cross-References. Educational television, KRS Ch. 168.

56.450. State Property and Buildings Commission — Issuance of revenue bonds.

(1) There is recognized, as an independent agency of the state within the meaning of KRS Chapter 12, and as a constituted authority of the Commonwealth of Kentucky, a state and a sovereign entity within the meaning of regulations of the United States Department of the Treasury, Internal Revenue Service, a State Property and Buildings Commission composed of the Governor, who shall be chairman thereof, the Lieutenant Governor who shall be vice chairman of the commission, the Attorney General, the secretary of the Cabinet for Economic Development, the secretary of the Finance and Administration Cabinet, and the secretary of the Revenue Cabinet, or their alternates as authorized in subsection (5) of this section.

(2) No member of the commission shall receive any salary, fee, or other remuneration for his services as a member of the commission, but each member shall be entitled to be reimbursed for his ordinary traveling expenses, including meals and lodging, incurred in the performance of his duties.

(3) The commission shall constitute a public body corporate with perpetual succession and power in its name to contract and be contracted with, sue and be sued, adopt bylaws, have and use a corporate seal, and exercise all of the powers granted to private corporations generally in KRS Chapter 271B, except as that chapter may be inconsistent with KRS 56.440 to 56.550.

(4) Subject to the provisions of KRS 56.550, but notwithstanding any other provision of the Kentucky Revised Statutes to the contrary, all revenue bonds issued by state agencies, except as provided in this chapter (but not including bonds issued directly by and in the name of the Commonwealth of Kentucky under authorization of the executive cabinet), shall be issued under the provisions of this chapter. As an additional and alternative method for the issuance of revenue bonds under the provisions of this chapter, upon application of any state agency and approval by the commission, the commission acting for and on behalf of said state agency may issue revenue bonds in its own name, in accordance with the terms and provisions of KRS Chapter 58, secured by and payable solely from all or any part of the revenues of the state agency as may be specified and provided in the approved application. Any covenants and undertakings of the state agency in the approved application with regard to the production of revenues and the use, application, or disposition thereof may be enforced by the holders of any of the revenue bonds or by any trustee for such bondholders. The issuance of any revenue bonds for the state or any of its agencies by or on behalf of the Kentucky Economic Development Finance Authority and the issuance of any revenue bonds for economic development projects authorized by Acts 1980, Ch. 109, shall require the prior approval of the State Property and Buildings Commission. In issuing bonds under its own name, or in approving issuance of bonds by other state agencies, the commission shall be deemed to be acting for the state government of the Commonwealth of Kentucky as one (1) unit within the meaning of the regulations of the United States Department of the Treasury, Inter-

nal Revenue Service, and it shall be limited to the issuance of bonds to accomplish the public purposes of that unit.

(5) (a) Each member of the commission may designate, by an instrument in writing over his signature and filed with the secretary as a public record of the commission, an alternate with full authority to attend in the absence of the appointing member for any reason, any properly convened meeting of the commission and to participate in the consideration of, and voting upon, business and transactions of the commission. Any designation of an alternate may, in the discretion of the appointing member, be limited upon the face of the appointing instrument, to be effective only for a designated meeting or only for specified business; or the same may be shown on the face of the appointing instrument to be on a continuing basis (but in no case for a period of more than four (4) years), whenever the appointing member is unable to attend, but always subject to revocation by the appointing member in an instrument of like formality, similarly filed with the secretary as a public record of the commission. Any party transacting business with the commission, or materially affected thereby, shall be entitled to accept and rely upon a joint certificate of the secretary of the commission and any member of the commission concerning the designation of any alternate, the time of designation, the scope thereof, and if of a continuing nature, whether the same has been revoked, and when; and the joint certificate shall be made and delivered to any such party within a reasonable time after written request is made therefor with acceptable identification of the business or transaction referred, and of the requesting party's interest therein. Each alternate shall be a person on the staff of the appointing member, or in the employ of his agency or department of the government of the Commonwealth, as the case may be.

(b) Any four (4) members of the commission, or their alternates authorized under paragraph (a) of this subsection, shall constitute a quorum and shall by majority vote be authorized to transact any and all business of the commission.

(c) The State Property and Buildings Commission is reconstituted as of October 1, 1976, with the powers herein provided.

(Enact. Acts 1949 (Ex. Sess.), ch. 11, § 2; 1960, ch. 63, Art. XIII; 1962, ch. 15, § 2; 1964, ch. 7, § 2; 1972, ch. 274, § 144; 1974, ch. 74, Art. II, § 9(2); 1976, ch. 205, § 2, effective October 1, 1976; 1980, ch. 141, § 2, effective July 15, 1980; 1980, ch. 295, § 16, effective July 15, 1980; 1982, ch. 396, § 7, effective July 15, 1982; 1990, ch. 476, Pt. IV, § 118, effective July 13, 1990; 1992, ch. 105, § 58, effective March 30, 1992; 1996, ch. 101, § 2, effective July 15, 1996.)

56.467. Commission to assist school financing.

The commission shall exercise the powers prescribed by KRS 162.520, 162.540, 162.550, 162.580, 162.590, 162.600, and 162.620 for the purpose of assisting boards of education of any county or independent school district in financing public school building projects and undertakings.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 285, effective July 13, 1990.)

56.495. Kentucky university and college projects.

The boards of regents of the respective state universities and the Kentucky Community and Technical College System and the board of trustees of the University of Kentucky may issue, under the provisions of KRS 162.340 to 162.380, consolidated educational building revenue bonds or housing bonds, provided that prior to seeking the final approval required by KRS 56.491, the board of the state university or the Kentucky Community and Technical College System shall submit to the commission, through the cabinet, a request for approval of the project before any financial commitment of any sort may be made in connection therewith, including employment of architects, engineers, fiscal agents, or attorneys. The request shall include a general description of the project and its need, use, location, approximate size, and such other information as the cabinet may require. After approval by the commission, the cabinet shall appoint fiscal agents, bond counsel, and architects and engineers as may be required to make plans and specifications or financial arrangements for the project.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 286, effective July 13, 1990; 1997 (1st Ex. Sess.), ch. 1, § 36, effective May 30, 1997.)

56.513. Interim financing — Revenue bond anticipation notes — Loan agreements — Tax status.

(1) When the State Property and Buildings Commission makes a determination, in accordance with the provisions of this chapter, that one (1) or more building projects or industrial development projects will be financed by the issuance of revenue bonds, then in anticipation of such financing the commission may borrow money to provide interim financing therefor and issue in evidence thereof its revenue bond anticipation notes, bearing interest at a rate or rates not exceeding the maximum rate permitted for the issuance of such bonds. Such interim financing may be entered into for the commission's own projects, for those of the University of Kentucky and the state colleges or universities or for any other agency of the Commonwealth where approval by the commission is required regarding the issuance of revenue bonds of such an agency. In instances where the revenue bonds involved are to be issued by other agencies, such agencies, with the prior approval of the commission, may borrow money in the same manner and for the same purpose and issue in evidence thereof their own revenue bond anticipation notes, according to rules and regulations promulgated by the commission.

(2) The commission shall solicit proposals for such interim financing from at least three (3) responsi-

ble lenders, and shall select in its discretion the best of such proposals consistent with sound financial practices. A selection may be made even though less than three (3) proposals are received. The term of any such revenue bond anticipation note shall not exceed five (5) years; and the same may be renewed, if necessary.

(3) Each revenue bond anticipation note may include prepayment provisions which will allow the commission or other borrowing agency to prepay the loan after giving reasonable notice to the lender; shall identify the revenue bond issue from the proceeds of which the note or notes and any interest thereon are to be paid; and shall include a statement that the note is being issued in anticipation of the identified revenue bond issue, and that neither the note, nor the interest thereon, shall constitute or evidence an indebtedness of the Commonwealth of Kentucky. Each such note and the interest thereon (to any extent not previously paid from other sources) shall be paid from the proceeds of the identified revenue bond issue, when such proceeds have been received and are available.

(4) Instead of borrowing money and issuing revenue bond anticipation notes in the full amount necessary for construction contract purposes, the commission (or such agencies with the prior approval of the commission and according to its rules and regulations), may enter into loan agreements with one (1) or more lenders (determined by the commission to be responsible) according to the terms of which it may be agreed:

(a) That the lender will continuously make available to the borrowing agency a stated maximum amount of money for a stated period of time;

(b) That the borrowing agency may demand and obtain cash advances against such commitment from time to time upon reasonable and agreed notice, and upon issuing in evidence of each advance a bond anticipation note which will bear an agreed rate of interest, not exceeding the maximum rate permitted for the issuance of the proposed bonds; and

(c) That in consideration of the making of such loan agreement the borrowing agency will pay to the lender or lenders a commitment fee determined by the commission to be reasonable according to financial conditions existing at the time the loan agreement is made.

Such loan agreements may be recorded as receivables upon the books of account of the commission, the secretary of the Finance and Administration Cabinet, or other borrowing agency, and construction contracts may be awarded against the same to the amount of money which the lender contractually agrees to make available to the borrowing agency, the same as in the case of loan agreements made with departments or agencies of the United States government.

(5) Each revenue bond anticipation note issued according to this section, and the receipt of interest thereon, shall be exempt from all taxation by the Commonwealth and all of its subdivisions, municipalities, and taxing authorities; and this may be stated as a representation in the text of each such revenue bond anticipation note.

(6) The State Property and Building Commission and other state agencies authorized to issue revenue bond anticipation notes under the terms of this section may, as an alternative and if authorized to do so by the governing body of such commission or agency, adopt the procedures for interim financing established for counties, cities, and other municipal corporations, or their agencies, by KRS 58.150.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 287, effective July 13, 1990.)

56.520. Revenue bonds — Investment of proceeds of authorized bonds.

(1) The commission may issue and sell revenue or other authorized bonds, in carrying out the provisions of this chapter, in denominations and amounts, as is deemed to be for the best interest of the Commonwealth, for any of the following purposes:

(a) To acquire real estate for state governmental use;

(b) To pay all or any part of the expense or cost of or incidental to a building project for state governmental use;

(c) To defray the cost of plans, specifications, blueprints, architectural fees, and other expenses authorized to be incurred for state governmental use.

(2) The payment of bonds issued, together with the interest thereon, may be secured by a pledge and a first lien on all of the receipts and revenue derived, or to be derived, from the rental or operation of the property involved. Neither the payment of any bond, nor the interest thereon issued under the authority of this chapter, shall constitute an indebtedness of the Commonwealth of Kentucky, nor shall any bond or interest thereon be payable out of any fund except funds derived from rentals or other revenues derived from the operation of the properties or from revenues as are available for the purpose by law.

(3) All competitive bids for the sale of revenue bonds shall be opened and read publicly by the secretary of the Finance and Administration Cabinet or the secretary's representative at a designated place, day, and hour, all of which shall be indicated in the notice made relative thereto.

(4) If the commission issues and sells bonds for a building project as authorized by this chapter, insurance, including fire and windstorm, casualty, catastrophe, use and occupancy, and such other insurance as the commission may deem advisable, shall be carried in connection with the building project, and it may so obligate and bind itself in a trust indenture securing the payment of the bonds. Any insurance shall be paid for out of funds available for the project.

(5) The commission may invest proceeds from the sale of its revenue or other authorized bonds in finan-

cial instruments and investments as provided in KRS 42.500 for the State Investment Commission.
(Enact. Acts 1949 (Ex. Sess.), ch. 11, § 9; 1956, ch. 90; 1956 (1st Ex. Sess.), ch. 7, Art. XVI, § 10; 1962, ch. 15, § 3; 1968, ch. 110, § 2; 1968, ch. 152, § 22; 1976, ch. 205, § 4, effective October 1, 1976; 1988, ch. 395, § 3, effective July 15, 1988; 1990, ch. 277, § 2, effective July 13, 1990; 1990, ch. 291, § 3, effective July 13, 1990; 1990, ch. 476, Pt. V, § 288, effective July 13, 1990; 1998, ch. 120, § 26, effective July 15, 1998; 1998, ch. 207, § 1, effective July 15, 1998; 1998, ch. 554, § 2, effective July 15, 1998.)

Legislative Research Commission Note. (7/13/90). The two Acts amending this section prevail over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476. Because there is a conflict between these two amending Acts, the amending Act which was last enacted by the General Assembly prevails, pursuant to KRS 446.250.

(7/15/98). This section was amended by 1998 Ky. Acts chs. 120, 207, and 554 which do not appear to be in conflict and have been codified together.

Cross-References. Issuance of revenue bonds for public projects, KRS 58.020.

Issuance of revenue bonds for state fair improvements, KRS 247.180.

56.550. Applicability of KRS 56.440 to 56.540 to certain projects.

(1) Nothing in KRS 56.440 to 56.540 shall be construed to apply to the construction of roads or bridges or the acquisition of rights-of-way or real estate in connection therewith now under the jurisdiction of the Department of Highways or the Turnpike Authority of Kentucky, or for any other expenditure made from the state road fund or by said turnpike authority.

(2) Except as provided by KRS 56.467, 162.520 to 162.620, nothing in KRS 56.440 to 56.540 shall be construed to apply to school districts, or to affect the rights, powers, and duties of the governing authorities of such districts; provided, however, that the acquisition of sites, and the acquisition, purchase, construction, leasing, and operation of television or related facilities as an aid to education or as an aid to any other proper public function, shall be deemed to be matters of statewide jurisdiction and interest, and any or all of such activities on the part of the commission shall not be deemed to constitute encroachment upon the authority of any school district.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 289, effective July 13, 1990.)

Cross-References. Educational television, KRS Ch. 168.

CHAPTER 57

PUBLIC PRINTING AND DISTRIBUTION OF PUBLIC DOCUMENTS

SECTION.

57.370. State-owned books to be marked for identification.
57.375. Agency preparing documents to be identified — State expense noted when.

57.370. State-owned books to be marked for identification.

When deemed by the Finance and Administration Cabinet to be desirable or necessary, consistent with all relevant factors concerning acquisition and use, all public books of the state shall be designated as public property by placing on the title page, "Property of the State of Kentucky," and the binder shall press those words on the cover. The words, "Property of the Commonwealth of Kentucky," may also be used for such purpose. Each officer who is charged with possession of books acquired under this chapter shall write or otherwise designate in or on each book the name of the office to which it belongs, if such books are to be retained permanently by such officer or his agency.
(2427: amend. Acts 1966, ch. 129, § 1.)

57.375. Agency preparing documents to be identified — State expense noted when.

All public documents printed under this chapter shall indicate the office of the unit preparing the document; in addition, any document distributed without charge shall indicate that the cost of printing was paid from state funds.
(Enact. Acts 1966, ch. 129, § 2.)

CHAPTER 58

ACQUISITION AND DEVELOPMENT OF PUBLIC PROJECTS THROUGH REVENUE BONDS

SECTION.

58.150. Revenue bond anticipation notes.
58.155. Grant anticipation notes.

INTEREST RATES ON PUBLIC BONDS

58.410. Definitions for KRS 58.410 to 58.440.
58.420. Public policy as to bond interest rates.
58.430. Removal of interest rate limits.
58.440. Refinancing at higher rate than that of original issue.

ENERGY CONSERVATION IMPROVEMENTS

58.600. Definitions for KRS 58.600 to 58.610.
58.605. Energy conservation revenue bonds for energy conservation measure — Procedure.
58.610. Issuance by school districts, county and city government, or special district — Special procedure.
58.615. [Repealed.]

58.150. Revenue bond anticipation notes.

(1) When the governing body of any county, city, or other municipal corporation, or agency thereof, shall make a determination that, in accordance with the provisions of any section of the statutes authorizing it to issue revenue bonds, assessment bonds, or mortgage bonds to finance any project, it will finance a project by the issuance of bonds, then in anticipation of financing, the governing body may provide for the interim financing of a project by the sale and issuance of revenue bond, assessment bond, or mortgage bond anticipation notes, as

the case may be, bearing interest at a rate or rates not exceeding the maximum rate permitted for the issuance of the bonds so anticipated, and payable within a specified period of time only from the proceeds of the bonds, when issued, or from the revenues or income of the project as may be available prior to or at maturity of the notes; provided that the initial term of the notes shall not be in excess of five (5) years from the date of issuance. The term "revenue bond" means bonds, notes, or other obligations for the payment of money issued by the state, any county, municipality, or other public district or authority except a school district, or any corporation or other corporate body acting as an instrumentality of the unit, and payable from a special fund into which some or all of the revenues of a public project have been or will be paid. "Assessment bond" means bonds, notes, or other obligations for the payment of money issued by any one (1) or more of the same issuing authorities payable from a special fund into which assessments levied on properties for benefits conferred have been or will be paid in accordance with law. "Mortgage bond" means revenue bonds which are secured by a mortgage deed of trust. A school district shall not be excluded from these definitions if it is authorized by the Kentucky Board of Education, by general or special authorization, to proceed under the authority of this section or KRS 56.513 through the agency of the appropriate city or county.

(2) The notes authorized herein shall be sold in the same manner as the bonds in anticipation of which they are issued, except that when the principal amount of the notes does not exceed one million dollars ($1,000,000) the provisions of KRS 424.360 for advertisement of the notes in a publication having general circulation among bond buyers shall be inapplicable, and the other publications required by this section shall be deemed sufficient.

(3) Each bond anticipation note may include prepayment provisions which will allow the issuing authority to prepay the note after giving reasonable notice to the holder; shall identify the bond issue from the proceeds of which the note or notes and any interest thereon are to be paid; and shall include a statement that the note is being issued in anticipation of the identified bond issue, and that neither the note, nor the interest, shall constitute or evidence an indebtedness of the issuing authority. Each note and the interest, to the extent not previously paid from other sources, shall be paid from the proceeds of the identified bond issue, when the proceeds have been received and are available; provided, however, that payment from the revenues of the project, for the financing of which the bonds will eventually be issued, shall be permitted, and provision shall be made for payment of that portion of the principal of any note issue which represents the principal of the proposed bonds scheduled to mature on or prior to the maturity of the notes.

(4) The notes authorized herein may be issued in a principal amount sufficient to include all interest due on the notes at or prior to maturity, if the notes shall be issued for a term of three (3) years or less, and the notes may be sold at a discount representing the interest due to the purchaser during the term.

(5) When, prior to the maturity of any notes issued under the authority of this section or KRS 56.513, the governing body of the issuing authority shall make a determination that by reason of construction delays, changes in plans, uncertainties in the bond market, or other causes justifying delay in the final offering of the bond issue, the bond issue should not immediately be offered, renewal notes may be issued subject to the same limitations contained in this section or KRS 56.513 relative to the original issue of notes, and the proceeds of the sale of the renewal notes shall be applied to the payment of the principal of the notes originally issued, or any prior issue of renewal notes, or to the payment of interest due or to become due on the notes or renewal notes; provided, however, that the interest, including discount, if any, payable from the proceeds of notes or renewal notes shall not exceed an amount equal to three (3) years' interest from the date of the original notes at the rate per annum established for the original notes.

(6) Counties, cities, and other municipal corporations, or agencies, in the discretion of the governing body in each case, may, as an alternative to this section and for interim financing purposes, solicit proposals, issue bond anticipation notes, and make commitment agreements in the same manner as provided for the State Property and Buildings Commission by KRS 56.513; provided, however, that in the case of notes issued on behalf of a school district, general or special approval of the Kentucky Board of Education shall be required in substitution for the approval of the State Property and Buildings Commission; and provided further, that the approval of the State Property and Buildings Commission will not be required for any issue of a county, city, or other municipal corporation, or any agency, and references to the commission shall be interpreted to be references to the governing body of the issuing authority.

(7) Nothing herein shall be deemed to invalidate any bond anticipation notes sold or issued under general statutes prior to the adoption of this section and KRS 56.513.

(8) Each bond anticipation note issued according to this section or KRS 56.513, and the receipt of interest on the note, shall be exempt from all taxation by the Commonwealth and all of its subdivisions, municipalities, and taxing authorities; and this may be stated as a representation in the text of each bond anticipation note.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 290, effective July 13, 1990; 1996, ch. 274, § 62, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996.)

Cross-References. Bond issue approval, 702 KAR 3:020. Restructuring revenue bond issues, 702 KAR 3:260.

58.155. Grant anticipation notes.

(1) In the case of any public work or public project, in connection with which the Commonwealth of Kentucky, or any department, agency or bureau thereof, or any political subdivision or governmental unit of the Commonwealth of Kentucky ("governmental agency") has applied for and received federal grants-in-aid or is entitled as a matter of law to receipt of federal grants-in-aid which may be applied for the purpose of providing a portion of or all of the funds required for construction and installation of any such public work or public project, such governmental agency may authorize and issue grant anticipation notes payable from grant proceeds when received, and any other assets which may be lawfully pledged by any such governmental agency and which are so pledged.

(2) Any grant anticipation notes issued pursuant to authority of this section shall be scheduled to mature at such time or times, not to exceed three (3) years from the date of issuance thereof, and shall bear such rate or rates of interest as the governing body of the governmental agency shall determine. Grant anticipation notes may be sold at public sale or pursuant to private, negotiated sale at the election of the governing body of the governmental agency issuing any such grant anticipation notes. Interest on any such grant anticipation notes may be capitalized in grant anticipation note issues for periods not exceeding three (3) years.

(3) Grant anticipation notes issued pursuant to the authority of this section shall be payable as to principal and interest, if interest is capitalized, from the federal grants in anticipation of which the grant anticipation notes are authorized and issued, and any governmental agency is authorized and empowered to pledge such grant proceeds when received, either as sole security for the repayment of grant anticipation notes, or together with any other assets and revenues of such governmental agency which may be lawfully pledged for such repayment.

(4) Grant anticipation notes issued pursuant to the authority of this section are hereby declared to be issued for public, governmental purposes and the interest derived thereon shall be exempt from taxation by the Commonwealth and by all political subdivisions of the Commonwealth. Grant anticipation notes shall also be exempt from ad valorem taxation by the Commonwealth or any political subdivision thereof.

(Enact. Acts 1980, ch. 273, § 1, effective April 9, 1980.)

Interest Rates on Public Bonds

58.410. Definitions for KRS 58.410 to 58.440.

(1) As used in KRS 58.410 to 58.440, unless the context otherwise requires:

(a) "Public body" means the Commonwealth, its political subdivisions, its municipalities, its school and other taxing districts, its nontaxing public bodies and institutions, and any and all agencies and instrumentalities thereof, whether such agencies or instrumentalities be now existing or hereafter created and established under and pursuant to specific statutory authority, or whether such agencies or instrumentalities be now existing or hereafter organized, established, and caused to exist as nonprofit corporations under applicable general laws, having performance as such agencies or instrumentalities as their sole corporate purposes;

(b) "Public obligation" means bonds, notes, warrants, or other obligations of any public body;

(c) "Rate of interest" means both the coupon or stated interest rate applicable to any public obligation, and the effective interest rate or interest cost percentage, computed upon the basis of the coupon or stated interest rate or rates and the price actually to be received by the issuing public body; provided, however, KRS 58.410 to 58.440 is not intended, and shall not be construed, to amend, alter, or repeal any existing law requiring that certain public obligations be sold at not less than the face amount thereof.

(2) KRS 58.410 to 58.440 does not relate to or affect borrowing by any person or corporation except such as are within the definition of "public body" as set forth in this section.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 291, effective July 13, 1990.)

58.420. Public policy as to bond interest rates.

It is hereby determined and declared to be the public policy of the Commonwealth that interest rates payable by public bodies upon public obligations be such as to be competitive with those rates which are permitted by other states, in order that necessary public projects may be financed and may be undertaken in the interest of the public health, safety, and general welfare.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 292, effective July 13, 1990.)

58.430. Removal of interest rate limits.

From and after March 9, 1970, notwithstanding any other acts or laws of other import which may presently prevail, wherever the same may be found in the Kentucky Revised Statutes as of such date, it shall be lawful for public bodies to establish, agree, and bind themselves to pay interest upon their public obligations at any rate or rates which may be determined upon by the governing bodies of the respective public bodies which are the issuers thereof; but subject, nevertheless, to such approvals as may now or hereafter be applicable thereto according to law.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 293, effective July 13, 1990.)

Opinions of Attorney General. This section does not implicitly repeal or in any way modify the maximum interest rate a school district may pay on money borrowed in anticipation of taxes. OAG 80-571.

58.440. Refinancing at higher rate than that of original issue.

If any public body shall determine:

(1) That financing of a public project may be accomplished to the best advantage in the public interest only by combining the same with refinancing of previously issued and outstanding public obligations at a rate or rates of interest higher than the rate or rates otherwise applicable thereto;
(2) That refinancing of a public project at a higher interest rate or rates is necessary in order to prevent or anticipate default in payment of interest or principal of public obligations with regard thereto; or
(3) That any combination of the circumstances described in subsection (1) or (2) of this section exists;

then such refinancing is recognized to be lawful; provided, however, that prior to any such refinancing at a higher rate or rates of interest, the issuing public body shall make and spread at large upon its public records its determination that such action is necessary or desirable in the public interest, and its reasons therefor.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 294, effective July 13, 1990.)

Energy Conservation Improvements

58.600. Definitions for KRS 58.600 to 58.610.

As used in KRS 58.600 to 58.610, unless the context requires otherwise:
(1) "Energy conservation revenue bonds" or "bonds" means securities issued by a local public agency in accordance with the provisions of KRS 58.600 to 58.610 to pay for energy conservation measures under guaranteed energy savings contracts;
(2) "Energy conservation measure" means a facility alteration designed to reduce energy consumption or operating costs, and may include one (1) or more of the following:
  (a) Insulation of building structure or systems within buildings;
  (b) Storm windows or doors, caulking or weatherstripping, multiple pane windows or doors, heat absorbing or heat reflective glazing for windows and doors, additional glazing, reductions in glass area or other window and door systems modifications that reduce energy consumption;
  (c) Automated or computerized energy control systems;
  (d) Heating, ventilating, or air conditioning system modifications or replacements;
  (e) Replacement or modification of lighting fixtures to increase energy efficiency of the lighting system without increasing the overall illumination of the building, unless an increase in illumination is necessary to conform to applicable state or local building codes for the lighting system after the proposed modifications are made;
  (f) Energy recovery systems;
  (g) Cogeneration systems that produce steam or forms of energy such as heat as well as electricity for use primarily within a building or complex of buildings;
  (h) Energy conservation measures that provide long-term operating cost reductions; or
  (i) Any life safety measures that provide long-term operating cost reductions;
(3) "Local public agency" means a city, county, charter county, urban-county, school district, special district, or an agency formed by a combination of these agencies under KRS Chapter 79;
(4) "Capital cost avoidance" has the same definition as in KRS 45A.345(2); and
(5) "Guaranteed energy savings contract" has the same definition as in KRS 45A.345(26).

(Enact. Acts 1996, ch. 213, § 1, effective July 15, 1996; 1998, ch. 375, § 6, effective July 15, 1998.)

58.605. Energy conservation revenue bonds for energy conservation measure — Procedure.

(1) Subject to the reporting and approval requirements in KRS 45A.352, 45A.353, and 58.610, any local public agency may issue energy conservation revenue bonds to pay for the cost of energy conservation measures under guaranteed energy savings contracts for the purpose of reducing the cost of energy to buildings owned or operated by the local public agency by making energy-saving improvements to these buildings.
(2) A local public agency, or an agency acting on its behalf, may issue energy conservation revenue bonds to finance the energy conservation measures under guaranteed energy savings contracts, with the following limitations:
  (a) Any energy conservation measure, financed through bonds, shall comply with the provisions set forth in KRS 45A.345, 45A.352, and 45A.353;
  (b) The term of the bonds shall run coterminous with the term of guaranteed energy savings contract;
  (c) A local public agency shall not enter into a guaranteed energy savings contract where the total cost of the energy conservation measures exceeds the cost of the energy savings plus the operational costs plus the capital cost avoidance that is estimated for the term of the guaranteed energy savings contract commencing from the date of the energy conservation measure's installation; and
  (d) The use of capital cost avoidance shall be subject to the following restrictions:
    1. The amount expended shall not exceed fifty percent (50%) of the project cost; and
    2. Capital cost avoidance shall be restricted to payment for permanent equipment replacement as follows:
      a. Storm windows or doors, multiglazed windows or doors, additional glazing, and reduction in glass area;
      b. Replacement of heating, ventilating, or air conditioning major components or systems;
      c. New lighting fixtures where required to achieve Illuminating Engineering Society of North America (IES) stan-

dards, provided the existing light fixtures shall have been determined to be obsolete and incapable of achieving IES standards; and

d. Life safety system replacements or upgrades which shall have been determined to be necessary to conform with existing state and local codes and standards.

(3) Energy conservation revenue bonds shall be issued in accordance with the provisions of KRS 58.010 to 58.140 and shall be sold at a competitive sale preceded by adequate public notice and shall bear interest at an interest rate or rates determined by the local public agency at the time of the sale.

(Enact. Acts 1996, ch. 213, § 2, effective July 15, 1996; 1998, ch. 120, § 31, effective July 15, 1998; 1998, ch. 375, § 7, effective July 15, 1998.)

Legislative Research Commission Note. (7/15/98). This section was amended by 1998 Ky. Acts chs. 120 and 375 which do not appear to be in conflict and have been codified together.

58.610. Issuance by school districts, county and city government, or special district — Special procedure.

(1) Energy conservation revenue bonds authorized under KRS 58.600 to 58.610 issued by or on behalf of a school district shall be approved or disapproved by the chief state school officer based on consideration of the following criteria:

(a) Funding capability of the school;

(b) The availability of general fund, capital outlay allotment under KRS 157.420, or state and local funds from the Facility Support Program of Kentucky under KRS 157.440, that are to be contributed by the school district as capital cost avoidance; and

(c) Proper bond documentation.

(2) Guaranteed energy savings and guaranteed operational savings of a guaranteed energy savings contract shall be exempt from current or future debt limitations, except that capital cost avoidance, as defined in KRS 58.600, shall not be exempt from current or future debt limitations.

(3) No energy conservation revenue bonds authorized under KRS 58.600 to 58.610 shall be issued by or on behalf of a county, urban-county government, charter county government, city, or special district without the prior approval of the state local debt officer, except that this approval shall not be required if the principal amount of energy conservation revenue bonds is less than five hundred thousand dollars ($500,000).

(4) Any issuance of energy conservation revenue bonds shall be reported to the state local debt officer.

(Enact. Acts 1996, ch. 213, § 3, effective July 15, 1996; 1998, ch. 375, § 8, effective July 15, 1998.)

58.615. Authority for administrative regulations. [Repealed.]

Legislative Research Commission Note. (7/15/98). Under KRS 446.260, the repeal of this section in 1998 Ky. Acts ch. 375 prevails over its amendment in 1998 Ky. Acts ch. 69.

Compiler's Notes. This section (Enact. Acts 1996, ch. 213, § 4, effective July 15, 1996) was repealed by Acts 1998, ch. 375, § 11, effective July 15, 1998.

TITLE VIII

OFFICES AND OFFICERS

CHAPTER 61

GENERAL PROVISIONS AS TO OFFICES AND OFFICERS — SOCIAL SECURITY FOR PUBLIC EMPLOYEES — EMPLOYEES RETIREMENT SYSTEM

SECTION.

General Provisions

61.020. Commissions, which officers required to have.
61.080. Incompatible offices.
61.330. Chief state school officer to deliver effects to successor — Penalty.
61.371. Definitions for KRS 61.371 to 61.379.
61.373. Restoration of public employee to position after military duty.
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The following officers shall have commissions issued to them by the Governor: Secretary of State, Auditor of Public Accounts, Treasurer, Commissioner of Agriculture, Superintendent of Public Instruction, Justices of the Supreme Court, clerk of the Supreme Court, Judges of the Court of Appeals, clerk of the Court of Appeals, railroad commissioners, Judges of the Circuit Courts, District Judges, county judges/executive, Commonwealth's attorneys, justices of the peace, and all the officers of the militia of rank and grade higher than and including the rank and grade of captain.

(3758: amend. Acts 1966, ch. 255, § 63; 1976, ch. 62, § 55; 1976 (Ex. Sess.), ch. 14, § 18, effective January 2, 1978; 1976 (Ex. Sess.), ch. 20, § 6, effective January 2, 1978.)

Cross-References. Board of Embalmers and Funeral Directors, certificate of appointment, KRS 316.180.

Board of Registration for Professional Engineers, certificate of appointment, KRS 322.250.

County judge/executive, commission to be issued to, Const., § 140.

Creation of office for longer than term prohibited, Const., § 23.

Fee not to be charged for affixing state seal to commission, KRS 14.090.

Justices of the peace, commission to be issued to, Const., § 142.

Railroad policemen, commission of, KRS 277.270.

61.080. Incompatible offices.

(1) No person shall, at the same time, be a state officer, a deputy state officer or a member of the General Assembly, and an officer of any county, city, consolidated local government, or other municipality, or an employee thereof.

(2) The offices of justice of the peace, county judge/executive, surveyor, sheriff, deputy sheriff, coroner, constable, jailer, and clerk or deputy clerk of a court, shall be incompatible, the one (1) with any of the others. The office of county judge/executive and county school superintendent are incompatible.

(3) No person shall, at the same time, fill a county office and a municipal office. Notwithstanding the fact that consolidated local governments have both municipal and county powers, persons who hold the office of mayor or legislative council member of a consolidated local government shall not thereby be deemed to hold both a county office and a municipal office. Officers of consolidated local governments shall not, at the same time, fill any other county or municipal office.

(4) No person shall, at the same time, fill two (2) municipal offices, either in the same or different municipalities.

(5) The following offices shall be incompatible with any other public office:

(a) Member of the Public Service Commission of Kentucky;

(b) Member of the Workers' Compensation Board;

(c) Commissioner of the fiscal court in counties containing a city of the first class;

(d) County indexer;

(e) Member of the legislative body of cities of the first class;

(f) Mayor and member of the legislative council of a consolidated local government;

(g) Mayor and member of the legislative body in cities of the second class; and

(h) Mayor and member of council in cities of the fourth class.

(6) No office in the Kentucky active militia shall be incompatible with any civil office in the Commonwealth, either state, county, district, or city.

(912, 1851b-8, 2711a-145o, 2768, 3043, 3107, 3484, 3746, 3952-4, 4921: impl. am. Acts 1942, ch. 4, § 13; 1978, ch. 379, § 56, effective April 1, 1979; 2002, ch. 346, § 13, effective July 15, 2002.)

Cross-References. Adjutant general's office not incompatible with commission in national guard, KRS 36.030.

County or regional housing member, KRS 80.440.

Extension board members, except county judge/executive, KRS 164.660.

Incompatible offices, Const., §§ 165, 237.

Militia, officer in may hold civil office, Const., § 165.

Notary public may hold other office, Const., § 165.

Regents for state colleges may hold other public office, KRS 164.321.

Representative, state, Const., §§ 44, 165.

Restrictions on the right of certain officers to hold other offices:

Artificial gas commission members, KRS 96.545.

Board for municipal electric plant, KRS 96.740.

Cities of the first class:

Building commissioners, KRS 98.060.

Civil service board members, KRS 90.120.

Waterworks, member of board of, KRS 96.240.

Cities of the second class:

Bridge commissioner, KRS 181.600.

Cities of the third class:

Electric and water plant board members, KRS 96.172.

Generally, Const., § 165.

Recreational commissioners, KRS 97.120.

Senator, state, Const., §§ 44, 165.

Soil and water resources division, director of, KRS 146.100.

Trustees of University of Kentucky may hold other public office, KRS 164.150.

Opinions of Attorney General. Membership on the McLean County board of education is not incompatible with the position of teacher of vocational agriculture in Muhlenberg County. OAG 60-901.

Although the positions of county director of pupil personnel and city director of pupil personnel are not incompatible as such, they are incompatible in fact because KRS 159.140(1) requires that a director of pupil personnel must devote his entire time to his duties which he could not do in two such positions. OAG 60-1027.

There is no statutory or constitutional incompatibility between the position of teacher and the office of county commissioner, but there may be a common law incompatibility. OAG 61-292.

There is no incompatibility between the office of magistrate and driving a school bus for the county board of education under Const., § 165 or this section, but there may be a common law incompatibility. OAG 61-390.

Holding the offices of deputy sheriff and deputy county court clerk at the same time is specifically prohibited. OAG 61-533.

The offices of treasurer of the school board and city clerk are incompatible. OAG 61-823.

The secretary and treasurer of the city board of education and the treasurer of the county board of education were disqualified from serving on the electric plant board. OAG 61-846.

One would be prohibited from serving on the county board of health and on the county board of education at the same time since the two offices are incompatible. OAG 62-617.

Actions taken as a school board member after filing for nomination for the office of sheriff and thus disqualifying himself, would be valid until the school board member resigned or was removed from office. OAG 65-211.

A member of the school board who files for nomination for the office of sheriff disqualifies himself from serving on the school board. OAG 65-211.

No constitutional or statutory incompatibility exists between membership on the school board and membership on the municipal housing commission. OAG 66-673.

The office of treasurer of the county board of education and the office or employment of county finance officer are incompatible. OAG 66-754.

A county treasurer may not serve simultaneously as county school treasurer. OAG 67-5.

Employment as director of pupil personnel for a district board of education is not incompatible with the position of member on the board of trustees of a public library district. OAG 67-83.

The holding of the position of public schoolteacher and the position of member of the board of city commissioners, at the same time, is not constitutionally nor statutorily incompatible. OAG 67-163.

There is no incompatibility in the holding of the offices of member of the board of education of an independent school district and stenographic reporter for a judicial district. OAG 67-177.

The offices of member of a city independent board of education and member of the county library board are incompatible. OAG 67-186.

The offices of member of the county board of education and member of the county library board of trustees are incompatible. OAG 67-186.

Membership on the board of regents of a state university is a state office and the Commissioner of the Department of Banking and Securities (now Department of Financial Institutions) is also a state office. OAG 67-557.

There is no prohibition against a person being a member of the county board of education and at the same time holding a position with the Commonwealth. OAG 68-21.

A member of the Council on Public Higher Education (now Council on Higher Education) must resign his position at the time he becomes a member of the Louisville board of aldermen. OAG 68-22.

There is no statutory or constitutional incompatibility against a person holding the position of secretary to the superintendent of the district board of education and at the same time holding the position of secretary-bookkeeper for the head start program of that school district. OAG 68-200.

The office of county school board member is incompatible with employment as county road supervisor. OAG 68-210.

The position of executive director or assistant executive director of a municipal housing commission is state employment and there is no incompatibility between these positions and the office of school board member. OAG 68-599.

A school teacher may legally serve at the same time as an election officer. OAG 68-601.

There is no constitutional nor statutory prohibition against a school teacher holding the office of magistrate but a common law incompatibility would exist. OAG 68-607.

The office of county clerk is incompatible with membership on the Commission on Higher Education. OAG 69-15.

Membership on a municipal housing commission is a state office, and, as such, there would be no constitutional nor statutory incompatibility involved in also holding at the same time membership on the Commission on Higher Education. OAG 69-15.

While membership on the Council on Public Higher Education (now Council on Higher Education), established pursuant to KRS 164.010 (now repealed), would constitute the holding of a state office, membership on a consolidated planning and

zoning commission is neither a city, county nor a state office as contemplated by either Const., § 165 or this section, so that no constitutional or statutory incompatibility exists that would prohibit a person from holding both offices at the same time. OAG 69-19.

An employee of the school system may seek and hold the office of county commissioner. OAG 69-94.

A school teacher may hold at the same time the office of property valuation administrator. OAG 69-158.

There is no provision under the Kentucky statutes or Constitution prohibiting a school teacher or principal from serving on a city commission. OAG 69-448.

There is no constitutional or statutory provision that prohibits a teacher in the public schools from running for the nomination of city commissioner and serving as such if elected. OAG 69-485.

A department head at a state university not only may become a candidate for the office of city commissioner but also may serve as such. OAG 69-486.

A school teacher or principal of a school may serve at the same time on the city commission. OAG 69-519.

A member of the police department in a city of the second class could neither become a candidate for membership on the local school board nor hold such office and retain his position on the city police force. OAG 69-634.

A magistrate may be employed as a school bus driver by the county board of education while he is serving as magistrate. OAG 70-2.

The director of pupil personnel for a county board of education may serve at the same time as deputy coroner of that same county. OAG 70-31.

A city elementary school principal may at the same time hold the office of city councilman in a city of the fourth class. OAG 70-183.

An individual can legally serve on the city-county youth commission and at the same time run for and hold membership on the local school board. OAG 70-391.

A member of the municipal housing commission can serve at the same time as a member of the local school board. OAG 70-444.

A school board member could not be hired by the county judge (now county judge/executive) to operate, manage or drive a county ambulance. OAG 70-478.

A person can become a candidate for school board membership and at the same time continue to serve on the city commission. OAG 70-558.

A person would be prohibited from serving on a county board of health and on the board of education at the same time without forfeiting the first office he held. OAG 70-632.

An individual may not at the same time hold the office of school board member and hold employment with a city. OAG 70-663.

There appears to be no constitutional or statutory incompatibility nor any conflict with merit system law in the holding of the office of board member in an independent school district and a position of employment with the department of corrections. OAG 70-811.

There is no statutory or constitutional incompatibility between being a school principal and serving on the city council. OAG 71-56.

There is no constitutional or statutory incompatibility between holding a position of schoolteacher and holding the office of police judge at the same time. OAG 71-108.

There would be no incompatibility between a principal and director of pupil personnel, which is a form of state employment, serving on a municipal civil service commission. OAG 71-305.

No constitutional or statutory incompatibility exists between the positions of the paying public office of city commissioner and a paying professorship at Western Kentucky University. OAG 71-443.

A person could not at the same time serve on the city's park and recreation board and be a member of the local board of education. OAG 72-618.

There is no violation of this section where a member of a city board of aldermen is a part-time paid faculty member of the University of Louisville. OAG 72-654.

A school board member may serve on an agricultural stabilization conservation committee. OAG 72-683.

An employee of the office of the auditor of public accounts may serve as a member of an independent school board. OAG 72-692.

A person may hold the office of mayor while holding a job under a federally financed school program. OAG 72-796.

There is no conflict where a person serves at the same time as county juvenile court judge and attorney for a public school board of education within the same county. OAG 73-35.

Although a school board employee is a state employee, he is not one under the merit system as established by KRS Chapter 18 (now repealed) and neither this section nor Const., § 165, which define incompatible officers, forbids a school board employee from serving as a city councilman. OAG 73-144.

There is no apparent common-law conflict when a magistrate drives a school bus as driving a school bus is state employment and a magistrate is a county officer; thus there is no constitutional or statutory conflict. OAG 73-212.

Since director of pupil personnel of a county school district is a state office and county judge (now county judge/executive) pro tem is a county office, the two offices are incompatible. OAG 74-382.

An unclassified employee of a state university is eligible to run for and serve on a county school board as there is no general prohibition against holding a state office and state employment at the same time and Const., § 165 and this section deal only with holding incompatible offices not the holding of a state office and state employment simultaneously. OAG 74-646.

The treasurer of a county school board is considered a state officer and may not at the same time serve as commissioner of a municipal public utility, which office in all probability constitutes a municipal office and, even if not, constitutes municipal employment. OAG 74-707.

A person appointed director of pupil personnel, a state office created by KRS 159.080, could not at the same time serve as magistrate or justice of the peace, a county office, as the two are incompatible under this section and Const., § 165. OAG 75-414.

Although the office of school board member and that of master commissioner of the circuit court are constitutionally and statutorily compatible offices, there could exist common-law conflict where the duties of both offices cannot be performed at the same time with care and ability. OAG 75-715.

Since the office of master commissioner does not constitute a state, city or county office, but merely an office of the court, no incompatibility would exist between the office of school board member and the position of master commissioner for the circuit court. OAG 75-715.

Although there would be no constitutional or statutory provision prohibiting a person from holding the office of magistrate, a county office, and at the same time serving on the county school board staff, which would constitute a form of state employment, there could be a common-law incompatibility since a magistrate must be accessible at all times to persons desiring to serve warrants and to those desiring to bring civil actions. OAG 76-216.

There is no statutory or constitutional incompatibility or conflict of interest between membership on a county school board and employment as a full time mental health worker for a nonprofit corporation which administers a community mental health program. OAG 76-227.

The mayor of the city of Glasgow can at the same time legally serve as principal of the local school. OAG 76-402.

A person cannot serve as a member of the school board and at the same time hold a position of city manager of a city without violating this section and Const., § 165 since these sections prohibit a state officer from holding a municipal office or employment at the same time. OAG 76-433.

A person who holds the position of director of the city's recreation program could not continue to serve as such and the same time serve as a member of the local board of education. OAG 76-434.

Inasmuch as the position of maintenance supervisor for a local board of education is a form of state employment, a person would not be prohibited from holding that position and also serving as a member of the county commission. OAG 76-533.

Since there is nothing under the terms of Const., § 165 and this section to prohibit a person from holding a state office and state employment at the same time, a person could hold the office of commonwealth's attorney, a state office, and a teaching position at a state university, a form of state employment, at the same time. OAG 76-563.

Membership on a county school board and the position of county director of civil defense are incompatible. OAG 76-687.

There is no provision under Const., § 165 or this section relating to incompatible offices that would prohibit a person from holding a position on a county board of education which is a form of state employment and serving on the fiscal court which is a county office, nor is there any prohibition to a person serving as a member of a county board of education and as mayor of a fourth class city. OAG 77-8.

An individual who is a member of an independent school board could not at the same time serve as member of a county board of health as these positions are incompatible. OAG 77-39.

A person who is the mayor of a fifth-class city cannot at the same time hold the position of superintendent of county schools since position of mayor is a municipal office and the position of superintendent is a state office and the fact that the mayor may not receive a salary is of no consequence in determining incompatibility. OAG 77-107.

The principal of an elementary school, a state employee, can become a candidate for the office of magistrate and if elected continue to retain his position as principal unless there would be some common-law conflict of interest where the individual could not perform the duties of both positions at the same time with care and ability or unless there is some local regulation promulgated by the county board of education prohibiting school employees from becoming candidates for public office without resigning or taking leave of absence. OAG 77-146.

Since a university professor is not a state officer or a deputy state officer, there would be no incompatibility if a city councilman became a law professor at a state university. OAG 77-174.

There is no statutory incompatibility in an individual holding the office of mayor of a third-class city, a municipal office, while retaining a faculty position at a regional university, a form of state employment. OAG 77-204.

Members of county board of education are state officers and at the same time the position of state ABC officer is one authorized pursuant to KRS 241.090 and such representatives have full police powers which may or may not place their position in the category of a state officer; and although subsection (1)(d) (now (2)(f)) of KRS 160.180 prohibits a school board member from holding and discharging the duties of any local office or agency under the city or county of his residence, it would not prohibit a school board member from holding employment or an appointive office with the state and of course a board member could not become a candidate for any public office, local or state; however, Const., § 165 and this section do not prohibit a person from holding two state offices or employment at the same time. OAG 77-245.

A university safety and security officer appointed and holding his position pursuant to KRS 164.950 to 164.980 is a state officer and as a state officer he is precluded by Const., § 165 and subsection (1) of this section from serving, at the same time, as either a city officer or a county officer. OAG 77-521.

Membership on the board of trustees of a city's public library would be incompatible with membership on the local school board. OAG 77-697.

Inasmuch as a membership in an educational association does not constitute a state, county or city office, a person could retain his membership in such an association while serving on a local school board. OAG 77-712.

The holding of the positions of superintendent of schools and members of a local school board does not by itself present a statutory or constitutional incompatibility, under this section and Const., § 165. OAG 78-413.

If one is not an employee of a county school board but serves, for example, as an employee of the State Department of Education, there would be no constitutional or statutory conflict under Const., § 165 and this section since a person can hold two state positions at the same time, whether they be in the form of an office or employment. OAG 78-645.

One may serve as a member of the Bowling Green board of education of the Bowling Green independent school district while at the same time being employed as an administrator of the Bowling Green-Warren County health department pursuant to appointment by the joint city-county board of health which is, in turn, approved by the Kentucky Department of Human Resources (now Cabinet for Human Resources), since the joint city-county health department would be considered a hybrid agency not contemplated by the Constitution or statute relating to incompatible offices, namely Const., § 165 and this section. OAG 78-646.

There is nothing under Const., § 165 or this section that would prohibit an employee of the University of Kentucky extension specialist department, poultry division, from holding a state office at the same time (such as the school board position), and this would be true even if the employee was under the state merit system in view of KRS 18.310(4) (now repealed). OAG 78-706.

A person could hold office on the county board of education and at the same time serve as state conservation officer. OAG 78-773.

A person holding the position of membership on the Marshall County board of education cannot at the same time serve as city treasurer of Calvert City. OAG 79-1.

Section 165 of the Constitution and this section prohibit a state officer from holding a municipal office at the same time; therefore, no one can hold the office of city attorney and serve as a member of an independent school board at the same time since the two positions are incompatible. OAG 79-44.

There is no conflict between the positions of superintendent of county schools and a supervisor of a county conservation district. OAG 79-149.

Since a school board member is a state officer, and since a county emergency director is a county employee, Const., § 165 and this section expressly prohibit one person from holding such office and employment at the same time. OAG 79-319.

Since a member of the county board of elections is a county officer and membership on the city council constitutes a municipal office, this section clearly prohibits a person from holding both at the same time. OAG 79-443.

Section 165 of the Constitution and this section prohibit a state officer from holding a county office at the same time; however, there is no prohibition against a state employee holding a county office except where such person is under the state merit system and cannot run for such office which would not be applicable with respect to school teachers since they do not come under the state system. OAG 79-459.

The position of county court clerk is a county office under the Constitution, particularly Const., § 99, and a school teacher, part-time or otherwise, is a state employee. OAG 79-459.

There is no constitutional nor statutory prohibition which would prohibit a local board from hiring a county clerk as a substitute teacher. OAG 79-459.

There is no incompatibility, under either Const., § 165, this section or the common law, between the state offices of secretary of energy and chairman of the board of trustees of the University of Kentucky. OAG 79-624.

The office of city school board member and that of county comptroller are incompatible. OAG 80-92.

Constitution, § 165 and this section prohibit a state officer or deputy state officer from holding a county office; however, there is no provision prohibiting a state employee, such as a school principal, who is not under the state merit system from becoming a candidate for a county office, such as a county magistrate, and serving as such at the same time he holds his state position. OAG 80-131.

Assuming no factual circumstances that would give rise to a common-law conflict of interest, a member of a county fiscal court while serving in office may also be employed, full-time or part-time, as an instructor at the University of Louisville, or any other state institution of higher learning. OAG 80-277.

There is no incompatibility in law or fact in holding at the same time the positions of commonwealth attorney and membership on the Eastern Kentucky University board of regents. OAG 80-402.

There is no incompatibility between serving as an employee of the Department of Human Resources and as a school board member since both positions are with the state, one being a form of state employment and the other (school board) a state office. OAG 80-505.

A county school teacher can be elected to the office of magistrate without violating Const., § 165 and this section since a person may hold both state employment such as a school teacher and at the same time hold a county office such as magistrate. OAG 81-13.

An assistant commonwealth attorney may accept a night teaching position with a community college without creating a conflict of interest since Const., § 165 and this section do not prohibit a person from holding a form of state employment and a state office at the same time. OAG 81-17.

The employment of a county attorney as attorney for the county board of education does not violate this section and Const., § 165, since employment as the school board attorney would be that of an independent contractor rather than an employee, and since such employment would at most be a form of state employment rather than constituting a state office. OAG 81-308.

An unpaid city council member who is also employed by the Kentucky Higher Education Assistance Authority as executive director, and by virtue of his position as executive director of the Kentucky Higher Education Assistance Authority, is also the executive director of the Kentucky Higher Education Student Loan Corporation, is holding a municipal office and state employment, concerning which there is no constitutional or statutory objection. OAG 82-282.

The executive director of the Kentucky Higher Education Authority must be considered a state employee within the meaning of Const., § 165 and this section; the same would be true with respect to his serving as executive director to the Kentucky Higher Education Student Loan Corporation pursuant to KRS 164A.050(7). OAG 82-282.

Being a jailer and a school bus driver at the same time involves no statutory incompatibility. However, it is possible that such dual roles will, in a particular county, present a common law incompatibility in that the jailer may not be able to execute both functions in the manner required by law. OAG 82-452.

No conflict of interest or incompatibility existed where an auxiliary police officer of a city was at the same time a full-time instructor-coordinator of the Department of Training at Eastern Kentucky University; an auxiliary police officer of a city has the same powers as a regular police officer and is, therefore, considered a municipal officer while the position of instructor-coordinator for a department at Eastern Kentucky University would at most be considered a form of state employment. Neither Const., § 165 nor this section prohibits a state employee from holding a municipal office. OAG 83-29.

Membership on a school board constitutes a state office. OAG 83-318.

From the standpoint of the incompatible offices provisions of Const., § 165 and this section, state officers are not prohibited from holding positions on the boards of directors of the Kentucky Housing Corporation and the Kentucky Higher Education Student Loan Corporation when those officers are holding positions specifically authorized by KRS 198A.030(3) and KRS 164A.050(3), because where a statute provides for the appointment of specifically designated public officers to hold another public office, these public officers hold their second public office in an "ex officio" capacity, which eliminates the possibility of a constitutional or statutory incompatibility. OAG 91-208.

NOTES TO DECISIONS

Analysis

6. Two municipal offices.
7. School officers and employees.

6. Two Municipal Offices.

Offices of school trustee and postmaster are incompatible. Johnson v. Sanders, 131 Ky. 537, 115 S.W. 772 (1909).

7. School Officers and Employees.

Offices of school trustee and school teacher are incompatible. Ferguson v. True, 66 Ky. (3 Bush) 255 (1868).

School officials are state officers. Hoskins v. Ramsey, 197 Ky. 465, 247 S.W. 371 (1923); Commonwealth v. Louisville Nat'l Bank, 220 Ky. 89, 294 S.W. 815 (1927); Fidelity & Deposit Co. v. Christian County Bd. of Educ., 228 Ky. 362, 15 S.W.2d 287 (1929); Commonwealth ex rel. Baxter v. Burnett, 237 Ky. 473, 35 S.W.2d 857 (1931); Tipton v. Commonwealth, 238 Ky. 111, 36 S.W.2d 855 (1931); Middleton v. Middleton, 239 Ky. 759, 40 S.W.2d 311 (1931); Board of Educ. v. Trustees of Buena Vista School, 256 Ky. 432, 76 S.W.2d 267 (1934); Board of Trustees v. Renfroe, 259 Ky. 644, 83 S.W.2d 27 (1935); Polley v. Fortenberry, 268 Ky. 369, 105 S.W.2d 143 (1937).

Offices of graded school board member and city trustee are incompatible. Middleton v. Middleton, 239 Ky. 759, 49 S.W.2d 311 (1931).

Office of school board member is not incompatible with position of highway maintenance supervisor. Polley v. Fortenberry, 268 Ky. 369, 105 S.W.2d 143 (1937).

The offices of assistant county school superintendent and teacher or principal of a county school in the same county are incompatible. Knuckles v. Board of Educ., 272 Ky. 431, 114 S.W.2d 511 (1938).

Where same person was appointed county superintendent of schools in two counties, he could, before commencement of terms, resign one appointment; incompatibility of appointments would not be ground for rescinding either appointment before commencement of term. Chestnut v. Reynolds, 291 Ky. 231, 163 S.W.2d 456 (1942).

Kentucky Revised Statute 164.130 (now repealed) as enacted by the Legislature permitted the Governor to make appointments to the Board of Trustees of the University of Kentucky. There was no limitation in that statute which prohibited the Governor from being a board member or from appointing himself; the Legislature made no exception to the

qualified persons whom the Governor could appoint to the at large seats on the Board of Trustees. It would seem apparent that the General Assembly did not intend any such exception to be applicable to the Governor because the legislature had enacted other statutes to prohibit certain office holders from holding a second office. Commonwealth ex rel. Cowan v. Wilkinson, 828 S.W.2d 610 (Ky. 1992).

61.330. Chief state school officer to deliver effects to successor — Penalty.

Upon retiring from office the chief state school officer shall deliver to his successor all books, papers, and effects belonging to the office, and on failure to do so he shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500), which shall be recovered by indictment in the Franklin Circuit Court.

(4384-33: amend. Acts 1990, ch. 476, Pt. IV, § 119, effective July 13, 1990.)

61.371. Definitions for KRS 61.371 to 61.379.

As used in KRS 61.371 to 61.379, unless the context otherwise requires:

(1) "Public employee" means a person appointed to a position in public service for which he is compensated on a full-time basis, excluding elected officers;

(2) "Public service" means employment by the Commonwealth of Kentucky, or by any county, city, or political subdivision or by any department, board, agency, or commission thereof;

(3) "Employer" means the officer, employee, board, commission or agency authorized by law to make appointments to a position in public service;

(4) "Position" means an office or employment in the public service, excluding an office filled by popular election;

(5) "Military duty" means training and service performed by an inductee, enlistee, or reservist or any entrant into a temporary component of the armed forces of the United States, and time spent in reporting for and returning from such training and service, or if a rejection occurs, from the place of reporting therefor. "Military duty" shall not include voluntary active duty for training of an individual as a reservist in the armed forces of the United States;

(6) "Board" means the personnel board established by KRS Chapter 18A;

(7) "Seniority" means the increase in compensation, status, and responsibility resulting from promotion or step progression within a class of a classified service or promotion or increase in compensation, status, and responsibility in the unclassified service.

(Enact. Acts 1966, ch. 32, § 1.)

Opinions of Attorney General. The definitions employed in this section must be construed to include boards of education. OAG 70-709.

The position of teacher for a county board of education comes within the definition of this section. OAG 70-709.

The seniority provision of this section translated into teacher seniority means seniority in the rate of salary. OAG 70-709.

61.373. Restoration of public employee to position after military duty.

(1) Any public employee who leaves a position after June 16, 1966, voluntarily or involuntarily, in order to perform military duty, and who is relieved or discharged from such duty under conditions other than dishonorable, and who has not been absent from public employment due to military duty in time of war or national or state emergency for a period of time longer than the duration of the war or national or state emergency plus six (6) months or in time of peace for a period of time not longer than six (6) years, and makes application for reemployment within ninety (90) days after he is relieved from military duty or from hospitalization or treatment continuing after discharge for a period of not more than one (1) year:

(a) If still physically qualified to perform the duties of his position, shall be restored to such position if it exists and is not held by a person with greater seniority, otherwise to a position of like seniority, status and pay;

(b) If not qualified to perform the duties of his position by reason of disability sustained during such service, the public employee shall be placed in another position, the duties of which he is qualified to perform and which will provide him like seniority, status and pay, or the nearest approximation thereof consistent with the circumstances of his case.

(2) In the case of any person who is entitled to be restored to a position in accordance with KRS 61.371 to 61.379, if the personnel board finds that the department or agency with which such person was employed immediately prior to his military duty:

(a) Is no longer in existence and its functions have not been transferred to any other agency; or

(b) For any reason it is not feasible for such person to be restored to employment by the department or agency, the board shall determine whether or not there is a position in any other department or agency of the same public employer for which the person is qualified and which is either vacant or held by a person having a temporary appointment thereto. In any case in which the board determines that there is such a position, the person shall be restored to the position by the department or agency in which the position exists.

(Enact. Acts 1966, ch. 32, § 2.)

Opinions of Attorney General. A teacher returning to employment with a board of education after being discharged from military service is entitled to those increments which normally would have accrued if employment with the board had not been interrupted by military service. OAG 70-709.

The principles applicable to reinstatement of veterans in employment by the central branch of state government are equally applicable to employment with a board of education. OAG 70-709.

When a teacher is relieved from military service and makes proper application to be reemployed, the school district is required to promptly reinstate said teacher with all the rights

and benefits provided by statute in KRS 61.371 to 61.379 even though the day of his return is after the school year has begun. OAG 74-258.

61.375. Restored employee discharged only for cause for year — Seniority.

Any person who is restored to a position in accordance with KRS 61.371 to 61.379 shall not be discharged from his position without cause within one (1) year after his restoration, and shall, without limiting other rights conferred by this or other sections, be considered as having been on furlough or leave of absence during his period of military duty. He shall be restored without loss of seniority, including, upon promotion or other advancement following completion of any period of employment required therefor, a seniority date in the advance position which will place him ahead of all persons previously junior to him who advanced to the position during his absence in the Armed Forces.
(Enact. Acts 1966, ch. 32, § 3.)

Opinions of Attorney General. Years spent in military service are not to be considered toward the four-year requirement for tenure status. OAG 76-316.

61.377. Leaves of absence to permit induction in military service.

Any employee who holds a position in the public service shall be granted a leave of absence for the purpose of being inducted or otherwise entering military duty. If not accepted for such duty, the employee shall be reinstated in his position without loss of seniority or status, or reduction in his rate of pay. During the period the employee shall for all purposes be considered to have rendered service and to have been compensated therefor at his regular rate of pay.
(Enact. Acts 1966, ch. 32, § 4.)

61.379. Rules and regulations — Appeals from failure to restore or discharge — Procedure.

The board shall adopt regulations to carry out the provisions of KRS 61.371 to 61.379 in accordance with KRS Chapter 13A. Any public employee who is not restored to a position, or who is discharged without cause within one (1) year after restoration, may appeal to the board for review. Upon review, both the employee and the employer may be represented by counsel. Technical rules as to admission of evidence shall not apply. If the board finds that the employer has violated the provisions of KRS 61.371 to 61.379 or regulations promulgated thereunder, it shall direct the employer to comply with the provisions and to compensate the employee for loss of pay suffered by reason of the violation; except any amount received by the employee during the period from his discharge to reinstatement from other public employment, unemployment compensation, or readjustment allowances from a public agency shall be deducted from such compensation.
(Enact. Acts 1966, ch. 32, § 5.)

Legislative Research Commission Note. (10/5/90) Pursuant to KRS 7.136(1), KRS Chapter 13A has been substituted for the prior reference to KRS Chapter 13 in this statute. The sections in KRS Chapter 13 were repealed by 1984 Ky. Acts ch. 417, § 36 and KRS Chapter 13A was created in that same chapter of the 1984 Ky. Acts.

61.394. State employees' leave of absence — Pay.

All officers and employees of this state, or of any department or agency thereof who are members of the National Guard or of any reserve component of the Armed Forces of the United States, or of the reserve corps of the United States Public Health Service, shall be entitled to leave of absence from their respective duties, without loss of time, pay, regular leave, impairment of efficiency rating, or of any other rights or benefits to which they are entitled, while in the performance of duty or training in the service of this state or of the United States under competent orders, for a period in any one (1) federal fiscal year not to exceed that specified in this section. Officers or employees while on leave shall be paid their salaries or compensations for a period or periods not exceeding fifteen (15) calendar days or ten (10) working days if the employee's position is based upon a five (5) day work week; twelve (12) days if the employee's position is based upon a six (6) day work week; fifteen (15) days if the employee's position is based upon a seven (7) day work week.
(Enact. Acts 1962, ch. 51, § 1; 1994, ch. 434, § 1, effective July 15, 1994; 2002, ch. 95, § 2, effective July 15, 2002.)

Cross-References. National guard, KRS Ch. 38.

61.395. Leave time for state employee who is disaster services volunteer — short title.

(1) As used in this section:
   (a) "Disaster" means disasters designated at level III and above in the American National Red Cross Regulations and Procedures; and
   (b) "State agency" means all departments, offices, commissions, boards, institutions, and political and corporate bodies of the state, including the offices of the clerk of the Supreme Court, clerks of the appellate courts, the several courts of the state, and the legislature, its committees, or commissions.
(2) An employee of a state agency who is a certified disaster services volunteer of the American Red Cross may be granted leave from work with pay for not to exceed thirty (30) work days in any twelve (12) month period to participate in specialized disaster relief services for the American Red Cross for the services of that employee and upon the approval of that employee's agency, without loss of seniority, pay, vacation time, sick time, compensatory time, or earned overtime accumulation. The agency shall compensate an employee granted leave under this section at the regular rate of pay for those regular work hours during which the employee is absent from work.
(3) This section may be cited as the Disaster Services Volunteer Leave Act.

(Enact. Acts 2002, ch. 95, § 1, effective July 15, 2002.)

61.396. Employees of political subdivisions eligible.

All officers and employees of counties, municipalities, school districts or other political subdivisions of the state who are members of the National Guard or of any reserve component of the Armed Forces of the United States, including the United States Public Health Service, shall be granted annual military leave by their respective employers as provided in KRS 61.394.

(Enact. Acts 1962, ch. 51, § 2; 1978, ch. 38, § 2, effective June 17, 1978.)

Opinions of Attorney General. A local school board has the authority to either grant or deny military leave with pay to its employees. OAG 75-685.

School boards have the option of granting military leave with pay to teachers and such option permits the crediting against such pay the money earned by the teacher for military duty. OAG 76-358.

Social Security for Public Employees

61.410. Declaration of policy.

(1) It is declared to be the policy of the General Assembly to extend the federal old-age, survivors, disability, and hospital insurance coverage to all public employees regardless of whether the employees are occupying positions which are covered by a retirement system; but no employee occupying a position to which KRS 161.220 to 161.710 are applicable shall be held to fall within the class of persons sought to be affected by this statement of policy except for employees of the state universities and public junior colleges.

(2) It is also the policy of the General Assembly that the protection afforded public employees by membership in a retirement system or by the right to receive periodic benefits under a retirement system will not be impaired as a result of any agreement made between the Commonwealth and the commissioner pursuant to KRS 61.410 to 61.500.

(3) The General Assembly ratifies the extension of federal old-age, survivors, disability, and hospital insurance coverage to public employees in positions covered by a retirement system prior to June 14, 1962, if the procedures specified by former KRS 61.430(6) were substantially followed.

(Enact. Acts 1951 (Ex. Sess.), ch. 3, § 1; 1956, ch. 32, § 1; 1962, ch. 12, § 1; 1968, ch. 152, § 26; 1998, ch. 436, § 1, effective July 15, 1998.)

Opinions of Attorney General. The term "other professional staff member of the state department of education" as used in KRS 161.220(4)(c) in defining persons eligible for teachers' retirement benefits and thereby excluded under this section means and includes (a) all positions within the department for which certification is or may be required as a condition of employment, and (b) all positions which are or have been filled by the superintendent of public instruction subject to the approval of the State Board of Education. OAG 66-746.

Under this section, participation in the social security program is mandatory for all public employees of the commonwealth except those employees occupying positions to which the provisions of KRS 161.220 to 161.710 are applicable, and consequently, the executive secretary, assistant executive secretary, senior accountant and administrative officer of the teachers' retirement system are neither subject to, nor eligible for, participation in the social security program. OAG 69-355.

If additional teaching activity falls within the category of being in fact a part of the regularly approved program of the public school district or the vocational school for which certification or a professional level of training is required as a condition of employment, then teachers' retirement applies and the teacher would not be eligible for social security participation. OAG 69-430.

A person who contributed to social security for certain service can also contribute to teachers' retirement if he should have been included. OAG 71-254.

61.420. Definitions for KRS 61.410 to 61.500.

For the purpose of KRS 61.410 to 61.500:

(1) "Wages" means all remuneration for employment as defined in subsection (2) of this section, including the cash value of all remuneration paid in any medium other than cash, except that the term shall not include that part of the remuneration which, even if it were for "employment" within the meaning of Federal Insurance Contributions Act, would not constitute "wages" within the meaning of that act;

(2) "Employment" means any service performed by an employee in the employ of the Commonwealth, a political subdivision, or an interstate instrumentality, for those employers, except (a) service of an emergency nature, (b) service which in the absence of an agreement entered into under KRS 61.410 to 61.500 would constitute "employment" as defined in the Social Security Act, or (c) service which under the Social Security Act may not be included in any agreement between the Commonwealth and the commissioner entered into under KRS 61.410 to 61.500; except that service, the compensation for which is on a fee basis, may be excluded in any plan approved under KRS 61.410 to 61.500, and provided also, that service in any class or classes of positions, the exclusion of which is permitted under the Social Security Act, may be excluded in any plan approved under KRS 61.460;

(3) "Employee" means any person in the service of the Commonwealth, a political subdivision, or an interstate instrumentality of which the Commonwealth is a principal and shall include all persons designated officers including those which are elected and those which are appointed;

(4) "State agency" means the Division of Social Security, Office of the Controller, which agency shall be subject to the authority of the secretary of finance and administration;

(5) "Political subdivision," in addition to counties, municipal corporations, and school districts, includes instrumentalities of the Commonwealth, of one (1) or more of its political subdivisions, or of the Commonwealth and one (1) or more of its political subdivisions, and any other governmental unit thereof;

(6) "Social Security Act" means the Act of Congress approved August 14, 1935, Chapter 531, 49 Stat. 620, officially cited as the "Social Security Act," including regulations and requirements issued

pursuant thereto, as that act has been and may from time to time be amended;

(7) "Federal Insurance Contributions Act" means subchapters A, B, and C of Chapter 21 of the Federal Internal Revenue Code and all amendments thereto;

(8) "Commissioner" means the Commissioner of Social Security and includes any individual to whom the commissioner may delegate any of the commissioner's functions under the Social Security Act; and, with respect to any transactions regarding insurance coverage occurring prior to April 11, 1953, includes the federal security administrator and any individual to whom the administrator may have delegated any of the administrator's functions under the Social Security Act; and, with respect to any transactions regarding insurance coverage occurring from April 11, 1953, to March 30, 1995, includes the Secretary of Health and Human Services and any individual to whom the secretary may have delegated any of the secretary's functions under the Social Security Act;

(9) "Insurance coverage" means coverage by the old-age, survivors, disability, and hospital insurance provisions of the Social Security Act.

(Enact. Acts 1951 (Ex. Sess.), ch. 3, § 2; 1956, ch. 32, § 2; 1958, ch. 135, § 1; 1962, ch. 12, § 2; 1974, ch. 74, Art. VI, § 35(4); 1980, ch. 275, § 1, effective July 15, 1980; 1982, ch. 393, § 37, effective July 15, 1982; 1994, ch. 508, § 15, effective July 15, 1994; 1998, ch. 436, § 2, effective July 15, 1998.)

Compiler's Notes. The Social Security Act, referred to herein, is compiled as 42 U.S.C. § 301 et seq. Section 218 of that act is compiled as 42 U.S.C. § 418. The Federal Insurance Contributions Act is compiled as 26 U.S.C. §§ 3101 to 3126.

Opinions of Attorney General. A special tax collector selected by an independent school district pursuant to KRS 160.500(2) is an officer of the school district and an employee of the school district under the definition of that term in the social security act and enabling legislation enacted by the Kentucky General Assembly. OAG 67-95.

61.430. Federal-state agreement.

Consistent with the terms and conditions of KRS 61.410 to 61.500, the state agency, with the approval of the Governor, is hereby authorized to enter into an agreement with the commissioner for the purpose of extending insurance coverage to employees with respect to services specified in the agreement which constitute employment as defined in KRS 61.420. An agreement entered into under this section may contain provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration and other appropriate provisions as the state agency and commissioner shall agree upon. Any agreement, subject to the provisions of the Social Security Act, shall provide in effect that:

(1) Insurance coverage shall be provided for employees whose services are described in the agreement, and their dependents and survivors on the same basis as though the services constituted employment within the meaning of Title II of the Social Security Act;

(2) The state shall pay to the Secretary of the Treasury, at times prescribed under the Social Security Act, contributions with respect to wages equal to the sum of the taxes imposed by sections 3101 and 3111 of the Federal Insurance Contributions Act if the services covered by the agreement constitute employment within the meaning of that act;

(3) Insurance coverage will be afforded with respect to services performed after an effective date specified in the agreement or modification thereof; except that the effective date shall not be earlier than January 1, 1955, in the case of an agreement or modification made between January 1, 1955, and January 1, 1958; or earlier than January 1, 1956, in the case of an agreement or modification made at any time in the years 1958 or 1959; or earlier than the first day of the year in which the agreement or modification was made, in the case of an agreement or modification made at any time between January 1, 1960, and July 1, 1962; or earlier than the first day of the fifth year preceding the year in which the agreement or modification is made, in the case of an agreement or modification made at any time after July 1, 1962;

(4) Insurance coverage shall be afforded with respect to all services constituting employment; except that in order for insurance coverage to be afforded with respect to services performed in the employ of a political subdivision of the state there must be in existence in regard to those services a plan which meets the requirements of KRS 61.460;

(5) Subject to the provisions of KRS 61.435, insurance coverage shall be afforded with respect to all services in positions covered by a retirement system; except that no agreement shall be effective to afford insurance coverage to any services performed in positions to which KRS 161.220 to 161.710 are applicable except for services performed in positions in a state university or public junior college.

(Enact. Acts 1951 (Ex. Sess.), ch. 3, § 3; 1952, ch. 29; 1956, ch. 32, § 3; 1956, ch. 166, § 1; 1958, ch. 135, § 2; 1962, ch. 12, § 3; 1998, ch. 436, § 3, effective July 15, 1998.)

Compiler's Notes. Title II of the Social Security Act, the Federal Insurance Contributions Act and § 218 (d)(3) of the Social Security Act referred to in this section are compiled as 42 U.S.C. § 409 et seq., 26 U.S.C. §§ 3101 to 3126, and 42 U.S.C. § 418 (d)(3) respectively.

Opinions of Attorney General. Under existing federal and state legislation, the members of the faculty of Murray State University may not be withdrawn as a separate group from social security coverage. In view of their status as state employees who are covered under the original 1951 agreement by virtue of a modification thereto, their coverage may be terminated only through termination of the 1951 agreement between the state and the secretary of health, education and welfare. OAG 68-450.

61.440. Interstate instrumentalities.

Any instrumentality jointly created by this state and any other state or states is hereby authorized, to the extent that this Commonwealth may confer authority, (1) to enter into an agreement with the commissioner

whereby the benefits of the federal old-age, survivors, disability, and hospital insurance system shall be extended to employees of the instrumentality, (2) to require its employees to pay (and for that purpose to deduct from their wages) contributions equal to the amounts which they would be required to pay under subsection (1) of KRS 61.450 if they were covered by an agreement made pursuant to KRS 61.430, and (3) to make payments to the Secretary of the Treasury in accordance with the agreement, including payments from its own funds, and otherwise to comply with the agreement. The agreement shall, to the extent practicable, be consistent with the terms and provisions of KRS 61.430, and all other terms and provisions, of KRS 61.410 to 61.500.

(Enact. Acts 1951 (Ex. Sess.), ch. 3, § 4; 1998, ch. 436, § 5, effective July 15, 1998.)

61.450. Contributions by state employees.

(1) Every employee of the state whose services are covered by an agreement entered into under KRS 61.430 shall be required to pay for the period of coverage, into the contribution fund established by KRS 61.470, contributions, with respect to wages received for each calendar year at the rate established by the Federal Insurance Contributions Act, as amended, and the Social Security Act, as amended. Such liability shall arise in consideration of the employee's retention in the service of the state, or his entry upon such service after March 14, 1951.

(2) The contribution imposed by this section shall be collected by deducting the amount of the contribution from wages as and when paid, but failure to make such deduction shall not relieve the employee from liability for such contribution.

(3) If more or less than the correct amount of the contribution imposed by this section is paid or deducted with respect to any wages, proper adjustment, or refund if adjustment is impracticable, shall be made, without interest, in such manner and at such times as the state agency shall prescribe.

(Enact. Acts 1951 (Ex. Sess.), ch. 3, § 5; 1958, ch. 135, § 3; 1960, ch. 85, § 1; 1962, ch. 12, § 5.)

Compiler's Notes. The Social Security Act, referred to herein, is compiled as 42 U.S.C. § 301 et seq. The Federal Insurance Contributions Act is compiled as 26 U.S.C. §§ 3101 to 3126.

61.460. Plans for coverage of employees of political subdivisions.

(1) Each political subdivision of the state is hereby authorized to submit for approval by the state agency a plan for extending insurance coverage to employees of the political subdivision; except that no plan shall provide insurance coverage to an employee occupying a position to which KRS 161.220 to 161.710 are applicable except for employees of the state universities and public junior colleges. Each plan and any amendments thereof shall be approved by the state agency if it finds that the plan, or the plan as amended, is in conformity with requirements as are provided in administrative regulations of the state agency, except that no plan shall be approved unless:

(a) It is in conformity with the requirements of the Social Security Act and with the agreement entered into under KRS 61.430;

(b) It provides that all services which constitute employment and are performed in the employ of the political subdivision by employees thereof, shall be covered by the plan;

(c) It specifies the source or sources from which the funds necessary to make the payments required by paragraph (a) of subsection (3) and by subsection (4) of this section are expected to be derived and contains reasonable assurance that those sources will be adequate for that purpose;

(d) It provides for methods of administration of the plan by the political subdivision as are found by the state agency to be necessary for the proper and efficient administration thereof; and

(e) It provides that the political subdivision will make reports, in the form and containing the information, as the state agency may from time to time require, and will comply with any provisions the state agency or the commissioner may from time to time find necessary to assure the correctness and verification of the reports.

(2) The state agency shall not finally refuse to approve a plan submitted by a political subdivision under subsection (1) of this section without reasonable notice and opportunity for hearing to the political subdivision affected thereby.

(3) (a) Each political subdivision for which a plan has been approved under this section is authorized to and shall pay into the contribution fund, with respect to contributions due for wages paid prior to 1987, at the time or times as the state agency may by administrative regulation prescribe, contributions in the amounts and at the rates specified in the applicable agreement entered into by the state agency under KRS 61.430; and, furthermore, in anticipation of the due date of any payments of contributions required by this paragraph, is authorized to and shall make any advancements the state agency, by administrative regulation or contract, may require.

(b) Each political subdivision is authorized to and shall make the payments as are determined by the state agency to be necessary for the purpose of defraying the expenses incurred by the state agency in administering KRS 61.410 to 61.500 for the benefit of those employees covered under any plan approved under subsection (1) of this section, but in no event shall such amount be greater than five percent (5%) of the contributions required under paragraph (a) of this subsection. The payments shall be made into the State Treasury and shall be credited to a separate trust and agency fund to be used by the state agency solely for the purpose stated in this paragraph.

(c) Each political subdivision required to make payments under paragraph (a) of this subsection is authorized, in consideration of the employee's retention in, or entry upon, employment after the effective date of KRS 61.410 to 61.500, to impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to wages received for each calendar year, at the rate established by the Federal Insurance Contributions Act, as amended, and the Social Security Act, as amended. Contributions so collected for wages paid prior to 1987 shall be paid into the contribution fund in partial discharge of the liability of the political subdivision under paragraph (a) of this subsection. Failure to deduct the contribution shall not relieve the employer of liability therefor.

(4) Delinquent payments due under paragraph (a) of subsection (3) of this section, with interest at the rate prescribed by Section 218 (j) of the Social Security Act, may be recovered by action in the Franklin Circuit Court against the political subdivision liable therefor or may, at the request of the state agency, be deducted from any other moneys payable to the subdivision by any department or agency of the state.

(Enact. Acts 1951 (Ex. Sess.), ch. 3, § 6; 1958, ch. 135, § 4; 1960, ch. 85, § 2; 1962, ch. 12, § 6; 1980, ch. 275, § 2, effective July 15, 1980; 1982, ch. 393, § 38, effective July 15, 1982; 1998, ch. 436, § 6, effective July 15, 1998.)

Compiler's Notes. The Social Security Act, referred to herein, is compiled as 42 U.S.C. § 301 et seq. Section 218 of that act is compiled as 42 U.S.C. § 418. The Federal Insurance Contributions Act is compiled as 26 U.S.C. §§ 3101 to 3126.

61.470. Contribution fund and contingent liability fund.

(1) There is hereby established a special fund to be known as the contribution fund. Such fund shall consist of and there shall be deposited therein:

(a) All contributions, interest, and penalties under KRS 61.450 and 61.460;

(b) All moneys appropriated or otherwise contributed thereto;

(c) Any property or securities and earnings thereof acquired through the use of moneys belonging to the fund;

(d) Interest earned upon any moneys in the fund, and

(e) All sums recovered from the bond of the custodian or otherwise for losses sustained by the fund, and all other moneys received for the fund from any other source. All moneys in the fund shall be mingled and undivided. Subject to the provisions of KRS 61.410 to 61.500, the state agency is vested with full power, authority and jurisdiction over the fund, including all moneys and property or securities belonging thereto, and may perform any and all acts whether or not specifically designated, which are necessary to the administration thereof and are consistent with the provisions of KRS 61.410 to 61.500.

(2) The contribution fund shall be a trust and agency fund which shall not lapse and shall be held separate and apart from any other funds or moneys of the state and shall be used and administered exclusively for the purposes of KRS 61.410 to 61.500. Withdrawals from such fund shall be made for, and solely for:

(a) Payment of amounts required to be paid to the Secretary of the Treasury pursuant to an agreement entered into under KRS 61.430;

(b) Payment of refunds provided for in subsection (3) of KRS 61.450;

(c) Refunds of overpayments, not otherwise adjustable, made by a political subdivision; and

(d) For payment of administrative costs for the administration of KRS 61.410 to 61.500 to the extent of the interest earned on investments of the contribution fund.

(3) From the contribution fund the custodian of the fund shall pay to the Secretary of the Treasury such amounts at such time or times as may be directed by the state agency in accordance with any agreement entered into under KRS 61.430.

(4) At the end of each fiscal year, the state agency shall make an estimate of the necessary operating costs of the state agency for the next fiscal year, including a contingent liability fund. After approval of this amount needed for necessary costs and contingent liability fund by the secretary of finance and administration, the realized investment earnings of the contribution fund available at the end of any fiscal year shall be reduced to this approved amount, and any excess is hereby authorized for transfer to the credit of the general fund.

(5) The Treasurer of the state shall be ex officio treasurer and custodian of the contribution fund and shall administer such fund in accordance with the provisions of KRS 61.410 to 61.500 and the directions of the state agency, and shall pay all warrants drawn upon the fund in accordance with the provisions of this section and with such regulations as the state agency may prescribe pursuant thereto.

(Enact. Acts 1951 (Ex. Sess.), ch. 3, § 7; 1966, ch. 133, § 1; 1982, ch. 393, § 39, effective July 15, 1982.)

61.480. State contributions authorized.

Authorization is hereby granted to all offices, departments, boards, commissions, institutions, and all other agencies of the state government of the Commonwealth of Kentucky to make payments to the contribution fund out of moneys, not required by law or contract to be expended for other purposes, in any revolving, trust or agency fund, or out of appropriations for recurring expenses heretofore or hereafter made by the General Assembly from the general expenditure fund or special funds.

(Enact. Acts 1951 (Ex. Sess.), ch. 3, § 8.)

61.490. Rules and regulations.

The state agency shall make and publish such rules and regulations, not inconsistent with the provisions of

KRS 61.410 to 61.500, as it finds necessary or appropriate to the efficient administration of the functions with which it is charged under KRS 61.410 to 61.500.
(Enact. Acts 1951 (Ex. Sess.), ch. 3, § 10.)

61.500. Retroactive effect of KRS 61.410 to 61.500.

The provisions of KRS 61.410 to 61.500 shall be retrospective to January 1, 1951, and any agreement entered into pursuant to it may be made with retroactive effect to January 1, 1951, or any date thereafter.
(Enact. Acts 1951 (Ex. Sess.), ch. 3, § 12.)

Legislative Research Commission Note. (11/15/90) Pursuant to KRS 7.136(1), the prior reference to KRS 195.100 contained in this section has been removed, that statute having been repealed by 1974 Acts Ch. 74, Art. VI, § 108.

Compiler's Notes. KRS 195.100 referred to in this section was repealed by Acts 1974, ch. 74, Art. VI, § 108.

KENTUCKY EMPLOYEES RETIREMENT SYSTEM

61.535. Cessation of membership — Conditions — Forfeiture of retirement benefits.

(1) The membership of any person in the system shall cease:
   (a) Upon withdrawal of his accumulated contributions at or any time after termination of employment, regardless of length of service;
   (b) Upon disability retirement;
   (c) Upon service retirement;
   (d) Upon death;
   (e) For persons hired prior to August 1, 2000, upon termination of employment with prejudice; or
   (f) For persons hired on or after August 1, 2000, upon conviction of a felony relating to the person's employment as provided in subsection (3) of this section.

(2) For purposes of KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852, termination of employment with prejudice shall mean termination as the result of conviction of the member in a court of competent jurisdiction of embezzlement or larceny of public funds or property or malfeasance in office, or the forcing of a member to make restitution for any funds or property criminally taken by said member at the time of termination of employment.

(3) Notwithstanding any provision of law to the contrary, an employee hired on or after August 1, 2000, who participates in one (1) of the retirement systems administered by the Kentucky Retirement Systems and who is convicted, in any state or federal court of competent jurisdiction, of a felony related to his employment shall forfeit rights and benefits earned under the retirement system, except for the return of his accumulated contributions and interest credited on those contributions. The payment of retirement benefits ordered forfeited shall be stayed pending any appeal of the conviction. If the conviction is reversed on final judgment, no retirement benefit shall be forfeited. The employer shall notify the retirement system when an employee is convicted under the provisions of this subsection.

(Enact. Acts 1956, ch. 110, § 6; 1960, ch. 165, part II, § 4; 1962, ch. 58, § 4; 1972, ch. 116, § 25; 1976, ch. 321, § 40; 1988, ch. 349, § 11, effective July 15, 1988; 2000, ch. 273, § 1, effective July 14, 2000.)

61.552. Service credit regained or obtained — Purchase of current service and service credit — Interest paid — Delayed contribution — Installment payments.

(1) Any employee participating in one (1) of the state-administered retirement systems who has been refunded his accumulated contributions under the provisions of KRS 16.645(22), 61.625, or 78.545(15), thereby losing service credit, may regain the credit by paying to the system from which he received the refund or refunds the amount or amounts refunded with interest at a rate determined by the board of the respective retirement system. The payment, including interest as determined by the board, shall be deposited to the member's contribution account and considered as accumulated contributions of the individual member. The payments shall not be picked up, as described in KRS 61.560(4), by the employer.

(2) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who did not elect membership in the County Employees Retirement System, as provided in KRS 78.540(2), may obtain credit in the County Employees Retirement System for prior service and for current service by paying to the County Employees Retirement System a delayed contribution payment for the service he would have received had he elected membership. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer. Payment may be by lump sum or the employee may pay by increments.

(3) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who did not elect membership in the Kentucky Employees Retirement System, as provided in KRS 61.525(2), may obtain credit in the Kentucky Employees Retirement System for prior service and for current service by paying to the system a delayed contribution payment for the service he would have received had he elected membership. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer. Payment may be by lump sum or the employee may pay by increments.

(4) An employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems may obtain credit in the Kentucky Employees Retirement System for current service between July 1, 1956, and the effective date of participation of his department by paying to the system a delayed contribution payment for the service he would have received had his department participated on July 1, 1956. The delayed contribution payment shall not be picked up, as de-

scribed in KRS 61.560(4), by the employer. Payment may be by lump sum or the employee may pay by increments.

(5) (a) An employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems may obtain credit in the County Employees Retirement System for current service between July 1, 1958, and the effective date of participation of his county by paying to the County Employees Retirement System a delayed contribution payment for the service he would have received had his county participated on July 1, 1958. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer.

(b) An employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems, who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by Kentucky Retirement Systems may obtain credit for the period of his service with an area development district created pursuant to KRS 147A.050 or with a business development corporation created pursuant to KRS 155.001 to 155.230 if that service was not covered by a state-administered retirement system. The member shall pay to the retirement system in which he participates a delayed contribution payment, as determined by the board's actuary. The employee may obtain credit for employment with a business development corporation only if the Kentucky Retirement Systems receives a favorable private letter ruling from the United States Internal Revenue Service or a favorable opinion letter from the United States Department of Labor. Payment may be by lump sum or the employee may pay by increments.

(6) After August 1, 2000, service credit obtained under the subsections of this section which do not require the employee to have a minimum number of years of service credit to be eligible to make a purchase shall be disallowed and the recontribution of refund, including interest as determined by the board or other payment, if any, shall be paid to the member if the member does not obtain for service performed six (6) months' additional current service credit in one (1) of the state-administered retirement systems. The service requirement shall be waived if the member dies or becomes disabled as provided for by KRS 16.582 or 61.600.

(7) The members shall not receive benefit of service for the same period of time in another public defined benefit retirement fund.

(8) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who has at least forty-eight (48) months' service if age sixty-five (65) or at least sixty (60) months' service if under age sixty-five (65) in the retirement systems administered by the Kentucky Retirement Systems, who formerly worked for a state university in a position which would have qualified as a regular full-time position had the university been a participating department, and who did not have the option to be covered at the university by a defined benefit retirement program, or did not participate in a retirement system which can be consolidated with other accounts pursuant to KRS 61.680(2), may obtain credit in the employee's account in the County Employees Retirement System, the Kentucky Employees Retirement System, or the State Police Retirement System for prior and current service by paying either retirement system a delayed contribution payment for the service he would have received had his period of university employment been covered by the County Employees, Kentucky Employees Retirement System, or State Police Retirement System. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer. Payment may be by lump sum, or the employee may pay by increments.

(9) (a) Effective August 1, 1980, any county participating in the County Employees Retirement System may purchase current service, between July 1, 1958, and participation date of the county, for present employees of the county who have obtained coverage under KRS 78.540(2);

(b) Effective July 1, 1973, any department participating in the Kentucky Employees Retirement System may purchase current service between July 1, 1956, and participation date of the department, for present employees of the department who were employees on the participation date of the department and elected coverage under KRS 61.525(2);

(c) Cost of the service credit purchased under this subsection shall be determined by computing the discounted value of the additional service credit based on an actuarial formula recommended by the board's consulting actuary and approved by the board. A department shall make payment for the service credit within the same fiscal year in which the option is elected. The county shall establish a payment schedule subject to approval by the board for payment of the service credit. The maximum period allowed in a payment schedule shall be ten (10) years with interest at the rate actuarially assumed by the board; however, a shorter period is desirable and the board may approve any schedule provided it is not longer than a ten (10) year period;

(d) If a county or department elects the provisions of this subsection, any present employee who would be eligible to receive service credit under the provisions of this subsection and has purchased service credit under subsection (4) or (5) of this section shall have his payment for the service credit refunded with interest at the rate paid under KRS 61.575 or 78.640;

(e) Any payments made by a county or department under this subsection shall be deposited

to the retirement allowance account of the proper retirement system and these funds shall not be considered accumulated contributions of the individual members.

(10) Interest paid by a member of the Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System under this section or other similar statutes under KRS 16.510 to 16.652, KRS 61.515 to 61.705, or KRS 78.520 to 78.852 prior to June 19, 1976, shall be credited to the individual member's contribution account in the appropriate retirement system and considered as accumulated contributions of the member.

(11) Employees who served as assistants to officers and employees of the General Assembly who have at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by Kentucky Retirement Systems and who were unable to acquire service under KRS 61.510(20) may purchase credit for the service performed after January 1, 1960. Service credit under this section shall be obtained by the payment of a delayed contribution which shall not be picked up by the employer as described in KRS 61.560(4).

(12) (a) Effective August 1, 1988, any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by Kentucky Retirement Systems may purchase service credit for seasonal, emergency, or temporary employment or part-time employment averaging one hundred (100) or more hours of work per month on a calendar or fiscal year basis. If the average number of hours of work is less than one hundred (100) per month, the member shall be allowed credit only for those months he receives creditable compensation for one hundred hours of work. The cost will be determined as a delayed contribution payment for the period of time involved, which shall not be picked up by the employer as described in KRS 61.560(4).

(b) Any noncertified employee of a school board who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by Kentucky Retirement Systems may purchase service credit for part-time employment prior to the 1990-91 school year which averaged eighty (80) or more hours of work per month on a calendar or fiscal year basis by paying to the County Employees Retirement System a delayed contribution payment. The delayed contribution payment shall not be picked up, as described in KRS 78.610(4), by the employer. Payment may be by lump sum or the employee may pay by increments. If the average number of hours of work is less than eighty (80) per month, the noncertified employee of a school board shall be allowed credit only for those months he receives creditable compensation for eighty (80) hours of work. The cost will be determined as a delayed contribution payment, which shall not be picked up by the employer as described in KRS 78.610(4).

(13) A retired member, who is contributing to one (1) of the state-administered retirement programs under the provisions of KRS 61.637(1) to (4) and purchases service credit under this section in the system or systems from which he is retired, shall have his retirement allowance recomputed:

(a) Upon termination from employment, if the member is contributing to the same system or systems from which he was retired; or

(b) Upon completion of six (6) months' service credit as required under subsection (6) of this section, if the member is contributing to a system other than the system or systems from which he is retired.

(14) Any employee participating in one (1) of the systems administered by Kentucky Retirement Systems who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by Kentucky Retirement Systems may obtain credit for prior or current service for any period of approved educational leave, or for agency-approved leave to work for a work-related labor organization if the agency subsequently participated in the County Employees Retirement System, by paying to the respective retirement system a delayed contribution payment. The employee may also obtain credit for agency-approved leave to work for a work-related labor organization if the agency subsequently participated in the County Employees Retirement System, but only if the Kentucky Retirement Systems receives a favorable private letter ruling from the United States Internal Revenue Service or a favorable opinion letter from the United States Department of Labor. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer, and shall be deposited to the individual member's account.

(15) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by Kentucky Retirement Systems may obtain credit for prior or current service for any period of approved maternity leave, unpaid leave authorized under the Federal Family and Medical Leave Act, or for any period of approved sick leave without pay, by paying to the respective retirement system a delayed contribution payment. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer, and shall be deposited to the individual member's account.

(16) Any employee participating in one (1) of the retirement systems administered by Kentucky Re-

tirement Systems may purchase service credit under any of the provisions of KRS 16.510 to 16.652, 61.515 to 61.705, or 78.520 to 78.852 by making installment payments in lieu of a lump-sum payment.

(a) The cost of the service shall be computed in the same manner as for a lump-sum payment which shall be the principal; and interest, at the actuarial rate in effect at the time the member elects to make the purchase compounded annually, shall be added for the period that the installments are to be made. Multiple service purchases may be combined under a single installment purchase; however, no employee may make more than one (1) installment purchase at the same time. Once multiple service purchases have been combined in an installment purchase, the employee may not separate the purchases or pay a portion of one (1) of the purchases. The employee may elect to stop the installment payments by notifying the retirement system; may have the installment purchase recalculated to add one (1) or more additional service purchases; or may pay by lump sum the remaining principal.

(b) One (1) year of installment payments shall be made for each one thousand dollars ($1,000) or any part thereof of the total cost, except that the total period allowed for installments shall not be less than one (1) year and shall not exceed five (5) years.

(c) The employee shall pay the installments by payroll deduction. Upon notification by the retirement system, the employer shall report the installment payments either monthly or semimonthly continuously over each twelve (12) month period at the same time as, but separate from, regular employee contributions on the forms or by the computer format specified by the board. The payments made under this subsection shall be considered accumulated contributions of the member and shall not be picked up by the employer pursuant to KRS 61.560(4) and no employer contributions shall be paid on the installments.

(d) The retirement system shall determine how much of the total cost represents payment for one (1) month of the service to be purchased and shall credit one (1) month of service to the member's account each time this amount has been paid. The first service credited shall represent the first calendar month of the service to be purchased and each succeeding month of service credit shall represent the succeeding months of that service.

(e) If the employee elects to stop the installment payments, the employee shall have sixty (60) days to pay the remaining principal of the purchase by lump sum. If the employee does not pay the remaining cost or if the employee dies, retires, or does not continue employment in a position required to participate in the retirement system, the retirement system shall refund to the member or the beneficiary the payment, payments, or portion of a payment that does not represent a full month of service purchased.

(f) If the employer does not report installment payments on an employee for sixty (60) days, except in the case of employees on military leave or sick leave without pay, the installment purchase shall cease and the retirement system shall refund to the employee the payment, payments, or portion of a payment that does not represent a full month of service purchased. Installment payments of employees on military leave or sick leave without pay shall be suspended during the period of leave and shall resume without recalculation upon the employee's return from leave.

(g) If payments have ceased under paragraph (e) or (f) of this subsection and the member later becomes a participating employee in one (1) of the three (3) systems administered by Kentucky Retirement Systems, the employee may complete the adjusted original installment purchase by lump sum or installment payments. If the employee elects to renew the installment purchase, the cost of the remaining service shall be recalculated in accordance with paragraph (a) of this subsection. If the original installment purchase was for multiple service purchases, the employee may not separate those purchases under a new installment purchase.

(17) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems may purchase service credit under any of the provisions of KRS 16.510 to 16.652, 61.515 to 61.705, or 78.520 to 78.852 by transferring funds through a direct trustee-to-trustee transfer as permitted under the applicable sections of the Internal Revenue Code and any regulations or rulings issued thereunder, or through a direct rollover as contemplated by and permitted under 26 U.S.C. sec. 401(a)(31) and any regulations or rulings issued thereunder. Service credit may also be purchased by a rollover of funds pursuant to and permitted under the rules specified in 26 U.S.C. sec. 402(c) and 26 U.S.C. sec. 408(d)(3). The Kentucky Retirement Systems shall accept the transfer or rollover to the extent permitted under the rules specified in the applicable provisions of the Internal Revenue Code and any regulations and rulings issued thereunder. The amount shall be credited to the individual member's contribution account in the appropriate retirement system and shall be considered accumulated contributions of the member.

(18) After August 1, 1998, any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who is age sixty-five (65) or older and has forty-eight (48) months of service credit or, if younger, who has sixty (60) months of service credit in systems administered by Kentucky Retirement Systems may purchase credit in the system in which the employee has the

service credit for up to ten (10) years service in a regular full-time position that was credited to a state or local government-administered public defined benefit plan in another state other than a defined benefit plan for teachers. The employee shall pay a delayed contribution payment. Payment may be by lump sum, or the employee may pay by increments. The employee may transfer funds directly from the other state's plan if eligible to the extent permitted under subsection (17) of this section and to the extent permitted by the other state's laws and shall provide proof that he is not eligible for a retirement benefit for the period of service from the other state's plan.

(19) After August 1, 1998, any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems, who has sixty (60) or more months of service in the State Police Retirement System or in a hazardous position in the Kentucky Employees Retirement System or the County Employees Retirement System, may purchase credit in the system in which the employee has the sixty (60) months of service credit for up to ten (10) years of service in a regular full-time position that was credited to a defined benefit retirement plan administered by a state or local government in another state, if the service could be certified as hazardous pursuant to KRS 61.592. The employee shall pay a delayed contribution payment. Payment may be by lump sum or by increments. The employee may transfer funds directly from the other unit of government's plan if eligible to the extent permitted under subsection (17) of this section and to the extent permitted by the other state's laws, and the employee shall provide proof that he is not eligible for a retirement benefit for the period of service from the other unit of government's plan.

(20) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by Kentucky Retirement Systems and who has completed service as a volunteer in the Kentucky Peace Corps, created by KRS 154.01-720, may purchase service credit for the time served in the corps by making delayed contribution payments.

(21) An employee participating in any retirement system administered by Kentucky Retirement Systems who has at least forty-eight (48) months of service if age sixty-five (65), or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by Kentucky Retirement Systems, and who was formerly employed in a regional community mental health and mental retardation services program, organized and operated under the provisions of KRS 210.370 to 210.480, which does not participate in a state-administered retirement system may obtain credit for the period of his service in the regional community mental health and mental retardation program, by paying to the state retirement system in which he participates a delayed contribution payment. Payment to one (1) of the retirement systems administered by the Kentucky Retirement Systems may be made by lump sum or in increments.

(22) An employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by the Kentucky Retirement Systems, who was employed by a vocational technical school in a noncertified part-time position averaging eighty (80) or more hours per month, determined by using the number of months actually worked within a calendar or fiscal year, may purchase service credit in the Kentucky Employees Retirement System. The cost of the service shall be a delayed contribution payment, which shall not be picked up by the employer as described in KRS 61.560(4).

(23) (a) Any person who is entitled to service credit for employment which was not reported in accordance with KRS 16.543, 61.543, or KRS 78.615 may obtain credit for the service by paying the employee contributions due within six (6) months of notification by the system. No interest shall be added to the contributions. The service credit shall not be credited to the member's account until the employer contributions are received. If a retired member makes the payment within six (6) months, the retired member's retirement allowance shall be adjusted to reflect the added service after the employer contributions are received by the retirement system.

(b) Any employee participating in one (1) of the state-administered retirement systems who is entitled to service credit under paragraph (a) of this subsection and who has not repaid the employee contributions due within six (6) months of notification by the system may regain the credit after the six (6) months by paying to the system the employee contributions plus interest at the actuarially assumed rate from the date of initial notification under paragraph (a) of this subsection. Service credit shall not be credited to the member's account until the employer contributions are received by the retirement system. The payments shall not be picked up, as described in KRS 61.560(4), by the employer.

(24) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by the Kentucky Retirement Systems may purchase service credit for employment with a public agency that would have been eligible to participate under KRS 61.520 but which did not participate in the Kentucky Employees Retirement System or a political subdivision that would have been eligible to participate under KRS 78.530 but which did not participate in

the County Employees Retirement System if the former public agency or political subdivision has merged with or been taken over by a participating department or county. The cost of the service shall be determined as a delayed contribution payment for the respective retirement system. Payment may be made by lump sum or in increments. The payment shall not be picked up, as described in KRS 61.560(4) or KRS 78.610(4), by the employer.

(25) Any employee participating in one (1) of the retirement systems administered by the Kentucky Retirement Systems prior to July 15, 2002, who has accrued at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by the Kentucky Retirement Systems and who has total service in all state-administered retirement systems of at least one hundred eighty (180) months of service credit may purchase a combined maximum total of five (5) years of retirement service credit which is not otherwise purchasable under any of the provisions of KRS 16.510 to 16.652, KRS 61.510 to 61.705, and KRS 78.510 to 78.852. The purchase price for the retirement service credit shall be calculated and paid for as a delayed contribution payment. The payment shall not be picked up, as described in KRS 16.545(4), KRS 61.560(4), KRS 78.610(4), by the employer, and the employee's payment shall be paid into the individual member's contribution account in the appropriate retirement system and shall be considered accumulated contributions of the member. Payment by the member may be by lump sum or by increments. The service purchased under this subsection shall not be used in determining a retirement allowance until the member has accrued at least two hundred forty (240) months of service, excluding service purchased under this subsection. If the member does not accrue at least two hundred forty (240) months of service, excluding service purchased under this subsection, upon retirement, death, or written request following termination, the payment, plus interest as provided in KRS 61.575, shall be refunded.

(26) An employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems, who has at least forty-eight (48) months of service if age sixty-five (65), or at least sixty (60) months of service if under age sixty-five (65), in the systems administered by Kentucky Retirement Systems, may obtain credit in the County Employees Retirement System for the period of that employee's service with a community action agency created under KRS 273.405 to 273.453 if that service was not covered by a state-administered retirement system. The member shall pay to the retirement system a delayed contribution payment. Payment may be made by lump sum or in increments. The payment shall not be picked up, as described in KRS 61.560(4) or 78.610(4), by the employer.

(27) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the retirement systems administered by the Kentucky Retirement Systems may obtain current service credit for up to forty-eight (48) months for his or her period of service as a Domestic Relations Commissioner by paying to the retirement system a delayed contribution payment no later than December 31, 2002. Payment may be made by lump sum or under an installment agreement. The payment shall not be picked up, as described in KRS 61.560(4), by the employer, and shall be deposited to the individual member's account.

(28) The board of trustees is authorized to establish a program, subject to a favorable ruling from the Internal Revenue Service, to provide for the purchase of service credit under any of the provisions of KRS 16.510 to 16.652, 61.515 to 61.705, and 78.520 to 78.852, pursuant to the employer pick-up provisions in 26 U.S.C. sec. 414(h)(2).

(Enact. Acts 1962, ch. 58, § 2; 1964, ch. 86, § 2; 1966, ch. 35, § 4; 1972, ch. 116, § 31; 1974, ch. 128, § 15; 1976, ch. 321, § 16; 1980, ch. 322, § 1, effective July 15, 1980; 1980, ch. 404, § 1, effective July 15, 1980; 1982, ch. 166, § 18, effective July 15, 1982; 1982, ch. 423, § 7, effective July 15, 1982; 1984, ch. 329, § 1, effective July 13, 1984; 1986, ch. 90, § 10, effective July 15, 1986; 1986, ch. 293, § 6, effective July 15, 1986; 1986, ch. 490, §§ 2 and 3, effective July 15, 1986; 1988, ch. 308, § 1, effective July 15, 1988; 1988, ch. 349, § 16, effective July 15, 1988; 1988, ch. 351, § 5, effective July 15, 1988; 1988, ch. 404, § 1, effective July 15, 1988; 1990, ch. 117, § 2, effective July 13, 1990; 1990, ch. 346, §§ 2, 3, effective July 13, 1990; 1990, ch. 489, § 5, effective July 13, 1990; 1992, ch. 100, § 12, effective July 14, 1992; 1992, ch. 240, § 21, effective July 14, 1992; 1994, ch. 406, § 2, effective April 11, 1994; 1994, ch. 485, § 12, effective July 15, 1994; 1996, ch. 31, § 4, effective July 15, 1996; 1996, ch. 70, § 1, effective July 15, 1996; 1996, ch. 167, § 10, effective July 15, 1996; 1996, ch. 346, § 1, effective July 15, 1996; 1998, ch. 56, § 1, effective July 15, 1998; 1998, ch. 105, § 9, effective July 15, 1998; 2000, ch. 385, § 14, effective July 14, 2000; 2002, ch. 52, § 5, effective July 15, 2002; 2002, ch. 210, § 1, effective July 15, 2002; 2002, ch. 270, § 3, effective July 15, 2002.)

Legislative Research Commission Note. (7/15/2002). This section was amended by 2002 Ky. Acts chs. 52, 210, and 270, which do not appear to be in conflict and have been codified together.

Compiler's Notes. Section 42 of Acts 1976, ch. 321 provided: "This Act shall not be construed as repealing any of the provisions of 1976 House Bill 142 [ch. 224 amending KRS 61.595 by adding provisions relating to members of general assembly] but shall be held and construed as ancillary and supplementary thereto."

Sections 401(a) and 402(c) of the Internal Revenue Code, referred to in subsection (16)(h) of this section, are compiled as 26 U.S.C. §§ 401(a) and 402(c), respectively.

Section 10 of Acts 1994, ch. 406 provides that: "The amendment of KRS 61.552 in Section 2 of this Act shall be retroactive to January 1, 1990, with respect to the right of a beneficiary to repay refunds, but the benefits related to service credit regained thereby shall be payable only after the repayment."

Cross-References. Reciprocal program between County Employees Retirement System, Kentucky Employees Retirement System, State Police Retirement System, Legislators' Retirement Plan, Judicial Retirement System, and Teachers' Retirement System, 102 KAR 1:185.

61.5525. Method for determining purchase of service credit — Exceptions.

(1) Effective July 1, 2001, purchase of service under the provisions of KRS 16.505 to 16.652, KRS 61.510 to 61.705, and KRS 78.510 to 78.852, except as provided in subsection (2) of this section, shall be determined by multiplying the higher of the employee's current rate of pay, final rate of pay, or final compensation as of the end of the month in which the purchase is made times the actuarial factor times the number of years of service being purchased.

(2) This provision shall not apply to KRS 61.552(1) and (23), or KRS 61.592(3)(c).

(Enact. Acts 2001, ch. 7, § 6, effective June 21, 2001; 2002, ch. 52, § 24, effective July 15, 2002.)

61.595. Service retirement allowance — Limitations.

(1) Effective July 1, 1990, upon retirement at normal retirement date or subsequent thereto, a member may receive an annual retirement allowance, payable monthly during his lifetime, which shall consist of an amount equal to two and two-tenths percent (2.2%) for the County Employees Retirement System and one and ninety-seven hundredths percent (1.97%) for the Kentucky Employees Retirement System of final compensation multiplied by the number of years of service credit, except that:

(a) Effective February 1, 1999, a member of the Kentucky Employees Retirement System who was participating in one of the state-administered retirement systems as of January 1, 1998, and continues to participate through January 1, 1999, shall receive an annual retirement allowance, payable monthly during his lifetime, which shall consist of an amount equal to two percent (2%) of final compensation multiplied by the number of years of service credit. Any Kentucky Employees Retirement System member whose effective date of retirement is between February 1, 1999, and January 31, 2009, and who has at least twenty (20) years of service credit in one of the state-administered retirement systems and who was participating in one of the state-administered retirement systems as of January 1, 1998, and continues to participate through January 1, 1999, shall receive an annual retirement allowance, payable monthly during his lifetime, which shall consist of an amount equal to two and two-tenths percent (2.2%) of final compensation multiplied by the number of years of service credit. Notwithstanding the provisions of KRS 61.565, the funding for this paragraph shall be provided from existing funds of the retirement allowance account;

(b) The annual normal retirement allowance for members of the General Assembly, who serve during the 1974 or 1976 General Assembly, and will have eight (8) years or more of total legislative service as of January 6, 1978, shall not be less than two hundred forty dollars ($240) multiplied by the number of years of service as a member of the General Assembly;

(c) The annual normal retirement allowance for members of the General Assembly who will have fewer than eight (8) years of service as of December 31, 1975, shall be as prescribed in Chapter 116, section 36(1), Acts of the 1972 General Assembly for legislative service prior to January 1, 1974;

(d) Former members of the General Assembly who have eight (8) or more years of legislative service prior to the 1976 Regular Session are eligible for an increased retirement allowance of two hundred forty dollars ($240) times the years of legislative service, if the member pays to the Kentucky Employees Retirement System thirty-five percent (35%) of the actuarial cost of the higher benefit, as determined by the system, except that a former member with sixteen (16) or more years of legislative service, or his beneficiary, who is receiving a retirement allowance, also is eligible under this section and may apply for a recomputation of his retirement allowance. The employer's share of sixty-five percent (65%) of the computed actuarial cost shall be paid from the State Treasury to the Kentucky Employees Retirement System upon presentation of a properly documented claim to the Finance and Administration Cabinet. If any member with sixteen (16) or more years of legislative service previously applied for and is receiving a retirement allowance, he may reapply and his retirement allowance shall be recomputed in accordance with this paragraph, and he shall thereafter be paid in accordance with the option selected by him at the time of the reapplication;

(e) The annual normal retirement allowance for a member with ten (10) or more years of service, in the Kentucky Employees Retirement System, at least one (1) of which is current service, shall not be less than five hundred twelve dollars ($512); and

(f) The annual retirement allowance for a member of the Kentucky employees retirement system or County Employees Retirement System shall not exceed the maximum benefit as set forth in the Internal Revenue Code.

(2) (a) Upon service retirement prior to normal retirement date, a member may receive an annual retirement allowance payable monthly during his lifetime which shall be determined in the same manner as for retirement at his normal retirement date with years of service and final compensation being determined as of

the date of his actual retirement, but the amount of the retirement allowance so determined shall be reduced to reflect the earlier commencement of benefits.

(b) A member of the Kentucky Employees Retirement System or the County Employees Retirement System who has twenty-seven (27) or more years of service credit, at least fifteen (15) of which are current service, may retire with no reduction in the retirement allowance. A member who has earned vested service credit in a retirement system, other than the Teachers' Retirement System, sponsored by a Kentucky institution of higher education, the Council on Postsecondary Education, or the Higher Education Assistance Authority, may count the vested service toward attaining the necessary years of service credit as provided in KRS 61.559(2)(c) and (d) to qualify for a retirement allowance. The credit from a Kentucky institution of higher education, the Council on Postsecondary Education, or the Higher Education Assistance Authority shall not be used toward the minimum fifteen (15) years of current service required by KRS61.559(2)(c) and (d) or to calculate his retirement allowance pursuant to this section. The provisions of this paragraph shall not be construed to limit the use of Teachers' Retirement System credit pursuant to KRS 61.680(2)(a).

(3) The retirement allowance shall be calculated by using the member's known creditable compensation prior to his last month's employment and an estimate of his creditable compensation during the last month he was employed. Based upon this calculation, the State Treasurer shall be requested to issue the initial retirement payment.

(4) A new calculation shall be made when the official report has been received of the member's creditable compensation during his last month's employment. However, the retirement allowance determined in accordance with subsection (3) of this section shall be the official retirement allowance unless the new calculation derives an amount which is two dollars ($2) greater or less than the amount of the initial retirement payment. If the member or beneficiary chose an actuarial equivalent refund payment option, the amount of estimated retirement allowance shall be the official retirement allowance unless the new calculation produces an amount which is one hundred dollars ($100) greater or less than the amount of the initial retirement payment.

(Enact. Acts 1956, ch. 110, § 18; 1960, ch. 165, part II, § 7; 1962, ch. 58, § 10; 1964, ch. 86, § 4; 1966, ch. 35, § 8; 1968, ch. 26, § 1; 1972, ch. 116, § 36; 1974, ch. 24, § 2; 1976, ch. 224, § 1; 1976, ch. 321, § 22; 1978, ch. 121, § 1, effective June 17, 1978; 1984, ch. 228, § 2, effective July 13, 1984; 1986, ch. 90, § 15, effective July 15, 1986; 1986, ch. 293, § 1, effective July 15, 1986; 1988, ch. 349, § 43, effective July 15, 1988; 1988, ch. 351, § 1, effective July 15, 1988; 1988, ch. 364, § 2, effective July 15, 1988; 1990, ch. 221, § 1, effective July 13, 1990; 1990, ch. 342, § 1, effective July 13, 1990; 1990, ch. 517, § 1, effective July 1, 1990; 1992, ch. 240, § 29, effective July 14, 1992; 1994, ch. 502, § 3, effective April 13, 1994; 1998, ch. 123, § 1, effective July 15, 1998; 1998, ch. 184, § 1, effective July 15, 1998; 2002, ch. 52, § 8, effective July 15, 2002.)

Compiler's Notes. Section 42 of Acts 1976, ch. 321 provides: "This Act shall not be construed as repealing any of the provisions of 1976 House Bill 142 [ch. 224 amending KRS 61.595 by adding provisions relating to members of general assembly] but shall be held and construed as ancillary and supplementary thereto."

Opinions of Attorney General. The term "employment covered by the Kentucky employees' retirement system" in KRS 161.607 embraces the term "service" as defined in KRS 61.510 and as referred to in this section so an employee of the Kentucky Department of Agriculture for the three years immediately preceding July 1, 1956, when there was no Kentucky Employees' Retirement System in existence, would still be entitled to purchase credit in the Teachers' Retirement System for the three years in question pursuant to the option contained in KRS 161.607. OAG 73-749.

61.691. Increase of benefits.

(1) Effective August 1, 1996, and on July 1 of each year thereafter, a recipient of a retirement allowance under KRS 16.510 to 16.652 and KRS 61.515 to 61.705 and KRS 78.520 to 78.852 shall have his retirement allowance increased by the percentage increase in the annual average of the consumer price index for all urban consumers for the most recent calendar year as published by the federal Bureau of Labor Statistics, not to exceed five percent (5%). In determining the annual employer contribution rate, only the cost of increases granted as of the most recent valuation date shall be recognized. The benefits of this subsection as provided on August 1, 1996 and thereafter shall not be considered as benefits protected by the inviolable contract provisions of KRS 61.692, 16.652, and 78.852. The General Assembly reserves the right to suspend or reduce the benefits conferred in this subsection if in their judgment the welfare of the Commonwealth so demands.

(2) A reemployed retired member whose payments are suspended as provided under KRS 61.637 shall be eligible for an increase in his suspended retirement allowance as provided under this section, computed as if he were receiving the retirement allowance at the time the increase under this section is effective.

(Enact. Acts 1972, ch. 116, § 59; 1976, ch. 321, § 31; 1978, ch. 311, § 19, effective June 17, 1978; 1978, ch. 384, § 554, effective June 17, 1978; 1980, ch. 186, § 16, effective July 15, 1980; 1982, ch. 423, § 12, effective July 15, 1982; 1984, ch. 232, § 9, effective July 13, 1984; 1986, ch. 293, § 2, effective July 15, 1986; 1988, ch. 349, § 28, effective July 15, 1988; 1990, ch. 489, § 3, effective July 13, 1990; 1990, ch. 517, § 2, effective July 1, 1990; 1992, ch. 240, § 49, effective July 14, 1992; 1994, ch. 105, § 1, effective July 1, 1994; 1994, ch. 502, § 1, effective April 13, 1994; 1994, ch. 406, § 6, effective June 30, 1996; 1996, ch. 320, § 1, effective July 15, 1996.)

Legislative Research Commission Note. (7/15/94). This section was amended by 1994 Ky. Acts chs. 105, 406, and 502.

The amendments of this section by 1994 Ky. Acts chs. 105 and 502 are in conflict. Under KRS 446.250, Acts ch. 502 as the last enactment prevails.

Compiler's Notes. Section 42 of Acts 1976, ch. 321 provided: "This Act shall not be construed as repealing any of the provisions of 1976 House Bill 142 [ch. 224 amending KRS 61.595 by adding provisions relating to members of general assembly] but shall be held and construed as ancillary and supplementary thereto."

Section 13 of Acts 1994, ch. 406 provided that: "The amendment of KRS 61.691 in Section 6 of this Act shall take effect on June 30, 1996."

61.703. Collection of benefit less than $1,000 by surviving relative.

(1) Upon the death of a member, retiree, or recipient who has an existing account or other benefit in a retirement system administered by the Kentucky Retirement Systems that totals no more than one thousand dollars ($1,000), the surviving spouse, or if none, a surviving child, or if none, a surviving parent, or if none, a surviving brother or sister, may without formal administration of the estate collect the account subject to the provisions of this section.

(2) The surviving spouse, child, parent, or brother or sister who makes demand for the deceased member, retiree, or recipient account shall file with the retirement office an affidavit stating that he or she is entitled to payment of the account. The affidavit shall conform to the requirements of the administrative regulation promulgated by the board.

(3) After having paid the account to the surviving spouse, child, parent, or brother or sister, the retirement system shall be discharged and held harmless to the same extent as if conducting business with a personal representative. The retirement system shall not be required to inquire into the truth or veracity of any statement made in the affidavit. In the event any person or entity establishes a superior right to the account, the surviving spouse, child, parent, or brother or sister, and not the Kentucky Retirement Systems, shall be answerable and accountable to any appointed personal representative for the estate.

(Enact. Acts 2002, ch. 52, § 17, effective July 15, 2002.)

61.705. Death benefit — Designation of beneficiary.

(1) Upon the death of a retired member of the Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System who was receiving a monthly retirement allowance based on a minimum of forty-eight (48) months of service or whose retirement allowance based on a minimum of forty-eight (48) months was suspended in accordance with KRS 61.637, a death benefit of five thousand dollars ($5,000) shall be paid. If the retired member had more than one (1) account in the Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System, the system shall pay only one (1) five thousand dollar ($5,000) death benefit. Application for the death benefit made to the Kentucky Retirement Systems shall include acceptable evidence of death and of the eligibility of the applicant to act on the deceased retired member's behalf.

(2) The death benefit shall be paid to a beneficiary named by the retired member. Upon retirement or any time thereafter, the retired member may designate on the form prescribed by the board, death benefit designation, an individual, his estate, a trust or trustee as the beneficiary of the death benefit. The beneficiary for the death benefit may or may not be the same beneficiary designated in accordance with KRS 61.590(1). If the beneficiary designated under this section dies prior to the member or if the beneficiary was the spouse and they were divorced on the date of the retired member's death, the retired member's estate shall become the beneficiary, unless the retired member has filed a subsequent death benefit designation.

(Enact. Acts 1980, ch. 186, § 18, effective July 15, 1980; 1982, ch. 423, § 14, effective July 15, 1982; 1988, ch. 349, § 30, effective July 15, 1988; 1998, ch. 123, § 2, effective July 15, 1998; 2000, ch. 385, § 29, effective July 14, 2000; 2002, ch. 52, § 16, effective July 15, 2002.)

Open Meetings of Public Agencies

61.800. Legislative statement of policy.

The General Assembly finds and declares that the basic policy of KRS 61.805 to 61.850 is that the formation of public policy is public business and shall not be conducted in secret and the exceptions provided for by KRS 61.810 or otherwise provided for by law shall be strictly construed.

(Enact. Acts 1992, ch. 162, § 1, effective July 14, 1992.)

Opinions of Attorney General. When university board of regents was considering an appointment or several appointments to a presidential search committee the appointees were not employees of the university or the board but were persons filling positions on an entity created by the board and their temporary existence would end when their task was complete; the board was not appointing, at that time, a university employee, the university president and thus the board incorrectly relied on KRS 61.810(1)(f) to close an otherwise public meeting to discuss the appointment of persons to the search committee. 97-OMD-80.

61.805. Definitions for KRS 61.805 to 61.850.

As used in KRS 61.805 to 61.850, unless the context otherwise requires:

(1) "Meeting" means all gatherings of every kind, including video teleconferences, regardless of where the meeting is held, and whether regular or special and informational or casual gatherings held in anticipation of or in conjunction with a regular or special meeting;

(2) "Public agency" means:

(a) Every state or local government board, commission, and authority;

(b) Every state or local legislative board, commission, and committee;

(c) Every county and city governing body, council, school district board, special district board, and municipal corporation;

(d) Every state or local government agency, including the policy-making board of an institution of education, created by or pursuant to state or local statute, executive order, ordinance, resolution, or other legislative act;

(e) Any body created by or pursuant to state or local statute, executive order, ordinance, resolution, or other legislative act in the legislative or executive branch of government;

(f) Any entity when the majority of its governing body is appointed by a "public agency" as defined in paragraph (a), (b), (c), (d), (e), (g), or (h) of this subsection, a member or employee of a "public agency," a state or local officer, or any combination thereof;

(g) Any board, commission, committee, subcommittee, ad hoc committee, advisory committee, council, or agency, except for a committee of a hospital medical staff or a committee formed for the purpose of evaluating the qualifications of public agency employees, established, created, and controlled by a "public agency" as defined in paragraph (a), (b), (c), (d), (e), (f), or (h) of this subsection; and

(h) Any interagency body of two (2) or more public agencies where each "public agency" is defined in paragraph (a), (b), (c), (d), (e), (f), or (g) of this subsection;

(3) "Action taken" means a collective decision, a commitment or promise to make a positive or negative decision, or an actual vote by a majority of the members of the governmental body; and

(4) "Member" means a member of the governing body of the public agency and does not include employees or licensees of the agency.

(5) "Video teleconference" means one (1) meeting, occurring in two (2) or more locations, where individuals can see and hear each other by means of video and audio equipment.

(Enact. Acts 1974, ch. 377, § 1; 1992, ch. 162, § 2, effective July 14, 1992; 1994, ch. 245, § 1, effective July 15, 1994.)

Opinions of Attorney General. An in-office meeting of school staff and employees is not covered by KRS 61.805 to 61.991 and, while the school board is an administrative body created by statute and is covered by the Open Meetings Law, this does not mean that the board may not attend a school staff meeting in the role of guests or observers as long as the meeting does not in any way become a board meeting. OAG 75-125.

The practice of a school board in scheduling a meeting at a given time and then all the members showing up 45 minutes early and holding a little private session in the back room of which meeting the press is neither notified, nor admitted to is contrary to the spirit and the letter of the Open Meetings Law for which a person attending such meeting could be punished as provided in KRS 61.991. OAG 76-378.

As a policymaking board of an institution of education and as a subagency of a public agency created pursuant to statute, the regular and special meetings of the board of control of the Kentucky High School Athletic Association are subject to the requirements of the Open Meetings Law. OAG 78-191.

A committee created by formal action of a public agency is subject to the Open Meetings Law to the same extent that the agency itself is, and school boards are public agencies under the law, and therefore the committee formed by the school board is subject to the open meetings requirements. OAG 78-496.

One of the exceptions to the open meeting requirements is collective bargaining negotiations between public employers and their employees or their representatives, but where the board of education has not committed itself to recognize and bargain with the teacher's committee, the meetings cannot be called bargaining negotiations, and therefore they do not come under the exception to the Open Meetings Law. OAG 78-496.

A committee appointed by the superintendent of schools at the discretion of the board of education is a public agency within the meaning of the Open Meetings Law. OAG 78-571.

A committee appointed by the superintendent of schools on his own initiative, and without any formal direction of the board of education, would not constitute a public agency. OAG 78-571.

The screening committee for a president of Western Kentucky University is not a public agency subject to the Kentucky Open Meetings Law, KRS 61.805 — 61.850. OAG 78-776.

If a county school board's affirmative action advisory committee was created by formal action of the county board of education, then the committee is a public agency which is required to conduct its meetings according to the Open Meetings Law, KRS 61.805 to 61.850. OAG 80-398.

Where newspaper reporter sought records of unrestricted expenditures of the University of Louisville Foundation, Inc. for certain years, it was improper for university custodian of records to deny inspection of records on the basis of a judicial determination that the foundation was not a public agency under this section and the Open Meetings Law since the request for the records and the response thereto was not made by or to the foundation but by the university which is a public agency under KRS 61.870 and the Open Records Law. OAG 81-2.

The Fayette County Board of Education is a public agency subject to the Open Meetings Law pursuant to subdivision (2) of this section. OAG 83-455.

Advisory committee appointed by the superintendent of a county board of education, on his own initiative and without any formal direction by the board, was subject to the Open Meetings Act since committee was created by executive order; to the extent it conflicts with this opinion, OAG 78-571 is hereby modified. OAG 89-25.

The University Senate, faculties of colleges, and faculties of departments are committees subject to the open meetings law. OAG 94-25.

The President's Cabinet and the President's Leadership Team, established, created, and controlled by the university president, do not fall within the meaning of "public agencies" as defined in KRS 61.805(2); consequently, these groups do not have to record minutes of their meetings or meet other requirements of the Open Meetings Act. OAG 95-OMD-71.

The Housing Appeals Committee of Eastern Kentucky University is a public agency subject to the terms and provisions of the Open Meetings Act and its meetings are open to the public unless it can invoke an exception to open and public meetings; pursuant to KRS 61.810(1)(k) and 20 U.S.C., § 1232g, it may properly go into closed session to discuss student housing appeals. 97-OMD-139.

While the Housing Appeals Committee of Eastern Kentucky University, a public agency, may properly go into closed session to discuss student housing appeals pursuant to KRS 61.810(1)(k) and is required to do so under 20 U.S.C., § 1232g, an eligible student, that is a student who is 18 or is attending an institution of postsecondary education, may waive his privacy rights under the Federal Educational Rights and Privacy Act by written consent, thus permitting public discussion of his housing appeal; however, if such appeal raises housing issues or evidence concerning other students, the

Housing Committee would be bound by 20 U.S.C., § 1232g(b)(1) and thus required to conduct the hearing in closed session. 97-OMD-139.

A county schools local facility planning committee was a public agency within the meaning of the statute. OAG 99-OMD-196.

A meeting of seven (7) Kentucky Department of Education employees, four (4) contractor representatives, and one (1) employee of the Office of Education Accountability did not constitute a meeting of a public agency within the statute. OAG 00-OMD-141.

Cited: Jefferson County Bd. of Educ. v. Courier-Journal, 551 S.W.2d 25 (Ky. Ct. App. 1977); Bell v. Board of Educ., 557 S.W.2d 433 (Ky. Ct. App. 1977).

NOTES TO DECISIONS

Analysis

3. Injunctive relief.
6. University foundations.
7. Public agency.

3. Injunctive Relief.

Injunction was proper under § 61.848 - even without a showing that petitioners had no adequate remedy at law - when a school board violated the Open Meeting Law by discussing a personnel reorganization plan in closed "executive" meetings; the preparation-for-litigation exception would not apply to mere discussion of whether dismissed administrators might sue the board. Also, the board failed to adhere to § 61.815, which requires that, before going into a closed session, a public body must state the exact exception it relies on to go into a closed meeting. Floyd County Bd. of Educ. v. Ratliff, 955 S.W.2d 921 (Ky. 1997).

6. University Foundations.

As long as the bylaws of the University of Louisville Foundation, Inc. provide for a membership of a quorum of the Board of Trustees of the University of Louisville, meetings of the University of Louisville Foundation, Inc. are subject to the Open Meetings Law. Courier-Journal & Louisville Times Co. v. University of Louisville Bd. of Trustees, 596 S.W.2d 374 (Ky. Ct. App. 1979).

7. Public Agency.

The Board of Trustees of the University of Kentucky was created by statute, so that the Presidential Search Committee, which was created by formal action of the Board of Trustees, was a public agency and therefore subject to the provisions of this section. Lexington Herald-Leader Co. v. University of Ky. Presidential Search Comm., 732 S.W.2d 884 (Ky. 1987).

61.810. Exceptions to open meetings.

(1) All meetings of a quorum of the members of any public agency at which any public business is discussed or at which any action is taken by the agency, shall be public meetings, open to the public at all times, except for the following:
   (a) Deliberations for decisions of the Kentucky Parole Board;
   (b) Deliberations on the future acquisition or sale of real property by a public agency, but only when publicity would be likely to affect the value of a specific piece of property to be acquired for public use or sold by a public agency;
   (c) Discussions of proposed or pending litigation against or on behalf of the public agency;
   (d) Grand and petit jury sessions;
   (e) Collective bargaining negotiations between public employers and their employees or their representatives;
   (f) Discussions or hearings which might lead to the appointment, discipline, or dismissal of an individual employee, member, or student without restricting that employee's, member's, or student's right to a public hearing if requested. This exception shall not be interpreted to permit discussion of general personnel matters in secret;
   (g) Discussions between a public agency and a representative of a business entity and discussions concerning a specific proposal, if open discussions would jeopardize the siting, retention, expansion, or upgrading of the business;
   (h) State and local cabinet meetings and executive cabinet meetings;
   (i) Committees of the General Assembly other than standing committees;
   (j) Deliberations of judicial or quasi-judicial bodies regarding individual adjudications or appointments, at which neither the person involved, his representatives, nor any other individual not a member of the agency's governing body or staff is present, but not including any meetings of planning commissions, zoning commissions, or boards of adjustment;
   (k) Meetings which federal or state law specifically require to be conducted in privacy; and
   (l) Meetings which the Constitution provides shall be held in secret.

(2) Any series of less than quorum meetings, where the members attending one (1) or more of the meetings collectively constitute at least a quorum of the members of the public agency and where the meetings are held for the purpose of avoiding the requirements of subsection (1) of this section, shall be subject to the requirements of subsection (1) of this section. Nothing in this subsection shall be construed to prohibit discussions between individual members where the purpose of the discussions is to educate the members on specific issues.

(Enact. Acts 1974, ch. 377, § 2; 1992, ch. 162, § 3, effective July 14, 1992.)

Northern Kentucky Law Review. Ziegler, The Kentucky Open Records Act: A Preliminary Analysis, 7 N. Ky. L. Rev. 7 (1980).

Opinions of Attorney General. The open meeting requirement applies to "work sessions" held by a board of education preceding a regular or special meeting. OAG 74-370.

A meeting to discuss and decide whether to negotiate with teacher's association on a collective bargaining agreement does not fit under the exception stated in subsection (5) (now (e)) of this section and thus should be a meeting open to the public. OAG 74-441.

Whether or not meetings of a student government association are open to the news media and the public may be decided by the organization which created the association or by the by-laws adopted by the association since it is a private association not covered by the Open Meetings Law. OAG 74-639.

School board members may attend an in-office meeting of school staff and employees as guests or observers and the

requirements of this section for an open meeting do not apply as long as the meeting in no way becomes a school board meeting. OAG 75-125.

The entire school board or any part thereof may participate in a professional negotiation session since this subject matter is expressly exempted from the open meetings requirement. OAG 75-125.

At a county board of education's special meeting, the discussion in closed session concerning the adoption of a regulation pertaining to payment of per diem allowances to board members was not within any exception to the requirement of open public meetings. OAG 75-299.

Where the procedure followed by members of a county board of education in discussing a regulation pertaining to a per diem allowance violated the requirement of open public meetings, the decision of the board would remain in effect in the absence of a court judgment declaring the action valid. OAG 75-299.

A meeting of a board of education to discuss the rehiring of a high school coach must be open to the public if the coach so requests but he is not entitled to take any part in the meeting, be represented by counsel, produce witnesses or make any argument before the board. OAG 75-369.

The discussion by the board of education as to the employment, discipline or promotion of an individual employee may be held in a closed meeting while the discussion of general personnel policies should be conducted in an open meeting. OAG 75-506.

The discussion and election of a new school board member, by the school board, upon resignation of one of the board members should be in an open meeting. OAG 76-4.

Since a county school board's consideration of the reappointment of the superintendent does not come under the exception provided by this section, documents presented at a board meeting by the superintendent in support of his candidacy for reappointment should be made available for public inspection. OAG 77-69.

The consideration by a board of education of the appointment of a superintendent may be conducted in a closed meeting, where such consideration includes personal interviews with candidates, but the final action of voting on whether to employ and appoint a particular candidate should take place in an open session. OAG 77-392.

Any person who a board of education believes can contribute information or advice on the subject matter under discussion may be invited into a closed executive session but he should remain only so long as is necessary to make his contribution to the discussion. OAG 77-560.

Since a condemnation suit is litigation and therefore a proper subject for a closed session, a county board of education could go into executive session to discuss the acquisition of a tract of land. OAG 77-577.

The open meetings exception of subsection (5) (now (e)) of this section has been broadened by judicial interpretation in the case of Jefferson County Bd. of Educ. v. Courier Journal, 551 S.W.2d 25 (Ky. App. 1955) to allow a public agency which is formulating its demands or position preparatory to collective bargaining negotiations either by way of deliberations or instructions to its advocate to be held in closed session. OAG 78-371.

A student is entitled to an orderly hearing, either closed or open, as the student desires, at which he must be given full opportunity to give his or her side of the story before the board and to produce either oral testimony or written affidavits of witnesses in his or her behalf, and the opportunity should be given to cross-examine witnesses. OAG 78-673.

If a school board discovers that, either deliberately or inadvertently, it has dealt with a matter in closed session which is not authorized under the law, it should take corrective action by acting on the same matter again in an open meeting to demonstrate its good faith in complying with the Open Meetings Law before the matter is adjudicated. OAG 79-516.

If a school board proposes to go into closed session to discuss "a personnel problem," a motion should be made and passed in open session to go into closed session to discuss a personnel problem involving a particular employee or employees; it is not necessary to name the employee or employees to be discussed. OAG 79-516.

Subdivision (6) (now (f)) of this section allows a closed session for discussions or hearings which might lead to the appointment, discipline or dismissal of an individual employee, but not to discussions of general personnel questions involving all employees or a group of employees and does not apply to the business of fixing salaries or the financial matters before the school board. OAG 79-516.

Where a county board of education was considering applicants for the office of superintendent of schools and had been conducting interviews with applicants in closed session, there was no violation of the Open Meetings Law in the proposal of the board to have a select committee sit with it in closed session and take an active part in the interviews and discussions. OAG 80-247.

Where a disciplinary hearing about a particular student in a public school is held, the hearing is exempt from the formalities of going into a closed session under subdivision (6) (now (f)) of this section or the necessity of taking final action in an open session according to the procedure set forth in KRS 61.815. OAG 81-135.

A board of education cannot meet in closed session to discuss either the acquisition or transfer of real estate resulting from one school district ceasing to exist and transferring its assets and liabilities to another district, since no public property is being bought or sold, and the merger will not affect the value of the property being transferred to the surviving school district; thus the exemption under subdivision (2) (now (b)) of this section would not apply. OAG 81-136.

A board of education cannot meet in closed session to discuss items related to a merger with another board of education since the merger of school districts is not one of the five subject matter exemptions under this section. OAG 81-136.

A board of education cannot meet in closed session to discuss personnel issues created by a move for the consolidation of two school districts when those issues relate to a group of employees affected by a disagreement surrounding the terms of a merger, since subdivision (6) (now (b)) of this section cannot be interpreted to permit discussion of general personnel matters in secret. OAG 81-136.

When a closed session of a school board is held as authorized by this section, minutes of the closed session should be made, but the board, in its discretion, may require the minutes to be sealed and withheld from public inspection and such minutes will not be part of the regular minutes of the meeting required by subsection (2) of KRS 160.270. OAG 81-235.

The Open Meetings Law permits the holding of a meeting by telephone conference call by the State Board of Education on the subject of the expulsion of a student of one of the schools of which the State Board has the direct oversight in disciplinary matters and the news media should be notified, at least 24 hours in advance, that the meeting by conference telephone is to be held on disciplinary matters and will be closed to the public; however, this opinion is confined to the following circumstances: (1) the State Board of Education meets regularly only every two months and the membership of the Board may reside anywhere within the boundaries of the commonwealth; (2) by regulation there has been established an appeal procedure utilizing hearing officers to review disciplinary cases where expulsion may be ordered; (3) the hearing officer shall hear proof, oral arguments and/or may request written briefs and shall make findings of fact, conclusions of law and recommendations to the State Board, and the State Board is required to make a final determination of the case within 30

days; (4) before the appeal procedure is begun the student has been provided a due process hearing at the local level; (5) the role of the State Board of Education on expulsion appeals is to review the record made up under the presiding of the hearing officer and to approve or disapprove the hearing officer's recommendation. OAG 82-179.

The State Board of Education may meet in closed session to act on a recommendation of a hearing officer on the expulsion of a student without any preliminary action in an open meeting and may take final action on the matter in a closed session. OAG 82-179.

Implementation of anticipated budget cuts in the Title I program was a general personnel matter which should not have been discussed in secret as long as the county board of education was discussing which positions to eliminate, if the issue was, for example, whether to eliminate social workers or music teachers or science teachers; on the other hand, if a decision had been reached to eliminate two out of four social worker positions and the question became which two of the four persons holding those positions would be dismissed, it then being necessary for the board to discuss qualifications and personalities, the board would have been justified in going into closed session for the purpose of that discussion. OAG 82-300.

Under this section, whenever a quorum of the members of any public agency meet and discuss any public business the meeting is a public meeting as defined in the Open Meetings Law; thus, where the entire county board of education called itself a "committee" and added several other people to the "committee" before conducting a private session with representatives of the county education association, the school board was required to comply with the Open Meetings Law. OAG 83-102.

Before going into closed session notice must be given by the board of education in a regular open meeting of the general nature of the business to be discussed in the closed session and a motion must be made and carried by majority vote to go into closed session. It is sufficient if the notice and motion to go into closed session simply states that the purpose of the session is to discuss personnel matters affecting certain individuals; the names of the individuals do not have to be stated in the notice and motion. OAG 83-379.

The board is only required to announce the general nature of the business to be discussed in the closed session; no particular candidate need be named in the announcement of a closed session to discuss appointment of a new superintendent, as that would subvert the intent of subdivision (6) (now (f)) of this section. OAG 83-455.

Discussion by county board of education about selection inquiries and qualification suggestions concerning appointment of a new superintendent of schools was not exempted from open session by subdivision (6) (now (f)) of this section since no individual was involved to whom reputational damage might occur; accordingly, board acted improperly in discussing such matters in closed session and subsequently taking action, in open session, to direct inquiries and suggestions concerning the appointment to a certain person. OAG 83-455.

Where a school board heard evidence in an open meeting regarding the proposed expulsion of a student and then properly went into closed session pursuant to subdivision (6) (now (f)) of this section in order to deliberate, the school superintendent's presence at the closed session was improper where the superintendent had represented the school board in a quasi-attorney role throughout the open session. OAG 83-488.

Although subdivision (6) (now (f)) of this section allows closed sessions to discuss appointment, discipline, or dismissal of an individual employee it is designed to protect the reputation of individual persons and should not be interpreted to permit discussion of general personnel matters in secret; in other words, discussion in closed session is specifically limited to discussions pertaining to the appointment, discipline, or dismissal of a specific individual. Accordingly, the Morehead State University Board of Regents erred when they went into closed session and merely discussed the selection process for a new president rather than specific individual candidates. OAG 83-489.

Advisory committee appointed by the superintendent of a county board of education, on his own initiative and without any formal direction by the board, was subject to the Open Meetings Act since committee was created by executive order; to the extent it conflicts with the opinion, OAG 78-571 is hereby modified. OAG 89-25.

The Buckley Amendment cannot be invoked to close an otherwise public meeting of a public agency, as that amendment is concerned with the release of the "educational records" of students and not with the holding of meetings of public agencies; in addition, the Buckley Amendment cannot be invoked to prohibit comment on or discussion of facts about a student learned independently of his school records; however, the Buckley Amendment can be invoked by the University of Louisville to prohibit the release of material, the source of which is a student's educational records. OAG 90-125.

Where meetings have not involved the appointment of specific persons by the University of Louisville or the discipline or dismissal of specific persons employed by or working or studying at the University, the assertion of subsection (6) (now (f)) of this section as the ground for closing a public meeting of a university committee is inapplicable and invalid. OAG 90-125.

In absence of a contract between the parties, discussions between the school board and a prospective school superintendent, involving his specific salary and the length of his contract, were subject to the exceptions to open meetings. OAG 91-144.

University's board of regents did not forfeit its right to invoke the legitimate exceptions to the Open Records Act just because it violated the Open Meetings Law. The records reviewed by the board relative to the proposed budget which occurred during an improperly closed meeting, and all other records of a preliminary character, still enjoyed the protection of KRS 61.878(1)(i), independent of the Open Meetings issue, until final action was taken by the Board. OAG 92-ORD-1346.

A university's board of regents denial of a request for access to certain records which were generated in the course of a closed session conducted by the board of regents in its regular meeting was improper. The board of regents violated this section to the extent that its closed discussions focused on classes of, as opposed to specific, individuals. However, only those records which reflected discussions of classes of individuals were subject to inspection. OAG 92-ORD-1346.

County board of education violated the Open Meetings Act when it went into a closed session to discuss the possibility of creating a new position with the school system. OAG 94-OMD-103.

When university board of regents was considering an appointment or several appointments to a presidential search committee the appointees were not employees of the university or the board but were persons filling positions on an entity created by the board and their temporary existence would end when their task was complete; the board was not appointing, at that time, a university employee, the university president and thus the board incorrectly relied on subsection (1)(f) of this section to close an otherwise public meeting to discuss the appointment of persons to the search committee. 97-OMD-80.

The Housing Appeals Committee of Eastern Kentucky University is a public agency subject to the terms and provisions of the Open Meetings Act and its meetings are open to the public unless it can invoke an exception to open and public meetings; pursuant to subsection (1)(k) of this section and 20

U.S.C., § 1232g, it may properly go into closed session to discuss student housing appeals. 97-OMD-139.

While the Housing Appeals Committee of Eastern Kentucky University, a public agency, may properly go into closed session to discuss student housing appeals pursuant to subsection (1)(k) of this section and is required to do so under 20 U.S.C., § 1232g, an eligible student, that is a student who is 18 or is attending an institution of postsecondary education, may waive his privacy rights under the Federal Educational Rights and Privacy Act by written consent, thus permitting public discussion of his housing appeal; however, if such appeal raises housing issues or evidence concerning other students, the Housing Committee would be bound by 20 U.S.C., § 1232g(b)(1) and thus required to conduct the hearing in closed session. 97-OMD-139.

In general, meetings of a quorum of the members of the Financial Aid Committee at which public business is discussed or at which action is taken must be open to the public at all times; however, the committee is authorized to go into closed session to discuss student financial aid appeals pursuant to subsection (1)(k) and 20 U.S.C. § 1232, which restricts discussion of personally identifiable information in education records in a public meeting without a parent or eligible student's prior written consent. OAG 98-OMD-142.

A county school system violated the Open Meetings Act when it failed to give notice of a meeting of its local facility planning committee. OAG 99-OMD-117.

NOTES TO DECISIONS

Analysis

1. Acquisition or sale of property.
2. Proposed or pending litigation.
3. Collective bargaining negotiations.
4. Discipline hearings.
5. Personnel matters.
6. University foundations.

1. Acquisition or Sale of Property.

Notice given in open meeting preparatory to closed session that the closed meeting would be held to discuss "property and negotiations" was not sufficient compliance with the requirement of notice of subsection (1) of KRS 61.815 for the term "property" fails to reveal whether it is real or personal, for purchase or for sale or whether publicity would affect its value. Jefferson County Bd. of Educ. v. Courier-Journal, 551 S.W.2d 25 (Ky. Ct. App. 1977).

In order to fully comply with subsection (2) of this section and KRS 61.815(1) notice of the county board of education of the business intended to be discussed in a closed session should contain information that the board of education intends to conduct an executive session for the purpose of discussing the sale or acquisition of real property and that the reason for privacy is due to the fact that publicity at the deliberation stage might be likely to affect the value instead of merely saying that the business to be discussed was "property and negotiations." Jefferson County Bd. of Educ. v. Courier-Journal, 551 S.W.2d 25 (Ky. Ct. App. 1977).

2. Proposed or Pending Litigation.

There is no requirement in the Open Meetings Law that the county board of education and its governing body give notice of an executive session in order to confer with their attorneys concerning proposed or pending litigation, for this matter is expressly excluded by the terms of this section and moreover involves the attorney-client relationship. Jefferson County Bd. of Educ. v. Courier-Journal, 551 S.W.2d 25 (Ky. Ct. App. 1977).

3. Collective Bargaining Negotiations.

Whenever a public agency is formulating its demands or position preparatory to collective bargaining negotiations, either by way of deliberation or instructions to its advocates, such type of sessions are within the purview of subsection (5) (now (e)) of this section and thus such meetings of a public agency may be in closed session. Jefferson County Bd. of Educ. v. Courier-Journal, 551 S.W.2d 25 (Ky. Ct. App. 1977).

A report by an associate superintendent on the status of a proposed contract between the county board of education and two teachers' associations and a recommendation to the board that negotiations should take place did not come under the exception of subsection (5) (now (e)) of this section so as to permit such discussion to take place in a closed meeting. Jefferson County Bd. of Educ. v. Courier-Journal, 551 S.W.2d 25 (Ky. Ct. App. 1977).

The collective bargaining negotiations referred to in subsection (5) (now (e)) of this section means the settling of disputes by negotiation between employer and the representatives of the employees and does not embrace reports or status briefings on the labor negotiations. Jefferson County Bd. of Educ. v. Courier-Journal, 551 S.W.2d 25 (Ky. Ct. App. 1977).

4. Discipline Hearings.

The hearing and the board's decision based on the evidence are separate phases of the termination proceeding, and the school board's power to reach its decision in closed session is preserved by this section despite the requirement of KRS 161.790 that the hearing be public. Bell v. Board of Educ., 557 S.W.2d 433 (Ky. Ct. App. 1977); Carter v. Craig, 574 S.W.2d 352 (Ky. Ct. App. 1978).

A discussion by a county board of education concerning the termination of the expenditure of funds on an educational television station operated by the county board of education and the attendant potential dismissal of all the employees of such station dealt only with a general personnel matter and therefore did not come under the exemption of subsection (6) (now (f)) of this section as an exemption to the requirement of the Open Meetings Law that all meetings be public meetings. Jefferson County Bd. of Educ. v. Courier-Journal, 551 S.W.2d 25 (Ky. Ct. App. 1977).

The vote of the board of education to demote a school principal need not be held in public. Miller v. Board of Educ., 610 S.W.2d 935 (Ky. Ct. App. 1980).

5. Personnel Matters.

Where a university board of trustees, during its July 18, 1977, meeting, closed said meeting to consider the election of one of two individual members to the position of chairman of the board of trustees, the meeting was a properly closed session. Courier-Journal & Louisville Times Co. v. University of Louisville Bd. of Trustees, 596 S.W.2d 374 (Ky. Ct. App. 1979).

The Presidential Search Committee created by the Board of Trustees of the University of Kentucky was not excepted from declaring public meetings when discussing the appointment of a president. Lexington Herald-Leader v. University of Ky. Presidential Search Comm., 732 S.W.2d 884 (Ky. 1987).

Injunction was proper under § 61.848 - even without a showing that petitioners had no adequate remedy at law - when a school board violated the Open Meeting Law by discussing a personnel reorganization plan in closed "executive" meetings; the preparation-for-litigation exception would not apply to mere discussion of whether dismissed administrators might sue the board. Also, the board failed to adhere to § 61.815, which requires that, before going into a closed session, a public body must state the exact exception it relies on to go into a closed meeting. Floyd County Bd. of Educ. v. Ratliff, 955 S.W.2d 921 (Ky. 1997).

6. University Foundations.

As long as the bylaws of the University of Louisville Foundation, Inc. provide for a membership of a quorum of the Board of Trustees of the University of Louisville, meetings of the University of Louisville Foundation, Inc. are subject to the Open Meetings Law. Courier-Journal & Louisville Times Co. v.

University of Louisville Bd. of Trustees, 596 S.W.2d 374 (Ky. Ct. App. 1979).

61.815. Requirements for conducting closed sessions.

(1) Except as provided in subsection (2) of this section, the following requirements shall be met as a condition for conducting closed sessions authorized by KRS 61.810:
   (a) Notice shall be given in regular open meeting of the general nature of the business to be discussed in closed session, the reason for the closed session, and the specific provision of KRS 61.810 authorizing the closed session;
   (b) Closed sessions may be held only after a motion is made and carried by a majority vote in open, public session;
   (c) No final action may be taken at a closed session; and
   (d) No matters may be discussed at a closed session other than those publicly announced prior to convening the closed session.

(2) Public agencies and activities of public agencies identified in paragraphs (a), (c), (d), (e), (f), but only so far as (f) relates to students, (g), (h), (i), (j), (k), and (l) of subsection (1) of KRS 61.810 shall be excluded from the requirements of subsection (1) of this section.

(Enact. Acts 1974, ch. 377, § 3; 1992, ch. 162, § 4, effective July 14, 1992.)

Opinions of Attorney General. A county school board may go into closed session for the purpose of interviewing candidates it is considering to fill a vacancy on the school board. OAG 77-674.

Where the purpose of a school board meeting in a discussion or hearing which might lead to the disciplining of a student, the board is not required to give notice in a regular meeting, or to make a motion in open session to conduct a closed session, or to take final action in an open session. OAG 77-674.

The general rule to be followed is that in every case where an agency goes into closed session because of a subject matter exemption, except in the case involving the disciplining of a student, the procedures of this section must be observed. OAG 80-248.

Where a disciplinary hearing about a particular student in a public school is held, the hearing is exempt from the formalities of going into a closed session under subdivision (6) (now (1)(f)) of KRS 61.810 or the necessity of taking final action in an open session according to the procedure set forth in this section. OAG 81-135.

The minutes of the State Board of Education must be recorded and open to public inspection pursuant to KRS 61.835, but they need show only the formal action taken and the votes cast by the members; the minutes of a closed session should show that the statutory formality of this section was observed before going into a closed session and should indicate the general subject of the closed session but they need not show information which would defeat the purpose of holding a closed session on the authorized subject matter. OAG 81-387.

The Open Meetings Law permits the holding of a meeting by telephone conference call by the State Board of Education on the subject of the expulsion of a student of one of the schools of which the State Board has the direct oversight in disciplinary matters and the news media should be notified, at least 24 hours in advance, that the meeting by conference telephone is to be held on disciplinary matters and will be closed to the public; however, this opinion is confined to the following circumstances: (1) the State Board of Education meets regularly only every two months and the membership of the Board may reside anywhere within the boundaries of the commonwealth; (2) by regulation there has been established an appeal procedure utilizing hearing officers to review disciplinary cases where expulsion may be ordered; (3) the hearing officer shall hear proof, oral arguments and/or may request written briefs and shall make findings of fact, conclusions of law and recommendations to the State Board, and the State Board is required to make a final determination of the case within 30 days; (4) before the appeal procedure is begun the student has been provided a due process hearing at the local level; (5) the role of the State Board of Education on expulsion appeals is to review the record made up under the presiding of the hearing officer and to approve or disapprove the hearing officer's recommendation. OAG 82-179.

The State Board of Education may meet in closed session to act on a recommendation of a hearing officer on the expulsion of a student without any preliminary action in an open meeting and may take final action on the matter in a closed session. OAG 82-179.

Under KRS 61.810, whenever a quorum of the members of any public agency meet and discuss any public business, the meeting is a public meeting is defined in the Open Meetings Law, KRS 61.805 to 61.850; thus, where the entire county board of education called itself a "committee" and added several other people to the "committee" before conducting a private session with representatives of the county education association, the school board was required to comply with the Open Meetings Law. OAG 83-102.

Before going into closed session notice must be given by the board of education in a regular open meeting of the general nature of the business to be discussed in the closed session and a motion must be made and carried by majority vote to go into closed session. It is sufficient if the notice and motion to go into closed session simply states that the purpose of the session is to discuss personnel matters affecting certain individuals; the names of the individuals do not have to be stated in the notice and motion. OAG 83-379.

Where the open and public session of a county's board of education meeting began in the school library, the open and public session should have resumed in the school library following a tour of the school, and the gathering of board members in the home economics classroom, where the closed meeting was to be held later, was in violation of this section, which as applied, would require the board members to have returned to the designated site for the open and public meeting, to have made a motion for a closed session and vote, before adjourning to the site of the closed or executive session of the otherwise public meeting. OAG 95-OMD-92.

When the notice, motion, and vote relative to a closed session of a county's board of education meeting were given, made and taken at a site which did not constitute the forum for the open and public board meeting, the members of the board of education violated the Open Meetings Act. OAG 95-OMD-92.

If the agenda incorporated into the written notice of a special meeting, held by the board of regents of university, listed only one substantive item for discussion, then discussion of any other substantive matter, whether discussed in an open or closed session is a violation of the Open Meetings Act. OAG 95-OMD-149.

NOTES TO DECISIONS

1. Notice.

This section instructs that notice of a closed session must come prior to every such session in the regular open meeting and must supply the general nature of the business to be considered and the reason for the secrecy. Jefferson County

Bd. of Educ. v. Courier-Journal, 551 S.W.2d 25 (Ky. Ct. App. 1977).

In order to fully comply with KRS 61.810(2) and subsection (1) of this section notice of the county board of education of the business intended to be discussed in a closed session should contain information that the board of education intends to conduct an executive session for the purpose of discussing the sale or acquisition of real property and that the reason for privacy is due to the fact that publicity at the deliberation stage might be likely to affect the value instead of merely saying that the business to be discussed was "property and negotiations." Jefferson County Bd. of Educ. v. Courier-Journal, 551 S.W.2d 25 (Ky. Ct. App. 1977).

Notice given in open meeting preparatory to closed session that the closed meeting would be held to discuss "property and negotiations" was not sufficient compliance with the requirement of notice of subsection (1) of this section for the term "property" fails to reveal whether it is real or personal, for purchase or for sale or whether publicity would affect its value. Jefferson County Bd. of Educ. v. Courier-Journal, 551 S.W.2d 25 (Ky. Ct. App. 1977).

Injunction was proper under § 61.848 — even without a showing that petitioners had no adequate remedy at law — when a school board violated the Open Meeting Law by discussing a personnel reorganization plan in closed "executive" meetings; the preparation-for-litigation exception would not apply to mere discussion of whether dismissed administrators might sue the board. Also, the board failed to adhere to this section, which requires that, before going into a closed session, a public body must state the exact exception it relies on to go into a closed meeting. Floyd County Bd. of Educ. v. Ratliff, 955 S.W.2d 921 (Ky. 1997).

61.820. Schedule of regular meetings to be made available.

All meetings of all public agencies of this state, and any committees or subcommittees thereof, shall be held at specified times and places which are convenient to the public, and all public agencies shall provide for a schedule of regular meetings by ordinance, order, resolution, bylaws, or by whatever other means may be required for the conduct of business of that public agency. The schedule of regular meetings shall be made available to the public.

(Enact. Acts 1974, ch. 377, § 4; 1992, ch. 162, § 5, effective July 14, 1992.)

Opinions of Attorney General. The county board of education's response to party complaining that at meeting some people could not hear, that the meeting site was inadequate and that people were forced to stand in the hallway and outside in the winter cold, violated the Open Meetings Act in that its written answer to the complaining party did not address the specific issues of accessibility to the meeting, noise in the meeting room, persons outside the meeting room in the hallway, and persons outside the building on a winter night; in addition, the response did not cite a section of the Open Meetings Act in support of the public agency's position and it did not provide a brief explanation of how that particular statutory provision applied to the situation involving the public agency. OAG 97-OMD-28.

Board of education violated the Open Meetings Act because even if the board met in a facility that would accomodate the number of persons normally expected to attend such meetings, where there was an overflow of attendees the board of education should have made a good faith effort to handle the overflow crowd so that persons in the hallway and outside the building could have observed the public proceedings. OAG 97-OMD-28.

When the school board moved the meeting site of the board meeting which began in the school board office from the office to the school library, the latter location became the designated site from which all remaining proceedings and actions relative to the meeting should have been conducted and in the absence of any compelling reason to do so, the school board was not justified in moving the meeting to yet another location as such action is inconvenient to the public. 97-OMD-84.

61.823. Special meetings — Emergency meetings.

(1) Except as provided in subsection (5) of this section, special meetings shall be held in accordance with the provisions of subsections (2), (3), and (4) of this section.

(2) The presiding officer or a majority of the members of the public agency may call a special meeting.

(3) The public agency shall provide written notice of the special meeting. The notice shall consist of the date, time, and place of the special meeting and the agenda. Discussions and action at the meeting shall be limited to items listed on the agenda in the notice.

(4) (a) As soon as possible, written notice shall be delivered personally, transmitted by facsimile machine, or mailed to every member of the public agency as well as each media organization which has filed a written request, including a mailing address, to receive notice of special meetings. The notice shall be calculated so that it shall be received at least twenty-four (24) hours before the special meeting. The public agency may periodically, but no more often than once in a calendar year, inform media organizations that they will have to submit a new written request or no longer receive written notice of special meetings until a new written request is filed.

(b) As soon as possible, written notice shall also be posted in a conspicuous place in the building where the special meeting will take place and in a conspicuous place in the building which houses the headquarters of the agency. The notice shall be calculated so that it shall be posted at least twenty-four (24) hours before the special meeting.

(5) In the case of an emergency which prevents compliance with subsections (3) and (4) of this section, this subsection shall govern a public agency's conduct of a special meeting. The special meeting shall be called pursuant to subsection (2) of this section. The public agency shall make a reasonable effort, under emergency circumstances, to notify the members of the agency, media organizations which have filed a written request pursuant to subsection (4)(a) of this section, and the public of the emergency meeting. At the beginning of the emergency meeting, the person chairing the meeting shall briefly describe for the record the emergency circumstances preventing compliance with subsections (3) and (4) of this section. These comments shall appear in the minutes. Discussions and action at the emergency meeting shall be limited to the emergency for which the meeting is called.

(Enact. Acts 1992, ch. 162, § 6, effective July 14, 1992.)

Opinions of Attorney General. If the agenda incorporated into the written notice of a special meeting, held by the board of regents of university, listed only one substantive item for discussion, then discussion of any other substantive matter, whether discussed in an open or closed session is a violation of the Open Meetings Act. OAG 95-OMD-149.

While the school board violated the Open Meetings Act by its failure to file a written response to the complaint within the statutorily mandated time frame, its decision to not renew the superintendent's contract was not a violation of the Open Meetings Act as that action was within the agenda of activities set forth in the notice for that special meeting which stated that "The purpose of the meeting will be to discuss renewal/or action of the superintendent's contract. OAG 97-OMD-43.

County Board of Education and Superintendent of County Schools violated the Open Meetings Act, specifically subsection (4)(a) of this section, by their failure to notify in writing all board members of the special meetings of the school board at least 24 hours prior to the commencement of those meetings even though the Board and the Superintendent had complied with the requirements of KRS 160.270(1). 97-OMD-90.

A community college board of directors erred in characterizing a meeting as an emergency meeting and in failing to identify the subject to be discussed in the notice of that meeting; however, because the board complied with the requirements for conducting a special meeting, with the exception of identifying the matter to be discussed, and because the record was devoid of evidence that the complainant newspaper submitted a request for written notification of special meetings of the board, the only violation of the Open Meetings Act consisted of the deficiency in the content of the notice otherwise delivered and posted in a timely manner. OAG 00-OMD-80.

The record contained insufficient evidence to support the contention that the county board of education rescheduled a regular 4:00 p.m. meeting when it issued an agenda which mistakenly stated that the meeting would begin at 6:00 p.m., thus triggering the posting and notice requirements of the statute. OAG 99-OMD-153.

NOTES TO DECISIONS

1. Change of Meeting Date.

Where school board changed monthly meeting date in open meeting, where press release had been issued, where newspaper article appeared, and where citizens appeared at the meeting, there was no positive showing that the board had decided any matters regarding closing the school in closed session. Coppage v. Ohio County Bd. of Educ., 860 S.W.2d 779 (Ky. Ct. App. 1992).

61.826. Video teleconferencing of meetings.

(1) A public agency may conduct any meeting, other than a closed session, through video teleconference.

(2) Notice of a video teleconference shall comply with the requirements of KRS 61.820 or 61.823 as appropriate. In addition, the notice of a video teleconference shall:

(a) Clearly state that the meeting will be a video teleconference; and

(b) Precisely identify the video teleconference locations as well as which, if any, location is primary.

(3) The same procedures with regard to participation, distribution of materials, and other matters shall apply in all video teleconference locations.

(4) Any interruption in the video or audio broadcast of a video teleconference at any location shall result in the suspension of the video teleconference until the broadcast is restored.

(Enact. Acts 1994, ch. 245, § 2, effective July 15, 1994.)

61.835. Minutes to be recorded — Open to public.

The minutes of action taken at every meeting of any such public agency, setting forth an accurate record of votes and actions at such meetings, shall be promptly recorded and such records shall be open to public inspection at reasonable times no later than immediately following the next meeting of the body.

(Enact. Acts 1974, ch. 377, § 7.)

Opinions of Attorney General. The minutes of the State Board of Education must be recorded and open to public inspection pursuant to this section, but they need show only the formal action taken and the votes cast by the members; the minutes of a closed session should show that the statutory formality of KRS 61.815 was observed before going into a closed session and should indicate the general subject of the closed session but they need not show information which would defeat the purpose of holding a closed session on the authorized subject matter. OAG 81-387.

The names, positions, and addresses of all the persons who were on the disciplinary board which found for student's suspension were open to student's inspection under this section; however, the selection and appointment documents were exempt as "preliminary recommendations" under KRS 61.878. OAG 83-332.

Tape recordings of board of education meetings were public records within the meaning of KRS 61.870(2), although inspection thereof could be denied on the ground that the recordings were preliminary drafts regarding preparation of the official minutes, as inspection of preliminary drafts may be denied pursuant to KRS 61.878(1)(g). OAG 89-93.

61.840. Conditions for attendance.

No condition other than those required for the maintenance of order shall apply to the attendance of any member of the public at any meeting of a public agency. No person may be required to identify himself in order to attend any such meeting. All agencies shall provide meeting room conditions which insofar as is feasible allow effective public observation of the public meetings. All agencies shall permit news media coverage, including but not limited to recording and broadcasting.

(Enact. Acts 1974, ch. 377, § 8.)

Opinions of Attorney General. With limited exceptions as provided for open meetings of public agencies, a local school board may prohibit nonstudents from entering upon school property, irrespective of the nature of activities which at the time are being conducted upon the property. OAG 90-11.

The county board of education's response to party complaining that at meeting some people could not hear, that the meeting site was inadequate and that people were forced to stand in the hallway and outside in the winter cold, violated the Open Meetings Act in that its written answer to the complaining party did not address the specific issues of accessibility to the meeting, noise in the meeting room, persons outside the meeting room in the hallway, and persons outside the building on a winter night; in addition, the response did not cite a section of the Open Meetings Act in support of the public agency's position and it did not provide a brief explanation of how that particular statutory provision

applied to the situation involving the public agency. OAG 97-OMD-28.

Board of education violated the Open Meetings Act because even if the board met in a facility that would accomodate the number of persons normally expected to attend such meetings, where there was an overflow of attendees the board of education should have made a good faith effort to handle the overflow crowd so that persons in the hallway and outside the building could have observed the public proceedings. OAG 97-OMD-28.

When the school board moved the meeting site of the board meeting which began in the school board office from the office to the school library, the latter location became the designated site from which all remaining proceedings and actions relative to the meeting should have been conducted and in the absence of any compelling reason to do so, the school board was not justified in moving the meeting to yet another location as such action is inconvenient to the public. 97-OMD-84.

61.846. Enforcement by administrative procedure — Appeal.

(1) If a person enforces KRS 61.805 to 61.850 pursuant to this section, he shall begin enforcement under this subsection before proceeding to enforcement under subsection (2) of this section. The person shall submit a written complaint to the presiding officer of the public agency suspected of the violation of KRS 61.805 to 61.850. The complaint shall state the circumstances which constitute an alleged violation of KRS 61.805 to 61.850 and shall state what the public agency should do to remedy the alleged violation. The public agency shall determine within three (3) days, excepting Saturdays, Sundays, and legal holidays, after the receipt of the complaint whether to remedy the alleged violation pursuant to the complaint and shall notify in writing the person making the complaint, within the three (3) day period, of its decision. If the public agency makes efforts to remedy the alleged violation pursuant to the complaint, efforts to remedy the alleged violation shall not be admissible as evidence of wrongdoing in an administrative or judicial proceeding. An agency's response denying, in whole or in part, the complaint's requirements for remedying the alleged violation shall include a statement of the specific statute or statutes supporting the public agency's denial and a brief explanation of how the statute or statutes apply. The response shall be issued by the presiding officer, or under his authority, and shall constitute final agency action.

(2) If a complaining party wishes the Attorney General to review a public agency's denial, the complaining party shall forward to the Attorney General a copy of the written complaint and a copy of the written denial within sixty (60) days from receipt by that party of the written denial. If the public agency refuses to provide a written denial, a complaining party shall provide a copy of the written complaint within sixty (60) days from the date the written complaint was submitted to the presiding officer of the public agency. The Attorney General shall review the complaint and denial and issue within ten (10) days, excepting Saturdays, Sundays, and legal holidays, a written decision which states whether the agency violated the provisions of KRS 61.805 to 61.850. In arriving at the decision, the Attorney General may request additional documentation from the agency. On the day that the Attorney General renders his decision, he shall mail a copy to the agency and a copy to the person who filed the complaint.

(3) (a) If a public agency agrees to remedy an alleged violation pursuant to subsection (1) of this section, and the person who submitted the written complaint pursuant to subsection (1) of this section believes that the agency's efforts in this regard are inadequate, the person may complain to the Attorney General.

(b) The person shall provide to the Attorney General:

1. The complaint submitted to the public agency;
2. The public agency's response; and
3. A written statement of how the public agency has failed to remedy the alleged violation.

(c) The adjudicatory process set forth in subsection (2) of this section shall govern as if the public agency had denied the original complaint.

(4) (a) A party shall have thirty (30) days from the day that the Attorney General renders his decision to appeal the decision. An appeal within the thirty (30) day time limit shall be treated as if it were an action brought under KRS 61.848.

(b) If an appeal is not filed within the thirty (30) day time limit, the Attorney General's decision, as to whether the agency violated the provisions of KRS 61.805 to 61.850, shall have the force and effect of law and shall be enforceable in the Circuit Court of the county where the public agency has its principal place of business or where the alleged violation occurred.

(5) A public agency shall notify the Attorney General of any actions filed against that agency in Circuit Court regarding enforcement of KRS 61.805 to 61.850.

(Enact. Acts 1992, ch. 162, § 7, effective July 14, 1992.)

Opinions of Attorney General. Where the school board, at an open and public meeting, voted to employ a certain law firm as of the date of that meeting, the school board did not violate the Open Meetings Act even though prior to such meeting the chairman and one member of the board hired such firm and paid for their services with their personal funds; nothing in the Open Meetings Act prohibits public officials from securing legal representation and advice with their personal funds outside the scope of a public meeting. OAG 94-OMD-83.

The county board of education's response to party complaining that some at meeting some people could not hear, that the meeting site was inadequate and people were forced to stand in the hallway and outside in the winter cold, violated the Open Meetings Act in that its written answer to the complaining party did not address the specific issues of accessibility to the meeting, noise in the meeting room, persons outside the meeting room in the hallway, and persons outside the building on a winter night; in addition, the response did not cite a section of the Open Meetings Act in support of the public

agency's position and it did not provide a brief explanation of how that particular statutory provision applied to the situation involving the public agency. OAG 97-OMD-28.

While the school board violated the Open Meetings Act by its failure to file a written response to the complaint within the statutorily mandated time frame, its decision to not renew the superintendent's contract was not a violation of the Open Meetings Act as that action was within the agenda of activities set forth in the notice for that special meeting which stated that "The purpose of the meeting will be to discuss renewal/or action of the superintendent's contract. OAG 97-OMD-43.

DECISIONS UNDER PRIOR LAW

1. Application.

Where court found that closed meeting of county board of education had violated the open meetings of public agencies law and declared all action taken at the meeting void and enjoined the board from holding future closed sessions on certain topics discussed at the meeting, the court remained within the authority supplied it by former law regarding enforcement of law concerning open meetings in granting such relief and as long as the board and its members made a good faith effort to obey they would not be cited for contempt. Jefferson County Bd. of Educ. v. Courier-Journal, 551 S.W.2d 25 (Ky. Ct. App. 1977).

61.848. Enforcement by judicial action — De novo determination in appeal of Attorney General's decision — Voidability of action not substantially complying — Awards in willful violation actions.

(1) The Circuit Court of the county where the public agency has its principal place of business or where the alleged violation occurred shall have jurisdiction to enforce the provisions of KRS 61.805 to 61.850, as they pertain to that public agency, by injunction or other appropriate order on application of any person.

(2) A person alleging a violation of the provisions of KRS 61.805 to 61.850 shall not have to exhaust his remedies under KRS 61.846 before filing suit in a Circuit Court. However, he shall file suit within sixty (60) days from his receipt of the written denial referred to in subsections (1) and (2) of KRS 61.846 or, if the public agency refuses to provide a written denial, within sixty (60) days from the date the written complaint was submitted to the presiding officer of the public agency.

(3) In an appeal of an Attorney General's decision, where the appeal is properly filed pursuant to subsection (4)(a) of KRS 61.846, the court shall determine the matter de novo.

(4) Except as otherwise provided by law or rule of court, proceedings arising under this section take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date.

(5) Any rule, resolution, regulation, ordinance, or other formal action of a public agency without substantial compliance with the requirements of KRS 61.810, 61.815, 61.820, and KRS 61.823 shall be voidable by a court of competent jurisdiction.

(6) Any person who prevails against any agency in any action in the courts regarding a violation of KRS 61.805 to 61.850, where the violation is found to be willful, may be awarded costs, including reasonable attorneys' fees, incurred in connection with the legal action. In addition, it shall be within the discretion of the court to award the person an amount not to exceed one hundred dollars ($100) for each instance in which the court finds a violation. Attorneys' fees, costs, and awards under this subsection shall be paid by the agency responsible for the violation.

(Enact. Acts 1992, ch. 162, § 8, effective July 14, 1992.)

NOTES TO DECISIONS

1. Application.

Injunction was proper under this section - even without a showing that petitioners had no adequate remedy at law - when a school board violated the Open Meeting Law by discussing a personnel reorganization plan in closed "executive" meetings; the preparation-for-litigation exception would not apply to mere discussion of whether dismissed administrators might sue the board. Also, the board failed to adhere to § 61.815, which requires that, before going into a closed session, a public body must state the exact exception it relies on to go into a closed meeting. Floyd County Bd. of Educ. v. Ratliff, 955 S.W.2d 921 (Ky. 1997).

DECISIONS UNDER PRIOR LAW

1. Application.

Where court found that closed meeting of county board of education had violated the open meetings of public agencies law and declared all action taken at the meeting void and enjoined the board from holding future closed sessions on certain topics discussed at the meeting, the court remained within the authority supplied it by this section in granting such relief and as long as the board and its members made a good faith effort to obey they would not be cited for contempt. Jefferson County Bd. of Educ. v. Courier-Journal, 551 S.W.2d 25 (Ky. Ct. App. 1977).

61.850. Construction.

KRS 61.805 to 61.850 shall not be construed as repealing any of the laws of the Commonwealth relating to meetings but shall be held and construed as ancillary and supplemental thereto.

(Enact. Acts 1974, ch. 377, § 11.)

OPEN RECORDS

61.870. Definitions for KRS 61.872 to 61.884.

As used in KRS 61.872 to 61.884, unless the context requires otherwise:

(1) "Public agency" means:

(a) Every state or local government officer;

(b) Every state or local government department, division, bureau, board, commission, and authority;

(c) Every state or local legislative board, commission, committee, and officer;

(d) Every county and city governing body, council, school district board, special district board, and municipal corporation;

(e) Every state or local court or judicial agency;

(f) Every state or local government agency, including the policy-making board of an institution of education, created by or pursuant to

state or local statute, executive order, ordinance, resolution, or other legislative act;

(g) Any body created by state or local authority in any branch of government;

(h) Any body which derives at least twenty-five percent (25%) of its funds expended by it in the Commonwealth of Kentucky from state or local authority funds;

(i) Any entity where the majority of its governing body is appointed by a public agency as defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (j), or (k) of this subsection; by a member or employee of such a public agency; or by any combination thereof;

(j) Any board, commission, committee, subcommittee, ad hoc committee, advisory committee, council, or agency, except for a committee of a hospital medical staff, established, created, and controlled by a public agency as defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (k) of this subsection; and

(k) Any interagency body of two (2) or more public agencies where each public agency is defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (j) of this subsection;

(2) "Public record" means all books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency. "Public record" shall not include any records owned or maintained by or for a body referred to in subsection (1)(h) of this section that are not related to functions, activities, programs, or operations funded by state or local authority;

(3) (a) "Software" means the program code which makes a computer system function, but does not include that portion of the program code which contains public records exempted from inspection as provided by KRS 61.878 or specific addresses of files, passwords, access codes, user identifications, or any other mechanism for controlling the security or restricting access to public records in the public agency's computer system.

(b) "Software" consists of the operating system, application programs, procedures, routines, and subroutines such as translators and utility programs, but does not include that material which is prohibited from disclosure or copying by a license agreement between a public agency and an outside entity which supplied the material to the agency;

(4) (a) "Commercial purpose" means the direct or indirect use of any part of a public record or records, in any form, for sale, resale, solicitation, rent, or lease of a service, or any use by which the user expects a profit either through commission, salary, or fee.

(b) "Commercial purpose" shall not include:

1. Publication or related use of a public record by a newspaper or periodical;
2. Use of a public record by a radio or television station in its news or other informational programs; or
3. Use of a public record in the preparation for prosecution or defense of litigation, or claims settlement by the parties to such action, or the attorneys representing the parties;

(5) "Official custodian" means the chief administrative officer or any other officer or employee of a public agency who is responsible for the maintenance, care and keeping of public records, regardless of whether such records are in his actual personal custody and control;

(6) "Custodian" means the official custodian or any authorized person having personal custody and control of public records;

(7) "Media" means the physical material in or on which records may be stored or represented, and which may include, but is not limited to paper, microform, disks, diskettes, optical disks, magnetic tapes, and cards; and

(8) "Mechanical processing" means any operation or other procedure which is transacted on a machine, and which may include, but is not limited to a copier, computer, recorder or tape processor, or other automated device.

(Enact. Acts 1976, ch. 273, § 1; 1986, ch. 150, § 2, effective July 15, 1986; 1992, ch. 163, § 2, effective July 14, 1992; 1994, ch. 262, § 2, effective July 15, 1994.)

Opinions of Attorney General. If a citizen requests to see the appointing documents for five employees of the school board or even for 25 employees there is no reason he should not be allowed access to the records and requests by school board that when specific individuals are involved in the requests they should be asked for on a one individual at a time basis was not justified. OAG 76-756.

The records pertaining to the salary, expense allowances and employee benefits of the employees of the University of Kentucky are public records subject to public inspection. OAG 78-179.

The Somerset Community College, an agency under the control of the board of trustees of the University of Kentucky, is a public agency within the definition of the Kentucky Open Records Law. OAG 79-348.

Where newspaper reporter sought records of unrestricted expenditures of the University of Louisville Foundation, Inc. for certain years, it was improper for university custodian of records to deny inspection of records on the basis of a judicial determination that the foundation was not a public agency under KRS 61.805 and the Open Meetings Law since the request for the records and the response thereto was not made by or to the foundation but by the university which is a public agency under the Open Records Law. OAG 81-2.

A letter of transmittal which was presented to a university board chairman prior to charges being preferred against a university president or faculty member is an official document which is required by subsection (3) of KRS 164.360 and, therefore, is a public record which should be made available for public inspection under the Open Records Law. OAG 81-291.

All libraries may refuse to disclose for public inspection their circulation records. As far as the Open Records Law is concerned, they may also make the records open if they so choose; however, the privacy rights which are inherent in a democratic society should constrain all libraries to keep their circulation lists confidential. OAG 82-149.

No person can demand as a matter of right to inspect the circulation records of any type of library — school, public,

academic or special — under the Open Records Law. OAG 82-149.

Clinical income derived from the services of physicians on the University of Kentucky's faculty in its College of Medicine, which is collected by the University and remitted monthly to the Kentucky Medical Services Foundation, Inc. (KMSF), under an agreement between the University and KMSF whereby KMSF reimburses the University for expenses and disburses clinical income to faculty physicians on the basis of their services, does not at any time become public money so as to constitute funding by state or local authority. OAG 82-216.

The public generally was entitled to inspect correspondence between two public agencies, the Medical Center of the University of Kentucky and the Kentucky Board of Medical Licensure. OAG 83-60.

School activity funds are under the control, and are the responsibility, of the principal and the principal is the official custodian of the records; any person is entitled to inspect the business records concerning such funds, but any items in the records which are made confidential by the Family Educational Rights and Privacy Act of 1974 or any state law may be deleted from the records before they are made available for public inspection. OAG 83-248.

A request to inspect public records under the Open Records Law was properly denied to the extent that the request related to documents of the Kentucky Educational Foundation, Inc., as the Foundation is not a public agency and does not appear to derive at least 25% of its funds from state or local authority; however, the request to inspect public records was improperly denied to the extent that the request related to records of the State Department of Education concerning the actual contributions, expenditures and services rendered by the Department to the Kentucky Educational Foundation, Inc. OAG 84-382.

Since a school district is a public agency under the Open Records Law and the certificates required by KRS 161.020 are public records as defined in Subsection (2) of this section, denial of a request to inspect the certificates required by KRS 161.020 to be filed with the Board of Education was improper under the Open Records Law, except that information, if any, on the certificates of a personal nature, such as social security numbers, home addresses and telephone numbers, need not be released. OAG 85-109.

The school system improperly denied the applicant-teacher's request for a copy of that portion of a tape containing the applicant-teacher's answers to questions propounded by the school system, the questions having been asked as part of the school system's teacher selection process. OAG 87-56.

The tapes of the hearing concerning a teacher contract termination proceeding conducted pursuant to KRS 161.790 were available for public inspection under the Open Records Law even though the tapes were in the possession of the reporter-transcriber rather than the Board of Education, as the teacher requested a public hearing and the matter had not reached the courts. OAG 87-62.

A university's copy of a letter from the National Collegiate Athletic Association (NCAA) addressed to counsel representing the University's assistant coach was a public record subject to public inspection unless one of the exceptions to public inspections could be properly invoked. OAG 88-47.

Where the private college did not receive any grants or loans from the Higher Education Assistance Authority, there was no evidence that the college was a "public agency" within the meaning of subdivision (1) of KRS 61.870, and the college properly denied the request to inspect its records and documents as it was not subject to the terms and provisions of the Open Records Act. OAG 88-61.

The Kentucky State University Foundation, Inc., is a recognized fund-raising instrumentality of Kentucky State University, and is thus an "agency thereof," within the meaning of subdivision (1) of this section. OAG 89-92.

Tape recordings of board of education meetings were public records within the meaning of this section, although inspection thereof could be denied on the ground that the recordings were preliminary drafts regarding preparation of the official minutes, as inspection of preliminary drafts may be denied pursuant to KRS 61.878(1)(g). OAG 89-93.

The Interfraternity and Panhellenic Councils at Eastern Kentucky University may be deemed "public agencies" for purposes of the Open Records Act, only if they derive at least 25% of their funds from state or local authority; the term "funds" refers to a sum or sums of money and while it is true that the Interfraternity and Panhellenic Councils derive an appreciable benefit from the University this benefit cannot be quantified, or otherwise translated into a monetary figure; therefore the Interfraternity and Panhellenic Councils are not public agencies within the meaning of KRS 61.870, et seq. and are not public agencies within the meaning of, or subject to, the Open Meetings Law. OAG 92-62.

County board of education did not violate the provisions of the Open Records Act by failing to afford access to teacher evaluations of cheerleading tryouts where those records had "disappeared," insofar as county board could not make available records which have disappeared or otherwise do not exist. OAG 94-ORD-142.

Where the University's official custodian of records failed to cite any of the "exceptions" to the general rule, found at KRS 61.872(4), (5), and (6), the University was obligated to physically retrieve and make available for inspection and for copying those specifically identified requested public records that were housed in a separate location. OAG 95-ORD-52.

County public schools system properly relied upon KRS 61.878(1)(a) in denying newspaper reporter's request for information as to each individual employee's race and gender. Providing the requester with alternative information, through a computer printout, as to the specific number of employees at each location which included personnel totals by race and sex broken down by schools, salaried employees and hourly employees met the principal purpose of the Open Records Act. This alternative information allowed the citizen to monitor the functioning and operations of the public agency and to be informed as to what their government was doing. 96-ORD-232.

An agreement reached between a school district and a former employee was a public record, notwithstanding the "limited" role that the school district played in negotiating the terms of the agreement, as there was no doubt that it was a party to the agreement and that the agreement was owned, used, in the possession of or retained by the school district. OAG 00-ORD-5.

An 84 page document prepared by a consultant for a university board of regents, which evaluated the president of the university, was a public record within the meaning of the statute as it was owned, used, and in the possession of a public agency. OAG 00-ORD-46.

NOTES TO DECISIONS

Analysis

1. Public records.
5. Attorney/client privilege.

1. Public Records.

State university's response to inquiry by collegiate athletic association into rules violation was not exempt from disclosure under Open Records Act exemption for public records. It is clear that the university is a "public agency" and the entire response submitted by the university to the National Collegiate Athletic Association (NCAA) constitutes a public record. Where the university spent over $400,000.00 for the response and the public has a legitimate interest in its contents, the response is not exempt. Furthermore, the contents of the

response are a matter of public interest and release would not constitute a clearly unwarranted invasion of personal privacy. University of Ky. v. Courier-Journal & Louisville Times Co., 830 S.W.2d 373 (Ky. 1992).

Any common law regarding access to records maintained by public agencies was codified and preempted by the General Assembly's passage of the Open Records Act. University of Ky. v. Courier-Journal & Louisville Times Co., 830 S.W.2d 373 (Ky. 1992).

5. Attorney/Client Privilege.

Public records protected by the attorney-client privilege are ordinarily excludable from the disclosure requirements of the Open Records Act. Hahn v. University of Louisville, 80 S.W.3d 771 (Ky. Ct. App. 2001).

61.871. Policy of KRS 61.870 to 61.884 — Strict construction of exceptions of KRS 61.878.

The General Assembly finds and declares that the basic policy of KRS 61.870 to 61.884 is that free and open examination of public records is in the public interest and the exceptions provided for by KRS 61.878 or otherwise provided by law shall be strictly construed, even though such examination may cause inconvenience or embarrassment to public officials or others.

(Enact. Acts 1992, ch. 163, § 1, effective July 14, 1992.)

Opinions of Attorney General. The University of Kentucky subverted the intent of the Open Records Act, which is essentially related to the intent of the State Archives and Records Act, by failing to develop a coherent scheme for the organized maintenance of records at identified maintenance locations. OAG 94-ORD-121.

The University of Kentucky subverted the intent of the Open Records Act, which is essentially related to the intent of the State Archives and Records Act, by failing to develop an adequate program for ensuring records management through agency oversight of employee records handling practices. OAG 94-ORD-121.

61.8715. Legislative findings.

The General Assembly finds an essential relationship between the intent of this chapter and that of KRS 171.410 to 171.740, dealing with the management of public records, and of KRS 11.501 to 11.517, 45.253, 171.420, 186A.040, 186A.285, and 194B.102, dealing with the coordination of strategic planning for computerized information systems in state government; and that to ensure the efficient administration of government and to provide accountability of government activities, public agencies are required to manage and maintain their records according to the requirements of these statutes. The General Assembly further recognizes that while all government agency records are public records for the purpose of their management, not all these records are required to be open to public access, as defined in this chapter, some being exempt under KRS 61.878.

(Enact. Acts 1994, ch. 262, § 1, effective July 15, 1994; 2000, ch. 506, § 17, effective July 14, 2000; 2000, ch. 536, § 17, effective July 14, 2000.)

Legislative Research Commission Note. (7/14/2000). This section was amended by 2000 Ky. Acts chs. 506 and 536, which are identical and have been codified together.

61.872. Right to inspection — Limitation.

(1) All public records shall be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884, and suitable facilities shall be made available by each public agency for the exercise of this right. No person shall remove original copies of public records from the offices of any public agency without the written permission of the official custodian of the record.

(2) Any person shall have the right to inspect public records. The official custodian may require written application, signed by the applicant and with his name printed legibly on the application, describing the records to be inspected. The application shall be hand delivered, mailed, or sent via facsimile to the public agency.

(3) A person may inspect the public records:

(a) During the regular office hours of the public agency; or

(b) By receiving copies of the public records from the public agency through the mail. The public agency shall mail copies of the public records to a person whose residence or principal place of business is outside the county in which the public records are located after he precisely describes the public records which are readily available within the public agency. If the person requesting the public records requests that copies of the records be mailed, the official custodian shall mail the copies upon receipt of all fees and the cost of mailing.

(4) If the person to whom the application is directed does not have custody or control of the public record requested, that person shall notify the applicant and shall furnish the name and location of the official custodian of the agency's public records.

(5) If the public record is in active use, in storage or not otherwise available, the official custodian shall immediately notify the applicant and shall designate a place, time, and date for inspection of the public records, not to exceed three (3) days from receipt of the application, unless a detailed explanation of the cause is given for further delay and the place, time, and earliest date on which the public record will be available for inspection.

(6) If the application places an unreasonable burden in producing public records or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency, the official custodian may refuse to permit inspection of the public records or mail copies thereof. However, refusal under this section shall be sustained by clear and convincing evidence.

(Enact. Acts 1976, ch. 273, § 2; 1992, ch. 163, § 3, effective July 14, 1992; 1994, ch. 262, § 3, effective July 15, 1994.)

Opinions of Attorney General. Under this section a person does not have to be a resident of any particular place to qualify for inspection of public records; therefore a school office could not withhold records from the inspection of a requestor who is not a resident of the school district. OAG 77-151.

There is no statutory requirement that an agenda be prepared for regular meetings of the school board but if an agenda

is prepared it is a public record; an agenda is required for a special meeting of the school board and it is also a "public record"; such agendas are "public records" pursuant to this section and open for inspection by any person during the regular office hours of the public agency. OAG 77-221.

A request to inspect any standard contract or printed contract form used by a county's schools during the years 1978, 1979 or 1980, for the purchase of instructional materials was specific enough and should have been complied with. OAG 80-289.

When the media attempts to carry out an evaluation regarding the quality of schools throughout the state, there is no unwarranted invasion of personal privacy in examining relevant prior work experience and educational qualifications of employees or former employees, and the same view applies to educational qualifications or levels attained by public employees. OAG 89-90.

A schoolteacher's college transcript is not subject to inspection, where a school board has denied inspection pursuant to KRS 61.878(1)(a). OAG 89-90.

The Kentucky State University Foundation, Inc., is a recognized fund-raising instrumentality of Kentucky State University, and is thus an "agency thereof," within the meaning of KRS 61.870(1). OAG 89-92.

A state university acted consistently with Open Records provisions in denying inspection of records where the majority of the several hundred records sought contained "education records," as defined, and effectively made confidential by, the federal Buckley Amendment, such that virtually all of the records requested would require redaction or masking to remove information personally identifiable to a student; an unreasonable burden in view of the scope of the request(s), if the records were to be made available for inspection without jeopardizing federal aid. OAG 90-24.

A state university failed to act consistently with Open Records provisions in denying a request to inspect five particular public safety dispatcher log cards, where the request for those specified items was particular, and narrow in scope, thus making redaction or masking of confidential information feasible without placing an unreasonable burden upon the agency. OAG 90-24.

Where university treated four separate requests for inspection of certain documents as one request, its response was improper for while it may well have wished to expedite this matter by issuing a single response, it nevertheless erred in failing to address the four requests in four separate responses. OAG 91-111.

OAG 90-24 is overruled; records of a campus law enforcement unit maintained by the unit for the purpose of law enforcement are no longer subject to the federal law, but are instead governed by the Kentucky Open Records Law. OAG 93-3.

High school site based decision making council subverted the intent of the Open Records Law short of denial of inspection by releasing records to a requester in a format, a computer disk, to which he had no means of gaining access. OAG 93-ORD-46.

While the school superintendent was not the presiding officer of the school board, against whom a complaint was made, failure to direct the letter to the presiding officer is a mere technicality which will not prohibit the invoking of the Open Meetings Act. OAG 93-OMD-61.

Where the University's official custodian of records failed to cite any of the "exceptions" to the general rule, found in subsections (4), (5) and (6), the University was obligated to physically retrieve and make available for inspection and for copying the specifically identified requested public records that were housed in a separate location. OAG 95-ORD-52.

Response of county board of education to request to inspect records containing the results of drug tests administered to school bus drivers that although records were available, counsel was reviewing the matter and a decision would be rendered in ten days was procedurally deficient as a public agency cannot postpone or delay the statutory deadline of KRS 61.880(1). Although the burden on the agency to respond in three working days is an onerous one, the only exceptions to this general rule are found at subsection (4) of this section and did not apply. 97-ORD-2.

University could not and was not required to furnish former employee records that did not exist; however, the university was obligated to furnish former employee records that had been furnished to the EEOC and KCHR upon prepayment of reasonable copying charges as a public agency cannot withhold public records from an applicant simply because they may be obtained from another source. 97-ORD-87.

A county board of education did not violate the statute where the requester sought to inspect voluminous records, many of which were not immediately accessible, and the board arranged for the requester to inspect the documents over a two (2) day period beginning 20 days after the statutory deadline for inspection. OAG 99-ORD-26.

Where the requester sought information from a board of education which was contained in numerous records, the board properly afforded the requester an opportunity to examine the records and to compile the information herself. OAG 99-ORD-33.

A board of education unreasonably postponed the requester's right of access to public records where the board extended the deadline for inspection of an abbreviated list of records for an additional 27 days, noting that eight (8) of these days were weekends and that its offices would be officially closed on three (3) other days during the 27 day period. OAG 99-ORD-44.

A board of education could not restrict the requester's right of on-site access to three (3) hours on a single day, notwithstanding that the board elected to assign an employee and a law enforcement officer to monitor the requester's inspection of the records, where the board acknowledged that no restraining order was issued against the requester to prevent him from entering the board's offices. OAG 99-ORD-44.

The Office of Education Accountability (OEA) properly denied a request for records pertaining to its director's computer pursuant to subsection (6) based on information received by the OEA from a credible source that the requester intended to attempt to hack into the hard drive of the computer after receiving the records. OAG 99-ORD-96.

It was incumbent on a board of education to adopt a uniform policy relative to release of board packets for upcoming meetings. OAG 99-ORD-155.

A board of education was not obligated to honor a standing request for access to board packets for upcoming meetings. OAG 99-ORD-155.

A settlement agreement between a party litigant and a school district, sealed or unsealed, is a public record and cannot be withheld from public disclosure, unless the document is properly excluded from disclosure by one or more of the applicable exceptions of KRS 61.878(1) of the Open Records Act or other applicable law; if the settlement agreement is sealed by order of a court, the question of whether the document is subject to public inspection must be raised in the judicial system, and the burden of showing that the record is exempt from disclosure falls upon the public agency or the affected party. OAG 01-6.

61.874. Abstracts, memoranda, copies — Agency may prescribe fee — Use of nonexempt public records for commercial purposes — Online access.

(1) Upon inspection, the applicant shall have the right to make abstracts of the public records and memoranda thereof, and to obtain copies of all

public records not exempted by the terms of KRS 61.878. When copies are requested, the custodian may require a written request and advance payment of the prescribed fee, including postage where appropriate. If the applicant desires copies of public records other than written records, the custodian of the records shall duplicate the records or permit the applicant to duplicate the records; however, the custodian shall ensure that such duplication will not damage or alter the original records.

(2) (a) Nonexempt public records used for noncommercial purposes shall be available for copying in either standard electronic or standard hard copy format, as designated by the party requesting the records, where the agency currently maintains the records in electronic format. Nonexempt public records used for noncommercial purposes shall be copied in standard hard copy format where agencies currently maintain records in hard copy format. Agencies are not required to convert hard copy format records to electronic formats.

(b) The minimum standard format in paper form shall be defined as not less than 8 ½ inches x 11 inches in at least one (1) color on white paper, or for electronic format, in a flat file electronic American Standard Code for Information Interchange (ASCII) format. If the public agency maintains electronic public records in a format other than ASCII, and this format conforms to the requestor's requirements, the public record may be provided in this alternate electronic format for standard fees as specified by the public agency. Any request for a public record in a form other than the forms described in this section shall be considered a nonstandardized request.

(3) The public agency may prescribe a reasonable fee for making copies of nonexempt public records requested for use for noncommercial purposes which shall not exceed the actual cost of reproduction, including the costs of the media and any mechanical processing cost incurred by the public agency, but not including the cost of staff required. If a public agency is asked to produce a record in a nonstandardized format, or to tailor the format to meet the request of an individual or a group, the public agency may at its discretion provide the requested format and recover staff costs as well as any actual costs incurred.

(4) (a) Unless an enactment of the General Assembly prohibits the disclosure of public records to persons who intend to use them for commercial purposes, if copies of nonexempt public records are requested for commercial purposes, the public agency may establish a reasonable fee.

(b) The public agency from which copies of nonexempt public records are requested for a commercial purpose may require a certified statement from the requestor stating the commercial purpose for which they shall be used, and may require the requestor to enter into a contract with the agency. The contract shall permit use of the public records for the stated commercial purpose for a specified fee.

(c) The fee provided for in subsection (a) of this section may be based on one or both of the following:

1. Cost to the public agency of media, mechanical processing, and staff required to produce a copy of the public record or records;
2. Cost to the public agency of the creation, purchase, or other acquisition of the public records.

(5) It shall be unlawful for a person to obtain a copy of any part of a public record for a:

(a) Commercial purpose, without stating the commercial purpose, if a certified statement from the requestor was required by the public agency pursuant to subsection (4)(b) of this section; or

(b) Commercial purpose, if the person uses or knowingly allows the use of the public record for a different commercial purpose; or

(c) Noncommercial purpose, if the person uses or knowingly allows the use of the public record for a commercial purpose. A newspaper, periodical, radio or television station shall not be held to have used or knowingly allowed the use of the public record for a commercial purpose merely because of its publication or broadcast, unless it has also given its express permission for that commercial use.

(6) Online access to public records in electronic form, as provided under this section, may be provided and made available at the discretion of the public agency. If a party wishes to access public records by electronic means and the public agency agrees to provide online access, a public agency may require that the party enter into a contract, license, or other agreement with the agency, and may charge fees for these agreements. Fees shall not exceed:

(a) The cost of physical connection to the system and reasonable cost of computer time access charges; and

(b) If the records are requested for a commercial purpose, a reasonable fee based on the factors set forth in subsection (4) of this section.

(Enact. Acts 1976, ch. 273, § 3; 1992, ch. 163, § 4, effective July 14, 1992; 1994, ch. 262, § 4, effective July 15, 1994.)

Opinions of Attorney General. Where a requester seeks photocopies of all official minutes of any special or regular school board meetings held in a certain county in 1981 and photocopies of all regular or special meetings held in the future, it is discretionary, as to the past meetings, whether the agency should first require the requester to inspect the records before ordering copies or to provide copies of the complete records for a reasonable fee without first inspecting them, and, as to the future meetings, there is no right of the requester to request copies of future meetings, since the right to copies is ancillary to the right to inspect under subsection (1) of this section. OAG 81-212.

While the school system may refuse to disclose the home addresses of students, it may not withhold the names of

students attending the school. A list of names should be furnished, if currently available, or the school system should prepare such a list, or let the requesting party prepare his or her own list from school system records. OAG 88-50.

Upon inspection, copying of the minutes of special meetings of a County School Board must be permitted; a reasonable fee, not exceeding the cost thereof, can be imposed for the copies. OAG 89-27.

Since the University of Kentucky Medical Center is clearly a public agency, it is therefore subject to the Open Records Act and the demand of $153 reproduction fee by the Medical Center was inconsistent with subsection (2) of this section. OAG 91-98.

Nothing in the Open Records Act statutes permits an agency to restrict a person to whom records have been released from reproducing those records or sharing them with others; accordingly a county board of education cannot restrain a recipient from reproducing the records with which she has been furnished. OAG 95-ORD-77.

University could not and was not required to furnish former employee records that did not exist; however, the university was obligated to furnish former employee records that had been furnished to the EEOC and KCHR upon prepayment of reasonable copying charges as a public agency cannot withhold public records from an applicant simply because they may be obtained from another source. 97-ORD-87.

A university's 15 cent per page copying fee for open records requests was excessive where the university charged its faculty and students 5 to 8 cents per copy, while charging those not associated with the university 10 cents to use the coin operated machines on campus, and 15 cents for copies made pursuant to an open records request; the university explained that the graduated rate schedule served to cross-subsidize the discount rate given to its faculty and students, but the Open Records Act does not authorize such a fee arrangement for reproducing copies of public records and, instead, the fee charge must be based upon the agency's actual cost for reproducing records per page, based on the cost of media and mechanical processing. OAG 99-ORD-186.

61.8745. Damages recoverable by public agency for person's misuse of public records.

A person who violates subsections (2) to (6) of KRS 61.874 shall be liable to the public agency from which the public records were obtained for damages in the amount of:

(1) Three (3) times the amount that would have been charged for the public record if the actual commercial purpose for which it was obtained or used had been stated;
(2) Costs and reasonable attorney's fees; and
(3) Any other penalty established by law.

(Enact. Acts 1994, ch. 262, § 7, effective July 15, 1994.)

61.876. Agency to adopt rules and regulations.

(1) Each public agency shall adopt rules and regulations in conformity with the provisions of KRS 61.870 to 61.884 to provide full access to public records, to protect public records from damage and disorganization, to prevent excessive disruption of its essential functions, to provide assistance and information upon request and to insure efficient and timely action in response to application for inspection, and such rules and regulations shall include, but shall not be limited to:
   (a) The principal office of the public agency and its regular office hours;
   (b) The title and address of the official custodian of the public agency's records;
   (c) The fees, to the extent authorized by KRS 61.874 or other statute, charged for copies;
   (d) The procedures to be followed in requesting public records.
(2) Each public agency shall display a copy of its rules and regulations pertaining to public records in a prominent location accessible to the public.
(3) The Finance and Administration Cabinet may promulgate uniform rules and regulations for all state administrative agencies.

(Enact. Acts 1976, ch. 273, § 4.)

Cross-References. Procedures for record request, 701 KAR 5:035.

Opinions of Attorney General. A county board of education did not violate the statute where the requester sought to inspect voluminous records, many of which were not immediately accessible, and the board arranged for the requester to inspect the documents over a two (2) day period beginning 20 days after the statutory deadline for inspection. OAG 99-ORD-26.

A board of education could not restrict the requester's right of on-site access to three (3) hours on a single day, notwithstanding that the board elected to assign an employee and a law enforcement officer to monitor the requester's inspection of the records, where the board acknowledged that no restraining order was issued against the requester to prevent him from entering the board's offices. OAG 99-ORD-44.

Where a request for records was submitted to the director of a corrections education center at a correctional complex, a position created by a memorandum of agreement between the Department of Corrections and the Kentucky Community Technical College System (KCTCS), the director's response that the requester that he should submit his request to KCTCS's official records custodian did not constitute an intentional subversion of the Open Records Act. OAG 00-ORD-12.

61.878. Certain public records exempted from inspection except on order of court — Restriction of state employees to inspect personnel files prohibited.

(1) The following public records are excluded from the application of KRS 61.870 to 61.884 and shall be subject to inspection only upon order of a court of competent jurisdiction, except that no court shall authorize the inspection by any party of any materials pertaining to civil litigation beyond that which is provided by the Rules of Civil Procedure governing pretrial discovery:
   (a) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy;
   (b) Records confidentially disclosed to an agency and compiled and maintained for scientific research. This exemption shall not, however, apply to records the disclosure or publication of which is directed by another statute;
   (c) 1. Upon and after July 15, 1992, records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed

would permit an unfair commercial advantage to competitors of the entity that disclosed the records;

2. Upon and after July 15, 1992, records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which are compiled and maintained:
   a. In conjunction with an application for or the administration of a loan or grant;
   b. In conjunction with an application for or the administration of assessments, incentives, inducements, and tax credits as described in KRS Chapter 154;
   c. In conjunction with the regulation of commercial enterprise, including mineral exploration records, unpatented, secret commercially valuable plans, appliances, formulae, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person; or
   d. For the grant or review of a license to do business.
3. The exemptions provided for in subparagraphs 1. and 2. of this paragraph shall not apply to records the disclosure or publication of which is directed by another statute;

(d) Public records pertaining to a prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the Commonwealth. This exemption shall not include those records pertaining to application to agencies for permits or licenses necessary to do business or to expand business operations within the state, except as provided in paragraph (c) of this subsection;

(e) Public records which are developed by an agency in conjunction with the regulation or supervision of financial institutions, including but not limited to, banks, savings and loan associations, and credit unions, which disclose the agency's internal examining or audit criteria and related analytical methods;

(f) The contents of real estate appraisals, engineering or feasibility estimates and evaluations made by or for a public agency relative to acquisition of property, until such time as all of the property has been acquired. The law of eminent domain shall not be affected by this provision;

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination before the exam is given or if it is to be given again;

(h) Records of law enforcement agencies or agencies involved in administrative adjudication that were compiled in the process of detecting and investigating statutory or regulatory violations if the disclosure of the information would harm the agency by revealing the identity of informants not otherwise known or by premature release of information to be used in a prospective law enforcement action or administrative adjudication. Unless exempted by other provisions of KRS 61.870 to 61.884, public records exempted under this provision shall be open after enforcement action is completed or a decision is made to take no action; however, records or information compiled and maintained by county attorneys or Commonwealth's attorneys pertaining to criminal investigations or criminal litigation shall be exempted from the provisions of KRS 61.870 to 61.884 and shall remain exempted after enforcement action, including litigation, is completed or a decision is made to take no action. The exemptions provided by this subsection shall not be used by the custodian of the records to delay or impede the exercise of rights granted by KRS 61.870 to 61.884;

(i) Preliminary drafts, notes, correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency;

(j) Preliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended;

(k) All public records or information the disclosure of which is prohibited by federal law or regulation; and

(l) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly.

(2) No exemption in this section shall be construed to prohibit disclosure of statistical information not descriptive of any readily identifiable person.

(3) No exemption in this section shall be construed to deny, abridge, or impede the right of a public agency employee, including university employees, an applicant for employment, or an eligible on a register to inspect and to copy any record including preliminary and other supporting documentation that relates to him. The records shall include, but not be limited to, work plans, job performance, demotions, evaluations, promotions, compensation, classification, reallocation, transfers, layoffs, disciplinary actions, examination scores, and preliminary and other supporting documentation. A public agency employee, including university employees, applicant, or eligible shall not have the right to inspect or to copy any examination or any documents relating to ongoing criminal or administrative investigations by an agency.

(4) If any public record contains material which is not excepted under this section, the public agency shall separate the excepted and make the nonexcepted material available for examination.

(5) The provisions of this section shall in no way prohibit or limit the exchange of public records or the sharing of information between public agencies when the exchange is serving a legitimate governmental need or is necessary in the performance of a legitimate government function.

(Enact. Acts 1976, ch. 273, § 5; 1986, ch. 494, § 24, effective July 15, 1986; 1992, ch. 163, § 5, effective July 14, 1992; 1994, ch. 262, § 5, effective July 15, 1994; 1994, ch. 450, § 34, effective July 15, 1994.)

Legislative Research Commission Note. This section was amended by 1994 Ky. Acts chs. 262 and 450 which do not appear to be in conflict and have been codified together.

Compiler's Notes. Section 38 of Acts 1994, ch. 450 provides that: "It is the intent of the General Assembly that the amendment to Section 34 of this Act shall be retroactive to July 15, 1992."

Opinions of Attorney General. The detailed line item proposed budget for the Jefferson County School System for the fiscal year 1976-1977, call the "budget book," should be open to public inspection and the public should have access to the revisions made therein since the official nature of the budget book removes it from the classification of a preliminary draft or a preliminary recommendation and thus it does not come within the exemptions of subsection (1)(g) and (h) of this section. OAG 76-551.

Under the exemption to open inspection provided by this section, a state university could properly refuse the request of an instructor to inspect her annual evaluations. OAG 77-394.

A document titled "Requirements for Kindergarten" and a letter dated January 24, 1978, to Mr. Charles Akins, county superintendent of schools from James B. Graham, superintendent of public instruction, are not exempt from public inspection under subsection (1) of this section since the letter is official correspondence which does not affect in any way the privacy rights of any individual and both documents should be made available for inspection by any member of the public. OAG 78-370.

Examination papers and test scores from colleges and universities are exempt from public inspection under subsection (1)(a) of this section. OAG 78-468.

A report of the equal opportunity office at the University of Kentucky is exempt under subsection (1)(h) of this section: "preliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended"; since the office has no power to make a binding ruling and only investigates complaints and makes a recommendation to the university administration, its reports are only preliminary recommendations. OAG 78-738.

A report of a performance review made by an ad hoc committee reviewing faculty performance rating is exempt under subsection (1)(h) of this section. OAG 78-738.

Payroll lists of employees of the board of education are open to public inspection, and the fact that social security numbers are included on such lists does not exempt the information since social security numbers are not automatically exempt under this section without a specific agency policy declaring them private and confidential. OAG 78-837.

Proposals and counterproposals submitted in the negotiating process by a school board and an organization representing teacher employees of the board are not required to be open to public inspection because of the exemptions provided by subsections (1)(g) and (1)(h) of this section. OAG 79-326.

To open the results of an anonymous evaluation of teachers by students to public inspection would be an unwarranted invasion of personal privacy exempted by subsection (1)(a) of this section. OAG 79-348.

Intra-office memoranda between school officials or between a teacher's advisory group and the superintendent, in which preliminary opinions are expressed concerning a certain reading program, are exempt from mandatory disclosure under subsection (1)(g) and (h) of this section. OAG 80-289.

Under the Buckley Amendment to the federal Family Educational Rights and Privacy Act (Section 513 of Pub. Law 93-380 as amended by Section 2 of Pub. Law 93-568), the records of students pertaining to residency classification are exempt from public inspection under this section because disclosure of the records is prohibited by federal law unless the student who is the subject of the records gives his authorization that they be disclosed to a particular person or persons. OAG 80-471 (modifying OAG 80-352).

Records of the Kentucky Retirement System and the Teacher's Retirement System which listed employees' length of service, total employee contributions and total employer contributions were exempt from the mandatory requirement of public inspection by subsection (1)(j) of this section which exempts from mandatory public inspection public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly since the records in question were made confidential by KRS 61.661 which requires that members' accounts be confidential. OAG 80-506.

Where a requester sought a document titled "Report to the President of the University of Kentucky Summarizing the Findings of the Site Visit to Evaluate the Research Activities of the Tobacco and Health Research Program and Research Institute" which reported on impressions gained after interviewing various persons connected with the institute, gave opinions as to features and persons who are worthy of blame and praise and made recommendations as to how the research program can be improved, the official records custodian of the University is entitled to withhold the document from public inspection under subsection (1)(h) of this section, as a preliminary memorandum in which opinions are expressed or policies are formulated or recommended. OAG 81-285.

A report made to a state university by an accounting firm concerning charges made against a university official is a public record, not exempt by this section and should therefore be made available for public inspection. OAG 81-291.

Documents which consist of business records of a state university, including purchase requisitions, bills, purchase orders and a purchase contract, and which were used by the university attorney in preparing charges to be brought before the university board, were public records and not exempt from disclosure under this section. OAG 81-291.

The records of a law firm hired to investigate charges brought against a state university official are not public records, but rather are the work product of the attorneys of that firm, and, since such work product is confidential under a rule promulgated pursuant to KRS 447.154, they are exempt from disclosure by subsection (1)(j) of this section as records made confidential by enactment of the general assembly. OAG 81-291.

No person can demand as a matter of right to inspect the circulation records of any type of library — school, public, academic or special — under the Open Records Law. OAG 82-149.

The contract or contracts between a county board of education, which was involved in litigation, and its attorneys should be made available for public inspection; although such a contract might not be discoverable under court rules, contracts of public agencies must be openly made and available for inspection by the public and knowledge of the terms of such contracts would not hinder the agency in the prosecution of its law suits. OAG 82-169.

Where a county board of education was involved in litigation, the records of payments made to attorneys, bills and statements submitted to the board by its attorneys, and unprivileged communications between the board and its attorneys need not be made available for public inspection

except by order of a court of competent jurisdiction and the Jefferson County board of education acted properly in denying inspection of said records. OAG 82-169.

University officials properly withheld inspection of the personnel file of the requester, which included letters of evaluation by faculty members, because the university is entitled to protect the privacy of the faculty members who wrote the letters of evaluation and because the letters contained preliminary recommendations and preliminary memoranda in which opinions were expressed; such faculty letters were exempt from inspection under subdivisions (1)(a) and (1)(h) of this section. OAG 82-204.

Where a state university committee filed a letter with a dean concerning the promotion and tenure of a certain professor and the letter contained the advice and recommendation of the committee, the letter was exempt from the mandatory requirement of public inspection and could be withheld from the professor's inspection under either subdivisions (1)(a) or (1)(h) of this section. OAG 82-211.

The records of graduate council decisions pertaining to individual students are confidential by law; there is no exception for statistical information in KRS 164.283, and this specific statute takes precedence over the general statute, the Open Records Law. Therefore, the custodian of records of Eastern Kentucky University properly denied access to the minutes of the graduate council and the graduate appeals committee, even though the request was for statistical information which would not have been exempt under subsection (2) of this section provided that it existed in compiled form. OAG 82-279.

Under the Open Records Law, KRS 61.870 to 61.884, a public record is either open to public inspection by any person or it may be withheld from inspection by every member of the public under one of the exceptions listed in subsection (1) of this section. This often means that the Open Records Law cannot be used in lieu of discovery procedures provided by the court rules of civil procedure. OAG 82-280.

A request for records compiled by security officers of the county board of education in connection with the investigation of criminal charges involving the requesting attorney's client, which records might be used in a prospective law enforcement action or administrative adjudication before the board of education, was properly denied under subdivision (1)(f) of this section. The inspection of the described records could only be mandatorily required by a requester by order of a court until such time as the enforcement action was completed or a decision was made to take no action. OAG 82-280.

If a request is made to inspect personnel action laying off, hiring or rehiring faculty and staff of a university during a reasonable period, the request should be granted either by allowing inspection of records after private matters have been deleted or by preparing a list of nonexempt information; the name, position, salary and period of employment of each person subject to personnel action during a reasonable specified period is nonexempt information. OAG 82-506.

Where a newspaper reporter requested information as to the age and address of present and former university employees, she was asking for information of a personal nature which was made exempt from mandatory public disclosure by subdivision (1)(a) of this section and the university was correct in relying on that statutory provision in denying the request. The university's offer to provide statistical data and nonexempt information on named individual employees, which presumedly would inform the requester of the name, position, work station and salary, satisfied the requirements of the law. OAG 82-506.

Where a request was made to inspect "lists or records that would designate laid-off faculty members as tenured or nontenured" such contract status was a public matter and the university should comply with the request. OAG 82-506.

The exemptions in the Open Records Law provided in subsection (1) of this section are permissive, not mandatory and, since Kentucky has no privacy law, a records' custodian has the authority to release exempted records unless there is some statute which makes the records confidential; there is no such statute pertaining to personnel records and, therefore, a school superintendent would have the authority to make teacher personnel records available to the public unless the school district had a policy of keeping the records confidential. In such case, every person requesting to inspect the records should be treated alike. OAG 83-329.

Under the Kentucky Open Records Law and under Kentucky case law a school superintendent had the legal right to refuse to send the personnel files of other teachers to the EEOC on the grounds that to do so would violate their personal privacy. OAG 83-329.

Documents pertaining to student's suspension were open to inspection by him, except documents which contained preliminary drafts, notes, correspondence with private individuals or preliminary recommendations and memoranda in which opinions were expressed or policies formulated or recommended, which could be properly exempted from his inspection; any complaints against him were also open to his inspection as were any written decisions by the disciplinary board. OAG 83-332.

The names, positions, and addresses of all the persons who were on the disciplinary board which found for student's suspension were open to student's inspection under KRS 61.835; however, the selection and appointment documents were exempt as "preliminary recommendations." OAG 83-332.

A letter written to the head of a university's art department by the university's president on behalf of the board of regents containing charges against the department head was exempt from inspection under subdivision (1)(a) of this section as a protection against an invasion of personal privacy of the department head, and under subdivision (1)(g) of this section as correspondence with a private individual which was not intended to give notice of a final agency action. OAG 83-358.

The class and grade statistical data of the Comprehensive Tests of Basic Skills, a standardized test administered to 3rd, 5th, 7th, and 10th grade students, as compiled by the Jefferson County Public Schools and released to each individual school, are open to public inspection under the Open Records Law, as long as the class and grade reports are not descriptive of any readily identifiable person. OAG 83-371.

Where one university student seeks the release of a tape or transcript of a student disciplinary hearing in which several other students were also involved, only those parts of the tape or transcript which relate to the student requesting access are available to him, since the other students have the right under subdivision (1)(a) of this section to nondisclosure of private information. OAG 83-427.

A student involved in student disciplinary proceedings at a university can be exempted from inspecting the records of the hearing (1) if public disclosure constitutes a clearly unwarranted invasion of another's privacy (such as another student); (2) if the records contain preliminary drafts, notes, correspondence with private individuals (other than a notice of final action); (3) if the records contain preliminary recommendations or memoranda which express opinions or policies; (4) and if disclosure is prohibited by federal law or regulation or by the Kentucky General Assembly. OAG 83-427.

The denial of a request to inspect the letter of a disciplinary recommendation from a school principal to the Board of Education was proper, because even excising the names of those involved would not be sufficient to protect their privacy, and furthermore, because the letter was a preliminary recommendation expressing an opinion or recommending a policy. OAG 85-90.

Since a school district is a public agency under the Open Records Law, and the certificates required by KRS 161.020 are

public records as defined in KRS 61.870(2), denial of a request to inspect the certificates required by KRS 161.020 to be filed with the Board of Education was improper under the Open Records Law, except that information, if any, on the certificates of a personal nature, such as social security numbers, home addresses and telephone numbers, need not be released. OAG 85-109.

Denial by the Department of Education of a request to inspect documents described as investigatory documents, memoranda, notes and preliminary recommendations regarding an investigation of a county school system and its superintendent was proper but only until such time as the Department completed its enforcement action or made a decision to take no such action, at which time the complaints minus the complainants' names would have to be made available for public inspection. OAG 85-126.

Denial of the request to inspect records of a former student, now deceased, including that student's application for admission and scholastic transcripts, where no parental consent had been obtained, was proper under the Open Records Act, subdivisions (1)(i) and (j) of this section and subsection (2) of KRS 164.283, pertaining to the confidentiality of such records. OAG 85-140.

The school system's denial of the request to inspect the actual examination administered by the school to the requesting party's child, which examination will be given again by the school system, was proper pursuant to subdivisions (1)(e) and (i) of this section. OAG 86-2.

The school system acted in conformity with the Open Records Law in not providing copies of teacher evaluations because if the former teacher's personnel file contained no evaluations of her performance as a teacher, a request to inspect evaluations was moot, and if the personnel file did contain such evaluations, the denial of the request to inspect those evaluations was supported by the exception to public inspection set forth in subdivision (1)(a) of this section. OAG 86-15.

Orders of the Treasurer, which are not the actual bills received by the school system but documents prepared by the treasurer primarily for internal use relative to the school board's bill approval process, retain a preliminary characterization which would permit the school system to refuse public inspection of them, until such time as the school board formally considers such orders and adopts and incorporates as its course of action and final decision the terms, conditions and recommendations contained in those orders. OAG 86-42.

The school superintendent's temporary withholding from public inspection of the "Administrative Memorandum" was proper pursuant to subdivision (1)(h) of this section, so long as he furnished upon request material relative to the monthly financial report, as such a memorandum was not an agenda but a preliminary intrasystem memorandum containing the superintendent's proposals and recommendations relative to items to be considered at meetings of the Board of Education. OAG 86-54.

The school superintendent's denial of the request to inspect teacher attendance records for a particular time period was improper under the Open Records Act as such documents are not protected by the privacy exemption under subdivision (1)(a) of this section because the teachers, as public employees, are only entitled to compensation for services rendered and the attendance sheets verify that they were present and on the job during any particular time period. OAG 86-55.

The University of Louisville's refusal to release the names of the donors and potential donors on whose behalf the University expended money in connection with University fund raising efforts was within the privacy exception to public inspection set forth in subdivision (1)(a) of this section, particularly since the University had already released the actual amounts of money spent in such situations. OAG 86-76.

Denial of the request to inspect and copy documents pertaining to an investigation of a teacher, consisting of preliminary recommendations and preliminary memoranda in which opinions were expressed, was proper as such documents did not set forth the final decision of the Board of Education and the Superintendent relative to the teacher in question. OAG 87-23.

The county board of education acted within the provisions of the Open Records Act when it refused to furnish the requesting party a copy of that portion of a tape recording of its meeting involving an executive or closed session, as such a tape recording constitutes a preliminary draft and preliminary notes of such a proceeding. OAG 87-44.

The school system improperly denied the applicant-teacher's request for a copy of that portion of a tape containing the applicant-teacher's answers to questions propounded by the school system, the questions having been asked as part of the school system's teacher selection process. OAG 87-56.

The tapes of the hearing concerning a teacher contract termination proceeding conducted pursuant to KRS 161.790 were available for public inspection under the Open Records Law, even though the tapes were in the possession of the reporter-transcriber rather than the Board of Education, as the teacher requested a public hearing and the matter had not reached the courts. OAG 87-62.

If the state university is a recipient of federal funds, it must conform to the provisions of the Family Educational Rights and Privacy Act of 1974 (the Buckley Amendment) to retain its eligibility for those funds and, therefore, the denial by the university of requests for all material involving and pertaining to students' "education records" was proper and was supported by subdivision (1)(i) of this section and 20 USCA § 1232. OAG 87-67.

The school system's refusal to release for public inspection the resume of one of its employees was supported by the exception to public inspection set forth in subdivision (1)(a) of this section relating to protection against an unwarranted invasion of personal privacy. OAG 87-77.

The public agency's response to a request for materials pertaining to payroll and financial data concerning the officers and employees of a school district was sufficient and proper as the public agency furnished the requesting party with a list containing the annual salaries and hourly wage figures of those officers and employees. OAG 88-13.

Denial of the request to inspect documents consisting of information, written statements, recordings, reports, and summaries of information pertaining to an investigation by school authorities of an incident involving students on school property was supported by exceptions to public inspection set forth in subdivisions (1)(g), (h) and (i) of this section and the federal Family Education and Privacy Rights Act. OAG 88-38.

Since the federal Family Educational and Privacy Rights Act sets forth provisions relative to the prohibition against the release of records pertaining to students in the absence of written consent of the parent or an appropriate court order, such records may be excluded from public inspection under subsection (1)(e) of this section. OAG 88-38.

A university's copy of a letter from the National Collegiate Athletic Association (NCAA) addressed to counsel representing the university's assistant coach was a public record subject to public inspection, and the exceptions to inspection were not applicable because the document in question was not correspondence between the university and a private party, and it was not a document prepared by anyone connected with the university. OAG 88-47.

While the school system may refuse to disclose the home addresses of students, it may not withhold the names of students attending the school. A list of names should be furnished, if currently available, or the school system should prepare such a list or let the requesting party prepare his or her own list from school system records. OAG 88-50.

A personnel folder of a public employee, by its very nature, contains a mixture of documents which are subject to inspection and which may be excluded from public inspection; rather than a "shotgun" approach or engaging in a sort of fishing expedition, a request to inspect personnel documents should be specific as to the kinds of records and documents which are the subject of the request to inspect. OAG 88-53.

A letter from the vice chancellor of a university to a member of the athletic department staff, which contained his preliminary impressions, observations, and opinions about various aspects of the operation of the basketball camp, did not represent the university's final decision or determination relative to the matter and could properly be withheld from public inspection. OAG 88-57.

Where the private college did not receive any grants or loans from the Higher Education Assistance Authority, there was no evidence that the college was a "public agency" within the meaning of subdivision (1) of KRS 61.870, and the college properly denied the request to inspect its records and documents as it was not subject to the terms and provisions of the Open Records Act. OAG 88-61.

When the media attempts to carry out an evaluation regarding the quality of schools throughout the state, there is no unwarranted invasion of personal privacy in examining relevant prior work experience and educational qualifications of employees or former employees, and the same view applies to educational qualifications or levels attained by public employees. OAG 89-90.

A schoolteacher's college transcript is not subject to inspection, where a school board has denied inspection pursuant to subdivision (1)(a) of this section. OAG 89-90.

Tape recordings of board of education meetings were public records within the meaning of KRS 61.870(2), although inspection thereof could be denied on the ground that the recordings were preliminary drafts regarding preparation of the official minutes, as inspection of preliminary drafts may be denied pursuant to subdivision (1)(g) of this section. OAG 89-93.

A state university acted consistent with Open Records provisions in denying inspection of records where the majority of the several hundred records sought contained "education records," as defined, and effectively made confidential by, the federal Buckley Amendment, such that virtually all of the records requested would require redaction or masking to remove information personally identifiable to a student; an unreasonable burden in view of the scope of the request(s), if the records were to be made available for inspection without jeopardizing federal aid. OAG 90-24.

A state university failed to act consistently with Open Records provisions in denying a request to inspect five particular public safety dispatcher log cards, where the request for those specified items was particular, and narrow in scope, thus making redaction or masking of confidential information feasible without placing an unreasonable burden upon the agency. OAG 90-24.

Police dispatch cards are subject to public inspection where such dispatch logs are of a general jurisdiction police agency or sheriff's office; this does not apply, however, to logs generated by a university law enforcement unit subject to Buckley Amendment provisions. OAG 90-24.

The Department of Education was not required to compile a listing to conform to a given request to inspect public records. OAG 90-26.

A county board of education failed to act consistently with Open Records provisions by failing to make a written response stating the specific basis for its denial of inspection of records reflecting exact beginning and ending salary payments to a teacher, and in refusing to allow inspection of such records. OAG 90-30.

The members of the University of Kentucky Alumni Association are neither state employees nor state licensees; they much more closely resemble members of a voluntary organization receiving at least 25% of its funding from state or local funds, and although the home addresses of those members are not required to be divulged by subdivision (1)(a) of this section, their work addresses do not fall under the exemptive language of this section. OAG 90-60.

County Board of Education did not act consistent with the provisions of this act in denying attorney's request to inspect a letter from police chief in which the chief expressed his concern to school superintendent as to misgivings regarding a promoter engaged to arrange a fund raising event to be staged at a school facility; even though there was a police investigation concerning the promoter, the letter was not a record of the police, and thus, the board's reliance on subdivision (1)(f) of this section to withhold the letter was not justified, nor would the board be justified in withholding the letter based on subdivision (1)(g). OAG 90-140.

School district improperly denied the request of the Department of Public Advocacy for access to material pertaining to the internal investigation conducted by school authorities relative to a disciplinary proceeding involving a student, for the provisions of subsection (5) of this section require such a disclosure to a public agency in the performance of its legitimate governmental functions. OAG 91-22.

The Hardin County Schools may refuse to release its recommendations on salary increases under subdivision (1)(h) of this section. The requested documents fit squarely within this exception, and if upon final action of the school board, these recommendations are adopted, they will become public records and must be made available for inspection. OAG 91-78.

Where university president adopted the recommendations of the Grievance Committee in concluding that no violations of personnel policy had occurred, and thereafter attempted to conciliate faculty member by requiring the Director to explain those policies to her but did not order that any remedial action be taken, nor did he offer any other explanation for her decision, or reject the findings and recommendations of the Committee, although the president failed to employ any legal "terms of art" in incorporating these findings, it is clear that she adopted the Committee's report, and that the report thereafter lost its preliminary status and was not exempt under subdivision (1)(h) of this section. OAG 91-90.

Where person requesting documents regarding detention of student at a school and the report and findings of an investigation conducted by the Department for Social Services did not demonstrate that he fell under any of the statutorily recognized classifications of KRS 620.050 or this section or that his particular situation warrants the release of the requested material his request was properly denied. OAG 91-93.

Where the letter of reprimand issued by public school to an individual who was the subject of investigation which enumerated the charges against him and advised him of the action taken against him and did not refer to, or incorporate any portion of, a report compiled in the course of the investigation, the documents which comprise the report were preliminary to the final decision and were properly withheld from public inspection pursuant to subdivisions (1)(g) and (h) of this section. OAG 91-102.

Tapes of investigative proceedings involving university and client of attorney requesting tapes were, for purposes of the Open Records Act, public records since the hearing at which the tapes were made was conducted by a public agency and involved an employee of a public agency, the tapes were not made solely to assist the university in preparing minutes of the hearing and thus subdivisions (1)(g) and (h) of this section were inapplicable; the tapes were used as the basis for report of university's counsel to the president, upon which final disciplinary action was taken, thus to the extent that they were adopted into this final action, they lost whatever preliminary status they may have enjoyed as internal investigative

materials; therefore the university improperly denied attorney's request for access to the tapes of the investigative proceeding of which his client was the subject as it was clear that the tapes were not exempt from disclosure pursuant to subdivision (1)(j) of this section, and the attorney-client work product doctrine. OAG 91-109.

Clearly, the Personnel Department of state government has no authority to regulate university personnel matters, and any changes wrought in the laws pertaining to state employees governed by KRS Chapter 18A have no bearing on university employees. Accordingly, KRS 18A.020 and, to the extent that it merely cross references the latter provision, subsection (3) of this section are inapplicable to university personnel policies and procedures. OAG 91-128.

The 1986 amendments, of KRS 18A.020 and subsection (3) of this section, do not preclude the university from properly withholding records under subdivisions (1)(a) through (j) of this section when a request is made by a university employee for records pertaining to him. OAG 91-128.

Salary recommendations are exempt from inspection under subdivision (1)(h) of this section until such time as they are acted upon and adopted by a governing board, OAG 79-469, OAG 91-78, and although the party requesting the documents is an employee of the University of Kentucky, and is therefore an employee of the state, he is not entitled to inspect and copy any record that relates to him pursuant to subsection (3) of this section. OAG 91-133.

As a member of the supervisory staff of the Department for Adult and Technical Education, employee was subject to the personnel policies of that Department, and not governed by KRS Chapter 18A; accordingly, subsection (3) of this section was not applicable to his open records request. OAG 91-154.

Inter- and intra-office memoranda, setting forth the opinions, observations and recommendations of agency personnel, which do not represent the agency's final decision on the matter, may be excluded from public inspection pursuant to subsections (1)(g) and (h) of this section. OAG 91-154.

A university may properly withhold performance evaluations under authority of subsection (1)(h) of this section, which authorizes nondisclosure of preliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended. OAG 91-161.

Although a writing was generated in the course of the annual review of the university president, that writing did not represent a "final report" as it was not prepared on official letterhead, nor did it bear the signature of the chairman or any member of the board. OAG 91-161.

If the disputed document, pertaining to university president's evaluation, describing his overall performance, was considered "final," it nevertheless would fall squarely within the parameters of subsection (1)(h) of this section. OAG 91-161.

The employment applications of school system employees, and other records of educational qualifications requested were subject to inspection; information of a personal nature contained in these documents, such as home address, phone number, social security number and marital status, should be separated and redacted in accordance with subsection (4) of this section. OAG 91-176.

School was required to release to a parent a copy of the internal investigative report prepared by employees of the public school following an incident involving her son at a middle school. OAG 91-177.

A memorandum to the County Board of Education concerning the preferment of charges against a teacher, and a letter to the Office of Legal Services of the Kentucky Department of Education advising that agency of the commencement of disciplinary action were properly withheld under subsection (1)(h) of this section. OAG 91-198.

A report written under KRS 161.120(2)(a) and (b) does not represent final agency action, but is more closely analogous to an internal affairs report and is exempt under this section. OAG 91-198.

Disciplinary action taken against teacher, and the charges from which that action stemmed, were related to the performance of his public duties, and therefore the records were not shielded from disclosure by subsection (1)(a) of this section. OAG 91-198.

Teacher's letter of resignation and the board minutes adopting same were properly released. OAG 91-198.

A letter relating to the building level portion of an audit of the school district fiscal activity written to the superintendent by the public accountant is a public record subject to inspection. It is not exempt as "correspondence with private individuals." A contractor to a governmental entity loses any character of "private individual" in connection with correspondence regarding administration or issues associated with administration of a governmental or public contract. OAG 92-44.

The Cabinet for Workforce Development was directed to release the employment application and resumes of the named employees of a state vocational-technical school, after separating or otherwise masking any information of a personal nature which appeared on those documents, including the employees' home addresses, social security numbers, and medical information; if the employees' teaching certificates were contained in the file, they too should have been released. OAG 92-59.

Where credit cards that bear the state university logo are privately owned, are the financial responsibility of the individual whose name appears on them, and no university funds are expended to discharge the debts incurred by the card holders or in payment of the annual fee, they are exempt under subsection (1)(a) of this section, even though printouts of charges of such credit cards must be considered a public record within the meaning of subsection (2) of KRS 61.870, since such printouts contain information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. OAG 92-110.

Inspection of credit card charges must be permitted when the charges are incurred by a public agency and involve the expenditure of public funds. OAG 92-110.

Members of board of education may only inspect the nonexempt records contained in the personnel files of certified and classified employees. Since the board of education no longer plays any role in personnel actions, it does not enjoy any greater right of access to the files by virtue of subsection (5) of this section. The board's right to inspect the personnel files of certified and classified employees of the school system is therefore the same as the right of inspection enjoyed by any citizen under this section. OAG 92-141.

The superintendent of a county's public school improperly invoked this section to authorize nondisclosure of his performance evaluation. The public's interest in reviewing those portions of the evaluation which have a direct bearing on his management of the school system, and the progress of the school system generally is superior to the reduced expectation of privacy in that document which the superintendent of public schools might have. Only those portions which contain personal information, the release of which would serve no legitimate public interest, are exempt from public inspection. OAG 92-ORD-1145.

University's board of regents did not forfeit its right to invoke the legitimate exceptions to the Open Records Act just because it violated the Open Meetings Law. The records reviewed by the board relative to the proposed budget which occurred during an improperly closed meeting, and all other records of a preliminary character, still enjoyed the protection of subsection (1) (i) of this section, independent of the Open Meetings issue, until final action was taken by the Board. OAG 92-ORD-1346.

University's board of regents denial of a request for access to certain records which were generated in the course of a closed session conducted by the board of regents in its regular

meeting was improper. The board of regents violated this section to the extent that its closed discussions focused on classes of, as opposed to specific, individuals. However, only those records which reflected discussions of classes of individuals were subject to inspection. OAG 92-ORD-1346.

University violated the Open Records Act in denying a third party's request under this section where the documents which gave rise to this appeal consisted of a one paragraph letter from a newspaper reporter to university counsel in which the newspaper requested copies of the evaluation report and supporting documents regarding the university board of trustees' evaluation of the university president, and a two paragraph response on university letterhead in which the official custodian of records, denied the request. Nothing in this correspondence could be deemed to touch on the intimate or personal features of the newspaper reporter's life and the university asserted no other privacy interest which might be implicated by release of the documents. OAG 92-ORD-1440.

School which received federal funds was prohibited by operation of subsection (1)(j) of this section from releasing education record to person who was interested in the record in order to ascertain if he was listed on the record as the father of the child since a federal law, the Buckley Amendment, bars the release of an education record, such as an enrollment application to a third person, without the prior written consent of a parent, for while such person believed he was the father of the named child, paternity had apparently never been established and such person must be treated as a third person, for purposes of the Buckley Amendment, until such time as paternity has been established, and the child's education records should not be released to him without the child's mother's written consent. OAG 92-ORD-1640.

OAG 90-24 is overruled; records of a campus law enforcement unit maintained by the unit for the purpose of law enforcement are no longer subject to the federal law, but are instead governed by the Kentucky Open Records Law. OAG 93-3.

Western Kentucky University properly denied a request for portions of student evaluations of instructors in the Physics and Astronomy Department for the past five years which "were used in determining whether a professor received any particular benefit or detriment," or "which have a direct bearing on the management and functions of the department." OAG 93-ORD-17.

Subdivisions (1)(j) and (1)(k) of this section authorize nondisclosure of records made confidential by federal or state law and are not overridden by subsection (3) of this section. OAG 93-ORD-19.

Subsection (3) of this section overrides any of the exemptions to public inspection set forth in subdivisions (1)(a)-(i) of this section, with the exception of examinations and documents relating to ongoing criminal or administrative investigations even when they are requested by the public agency employee and relate to him, when an open records request is submitted by a public agency employee or university employee. OAG 93-ORD-19.

Where disputed records were prepared in the course of an interview with a university employee, and related to his complaint filed with the Affirmative Action Office, those records fell squarely within the parameters of subsection (3) of this section and should have been released by the university. OAG 93-ORD-19.

University violated the Open Records Act in redacting portions of a police incident report pursuant to subdivision (1)(a) of this section on records requested by a newspaper where release of the redacted portions of the report did not constitute a clearly unwarranted invasion of an individual's privacy since the public's interest in disclosure was superior to his privacy interest. OAG 93-ORD-21.

School district properly denied request of attorney representing the board of education of one (1) county for records of second school district in second county under authority of Family Educational Rights and Privacy Act of 1974 (FERPA) which is incorporated into the Open Records Act by operation of subdivision (1)(j) of this section although educational officials in the second county may release education records to state and local educational officials in connection with the audit and evaluation of a federally or state supported program pursuant to 20 U.S.C. § 1232g (b) (5), they are not required to do so. OAG 94-ORD-17.

Documents which were submitted to University Administrator by the Office of Legal Counsel relative to the University's meeting policy and which were the basis for Administrator's memorandum to requester of documents, were not shielded by the attorney-client privilege. OAG 94-ORD-108.

Handwritten notes taken by a public employee in the discharge of his public duties may properly be treated as public records. While in most instances, such notes would be excluded from public inspection by operation of subdivision (1)(h) of this section, subsection (3) of this section mandates the release of "any record including preliminary and other supporting documentation" to a public employee, including a university employee, upon request, as long as those records "relate to him." OAG 94-ORD-108.

Request for each document used as a reference for University's faculty handbook section on conducting meetings, and each document used as a reference for the section on access to and destruction of records was improperly denied as a "request for a list of reference sources"; in light of the preface appearing in the handbook, the University could not legitimately claim that the request was too nonspecific. OAG 94-ORD-108.

Request for formal merit evaluation forms containing the final merit evaluation ratings for two faculty members for each year they were employed by the University was properly denied based on subdivisions (1)(a), (1)(h), and (1)(i) of this section. OAG 94-ORD-108.

University improperly denied release of unredacted copies of letter of resignation submitted by a number of University employees, but University was permitted to redact those portions of one resignation letter which pertain to employee's merit evaluation and student evaluations. OAG 94-ORD-108.

University improperly redacted portions of the Chancellor's letter to the Dean of the College of Agriculture notifying the Dean that the recommendation to promote a faculty member to the rank of full professor was not approved. OAG 94-ORD-108.

University must release the departmental recommendation that a faculty member be placed on a terminal contract but the University may redact those portions of the recommendation which contain personal opinions not adopted by the Dean. OAG 94-ORD-108.

Where faculty committee appointed by the dean to evaluate faculty member had no independent authority to determine what final action would be taken relative to faculty member's continuing service as chairman of department, and where the dean did not memorialize his decision to retain faculty member as department chair nor did he incorporate the committee's evaluation or adopt it as his final action, request for release of performance evaluation was properly denied by the university as a predecisional document. OAG 94-0RD-132.

A member of a school board is entitled to documents of the school system which relate to a legitimate governmental purpose and the board member's public function. If the request is for records which fall outside this area, then the board member's right of inspection would be the same as that of any other citizen under the Open Records Act. OAG 96-ORD-110.

If a board member makes a request for copies of records under the Open Records Act, then he or she may be charged a reasonable fee for copies of the public records. OAG 96-ORD-110.

County public schools system properly relied upon subsection (1)(a) of this section in denying newspaper reporter's request for information as to each individual employee's race and gender. Providing the requester with alternative information, through a computer printout, as to the specific number of employees at each location which included personnel totals by race and sex broken down by schools, salaried employees and hourly employees met the principal purpose of the Open Records Act. This alternative information allowed the citizen to monitor the functioning and operations of the public agency and to be informed as to what their government was doing. 96-ORD-232.

University properly relied on subsection (1)(a) of this section to authorize nondisclosure of the amounts of outside income of members of the athletic department, but subsection (1)(a) of this section does not authorize nondisclosure of the sources of that income. 97-ORD-85.

Former employee of university was improperly denied access to all otherwise exempt records relating to university's decision not to renew his contract and all records relating to complaints about him, except those that implicated the federal Buckley Amendment, 20 U.S.C. § 1232g, and any records properly classified as education records within the meaning of the statute may be withheld pursuant to subsection (k) of this section. 97-ORD-87.

Subsection (1)(l) prohibits the disclosure of information which has been made confidential by the General Assembly; thus a teacher's request for full access to records relating to a complaint filed agint her was properly denied, as release of this information is prohibited by KRS 7.410(3). OAG 98-ORD-149.

A requestor was entitled to know the names of students enrolled in a future farmers program during a specified period if the county school system had designated this information as directory information; if the school system had not done so, such information, along with all other records generally characterized as education records, was properly withheld. OAG 99-ORD-26.

Where the requester sought information from a board of education which was contained in numerous records, the board properly afforded the requester an opportunity to examine the records and to compile the information herself. OAG 99-ORD-33.

Where the office of academic affairs of Western Kentucky University issued a reprimand to the director of its Glasgow Extended Campus after an investigation and review of a complaint of sexual harassment by the Equal Opportunity Office, the university improperly withheld the letter of reprimand and the complaint of sexual harassment from which it stemmed, notwithstanding the fact that the university characterized the reprimand as an internal disciplinary procedure; the university could take reasonable steps to protect the identity of the complainant by masking her name and any personally identifiable information which appeared in the complaint, investigative report, and reprimand along with the names of other complainants and witnesses, but the privacy interests of the director were not entitled to the same consideration as he violated the public trust by engaging in improper conduct in the performance of his official duties. OAG 99-ORD-39.

The Western Kentucky University was required to disclose the letter of resignation submitted by the director of its Glasgow Extended Campus after an investigation and review of a complaint of sexual harassment by the Equal Opportunity Office. OAG 99-ORD-39.

The Western Kentucky University was required to disclose the minutes of the open portion of a meeting of a sexual harassment grievance appeal committee pertaining to a complaint against the director of its Glasgow Extended Campus. OAG 99-ORD-39.

The Western Kentucky University was required to disclose records documenting the disbursement of public funds to the director of its Glasgow Extended Campus after an investigation and review of a complaint of sexual harassment by the Equal Opportunity Office, notwithstanding a confidentiality agreement relative to the amount and character of the consideration paid. OAG 99-ORD-39.

With respect to correspondence between the Western Kentucky University and the director of its Glasgow Extended Campus in which the director was asked to resign or threatened with termination or a change in status or duties, because the director resigned before such threats could be carried out, such correspondence could be withheld pursuant to subsection (1)(j). OAG 99-ORD-39.

Response cards submitted by parents of children enrolled at a middle school to the county public schools, reflecting the decision to transfer their children from the school, qualified for protection as education records under both federal and state acts and, therefore, were exempt from disclosure under subsections (1)(k) and (1)(l). OAG 99-ORD-73.

Response cards submitted by parents of children enrolled at a middle school to the county public schools, reflecting the decision to transfer their children from the school, were exempt from disclosure under subsection (1)(a). OAG 99-ORD-73.

The Office of Education Accountability properly denied a request for access to an intra-office memorandum and the identity of an informant, which related to the requester's attempt to hack into or invade the agency's computer system. OAG 99-ORD-96.

A school district improperly refused to release a copy of a letter of suspension of a former principal of an elementary school and the principal's letter of resignation, notwithstanding that no final action was ever taken against the principal because of her resignation, since, otherwise, there would be no way for the public to evaluate a complaint made against a public employee in a matter related to her job performance and a matter about which the public has a right to know, and more importantly, no way for the public to effectively monitor public agency action, and insure that the agency is appropriately investigating and acting upon allegations of employee misconduct. OAG 99-ORD-116.

A county board of education properly denied a request for records of corporal punishment conducted in the school system as the release of the information would have constituted an invasion of personal privacy of the students involved. OAG 99-ORD-160.

A county school system did not violate the Open Records Act in denying a request to inspect a videotape recording of an incident involving the requester's son that occurred on a county school bus; the videotape qualified for exclusion from public inspection under KRS 81.878(1)(k) and (1)(l) which incorporate the Family Educational Rights and Privacy Act and its state counterpart into the Open Records Act as it contained information on more than one student and such information was inextricably intermingled and therefore nonsegregable, and, therefore, the school system could not disclose the videotape in such a way as to meaningfully honor the rights of the requester to inspect the tape without violating the corresponding rights of the other students and their parents in nondisclosure of the tape to third parties. OAG 99-ORD-217.

Subsection (1)(a) did not justify a school district's denial of access to a settlement agreement with a former employee since a review of the settlement agreement revealed little if anything which would cause the former employee such serious personal embarrassment or humiliation that it would overcome the presumption of openness; although brief references to the incident giving rise to her termination appeared in the agreement, these details no doubt came to light in the jury trial which resulted in her acquittal, appeared in the court

record, and received media coverage, and the former employee's desire to keep secret the amount of money she received, or the terms of the settlement, could be accorded little weight. OAG 00-ORD-5.

A school district's denial of access to a settlement agreement with a former employee could not be justified by subsection (1)(l), operating in tandem with KRS 161.790(5), since the latter statute does not shield from disclosure a settlement agreement entered into by a teacher and a school district. OAG 00-ORD-5.

The Kentucky High School Athletic Association properly relied upon subsection (1)(j) in denying a request for "Top 25" and "Scratch" lists since the lists were preliminary recommendations in which opinions were expressed; the very act of a coach in electing to rank or scratch a game official constituted the expression of an opinion by the coach, and the ultimate decision-making authority rested with the assigning secretary who relied on the lists as an aid in assigning game officials. OAG 00-ORD-29.

The Kentucky High School Athletic Association properly relied upon subsection (1)(a) in denying a request for "Top 25" and "Scratch" lists since disclosure of such records would constitute a clearly unwarranted invasion of personal privacy in the absence of a superior public interest in inspection of the records; in the evaluative records at issue, officials' performances were rated as high, moderate, or low, and in some instances the officials were entirely disallowed, or scratched, as unacceptable, and given the passions that competitive sports ignite, and the largely subjective nature of the duties the officials performed, the records warranted even greater protection than a typical evaluation. OAG 00-ORD-29.

A school system properly denied a request for documentation collected and/or generated by the school system that was forwarded to a Commonwealth's Attorney regarding a former transportation department supervisor since the Commonwealth's Attorney and/or the Kentucky State Police were still in the process of investigating the matter. OAG 00-ORD-78.

A state university improperly relied on subsection (1) as a basis for a blanket denial of a request by an attorney for various records pertaining to a university employee who was involved in litigation with a client of the attorney. OAG 00-ORD-97.

Subsection (1)(a) did not permit a state university to withhold disclosure of various records pertaining to a university employee, including her telephone records, time sheets, job descriptions, records reflecting disciplinary actions against her, and any personal files in her office computer; however, the subsection did permit withholding of portions of the employee's personnel file that contained such purely personal information as social security number, home address, and home telephone number, as well as her performance evaluation. OAG 00-ORD-97.

A county public school system violated the Open Records Act in partially denying a request for records relating to traditional school enrollment policies and residency requirements; the school system's reliance on KRS 160.705 et seq. and 20 U.S.C. § 1232g, incorporated into the Open Records by operation of subsections (1)(k) and (1)(l), was misplaced. OAG 00-ORD-119.

A county board of education properly partially denied a request for information and records pertaining to a high school principal when it furnished redacted copies of his job application and teacher certification, but refused to furnish a copy of his college transcript. OAG 00-ORD-126.

A county school system was not required to disclose bus run reports, including the names of the students assigned to each stop and the times at which the students are picked up and dropped off, the list of students that purchased parking permits at the high school, or attendance reports for each homeroom as such records were exempt from disclosure under subsections (1)(k) and (l) and the federal Family Educational Rights and Privacy Act and its state counterpart. OAG 00-ORD-148.

A county school system was not required to disclose attendance reports at a high school as such records were exempt from disclosure under 61.878 and the federal Family Educational Rights and Privacy Act and its state counterpart. OAG 00-ORD-155.

A school district properly denied a request for various student records, as it had not taken steps to designate any information contained in its student records as directory information; however, disclosure of a "fourth day count" reflecting total enrollment in the district was required as such count contained only raw data and was devoid of any personally identifiable information. OAG 00-ORD-158.

The Education Professional Standards Board improperly relied on subsection (1)(i) in denying a request for a copy of a report prepared by a board investigator into allegations against the requester of misconduct as he was entitled under subsection (3) to inspect and to copy any record including preliminary and other supporting documentation that related to him. OAG 00-ORD-159.

A county school system properly denied a records request by a reporter for copies of termination letters and all documents related to disciplinary action on charges filed by the school superintendent against two (2) teachers as such documents were preliminary correspondence other than correspondence which was intended to give notice of final action of a public agency and preliminary recommendations. OAG 00-ORD-164.

A university properly denied a request for a copy of a study done by a consultant concerning classified employees as the final study had not yet been submitted and the university had only received preliminary data reports, notwithstanding that the study had been discussed in open forums. OAG 00-ORD-195.

A county public school system properly denied a request for all complaints concerning the admission policies or procedures or administration of those policies applicable to a particular school as such records were exempt from disclosure under subsection (1)(k) and (l), incorporating the federal Family Educational Rights and Privacy Act and the Kentucky Family Education Rights and Privacy Act (KRS 160.705 et seq.). OAG 00-ORD-213.

NOTES TO DECISIONS

Analysis

3. Standard for nondisclosure.
4. Personnel files.
8.5. Standardized tests.
9. Nonexempt information.
12. Standing to contest agency decision.
16. Statistical information.
17. Public agency employees.

3. Standard for Nondisclosure.

In light of the clear recognition of an individual's right of privacy in Kentucky, the question of whether, absent a court order, information should be withheld from disclosure pursuant to subdivision (1)(a) of this section, is subject to a test of balancing the interests of the parties as well as those of the public, measured by the standard of a reasonable man. Board of Educ. v. Lexington-Fayette Urban County Human Rights Comm'n, 625 S.W.2d 109 (Ky. Ct. App. 1981).

4. Personnel Files.

There is no unqualified right for one governmental entity to examine the total personnel files of another governmental entity; accordingly, where the Human Rights Commission sought all personnel records of complainant and three other school security officers in an employment promotion sex discrimination case, the Board of Education need only disclose

such information as remains after it "sanitizes" the records, pursuant to subsection (3) of this section, to remove material not germane to the action. Board of Educ. v. Lexington-Fayette Urban County Human Rights Comm'n, 625 S.W.2d 109 (Ky. Ct. App. 1981).

8.5. Standardized Tests.

Open Records Act did not authorize court to order standardized examination to be available for viewing by parents; the discretion given to courts under that act is not unbridled, and in the case of an examination, the individual's interest must be balanced against the interest of the state in protecting the integrity of the examination. Triplett v. Livingston County Bd. of Educ., 967 S.W.2d 25 (Ky. Ct. App. 1997), cert. denied, 525 U.S. 1104, 119 S. Ct. 870, 142 L. Ed. 2d 771 (1999).

9. Nonexempt Information.

State university's response to inquiry by collegiate athletic association into rules violation was not exempt from disclosure under Open Records Act exemption for public records. It is clear that the university is a "public agency" and the entire response submitted by the university to the National Collegiate Athletic Association (NCAA) constitutes a public record. Where the university spent over $400,000.00 for the response and the public has a legitimate interest in its contents, the response is not exempt. Furthermore, the contents of the response are a matter of public interest and release would not constitute a clearly unwarranted invasion of personal privacy. University of Ky. v. Courier-Journal & Louisville Times Co., 830 S.W.2d 373 (Ky. 1992).

12. Standing to Contest Agency Decision.

A party affected by the decision of a public agency to release records pursuant to the Kentucky Open Records Act had standing to contest the agency decision in court where the disclosure of information in the public record would constitute a clearly unwarranted invasion of personal privacy. Beckham v. Board of Educ., 873 S.W.2d 575 (Ky. 1994).

16. Statistical Information.

A county school system was required to release statistical information relating to student disciplinary hearings without redacting the particular school and offense that appeared on those records, while redacting all information that would reveal any personal characteristics of the student, including name or age, or information that would reasonably lead to identification of the student. Hardin County Sch. v. Foster, 40 S.W.3d 865 (Ky. 2001).

17. Public Agency Employees.

KRS 61.878(1), specifically directing that no court shall authorize the inspection by any party of any materials pertaining to civil litigation beyond that which is provided by the Rules of Civil Procedure governing pretrial discovery, overrides the provisions of KRS 61.878(3), dealing with the rights of a public agency employee, including a university employee, to inspect and to copy any record that relates to him. Hahn v. University of Louisville, 80 S.W.3d 771 (Ky. Ct. App. 2001).

61.880. Denial of inspection — Role of Attorney General.

(1) If a person enforces KRS 61.870 to 61.884 pursuant to this section, he shall begin enforcement under this subsection before proceeding to enforcement under subsection (2) of this section. Each public agency, upon any request for records made under KRS 61.870 to 61.884, shall determine within three (3) days, excepting Saturdays, Sundays, and legal holidays, after the receipt of any such request whether to comply with the request and shall notify in writing the person making the request, within the three (3) day period, of its decision. An agency response denying, in whole or in part, inspection of any record shall include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld. The response shall be issued by the official custodian or under his authority, and it shall constitute final agency action.

(2) (a) If a complaining party wishes the Attorney General to review a public agency's denial of a request to inspect a public record, the complaining party shall forward to the Attorney General a copy of the written request and a copy of the written response denying inspection. If the public agency refuses to provide a written response, a complaining party shall provide a copy of the written request. The Attorney General shall review the request and denial and issue within twenty (20) days, excepting Saturdays, Sundays and legal holidays, a written decision stating whether the agency violated provisions of KRS 61.870 to 61.884.

(b) In unusual circumstances, the Attorney General may extend the twenty (20) day time limit by sending written notice to the complaining party and a copy to the denying agency, setting forth the reasons for the extension, and the day on which a decision is expected to be issued, which shall not exceed an additional thirty (30) work days, excepting Saturdays, Sundays, and legal holidays. As used in this section, "unusual circumstances" means, but only to the extent reasonably necessary to the proper resolution of an appeal:

1. The need to obtain additional documentation from the agency or a copy of the records involved;
2. The need to conduct extensive research on issues of first impression; or
3. An unmanageable increase in the number of appeals received by the Attorney General.

(c) On the day that the Attorney General renders his decision, he shall mail a copy to the agency and a copy to the person who requested the record in question. The burden of proof in sustaining the action shall rest with the agency, and the Attorney General may request additional documentation from the agency for substantiation. The Attorney General may also request a copy of the records involved but they shall not be disclosed.

(3) Each agency shall notify the Attorney General of any actions filed against that agency in Circuit Court regarding the enforcement of KRS 61.870 to 61.884. The Attorney General shall not, however, be named as a party in any Circuit Court actions regarding the enforcement of KRS 61.870 to 61.884, nor shall he have any duty to defend his decision in Circuit Court or any subsequent proceedings.

(4) If a person feels the intent of KRS 61.870 to 61.884 is being subverted by an agency short of denial of

inspection, including but not limited to the imposition of excessive fees or the misdirection of the applicant, the person may complain in writing to the Attorney General, and the complaint shall be subject to the same adjudicatory process as if the record had been denied.

(5) (a) A party shall have thirty (30) days from the day that the Attorney General renders his decision to appeal the decision. An appeal within the thirty (30) day time limit shall be treated as if it were an action brought under KRS 61.882.

(b) If an appeal is not filed within the thirty (30) day time limit, the Attorney General's decision shall have the force and effect of law and shall be enforceable in the Circuit Court of the county where the public agency has its principal place of business or the Circuit Court of the county where the public record is maintained.

(Enact. Acts 1976, ch. 273, § 6; 1992, ch. 163, § 6, effective July 14, 1992; 1994, ch. 262, § 6, effective July 15, 1994.)

Opinions of Attorney General. Where a former school district employee sought examination of all records of all teachers and administrators on extended employment in the years 1973-1980, the number of days or weeks worked beyond the 185-day school year, the amounts paid each for extended employment and records of length of administrators contracts, a mere showing of the minute books was insufficient. OAG 79-380.

The school board of an independent school district is entitled to physically inspect the invoices, vouchers and other records which have been created by operation of the school district business and the written contract concerning the employment of the superintendent. OAG 79-390.

Where a county school superintendent verbally denied a written request to inspect certain educational records pertaining to teacher assignments, the superintendent did not act in accordance with the Open Records Law, in that he failed to make a written reply to the request and he failed to give a statement of reasons explaining his denial. OAG 83-144.

School principal did not act in accordance with the Open Records Law when he did not either make the requested records available for public inspection or give the requester a reason why the records, or a part of them, would be kept confidential. OAG 83-248.

The denial of a request to inspect the letter of a disciplinary recommendation from a school principal to the Board of Education was proper, because even excising the names of those involved would not be sufficient to protect their privacy, and furthermore, because the letter was a preliminary recommendation expressing an opinion or recommending a policy. OAG 85-90.

Failure of county school superintendent to state in writing reasons for refusing to permit requesting party to inspect documents and to send a copy of the letter of denial to the Attorney General's office were violations of the Open Records Law. OAG 85-109.

The superintendent of the county schools did not comply with subsection (1) of this section since he did not respond in writing and he neither advised the requesting party that the records requested were available for inspection nor did he advise the requesting party the specific exception to public inspection he was relying upon in support of his decision to deny public inspection. OAG 86-86.

A county board of education failed to act consistently with Open Records provisions by failing to make a written response stating the specific basis for its denial of inspection of records reflecting exact beginning and ending salary payments to a teacher, and in refusing to allow inspection of such records. OAG 90-30.

Where university treated four separate requests for inspection of certain documents as one request, its response was improper for while it may well have wished to expedite this matter by issuing a single response, it nevertheless erred in failing to address the four requests in four separate responses. OAG 91-111.

In a request for inspection of certain documents where only some of the documents were readily available while others were in storage and would have to be located, those documents which were immediately accessible should have been made available for inspection, or a proper denial pursuant to subsection (1) of this section should have been issued; all documents could not be withheld until such time as those less accessible documents had been retrieved from storage. OAG 91-111.

Denial of the request to inspect a number of documents in the possession of the public schools was deficient in that it did not cite a specific statutory exemption authorizing nondisclosure, as required by subsection (1) of this section, nor was a copy of the letter of denial forwarded to Attorney General's office, as required by subsection (2) of this section. OAG 91-176.

The Interfraternity and Panhellenic Councils at Eastern Kentucky University may be deemed "public agencies" for purposes of the Open Records Act, only if they derive at least 25% of their funds from state or local authority; the term "funds" refers to a sum or sums of money, and while it is true that the Interfraternity and Panhellenic Councils derive an appreciable benefit from the University this benefit cannot be quantified, or otherwise translated into a monetary figure; therefore the Interfraternity and Panhellenic Councils are not public agencies within the meaning of KRS 61.870, et seq. and are not public agencies within the meaning of, or subject to, the Open Meetings Law. OAG 92-62.

Response to request for records was procedurally deficient insofar as it was not issued within three working days. Some 28 working days elapsed between the date of the request and the date of the response. Allowing for delays in the mail, the response was nevertheless untimely; however, since the college acknowledged its obligation under the Open Records Law to release all documents pertaining to the contractual relationship between college and company although the response was procedurally deficient, it was substantially correct. OAG 92-120.

Response of county board of education to request to inspect records containing the results of drug tests administered to school bus drivers that although records were available, counsel was reviewing the matter and a decision would be rendered in ten days was procedurally deficient as a public agency cannot postpone or delay the statutory deadline of subsection (1) of this section. Although the burden on the agency to respond in three working days is an onerous one, the only exceptions to this general rule are found at 61.872(4) and did not apply here. 97-ORD-2.

Although a county board of education issued a timely written response to a request, the board violated the procedural requirements of the statute as it failed to cite the specific open records exceptions authorizing its partial denial of the request. OAG 99-ORD-26.

A board of education unreasonably postponed the requester's right of access to public records where the board extended the deadline for inspection of an abbreviated list of records for an additional 27 days, noting that eight (8) of these days were weekends and that its offices would be officially closed on three (3) other days during the 27 day period. OAG 99-ORD-44.

A school district properly discharged its duties under the Open Records Act by agreeing to permit the requester to

inspect the nonexempt portions of records containing the information she sought during its regular business hours where the requested information was not inclusively contained in any one comprehensive document. OAG 99-ORD-48.

A state university violated the statute where it failed to respond to a request for records until after receiving notice that an appeal would be filed. OAG 99-ORD-190.

The Kentucky State University violated the statute by failing to comply with the procedural guidelines for agency response set forth at subsection (1) and by failing to advise the requester in writing, and in clear and direct terms, that no records existed that were responsive to his request. OAG 00-ORD-82.

A school council violated the statute by failing to respond in writing, and within three (3) business days, to a request. OAG 00-ORD-123.

61.882. Jurisdiction of Circuit Court in action seeking right of inspection — Burden of proof — Costs — Attorney fees.

(1) The Circuit Court of the county where the public agency has its principal place of business or the Circuit Court of the county where the public record is maintained shall have jurisdiction to enforce the provisions of KRS 61.870 to 61.884, by injunction or other appropriate order on application of any person.

(2) A person alleging a violation of the provisions of KRS 61.870 to 61.884 shall not have to exhaust his remedies under KRS 61.880 before filing suit in a Circuit Court.

(3) In an appeal of an Attorney General's decision, where the appeal is properly filed pursuant to KRS 61.880(5)(a), the court shall determine the matter de novo. In an original action or an appeal of an Attorney General's decision, where the appeal is properly filed pursuant to KRS 61.880(5)(a), the burden of proof shall be on the public agency. The court on its own motion, or on motion of either of the parties, may view the records in controversy in camera before reaching a decision. Any noncompliance with the order of the court may be punished as contempt of court.

(4) Except as otherwise provided by law or rule of court, proceedings arising under this section take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date.

(5) Any person who prevails against any agency in any action in the courts regarding a violation of KRS 61.870 to 61.884 may, upon a finding that the records were willfully withheld in violation of KRS 61.870 to 61.884, be awarded costs, including reasonable attorney's fees, incurred in connection with the legal action. If such person prevails in part, the court may in its discretion award him costs or an appropriate portion thereof. In addition, it shall be within the discretion of the court to award the person an amount not to exceed twenty-five dollars ($25) for each day that he was denied the right to inspect or copy said public record. Attorney's fees, costs, and awards under this subsection shall be paid by the agency that the court determines is responsible for the violation.

(Enact. Acts 1976, ch. 273, § 7; 1992, ch. 163, § 7, effective July 14, 1992.)

Opinions of Attorney General. A "standing request" for all documents compiled by the Hardin County Schools for use by the board may properly be denied on the grounds that it fails to reasonably identify the records sought. While the purpose and intent of the Open Records Act is to permit the "free and open examination of public records," the right of access is not absolute. As a pre-condition to inspection, a requesting party must identify with "reasonable particularity" those documents which he wishes to review. OAG 91-78.

Cited: Board of Educ. v. Lexington-Fayette Urban County Human Rights Comm'n, 625 S.W.2d 109 (Ky. Ct. App. 1981).

NOTES TO DECISIONS

2. Standing to Contest Agency Decision.

A party affected by the decision of a public agency to release records pursuant to the Kentucky Open Records Act had standing to contest the agency decision in court where the disclosure of information in the public record would constitute a clearly unwarranted invasion of personal privacy. Beckham v. Board of Educ., 873 S.W.2d 575 (Ky. 1994).

61.884. Person's access to record relating to him.

Any person shall have access to any public record relating to him or in which he is mentioned by name, upon presentation of appropriate identification, subject to the provisions of KRS 61.878.

(Enact. Acts 1976, ch. 273, § 8.)

Opinions of Attorney General. University officials properly withheld inspection of the personnel file of the requester, which included letters of evaluation by faculty members, because the university was entitled to protect the privacy of the faculty members who wrote the letters of evaluation and because the letters contained preliminary recommendations and preliminary memoranda in which opinions were expressed; such faculty letters were exempt from inspection under KRS 61.878(1)(a) and (h). OAG 82-204.

Suspended student had the right, under this section and KRS 164.283, to inspect his transcript as it related to the classes he had taken while at the University and the grades received therefor. OAG 83-332.

Suspended student had the right to have a tape or transcript of any part of the disciplinary hearing which pertained to him and to documents relating to other disciplinary proceedings involving him. OAG 83-332.

Suspended student had the right of access to copies of all documents regarding financial aid agreements between him and the University since they pertained to his financial status at the University. OAG 83-332.

Documents pertaining to student's suspension were open to inspection by him, except documents which contained preliminary drafts, notes, correspondence with private individuals or preliminary recommendations and memoranda in which opinions were expressed or policies formulated or recommended, which could be properly exempted from his inspection; any complaints against him were also open to his inspection as were any written decisions by the disciplinary board. OAG 83-332.

Special Law Enforcement Officers

61.900. Definitions for KRS 61.902 to 61.930.

As used in KRS 61.902 to 61.930:

(1) "Commission" means a commission issued to an individual by the secretary of justice, entitling the

individual to perform special law enforcement duties on public property;

(2) "Council" means the Kentucky Law Enforcement Council;

(3) "Cabinet" means the Justice Cabinet;

(4) "Public property" means property currently owned or used by any organizational unit or agency of state, county, city, metropolitan government, or a combination of these. The term shall include property currently owned or used by public airport authorities;

(5) "Secretary" means the secretary of the Justice Cabinet;

(6) "Special law enforcement officer":

(a) Means one (1) whose duties include the protection of specific public property from intrusion, entry, larceny, vandalism, abuse, intermeddling, or trespass;

(b) Means one (1) whose duties include the prevention, observation, or detection of, or apprehension for, any unlawful activity on specific public property;

(c) Means one (1) whose special duties include the control of the operation, speed, and parking of motor vehicles, bicycles, and other vehicles, and the movement of pedestrian traffic on specific public property;

(d) Means one (1) whose duties include the answering of any intrusion alarm on specific public property;

(e) Shall include the Capitol police, the Capital Plaza police, public school district security officers, public airport authority security officers, and the officers of the other public security forces established for the purpose of protecting specific public property; and

(f) Shall not include members of a lawfully organized police unit or police force of state, county, city, or metropolitan government, or a combination of these, who are responsible for the detection of crime and the enforcement of the general criminal law enforcement of the state; it shall not include any of the following officials or officers:

1. Sheriffs, sworn deputy sheriffs, city marshals, constables, sworn deputy constables, and coroners;
2. Auxiliary and reserve police appointed under KRS 95.160 or 95.445, or citation and safety officers authorized by KRS 83A.087 and 83A.088;
3. State park rangers and officers of the Division of Law Enforcement within the Department of Fish and Wildlife Resources;
4. Officers of the Transportation Cabinet responsible for law enforcement;
5. Officers of the Department of Corrections responsible for law enforcement;
6. Fire marshals and deputy fire marshals;
7. Other officers not mentioned above who are employed directly by state government and are responsible for law enforcement;
8. Federal peace officers;
9. Those campus security officers who are commissioned under KRS 164.950;
10. Private security guards, private security patrolmen, and investigators licensed pursuant to state statute; and
11. Railroad policemen covered by KRS 277.270 and 277.280; and

(7) "Sworn public peace officer" means one (1) who derives plenary or special law enforcement powers from, and is a full-time employee of, the federal government, the Commonwealth, or any political subdivision, agency, department, branch, or service of either, or of any municipality.

(Enact. Acts 1976, ch. 178, § 2, effective January 1, 1977; 1980, ch. 188, § 20, effective July 15, 1980; 1986, ch. 331, § 15, effective July 15, 1986; 1992, ch. 48, § 4, effective July 14, 1992; 1992, ch. 211, § 13, effective July 14, 1992; 1992, ch. 435, § 2, effective July 14, 1992; 1998, ch. 23, § 13, effective July 15, 1998.)

Cross-References. Special local peace officers, KRS 61.360.

61.902. Appointment by secretary.

The secretary of the Justice Cabinet may commission special law enforcement officers, for such time as he deems necessary, to protect and to enforce the law on public property. Upon application of a unit or agency of state, county, city or metropolitan government, the secretary may appoint those persons recommended by the unit or agency who satisfy the requirements of KRS 61.900 to 61.930.

(Enact. Acts 1976, ch. 178, § 3, effective January 1, 1977.)

Opinions of Attorney General. A county board of education, as a unit of the state government, would not be required to file an application to have any of its employees commissioned as special law enforcement officers, but any security guards who are not commissioned would possess no more powers than a citizen. OAG 76-676.

61.904. Administration — Rules and regulations — Employees.

KRS 61.900 to 61.930 shall be administered by the secretary, or by any agency within the Justice Cabinet designated by the secretary and acting under his authority. The secretary shall make, promulgate, and enforce such rules, orders, regulations, and instructions as may be reasonable and necessary to carry out the provisions of KRS 61.900 to 61.930. The secretary may appoint such employees, and delegate such duties to the same, as he, in his sound discretion, deems appropriate.

(Enact. Acts 1976, ch. 178, § 4, effective January 1, 1977.)

61.906. Requirements for appointment.

In order to qualify for a commission as a special law enforcement officer under KRS 61.900 to 61.930, an individual must present satisfactory evidence of compliance with the following conditions and requirements:

(1) No person shall be eligible for a commission who:
   (a) Has been dishonorably discharged from the Armed Forces of the United States;
   (b) Has been convicted in any jurisdiction of any felony or of any crime involving moral turpitude for which he has not received a full pardon;
   (c) Has been convicted of any other offense or offenses more than five (5) times within the previous three (3) years;
   (d) Has by any court of competent jurisdiction been declared mentally disabled by reason of mental retardation or disease and has not been restored; or
   (e) Suffers from habitual drunkenness or from narcotics addiction or dependence, or from any physical defect or deficiency which the secretary determines to materially impair the applicant's ability to perform the duties of a special law enforcement officer.
(2) Every person to be eligible for a commission shall:
   (a) Have reached his twenty-first birthday;
   (b) Provide, on forms supplied by the secretary, such information pertaining to himself as may reasonably be requested thereon, including, but not limited to his: name; age; date of birth; current address and employment; prior addresses and employment for the past ten (10) years; aliases, if any; arrest and conviction record, if any; Social Security number; fingerprints; photographs; and general physical description. The accuracy of such information shall be attested by the applicant and his attestation shall be notarized by one authorized to administer oaths;
   (c) Be of good moral character;
   (d) Provide references from two (2) reputable residents of the Commonwealth who are not related to him and who have known him well for a period of not less than three (3) years, attesting to his good character;
   (e) Pay the fees provided in KRS 61.908; and
   (f) Provide evidence satisfactory to the secretary that he meets the following requirements:
      1. Is a graduate of an accredited high school or of an equivalent technical or vocational training or education program satisfactory to the secretary; or holds a G.E.D. certificate; provided, however, that all special local peace officers formally commissioned under KRS 61.360 and with unexpired commissions on December 31, 1976, shall be deemed to have met the requirements of this subsection;
      2. Has successfully completed not fewer than eighty (80) hours of training in a program approved by the council and dealing comprehensively with the subjects of criminal law and the law of arrest, search and seizure; or has been employed as a full-time sworn public peace officer for a period of not less than one (1) year within the past five (5) years, and has never been discharged for cause from employment as a sworn public peace officer; or has been employed in a full-time capacity as a military policeman engaged in law enforcement for the United States Armed Forces for a period of not less than one (1) year within the past five (5) years; or has successfully completed a written, oral and practical examination approved by the council and dealing comprehensively with the subject matter of criminal law and the law of arrest, search and seizure; and
      3. Demonstrates, in written and practical examinations approved by the council, knowledge of and proficiency in firearms safety, range firing, the moral and legal aspects of firearms use, and first aid. Provided, however, that all special local peace officers formally commissioned under KRS 61.360 and with unexpired commissions on December 31, 1976, shall be deemed to have met the requirements of these subsections.

(Enact. Acts 1976, ch. 178, § 5, effective January 1, 1988; 1982, ch. 141, § 45, effective July 15, 1982; 1988, ch. 283, § 3, effective July 15, 1988.)

Compiler's Notes. This section was amended by § 48 of Acts 1980, ch. 396, which would have taken effect July 1, 1982; however, Acts 1982, ch. 141, § 146, effective July 1, 1982, repealed Acts 1980, ch. 396.

61.908. Fees.

The following fees shall be required with respect to applications, examinations, and training for commissions:
(1) With the initial application, a fee of twenty-five dollars ($25);
(2) With application for renewal, a fee of twenty-five dollars ($25);
(3) Prior to any written examination approved by the Kentucky Law Enforcement Council, a fee of fifteen dollars ($15);
(4) Prior to any practical examinations on firearms proficiency approved by the council, a fee of twenty dollars ($20); and
(5) Prior to any training program approved by the council for special law enforcement officers, a reasonable fee as determined by the secretary to cover the cost of training;
(6) All funds received by the cabinet as fees pursuant to this section shall be available for use by the secretary in administering the provisions of KRS 61.900 to 61.930, and any excess funds not expended at the end of the fiscal year shall revert to the general fund.

(Enact. Acts 1976, ch. 178, § 6, effective January 1, 1977.)

61.910. Revocation or suspension of commission.

The secretary shall revoke or suspend the commission of any special law enforcement officer whenever he shall determine:

(1) That the commission-holder does not meet, or no longer meets, the requirements and conditions for the commission; or
(2) That the commission-holder has knowingly falsified an application or portion thereof, or has made any knowingly false or misleading statement of a material fact to the secretary or any of his delegates, agents or officers; or
(3) That the commission-holder has violated: Any provision of KRS 61.900 to 61.930; or any rule, regulations or order of the secretary; or any law of the Commonwealth or of the United States, the violation of which the secretary determines to bear a reasonable relationship to eligibility for the commission.

(Enact. Acts 1976, ch. 178, § 7, effective January 1, 1977.)

61.912. Power of arrest.

Any duly commissioned special law enforcement officer shall, while performing law enforcement duties upon the public property he is hired to protect, be empowered to arrest:
(1) Persons committing, in his presence and upon the public property he is hired to protect, any misdemeanor, any traffic violation, or any other violation as defined by KRS 500.080(17);
(2) Provided there exists probable cause to believe a felony has been committed upon the premises he is hired to protect, any person whom the officer reasonably and actually believes to have committed such felony upon the public property.

(Enact. Acts 1976, ch. 178, § 8, effective January 1, 1977.)

61.914. Other powers.

Duly commissioned special law enforcement officers shall have the power to issue tickets for parking violations committed upon the public property in their presence and the power of peace officers under KRS 431.015 to issue citations for misdemeanors, and other violations as defined by KRS 500.080(17), committed in their presence upon the public property.

(Enact. Acts 1976, ch. 178, § 9, effective January 1, 1977.)

61.916. Use of deadly force to make an arrest.

A special law enforcement officer may, in the course of accomplishing any lawful arrest for a felony committed upon the public property as herein provided, use and apply that force which he believes is necessary to make the arrest, except that he may only use deadly force to make such an arrest if:
(1) The officer, in making the arrest, is authorized to act as a special law enforcement officer; and
(2) The arrest is for a felony involving the use or threatened use of physical force likely to cause death or serious physical injury; and
(3) The officer believes that the person to be arrested is likely to endanger human life unless arrested without delay.

(Enact. Acts 1976, ch. 178, § 10, effective January 1, 1977.)

61.918. Use of force less than deadly force.

A special law enforcement officer may, in the course of accomplishing any lawful arrest for a criminal offense other than a felony committed upon the public property as herein provided, use and apply that force, less than deadly force, which he believes is necessary to make the arrest.

(Enact. Acts 1976, ch. 178, § 11, effective January 1, 1977.)

61.920. Area of jurisdiction of special officer.

The powers and duties of special law enforcement officers shall be confined to the premises of the public property to be protected, except while in pursuit of a person fleeing from the property after committing any felony or misdemeanor, other than traffic violations, on the property. In such case the officer may pursue the person and make arrest anywhere within this state. In the course of making a lawful arrest for a felony after such pursuit, he may use and apply that force which he believes is necessary to make the arrest, except that he may only use deadly force in making such an arrest if the conditions specified in KRS 61.916 are satisfied. In the course of making a lawful arrest for a criminal offense other than a felony after such pursuit, he may use and apply that force, less than deadly force, which he believes is necessary to make the arrest.

(Enact. Acts 1976, ch. 178, § 12, effective January 1, 1977.)

61.922. Construction.

Nothing in KRS 61.900 to 61.930 shall be construed as being in derogation of the common law, or of any statute of the Commonwealth, pertaining to:
(1) Arrest by a private citizen; or
(2) In any civil or criminal case, the defenses of protection of self, protection of another, protection of property, prevention of a suicide or crime and any other applicable justification defense set forth in KRS Chapter 503.

(Enact. Acts 1976, ch. 178, § 13, effective January 1, 1977.)

61.924. Use of public emergency vehicles.

Duly commissioned special law enforcement officers shall have the right to use and operate public emergency vehicles in accordance with KRS 189.910 through 189.993.

(Enact. Acts 1976, ch. 178, § 14, effective January 1, 1977.)

61.926. Special officers designated peace officers — Authorization to carry a concealed deadly weapon.

Special law enforcement officers duly commissioned under KRS 61.900 to 61.930 shall be deemed "peace officers" within the meaning of KRS 527.020 and shall be authorized to carry a concealed deadly weapon on or about their persons when necessary for their protection in the discharge of their official duties.

(Enact. Acts 1976, ch. 178, § 15, effective January 1, 1977.)

61.930. Citation of act.
KRS 61.900 to 61.926 may be cited as "The Special Law Enforcement Officer Act."
(Enact. Acts 1976, ch. 178, § 1, effective January 1, 1977; 1980, ch. 188, § 21, effective July 15, 1980.)

INFORMATION RESOURCES

61.950. Meetings — Roles and duties — Administrative Regulations. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1984, ch. 375, § 3, effective July 13, 1984; 1986, ch. 318, § 2, effective July 15, 1986; 1990, ch. 36, § 2, effective July 13, 1990; 1994, ch. 401, § 4, effective July 15, 1994; 1998, ch. 154, § 69, effective July 15, 1998; 1998, ch. 363, § 4, effective July 15, 1998) was repealed by Acts 2000, ch. 506, § 25 and ch. 536, § 37, effective July 14, 2000. For present law, see KRS 11.501 et seq.

PENALTIES

61.991. Penalties.
(1) Any person who knowingly attends a meeting of any public agency covered by KRS 61.805 to 61.850 of which he is a member, not held in accordance with the provisions of KRS 61.805 to 61.850 shall be punished by a fine of not more than one hundred dollars ($100).
(2) (a) Any official of a public agency who willfully conceals or destroys any record with the intent to violate KRS 61.870 to 61.884 shall be guilty of a Class A misdemeanor for each separate violation.
(b) Any official of a public agency who fails to produce any record after entry of final judgment directing that such records shall be produced shall be guilty of contempt.
(3) Any person who violates any of the provisions of KRS 61.900 to 61.930 shall be fined not more than two hundred fifty dollars ($250) or imprisoned not more than ninety (90) days, or both.
(Enact. Acts 1974, ch. 377, § 10; 1976, ch. 273, § 9; 1976, ch. 178, § 17, effective January 1, 1977.)

CHAPTER 62

OATHS AND BONDS

SECTION.

BONDS

62.060. Bonds of officers, depositories and fiduciaries — Form — Conditions — Amount — Renewal.
62.070. Action and recovery on bond.
62.080. Liability for public funds placed in depository.
62.160. Bonds of state officers — Minimum sum — Increase or renewal.
62.170. Bonds of state employees — Blanket bonds — Amount — Insurance companies that may participate.
62.180. Condition of bonds of state officers — Ex officio liability.
62.190. Conditions of blanket bonds.
62.200. Corporate surety on bonds of state officers and employees — Approval as to form and legality — Filing.

BONDS

62.060. Bonds of officers, depositories and fiduciaries — Form — Conditions — Amount — Renewal.
(1) Except as provided by KRS 395.130, the bond required by law to be executed and given by any public official, depository of public funds, or any fiduciary, and other bond required by law for the discharge or performance of any public or fiducial office, trust or employment, shall be a covenant to the Commonwealth of Kentucky from the principal and surety or sureties that the principal will faithfully discharge his duties, and there shall be no other obligation in the bond. The bond shall be limited in a definite penal sum, which shall be determined and fixed by the officer or officers whose duty it is to approve the bond. The bond of each fiduciary shall be fixed in a penal sum of not less than the estimated value of the estate which the fiduciary is in charge of. The officer or officers taking any bond mentioned in this section may, at any time when it appears to be to the interest of the obligee, increase the penal sum of the bond or require a renewal thereof with other or additional sureties.
(2) A bond or obligation taken in any form other than that required by subsection (1) shall be binding on the parties thereto according to its terms.
(3) This section shall not apply to bonds given pursuant to KRS 62.160 to 62.200.
(186d-1, 3751: amend. Acts 1946, ch. 27, § 6; 1972, ch. 203, § 3.)

Compiler's Notes. Section 56 of Acts 1972, ch. 203, provided: "Nothing in the Act shall be construed to effect any substantive change in the statute law of Kentucky and if any substantive change appears to be effected it shall be disregarded and the law as it existed prior to the effective date of this Act shall be given full force and effect."

Cross-References. Alcoholic beverage administrator, amount of bond:
City, KRS 241.180.
County, KRS 241.130.
Custodian of insurance securities, amount of bond, KRS 304.8-070.
Guardian, persons who may not be surety for, KRS 387.070.
Guardian, removal for failure to give additional security, KRS 387.090.
Sheriff, coroner and jailer, persons who may not be sureties on bond of, KRS 70.020, 71.010, 72.010.
Treasurer of pension fund for police and firemen of fourth-class city, conditions of bond, KRS 95.778.
Utility commissioners in third-class cities, not to be surety on bond of city official, KRS 96.530.

62.070. Action and recovery on bond.
Actions may be brought from time to time on any bond required by law for the discharge or performance of any public or fiducial office, trust or employment, in the name of the Commonwealth, for its benefit or for that of any person injured by a breach of the covenant or

condition, at the proper costs of the party suing, against the parties jointly or severally, together with the personal representatives, heirs and devisees or distributees of such of them as may be dead. Recovery against the surety shall be limited to the amount of the penalty fixed in the bond, but recovery against the principal shall not be limited by the amount of the penalty fixed in the bond. Recovery on the bond shall not be restricted to duties or responsibilities belonging to the office, trust or employment at the date the bond is executed, but may include any duties or responsibilities thereafter imposed by law or lawfully assumed.
(186d-1, 3752.)

Cross-References. Auditor liable for acts of assistants, KRS 43.030.

Constable, motion against and recovery on bond of, KRS 70.410, 70.420.

Escape of prisoner, officers liable for, KRS 440.040.

Expenditure of tax for purpose other than for which levied, local officials liable for, KRS 68.100.

Judgments in favor of commonwealth, unpaid, liability of circuit clerk for, KRS 135.030.

Limitation of action against surety on bond given in judicial proceeding, KRS 413.220.

Limitation of action on official bond, KRS 413.090.

Master commissioner, special bond, actions that must be brought on, KRS 31A.020.

Peace officer, continuation of bond of, after removal and until reinstatement, KRS 63.160.

Official misconduct, KRS 522.010 to 522.040.

Sale bond, liability for officer taking insufficient, KRS 426.610.

Sheriff:

- Liability for failure to return execution in time, KRS 426.350, 426.360.
- Liability for nonpayment of money on writ of execution, KRS 426.360.
- Revenue collector, bond as, KRS 134.230.
- Suits on bond of sheriff may be brought in Franklin Circuit Court, KRS 135.080.
- Sureties' liabilities for excess advancements to sheriffs, KRS 64.140.
- Sureties' rights and liabilities when sheriff dies or vacates office, KRS 70.110.

Treasurer, county, liability for signing warrants in excess of budget funds, KRS 68.300, 68.990.

62.080. Liability for public funds placed in depository.

All persons required by law to give bonds for the discharge or performance of any public or fiducial office, trust or employment are relieved from all liability as insurers of funds that come into their hands or subject to their control after the funds are deposited in good faith in a depository or depositories in the county approved by the fiscal court, and the obligors in the bonds shall not be responsible for loss of, or delay in payment of such funds by reason of the failure or suspension of such depository.
(186d-1.)

Cross-References. Officer of county having population of 75,000 not liable for default of approved depository, KRS 64.365.

62.160. Bonds of state officers — Minimum sum — Increase or renewal.

(1) The state officers elected by the voters of the state at large, except the Governor, Lieutenant Governor, and the Superintendent of Public Instruction, the heads of departments and cabinets of the state government, the adjutant general, the members of the Public Service Commission, the members of the State Fair Board and Fish and Wildlife Resources Commission, and the members of the Kentucky Board of Tax Appeals and the Alcoholic Beverage Control Board, shall each give bond. The amounts of the bonds shall be fixed by the Governor, which amounts as to those offices set forth in subsection (2) of this section shall be not less than the amounts set forth for the respective offices. At any time when it appears to be to the interest of the Commonwealth the Governor may increase the penal sum of any bond or require a renewal of the bond with other or additional surety.

(2) The minimum sum of the bond for the following offices shall be as follows:

Secretary of State	$10,000
Attorney General	10,000
State Treasurer	300,000
Secretary for economic development	10,000
Commissioner of Agriculture	10,000
Secretary for education, arts, and humanities	10,000
Auditor of Public Accounts	25,000
Adjutant general	10,000
Secretary of finance and administration	100,000
Secretary of revenue	50,000
Secretary of transportation	50,000
Commissioner of highways	50,000
Secretary of justice	50,000
Secretary of corrections	25,000
Commissioner for health services	10,000
Secretary of labor	5,000
Commissioner of surface mining reclamation and enforcement	50,000
State librarian	5,000
Commissioner of mines and minerals	5,000
Commissioner of alcoholic beverage control	10,000
Commissioner of financial institutions	25,000
Secretary for natural resources and environmental protection	10,000
Commissioner of insurance	50,000
Commissioner of vehicle regulation	10,000
Commissioner of fish and wildlife resources	5,000
Secretary for health services	20,000
Secretary for families and children	20,000
Commissioner for environmental protection	10,000
Secretary for public protection and regulation	10,000
Secretary of tourism	25,000
Commissioner for community based services	20,000
Member of the Public Service Commission	10,000
Member of State Fair Board	10,000

Member of Fish and Wildlife Resources Commission	1,000
Member of Kentucky Board of Tax Appeals	10,000
Associate member of Alcoholic Beverage Control Board	5,000
Commissioner of local government	100,000

(Enact. Acts 1946, ch. 27, § 1; 1966, ch. 255, § 65; 1974, ch. 74, Art. VIII, A., § 1; 1978, ch. 155, § 56, effective June 17, 1978; 1978, ch. 379, § 56, effective April 1, 1979; 1980, ch. 188, § 23, effective July 15, 1980; 1992, ch. 13, § 12, effective July 14, 1992; 1992, ch. 27, § 13, effective March 2,1992; 1998, ch. 426, § 88, effective July 15, 1998; 2000, ch. 14, § 7, effective July 14, 2000.)

Cross-References. Bond of commissioner of state police, KRS 16.080.

62.170. Bonds of state employees — Blanket bonds — Amount — Insurance companies that may participate.

(1) The secretary of the Finance and Administration Cabinet shall secure, except for state officers required by KRS 62.160 to file bond, blanket bonds, with or without cosureties, written on a blanket position form, to cover all other officers, employees, or deputies of the Commonwealth of Kentucky, including all judges, clerks, and employees of the Court of Justice, including all other members of boards or commissions or employees of those boards or commissions, and including all superintendents, receivers, or employees of penal or eleemosynary institutions managed or directed by the Justice Cabinet, the Cabinet for Health Services, the Cabinet for Families and Children, or any other department or agency of the Commonwealth of Kentucky. Nothing in this paragraph shall be deemed to prohibit the securing of any such blanket position bond on a departmental, board, commission, agency, or institutional basis.

(2) The secretary of the Finance and Administration Cabinet may secure one (1) or more excess blanket bonds, with or without cosureties, to cover selected groups of persons covered by the bond or bonds required in the preceding paragraph to provide additional coverage which he may deem necessary by the exposures indicated in accordance with the duties and responsibilities indicated by the personnel classification schedules of the Personnel Cabinet and, for Court of Justice officers and personnel, by the Administrative Office of the Courts and in accordance with the amounts of money and property handled by the respective officers and employees.

(3) Such bond or bonds shall be written by and participated in only by insurance companies licensed by the Department of Insurance to do business in this state and shall be countersigned by a duly authorized licensed resident agent of the company. The bonds may be written with or without cosureties. Further, the bonds are to be a percentage of the total risks, the Department of Insurance to approve the amount of the risk written by any one (1) company.

(4) The penal amount of the bond secured pursuant to this section shall be fixed by the secretary of the Finance and Administration Cabinet in accordance with the duties and responsibilities indicated by the personnel classification schedules of the Personnel Cabinet and, for Court of Justice officers and personnel, by the Administrative Office of the Courts, and in accordance with the amounts of money and property handled by the respective officers and employees.

(Enact. Acts 1946, ch. 27, § 2; 1956, ch. 153, § 1; 1960, ch. 101; 1974, ch. 74, Art. II, § 9(2); Art. VI, § 36; 1976 (Ex. Sess.), ch. 22, § 76; 1998, ch. 154, § 70, effective July 15, 1998; 1998, ch. 426, § 89, effective July 15, 1998.)

Legislative Research Commission Note. (7/15/98). This section was amended by 1998 Ky. Acts chs. 154 and 426 which do not appear to be in conflict and have been codified together.

Cross-References. Blanket and group insurance, KRS 304.18-010 to 304.18-100.

Bonds of district mine inspectors and inspectors of mine weights, KRS 351.090.

Bonds of members, officers and employees of Soil and Water Resources Commission, KRS 146.090.

Bonds of officers and civilian employees of state police, KRS 16.080.

Bonds of park custodians commissioned as peace officers, KRS 148.056.

62.180. Condition of bonds of state officers — Ex officio liability.

Each bond provided for in KRS 62.160 shall be a covenant to the Commonwealth of Kentucky that the principal will faithfully discharge his duties and will faithfully account for and pay over all money and property that may come into his possession by virtue of his office or position. Liability on the bond of any officer shall extend to any position held by him ex officio.

(Enact. Acts 1946, ch. 27, § 3; 1956, ch. 153, § 2, effective May 18, 1956.)

62.190. Conditions of blanket bonds.

The bonds provided for by section 62.170 of the Kentucky Revised Statutes shall be covenants to the Commonwealth of Kentucky that the officers, employees or holders of positions covered by the bond will faithfully account for and pay over all money and property that may come into their possession by virtue of their office, employment or position.

(Enact. Acts 1946, ch. 27, § 4; 1950, ch. 23, § 1; 1956, ch. 153, § 3, effective May 18, 1956.)

62.200. Corporate surety on bonds of state officers and employees — Approval as to form and legality — Filing.

(1) Each bond mentioned in KRS 62.160 to 62.190 shall be executed by a corporate surety authorized to do a surety business in Kentucky. No bond shall be accepted until it has been approved by the Attorney General as to form and legality, except the bond of the Attorney General which shall be accepted when approved in such respects by the Governor.

(2) All bonds given pursuant to KRS 62.160 to 62.190, except the bond of the Secretary of State, shall be filed in the office of the Secretary of State. The bond of the Secretary of State shall be filed in the office of the Governor.

(Enact. Acts 1946, ch. 27, § 5; 1950, ch. 23, § 2.)

Opinions of Attorney General. Since membership on a county school board constitutes a state elective office, a person could not hold such position and at the same time continue to serve on the board of supervisors of a soil conservation district. OAG 76-227.

CHAPTER 63

RESIGNATIONS, REMOVALS, AND VACANCIES

SECTION.

REMOVALS

63.080. Governor may remove officers appointed by him, without cause — Exceptions.

VACANCIES

63.190. Vacancies filled by the Governor.

REMOVALS

63.080. Governor may remove officers appointed by him, without cause — Exceptions.

(1) Except as provided in subsection (2) of this section and otherwise provided by law, any person appointed by the Governor, either with or without the advice and consent of the Senate, may be removed from office by the Governor for any cause the Governor deems sufficient, by an order of the Governor entered in the executive journal removing the officer.

(2) Members of the board of trustees of the University of Kentucky, the board of trustees of the University of Louisville, members of the board of regents respectively of Eastern Kentucky University, Western Kentucky University, Morehead State University, Kentucky State University, Northern Kentucky University, Murray State University, and the Kentucky Community and Technical College System, and members of the Kentucky Board of Education and the Council on Postsecondary Education shall not be removed except for cause.

(3750: amend. Acts 1948, ch. 25; 1966, ch. 255, § 67; 1968, ch. 152, § 28; 1990, ch. 60, § 2, effective July 13, 1990; 1990, ch. 476, Pt. II, § 37, effective July 13, 1990; 1990, ch. 504, § 5, effective July 13, 1990; 1992, ch. 10, § 16, effective July 1, 1992; 1996, ch. 362, § 6, effective July 15, 1996; 1997 (1st Ex. Sess.), ch. 1, § 41, effective May 30, 1997.)

Compiler's Notes. The reference to State Board of Elementary and Secondary Education in this section has been changed to Kentucky Board of Education on authority of Acts 1996, ch. 362, § 6, effective July 15, 1996.

Cross-References. Fish and Wildlife Resources Commission, members removal only for cause and after hearing, KRS 150.022.

Psychologists, Board of Examiners of, removable only for cause, KRS 319.020.

Public service commissioners, removal of, KRS 278.070.

State Board of Accountancy members may be removed only for cause, KRS 325.230.

VACANCIES

63.190. Vacancies filled by the Governor.

In every case where there is no other provision of law for the filling of a vacancy in any office, the vacancy shall be filled by appointment by the Governor.

(3758.)

Cross-References. Acceptance of incompatible office vacates first, KRS 61.090.

Constitutional offices, vacancies in filled by governor, Const., § 76.

Definition of vacancy, KRS 446.010.

Elections to fill vacancies, KRS Ch. 121.

Elective offices, vacancies in, how filled, Const., § 152.

Various offices, filling of vacancies in:

- Alcoholic beverage control board, KRS 241.100.
- Assistant secretary of state, KRS 14.020.
- Bar examiners, SCR 2.000.
- Board of dentistry, KRS 313.200.
- Board of education, county and city, KRS 160.190.
- Board of health for Louisville and Jefferson County, KRS 212.390.
- Board of nursing education and nurse registration, KRS 314.121.
- Chiropractic examiners, KRS 312.025.
- City officers:
  - Generally, Const., § 160.
    - Board of adjustment, KRS 100.217.
    - Housing authority, members, KRS 80.040.
    - Planning commissioners, KRS 100.157.
    - Recreational commissioners, KRS 97.120.
  - First-class cities, KRS 83.580.
    - Aldermen, KRS 83A.040.
    - Board of adjustment, KRS 100.217.
    - Board of equalization, KRS 91.390.
    - Board of health for city and county, KRS 212.390.
    - Civil service board, KRS 90.120.
    - Heads of departments, KRS 83.580.
    - Library trustees, KRS 173.040.
    - Mayor, KRS 83A.040.
    - Memorial commissioners, KRS 97.630.
    - Planning commissioners, KRS 100.157.
    - Waterworks board, KRS 96.240.
  - Second-class cities, 83A.040.
  - Third-class cities, KRS 83A.040.
  - Fourth-class and fifth-class cities, KRS 83A.040.
    - Civil service commission, KRS 95.763.
  - Sixth-class cities, KRS 83A.040.
- Clerk of Court of Appeals, Const., § 122.
- Constitutional officers, Const., § 76.
- Elections, county board of, KRS 117.035.
- Election officers, precinct, KRS 117.045.
- Elective office, Const., § 152.
- Embalmers and funeral directors, board of, KRS 316.180.
- Fire protection district trustees, KRS 75.031.
- Fish and Wildlife Resources Commission, KRS 150.022.
- Governor, Const., § 84; KRS 120.205.

Housing authority, members, county and regional, KRS 80.420, 80.430.
Jailer, KRS 63.150, 71.090.
Jefferson County Children's Home, board for, KRS 201.020.
Judge of circuit court, Const., § 118.
Judicial council, KRS 27A.100.
Kentucky School for Blind, officers and employees of, KRS 167.150.
Legislative Research Commission, KRS 7.090.
Levee commissioners, KRS 266.190.
Librarians, State Board for Certification of, KRS 171.240.
Library trustees of city, county or regional library, KRS 173.340.
Lieutenant governor, Const., § 85; KRS 120.205.
Military officers, Const., § 222.
Nominees of political parties, KRS 118.105, 118.325.
Pharmacy, Board of, KRS 315.150.
Planning commission to which capital city belongs, Governor to appoint member, KRS 100.133.
Playground and recreation board, county and city, KRS 97.030.
Podiatry, official examiners in, KRS 311.410.
Presidential electors, KRS 118.445.
Processioners of land, KRS 73.180.
Psychologists, Board of Examiners of, KRS 319.020.
Public road district board of directors, KRS 184.060.
Public service commissioners, KRS 278.050.
Railroad commissioners, Const., § 209.
Sanitation district directors, KRS 220.140.
School district superintendent, KRS 160.350.
Sheriff, KRS 63.220, 70.200, 134.220, 134.280.
Soil and Water Resources Commission, KRS 146.090.
Soil conservation, board of adjustment, KRS 262.460.
Soil conservation supervisors, KRS 262.240.
State Board of Accountancy members, KRS 325.230.
State fair board members, KRS 247.090.
State treasurer, KRS 41.050, 41.330.
Statutory administrative department heads, KRS 12.040.
Tax collector, KRS 134.280.
Teachers' retirement system, trustees of, KRS 161.270.
Veterinary Examiners, State Board of, KRS 321.230.
Water district commissioners, KRS 74.020.

NOTES TO DECISIONS

Analysis

8. Board of education.
11. Boards of trustees.

8. Board of Education.

Vacancies in offices of board of education are to be filled by the board so long as a quorum remains, but when no quorum remains then by the Governor. Glass v. City of Hopkinsville, 225 Ky. 428, 9 S.W.2d 117 (1928); Board of Trustees v. Kercheval, 242 Ky. 1, 45 S.W.2d 846 (1931).

When a board of education is without any members, the Governor may appoint the entire body. Board of Trustees v. Kercheval, 242 Ky. 1, 45 S.W.2d 846 (1931).

11. Boards of Trustees.

When a vacancy is to be filled by the remaining members of a board, such members as remain in office may act but if the remaining members are deadlocked, the Governor may appoint. Board of Trustees v. Kercheval, 242 Ky. 1, 45 S.W.2d 846 (1931); Middleton v. Lewis, 248 Ky. 86, 58 S.W.2d 251 (1933); Horn v. Wells, 253 Ky. 494, 69 S.W.2d 1011 (1934).

CHAPTER 64

FEES AND COMPENSATION OF PUBLIC OFFICERS AND EMPLOYEES

SECTION.

Fee-Bills

64.410. How fee-bills made out — Provisions concerning.

Compensation of Public Officers and Employees Generally

64.480. Compensation of elective state officers — Adjustment of salaries.
64.590. Compensation of officers and employees of political subdivisions or local governmental units or districts other than counties or cities, including school districts.
64.640. Compensation of state officers and employees generally.
64.660. Compensation of members of public boards and commissions.
64.690. Applicability of other statutes dealing with compensation — Applicability of KRS 64.368 if population decreases below 70,000.
64.710. Expense accounts and contingent funds prohibited — Exceptions.

Fee-Bills

64.410. How fee-bills made out — Provisions concerning.

(1) The fee-bills of every officer shall be made out at length, in figures and in plain English, and signed by the officer in his official capacity.
(2) No officer shall demand or receive for his services:
(a) Any other or greater fee than is allowed by law;
(b) Any fee for services rendered when the law has not fixed a compensation therefor;
(c) Any fee for services not actually rendered.
(3) Where there are more plaintiffs or defendants than one (1) in an action and they sever in their pleadings or otherwise, so that part of them cause an officer to render separate services for him or them, for which the others ought not to be liable, the fees for such services shall be charged separately to those for whom the service is rendered.
(4) No officer in making out his fee-bill shall omit the name of any person properly chargeable therewith, or insert the name of a person not properly chargeable.
(5) Fees against a person acting in a trust capacity shall be made out against him in such capacity and he shall only be liable therefor to the extent of the trust funds in his hands liable to the payment thereof.
(6) No fee-bill shall be made out, or compensation allowed hereafter, for any ex officio services rendered by any officer.

Compensation of Public Officers and Employees Generally

64.480. Compensation of elective state officers — Adjustment of salaries.

(1) Effective, with respect to the offices of Governor on December 11, 1979, and Lieutenant Governor on the fifth Tuesday following the regular November election in 1975, and with respect to the other offices named in this section on the first Monday in January, 1976, the compensation of the following named officers, payable monthly out of the State Treasury, shall be the sum per annum designated for the respective offices, as follows: Governor, forty-five thousand dollars ($45,000) until December 11, 1981, then fifty thousand dollars ($50,000) until December 13, 1983, and then sixty thousand dollars ($60,000) until January 1, 1985; Lieutenant Governor, twenty-seven thousand nine hundred dollars ($27,900) per annum, plus any compensation received while acting in the place of the Governor; Attorney General, Commissioner of Agriculture, Secretary of State, State Treasurer, Auditor of Public Accounts, and clerk of the Supreme Court of Kentucky elected in November, 1975, as clerk of the Court of Appeals, twenty-seven thousand nine hundred dollars ($27,900).

(2) In order to equate or adjust the compensation of the Lieutenant Governor, Attorney General, Commissioner of Agriculture, Secretary of State, State Treasurer, Auditor of Public Accounts, and clerk of the Supreme Court of Kentucky with the purchasing power of the 1949 dollar, the Department for Local Government of Kentucky shall compute by the second Friday in February of every year, beginning in 1977, the maximum permissible compensation of the officials mentioned in this subsection based precisely upon the consumer price index formula approved in Matthews v. Allen, Kentucky, 360 S.W.2d 139 (1962). Thus the maximum permissible compensation effective for the entire year of 1977 and subsequent years will be the actual compensation to be paid said officials. The year of adjustment will be the particular full calendar year involved.

(3) It is the intention of the Legislature that the constitutionally permissible adjustment of salaries of these officials be framed around equating current salaries with the purchasing power of the dollar in 1949 when Section 246 of the Constitution of Kentucky was amended. Section 246 of the Constitution of Kentucky, as amended, established a monetary level of twelve thousand dollars ($12,000) per annum for said officials. The formula merely effects an adjustment of the constitutional monetary level in terms of the current consumer price index.

(4) In order to adjust the compensation of the Governor to reflect changes in the purchasing power of the dollar, the Department for Local Government shall compute by the second Friday in February of every year, beginning in 1985, an adjusted salary of the Governor by multiplying sixty thousand dollars ($60,000) by the increase in the consumer price index during the period from January 1, 1984, to the beginning of the then-current calendar year. The actual compensation paid to the Governor for the entire calendar year of 1985 and subsequent years shall be the adjusted salary.

(Enact. Acts 1950, ch. 123, § 1; 1954, ch. 176; 1958, ch. 50; 1966, ch. 38, § 1; 1972, ch. 22, § 2; 1976, ch. 83, § 15, effective March 29, 1976; 1978, ch. 155, § 57, effective June 17, 1978; 1978, ch. 384, § 581, effective June 17, 1978; 1978, ch. 386, § 1, effective June 17, 1978; 1982, ch. 328, § 1, effective July 15, 1982; 1986, ch. 374, § 20, effective July 15, 1986; 1992, ch. 27, § 5, effective March 2, 1992; 1994, ch. 486, § 20, effective July 15, 1994; 1998, ch. 69, § 25, effective July 15, 1998.)

Cross-References. Attorney General to be paid by salary only, Const., § 96.

Fees of Attorney General to be covered into state treasury, Const., § 93.

Fees of Treasurer to be covered into state treasury, Const., § 93.

Governor to be paid by salary only, Const., § 96.

Governor's compensation to be fixed by law, Const., § 74.

Lieutenant Governor, compensation for services as President of the Senate, and while acting as Governor, Const., § 86, KRS 6.190.

Lieutenant Governor's compensation for services as member of Legislative Research Commission, KRS 7.090.

Limit on compensation of public officers, Const., § 246.

Per diem of Lieutenant Governor as President of the Senate, KRS 6.190.

Secretary of State, compensation as member of State Board of Elections, KRS 117.015.

Superintendent of Public Instruction to be paid by salary only, Const., § 96.

Treasurer to be paid by salary only, Const., § 96.

Opinions of Attorney General. The maximum annual compensation for the Lieutenant Governor, Attorney General, Superintendent of Public Instruction, Commissioner of Agriculture, Secretary of State, State Treasurer, Auditor of Public Accounts, and clerk of the Supreme Court of this Commonwealth was $58,101. OAG 88-10.

The maximum annual compensation possible for the Lieutenant Governor, Attorney General, Superintendent of Public Instruction, Commissioner of Agriculture, Secretary of State, State Treasurer, Auditor of Public Accounts and Clerk of the Supreme Court of Kentucky for 1990 would be $63,462. OAG 90-17.

The Department of Local Government accurately computed the maximum annual compensation for the Lieutenant Governor, Attorney General, Superintendent of Public Instruction, Commissioner of Agriculture, Secretary of State, Treasurer, Auditor of Public Accounts, and Clerk of the Supreme Court, as $67,378 for 1991. OAG 91-29.

For an opinion verifying the accuracy of computations to be used in adjusting salaries of constitutional officers in relation to changes in the Consumer Price Index, see OAG 93-21.

For the adjustments to salaries of constitutional officers in relation to changes in the Consumer Price Index salary adjustment computations and therefore, the maximum annual compensation allowable by law for such positions in 1994 see OAG 94-7.

For the adjustments to salaries of constitutional officers in relation to change in the Consumer Price Index salary adjustment computations and therefore, the maximum annual compensation allowable for such positions in 1995 see OAG 95-5. OAG 95-5.

Cited: Board of Educ. v. De Weese, 343 S.W.2d 598 (Ky. 1961).

64.590. Compensation of officers and employees of political subdivisions or local governmental units or districts other than counties or cities, including school districts.

In the case of any political subdivision or local governmental unit or district other than a county or city, having a governing body or authority composed of more than one (1) member, such governing body or authority shall fix the compensation of every officer and employee of the political subdivision, local governmental unit, or district whose compensation is payable from the funds of the political subdivision, governmental unit, or district, except that in the case of officers elected by popular vote the same limitations and restrictions shall apply as are applicable under KRS 83A.070 to the fixing of compensation of city officers elected by popular vote. Nothing in this section is intended to confer any power on any governing board or authority, with respect to the compensation of its own members, that it does not specifically possess under other statutes. This section applies to school districts, but is not intended to supersede any present provision of law relating to the fixing or payment of the compensation of teachers.
(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 295, effective July 13, 1990.)

Cross-References. Limit on compensation of public officers, Const., § 246.

64.640. Compensation of state officers and employees generally.

(1) Except as otherwise provided in subsection (2) of this section, and excepting officers elected by popular vote, employees of the General Assembly, including employees of the Legislative Research Commission, members of boards and commissions, those officers and employees of Kentucky Educational Television exempt from classified service as provided in KRS 18A.115, presidents and employees of the state universities and the state colleges, and persons employed by the commissioner of parks on a temporary basis under KRS 148.026, the Personnel Cabinet shall prepare schedules of compensation, payable out of the State Treasury, with a minimum salary rate, and other salary rates as are deemed necessary or advisable, for the office or position of employment of every state officer and employee, including specifically the offices and positions of employment in every constitutional administrative department, statutory administrative department, independent agency, board, commission, or other unit of state government. The language of any statute empowering a board, commission, authority, or other administrative body for which the Personnel Cabinet provides personnel and payroll services except for any board governing any of the Kentucky Retirement Systems, the Kentucky Higher Education Assistance Authority, the Kentucky Authority for Educational Television, or the Council on Postsecondary Education to establish, set, or approve the salaries of its administrative head and other employees to the contrary notwithstanding, the establishment or setting of salaries for administrative heads or other employees shall be subject to the approval of the secretary of the Personnel Cabinet. The schedules and rates shall be based upon studies of the duties and responsibilities of the offices and positions and upon a comparison with rates being paid for similar or comparable services elsewhere, and in the preparation of such schedules, the Personnel Cabinet shall ascertain and record the duties, responsibilities, and authority pertaining to the various offices and positions in the state service, and classify such positions in the manner provided in KRS 18A.030, 18A.035, 18A.110, 18A.130, 18A.135, and 18A.150 to 18A.160. No such schedule shall become effective until it has been approved by the Governor by executive order.

(2) The Governor shall set the compensation payable out of the State Treasury to each officer or position in the state service, which officer or position heads a statutory administrative department, independent agency, or other unit of state government, except for those excluded under subsection (1) of this section. Such compensation shall be based upon studies of the duties and responsibilities and classification of the positions by the Governor and upon a comparison with compensation being paid for similar or comparable services elsewhere, provided, however, such compensation shall not exceed the total taxable compensation of the Governor derived from state sources, the provisions of KRS 64.660 to the contrary notwithstanding. For the purposes of this section, the total taxable compensation of the Governor from state sources shall include the amount provided for compensation to the Governor under KRS 64.480 and any benefits or discretionary spending accounts that are imputed as taxable income for federal tax purposes.

(3) The compensation payable out of the State Treasury to officers and employees subordinate to any office or position covered by subsection (2) of this section shall not exceed the maximum rate established pursuant to subsection (2) of this section for such office or position, except with respect to physicians as provided in KRS 64.655 and employees of the Public Service Commission of Kentucky whose compensation shall be fixed, within constitutional limits, by the Personnel Cabinet with the approval of the Governor as provided in subsection (1) of this section.

(4) Nothing in this section shall preclude the allowance of maintenance to officers and employees of the state.

(Enact. Acts 1950, ch. 123, § 22; 1952, ch. 98; 1954, ch. 174, § 1; 1956 (1st Ex. Sess.), ch. 7, Art. III; 1960, ch. 38; 1962, ch. 106, Art. I, § 11; 1962, ch. 184, § 1; 1962, ch. 210, § 13; 1966, ch. 38, § 2; 1966, ch. 255, § 76; 1970, ch. 160, § 1; 1972, ch. 22, § 1; 1976, ch. 83, § 13, effective March 29, 1976; 1978, ch. 379, § 56, effective April 1, 1979; 1980, ch. 98, § 1, effective July 15, 1980; 1980, ch. 331, § 1, effective July 15, 1980; 1982, ch.

448, § 63, effective July 15, 1982; 1998, ch. 154, § 71, effective July 15, 1998; 2000, ch. 495, § 2, effective July 14, 2000; 2000, ch. 501, § 5, effective July 14, 2000.)

Legislative Research Commission Note. (7/14/2000). This section was amended by 2000 Ky. Acts chs. 495 and 501, which do not appear to be in conflict and have been codified together.

Cross-References. Commissioner of mental health, salary of not limited by KRS 64.640.

Limit on compensation of public officers, Const., § 246.

Officers and employees of state universities and state colleges not subject to this section, KRS 164.225, 164.285, 164.365.

State universities and state colleges not to be included in Department of Education, KRS 164.285.

Opinions of Attorney General. Just as this section provides an upper limit for all employees with regard to their potential salary, including any 5 percent increases, KRS 161.340 must be read into KRS 18A.350 to 18A.360 (KRS 18A.360, now repealed) to provide an absolute upper salary limit for the executive secretary of the Teachers' Retirement System to be the maximum set for commissioners by subsection (2) of this section. OAG 82-355.

64.660. Compensation of members of public boards and commissions.

Nothing in KRS 64.480 to 64.740 is intended to authorize the increase of the compensation now fixed by law for the members of any public board or commission for their services as members of the board or commission, except members of fiscal courts to the extent authorized in subsection (3) of KRS 64.530.

(Enact. Acts 1950, ch. 123, § 24; 1980, ch. 188, § 29, effective July 15, 1980.)

Compiler's Notes. KRS 64.490 to 64.499, 64.500 to 64.525, 64.560, 64.570, 64.580, 64.600, 64.620, 64.645, 64.650, 64.670, 64.680, 64.700, 64.750 and 64.760, contained in the reference to KRS 64.480 to 64.760 above, have been repealed.

64.690. Applicability of other statutes dealing with compensation — Applicability of KRS 64.368 if population decreases below 70,000.

(1) Except as provided in KRS 64.610 and in this section, KRS 64.480 to 64.740 are intended to supersede any existing statute, fixing the compensation, or authorizing any public officer or body to fix the compensation, of any public officer or employee covered by KRS 64.480 to 64.740.

(2) Any public officer or body which has authority to fix the compensation of any state officer or employee covered by KRS 64.640 shall exercise such authority, subject to the schedule and limits of compensation for the particular office or position prescribed in KRS 64.640. The secretary of the Personnel Cabinet shall have the authority to monitor and require compliance with the provisions of this section and KRS 64.640 and 64.475.

(3) KRS 64.480 to 64.740 are not intended to supersede any existing statute, with respect to the compensation of circuit clerks, county clerks, sheriffs, master commissioners, and receivers, and their deputies and assistants, in counties containing a population of seventy thousand (70,000) or more, or property valuation administrators, their deputies, and assistants, in any county.

(4) If a county's population that equaled or exceeded seventy thousand (70,000) is less than seventy thousand (70,000) after the most recent federal decennial census, then the provisions of KRS 64.368 shall apply.

(Enact. Acts 1950, ch. 123, § 27; 1966, ch. 255, § 77; 1982, ch. 385, § 24, effective July 1, 1982; 1992, ch. 220, § 9, effective January 1, 1994; 2000, ch. 495, § 3, effective July 14, 2000; 2002, ch. 71, § 6, effective July 15, 2002.)

64.710. Expense accounts and contingent funds prohibited — Exceptions.

No public officer or employee shall receive or be allowed or paid any lump sum expense allowance, or contingent fund for personal or official expenses, except where such allowance or fund either is expressly provided for by statute or is specifically appropriated by the General Assembly.

(Enact. Acts 1950, ch. 123, § 30.)

TITLE IX

COUNTIES, CITIES, AND OTHER LOCAL UNITS

CHAPTER 65

GENERAL PROVISIONS APPLICABLE TO COUNTIES, CITIES, AND OTHER LOCAL UNITS

SECTION.

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65.952. Title to property subject to the lease.
65.954. Construction of KRS 65.940 to 65.956.
65.956. Short title.

SPECIAL DISTRICTS

65.160. Special districts may be formed by two or more counties.

(1) Upon approval of the fiscal courts of the counties involved, two (2) or more counties may join together to form a special district to fulfill any purpose which any individual county is presently authorized to fulfill or may be authorized to fulfill in the future.
(2) The membership of the governing body of such multi-county special districts shall be apportioned among the counties in ratio to their population, with each county having at least one (1) member.
(3) Members of the governing body of multi-county special districts may be removed from office as provided by KRS 65.007.

(Enact. Acts 1972, ch. 31, § 1; 1980, ch. 18, § 2, effective July 15, 1980; 1980, ch. 188, § 34, effective July 15, 1980.)

Legislative Research Commission Note. This section was amended by two 1980 acts which do not appear to be in conflict and have been compiled together.

Compiler's Notes. This section was formerly compiled as KRS 65.040 and was renumbered by the Reviser under authority of KRS 7.136.

65.162. Special districts may be expanded to include additional counties.

(1) Any special district may be expanded to include additional counties within its jurisdiction for performing the function for which it was organized.
(2) Before a county may participate in a multi-county special district, the fiscal court shall determine that participation is feasible and necessary. The determination shall be made only after a duly advertised public hearing has been held by the fiscal court.
(3) When a county is added to a multi-county special district, it shall be given representation on the governing body of the district in the same manner as the other counties within the district.
(4) Members of the governing body of multi-county special districts may be removed from office as provided by KRS 65.007.

(Enact. Acts 1972, ch. 31, § 2; 1980, ch. 18, § 3, effective July 15, 1980; 1980, ch. 188, § 35, effective July 15, 1980.)

Legislative Research Commission Note. This section was amended by two 1980 acts which do not appear to be in conflict and have been compiled together.

Compiler's Notes. This section was formerly compiled as KRS 65.050 and was renumbered by the Reviser under authority of KRS 7.136.

INTERLOCAL COOPERATION ACT

65.210. Short title of KRS 65.210 to 65.300.

KRS 65.210 to 65.300 may be cited as the Interlocal Cooperation Act.

(Enact. Acts 1962, ch. 216, § 1.)

Opinions of Attorney General. Each of the local superintendents who comprise the Board of Directors of Eastern Kentucky Educational Development Corporation (EKEDC) may be held liable for the commission of an act or omission to take action regarding EKEDC matters which is a legal cause of injury to another. OAG 79-502.

65.220. Purpose of KRS 65.210 to 65.300.

It is the purpose of KRS 65.210 to 65.300 to permit local governmental units and the sheriff upon approval of the fiscal court to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.

(Enact. Acts 1962, ch. 216, § 2; 2000, ch. 464, § 2, effective July 14, 2000.)

65.230. Definition of "public agency" for KRS 65.210 to 65.300.

As used in KRS 65.210 to 65.300, unless the context otherwise requires, "public agency" means any political subdivision of this state, any agency of the state government or of the United States, a sheriff, and any political subdivision of another state. It also means a state-supported or private institution of higher education and a county or independent public school district for the purposes of entering into a joint agreement to establish and operate a program or facility, including a center for child learning and study, designed to help

one (1) or more schools meet any of the goals set forth in KRS 158.6451, or for the investment of funds. If a private institution of higher education proposes to participate in an agreement pursuant to the Interlocal Cooperation Act, the Attorney General shall determine if the proposal is compatible with the United States Constitution, as part of the review of the agreement provided in KRS 65.260(2).

(Enact. Acts 1962, ch. 216, § 3; 1964, ch. 114, § 1; 1982, ch. 87, § 1, effective July 15, 1982; 1988, ch. 393, § 1, effective July 15, 1988; 1994, ch. 356, § 1, effective July 15, 1994; 2000, ch. 464, § 3, effective July 14, 2000.)

65.240. Joint exercise of power by state agencies with other public agencies.

(1) Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state, and jointly with any public agency of any other state or of the United States to the extent that the laws of the United States permit such joint exercise or enjoyment. Any agency of the state government when acting jointly with any public agency may exercise and enjoy all of the powers, privileges and authority conferred by KRS 65.210 to 65.300 upon a public agency.

(2) Any two (2) or more public agencies may enter into agreements with one another for joint or cooperative action pursuant to the provisions of KRS 65.210 to 65.300. Appropriate action by ordinance, resolution or otherwise pursuant to law, of the governing bodies of the participating public agencies shall be necessary before any such agreement may enter into force.

(3) A state-supported institution of higher education and one (1) or more county or independent public school districts may enter into agreements under KRS 65.210 to 65.300 for the purposes specified in KRS 65.230, notwithstanding any other provision of the statutes restricting, qualifying or limiting their authority to do so.

(Enact. Acts 1962, ch. 216, § 4(1), (2); 1964, ch. 114, § 2; 1982, ch. 97, § 2, effective July 15, 1982; 1988, ch. 393, § 2, effective July 15, 1988.)

Opinions of Attorney General. Local school districts are public agencies which may take advantage of the benefits to be derived from entering into an interlocal agreement with each other. OAG 79-500.

What a public agency can do by itself can usually be done jointly with other public agencies under an interlocal cooperation agreement, assuming no statutory bar exists to the contrary. OAG 79-500.

Concerning school and educational matters generally, a Kentucky city could not execute an interlocal agreement because cities do not have statutory authority to participate in school matters. OAG 79-574.

65.245. Cooperative interlocal agreements for the sharing of revenues.

(1) It is the purpose of this section to clarify the ability of cities, counties, urban-counties, charter counties, consolidated local governments, and sheriffs upon approval of the fiscal court or consolidated local government to share their revenues by entering into interlocal agreements.

(2) Any city, county, urban-county, consolidated local government, or charter county may by ordinance enter into cooperative interlocal agreements for the sharing of revenues. A sheriff, upon approval of the fiscal court or the consolidated local government, may enter into a memorandum of agreement with local governments for the purposes of sharing of revenues. The distribution of the revenues shall be as agreed upon by the local governments or the sheriff and contained in the interlocal agreement.

(Enact. Acts 1992, ch. 87, § 1, effective July 14, 1992; 2000, ch. 464, § 4, effective July 14, 2000; 2002, ch. 346, § 27, effective July 15, 2002.)

65.250. Contents of agreements authorized by KRS 65.240 — Status of employees.

(1) Any such agreement shall specify the following:
   (a) The duration of the agreement;
   (b) The precise organization, composition and nature of any separate legal or administrative entity created thereby together with a statement of the powers delegated thereto; provided such legal entity may be legally created;
   (c) The purpose or purposes of such legal or administrative entity;
   (d) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor; said agreement for financing the joint or cooperative undertaking shall include agreements relative to the respective responsibilities of the units of government involved for the payment of the employer's share involved in any pertinent pension plan or plans, if any, provided for by KRS 65.280;
   (e) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;
   (f) Any other necessary and proper matters.

(2) In the event that the agreement does not establish a separate legal or administrative entity to conduct the joint or cooperative undertaking, the agreement shall, in addition to paragraphs (a), (c), (d), (e) and (f) enumerated in subsection (1) of this section, contain the following:
   (a) Provision for an administrator or joint board responsible for administering the joint or cooperative undertaking. In the event that a joint board is established, the public agencies party to the agreement shall be represented thereon;
   (b) The manner of acquiring, holding and disposing of real and personal property used in the joint or cooperative undertaking.

(Enact. Acts 1962, ch. 216, § 4(3), (4); 1964, ch. 114, § 4; 1966, ch. 255, § 78.)

Cross-References. Preschool education program for four (4) year old children, 704 KAR 3:410.

65.260. Limitations upon agreements — Approval by Attorney General or Department for Local Government — Exemptions.

(1) No agreement made pursuant to KRS 65.210 to 65.300 shall relieve any public agency of any obligation or responsibility imposed upon it by law except that to the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made pursuant to KRS 65.210 to 65.300, that performance may be offered in satisfaction of the obligation or responsibility.

(2) Except as provided in subsections (3) and (4) of this section, every agreement made pursuant to KRS 65.210 to 65.300 shall, prior to and as a condition precedent to its entry into force, be submitted to the Attorney General who shall determine whether the agreement is in proper form and compatible with the laws of this state, except for interlocal agreements between cities, counties, charter counties, urban-county governments, and sheriffs upon approval of the fiscal court, which shall be submitted to the Department for Local Government. The Attorney General or the Department for Local Government shall approve any agreement submitted to them under this subsection unless they find that it does not meet the conditions set forth in KRS 65.210 to 65.300. If the agreement does not meet these conditions, the Attorney General or the Department for Local Government shall detail in writing, addressed to the governing bodies of the public agencies concerned, the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within sixty (60) days of its submission shall constitute approval thereof.

(3) The submission of an interlocal cooperative agreement to the Attorney General or the Department for Local Government as provided in subsection (2) of this section shall not be required for any cooperative agreement which involves only the construction, reconstruction, or maintenance of a municipal road or bridge, provided a written agreement is approved by each of the affected governing bodies.

(4) Interlocal cooperative agreements between school boards and counties shall be exempt from the provisions of subsection (2) of this section.

(Enact. Acts 1962, ch. 216, § 4(5), (6); 1964, ch. 114, § 3; 1992, ch. 46, § 1, effective July 14, 1992; 2000, ch. 464, § 1, effective July 14, 2000.)

65.270. Revenue bonds.

(1) Whenever any two (2) or more public agencies, as defined in KRS 65.230, enter into an agreement for joint or cooperative action pursuant to the provisions of KRS 65.210 to 65.300, any public agency acting separately or jointly with one (1) or more of any other agencies, may acquire, construct, maintain, add to, and improve the necessary property, real and personal, which is required in order to perform the functions under the agreement, and for the purpose of defraying the costs incident to the performance of the agreement, may borrow money and issue negotiable revenue bonds.

(2) Any public agency or agencies may borrow money and issue bonds under this section pursuant to an order, resolution, or ordinance of its or their legislative or administrative body or bodies, which order, resolution, or ordinance shall set forth the terms of the agreement in full, the amount of the revenue bonds to be issued, and the maximum rate of interest. In every instance the order, resolution, or ordinance shall provide that the joint or cooperative action is being undertaken pursuant to the provisions of KRS 65.210 to 65.300.

(3) The bonds may be issued to bear interest at a rate or rates or method of determining rates as the public agency or agencies determines, payable at least annually, and shall be executed in a manner and be payable at times not exceeding thirty (30) years from the date of issuance and at a place or places as the public agency or agencies determines.

(4) The bonds may provide that they or any of them may be called for redemption prior to maturity, on interest payment dates not earlier than one (1) year from the date of issuance of the bonds.

(5) Any public agency is empowered to accept donations or gifts to the joint or cooperative action from any source and to accept appropriations and grants to the joint or cooperative action from the federal government or its agencies and appropriations from the state or any county, city, or other political subdivision and, at the option of the public agency or agencies, to pledge any donations, gifts, or appropriations to the payment of revenue bonds issued to finance the cost of a joint or cooperative action.

(6) Bonds issued pursuant to this section shall be negotiable and shall not be subject to taxation. If any officer whose signature or countersignature appears on the bonds or coupons ceases to be an officer before delivery of the bonds, his signature or countersignature shall be valid and sufficient for all purposes the same as if he had remained in office until delivery. The bonds shall be sold in a manner and upon terms as the public agency or agencies deem best. The bonds shall be payable solely from the revenue derived from the joint or cooperative action and shall not constitute an indebtedness of the state, county, city, or political subdivision. It shall be plainly stated on the face of each bond that it has been issued under the provisions of KRS 65.210 to 65.300.

(7) All money received from the bonds shall be applied solely for the acquisition, construction, maintenance, improvement, or operation of the joint or cooperative action, and the necessary expense of preparing, printing, and selling the bonds, or to advance the payment of interest on the bonds during the first three (3) years following the date of the issuance of the bonds.

(8) Before the issuance of the bonds the public agencies party to the agreement shall, by orders, resolutions, or ordinances of their respective legislative bodies, set aside and pledge the income and reve-

nue of the joint or cooperative action including rents, royalties, fees, and proceeds of sales of property and from rates and charges for services derived or rendered by the joint or cooperative action into a separate and special fund to be used and applied in payment of the cost of the maintenance, operation, and depreciation incident to the joint or cooperative action. The orders, resolutions, or ordinances shall determine and fix the amount of revenue necessary to be set apart and applied to the payment of principal and interest of the bonds, and the proportion of the balance of the income and revenue to be set aside as a proper and adequate depreciation account. The remaining proportion of the balance shall be set aside for the reasonable and proper operation and maintenance of the joint or cooperative action.

(9) The rents, royalties, fees, rates, and charges for the service or sale of the joint or cooperative action shall be fixed and revised from time to time so as to be sufficient to provide for the payment of interest upon all bonds and to create a sinking fund to pay the principal of the bonds when due, and to provide for the operation and maintenance of the joint or cooperative action and an adequate depreciation account.

(Enact. Acts 1962, ch. 216, § 5; 1996, ch. 274, § 4, effective July 15, 1996.)

Cross-References. Acquisition and development of public projects by governmental units and agencies through revenue bonds, KRS ch. 58.

Facsimile signatures and seals on public securities and options as to negotiability, KRS 61.390.

65.280. Effect of civil service laws and regulations upon transferred employees.

(1) In the event that a public agency or agencies determine to transfer any of its employees to the joint or cooperative action, which employees are subject to any civil service laws or regulations, such employees shall not lose any rights or benefits which have accrued prior to such transfer. Such employees, when transferred, to the joint or cooperative action from a public agency or agencies that are subject to any civil service laws or regulations, and who have completed probationary appointments with the public agency or agencies prior to the date of transfer, shall be considered as having satisfied all of the qualifications of the joint or cooperative action and shall be given full and regular appointments as defined in such laws or regulations as of the date they are transferred to the joint or cooperative action.

(2) In the event that the joint or cooperative action is such that its employees would be afforded civil service rights or benefits if they were employees of a county or city, such employees shall be afforded the protection of civil service laws or regulations; provided, however, that such protection is available under the laws of this state.

(3) In the event the joint or cooperative action employs a person employed immediately prior thereto by a component city or county, or by a special district, such employee shall be deemed to remain an employee of such city, county or special district for the purposes of any pension plan of such city, county, or special district, and shall continue to be entitled to all rights and benefits thereunder as if he had remained as an employee of the city, county, or special district, until the joint or cooperative action has provided a pension plan to which such employee is eligible and such employee has elected, in writing, to participate therein. Until such election, the joint or cooperative action shall deduct from the remuneration of such employee the amount which such employee is or may be required to pay in accordance with the provisions of the plan of such city, county, or special district and the joint or cooperative action shall pay to the city, county, or special district any amounts required to be paid under the provisions of such plan by employer and employee, unless an agreement, not adversely affecting the employee's interest, or expectancy, has been made pursuant to KRS 65.250 (1)(d) for the payment of the employer's pension obligation.

(Enact. Acts 1962, ch. 216, §§ 6, 7; 1964, ch. 114, § 5; 1966, ch. 255, § 79; 1972, ch. 383, § 1.)

65.290. Copies of agreement must be filed — Status of agencies in controversy involving interstate agreement.

Before any agreement made pursuant to KRS 65.210 to 65.300 shall become operative or have force and effect, a certified copy thereof shall be filed with the county clerk of the county which is party to the agreement, the county clerk of the county wherein any other political subdivision of the state is located which is party to such agreement, and with the Secretary of State. In the event that an agreement entered into pursuant to KRS 65.210 to 65.300 is between or among one or more public agencies of this state and one or more public agencies of another state or of the United States, said agreement shall have the status of an interstate compact, but in any case or controversy involving performance or interpretation thereof or liability thereunder, the public agencies party thereto shall be real parties in interest and the state may maintain an action to recoup or otherwise make itself whole for any damages or liability which it may incur by reason of being joined as a party therein. Such action shall be maintainable against any public agency or agencies whose default, failure of performance, or other conduct caused or contributed to the incurring of damage or liability by the state.

(Enact. Acts 1962, ch. 216, § 8; 1964, ch. 114, § 6.)

65.300. Approval of agreement by officer or agency required.

In the event that an agreement made pursuant to KRS 65.210 to 65.300 shall deal in whole or in part with the provisions of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disap-

proved by such officer or agency as to all matters within the jurisdiction of such officer or agency in the same manner and subject to the requirements governing the action of the Attorney General pursuant to subsection (2) of KRS 65.260. The requirement of this section shall be in addition to and not in substitution for the requirement of submission to and approval by the Attorney General under subsection (2) of KRS 65.260.
(Enact. Acts 1962, ch. 216, § 9.)

Short-Term Borrowing Act

65.7701. Definitions for KRS 65.7703 to 65.7721.
As used in KRS 65.7703 to 65.7721, unless the context otherwise requires:
(1) "Governmental agency" means any county, urban-county government, consolidated local government, city, taxing district, special district, school district, or other political subdivision of the Commonwealth or body corporate or politic or any instrumentality of the foregoing.
(2) "Governing body" means the board, council, commission, fiscal court, or other body or group that is authorized by law to act on behalf of a governmental agency.
(3) "Legislation" means an order, resolution, or ordinance of the governing body.
(4) "Notes" means notes authorized by KRS 65.7703 to 65.7721 which may be secured by taxes or revenue or taxes and revenue.
(5) "Revenue" means all funds received by a governmental agency which are not taxes, including but not limited to excises, transfers, service fees, assessments, and occupational license fees.
(6) "State local debt officer" means the officer so designated in KRS 66.045.
(7) "Taxes" means taxes properly levied upon real or personal property.
(Enact. Acts 1990, ch. 76, § 1, effective July 13, 1990; 1994, ch. 508, § 22, effective July 15, 1994; 2002, ch. 346, § 35, effective July 15, 2002.)

65.7703. Authority to borrow money in anticipation of taxes or revenues — Notes to be payable only by appropriation.
A governmental agency shall have power and authority, by legislation duly adopted, to borrow moneys from time to time in any fiscal year in anticipation of the receipt of current taxes or revenues, or both, to evidence the obligation by notes, appropriately designated, and to authorize, issue, and sell notes in the manner, and subject to the limitations provided in KRS 65.7703 to 65.7721. Notes shall be payable only from moneys appropriated by the governing body of the governmental agency. The power to borrow from time to time shall include, but not be limited to, the power to make a single authorization and issue and sell portions of the amount of authorized notes whenever desired during the fiscal year.
(Enact. Acts 1990, ch. 76, § 2, effective July 13, 1990.)

65.7705. Note maximums.
No governmental agency shall authorize or issue notes in any one (1) fiscal year which in the aggregate shall exceed seventy-five percent (75%) of:
(1) In the case of notes payable solely from and secured by a pledge of taxes, the amount of taxes levied and to be collected for the current fiscal year;
(2) In the case of notes payable solely from and secured by a pledge of revenues, the amount of revenues anticipated to be collected during the current fiscal year; and
(3) In the case of notes payable from and secured by a pledge of taxes and revenues, the sum of taxes and revenues anticipated to be collected during the current fiscal year.
(Enact. Acts 1990, ch. 76, § 3, effective July 13, 1990.)

65.7707. Maturity of notes — Payment of interest.
Notes payable shall mature on a date determined by the governing body which shall be no later than the last day of the fiscal year in which the notes are issued. Interest on notes from the date thereof shall be payable at their maturity or payable in installments at earlier dates. Interest on the notes may be at a rate, rates or method of determining rates the governing body of the governmental agency unit may determine.
(Enact. Acts 1990, ch. 76, § 4, effective July 13, 1990.)

65.7709. Time of issuance — Format.
Notes shall be dated as of a date not more than thirty (30) days after the effective date of the legislation authorizing the notes. Notes shall be issued in the denominations, shall be subject to the rights of prior redemption, shall have the privileges of exchange and registration, shall be dated, shall be in registered or bearer form, with or without coupons, and shall be payable at the place or places, all as the governing body of the governmental agency may determine.
(Enact. Acts 1990, ch. 76, § 5, effective July 13, 1990.)

65.7711. Notes to be secured by pledge, lien, and charge — Sinking fund or note retirement fund.
Notes issued in a single fiscal year, shall be equally and ratably secured by the pledge of, security interest in, and a lien and charge on, the taxes or revenues, or both, of the governmental agency specified in the authorizing legislation which are in the process of collection and are to be received during the period when the notes will be outstanding. The pledge, lien, and charge shall be fully perfected as against the governmental agency, all creditors, and all third parties in accordance with the terms of the legislation from and after the delivery of the notes until the notes are paid in full. The legislation may establish one (1) or more sinking funds or note retirement funds and provide for periodic or other deposits therein, and may contain such covenants or other provisions as the governmental agency shall determine. In every case, the taxes and revenues pledged shall be those taxes and revenues which are the subject of appropriation for the current fiscal year. The holders or owners of notes may be given the right to have the notes continually secured by the faith and credit of the governmental agency, and each note shall bear on its face a statement to that effect and to the effect that the right of payment on the note is limited to

the taxes or revenues pledged under the legislation of the governmental agency authorizing the notes.
(Enact. Acts 1990, ch. 76, § 6, effective July 13, 1990.)

65.7713. Enforcement of pledge, lien, and charge — Payment of notes.
The holder of the notes may enforce a pledge of, security interest in, and lien and charge on, the taxes or revenues, or both, of the governmental agency against all state and local public officials in possession of any of the taxes or revenues at any time which may be collected directly from the official upon notice by the holder for application to the payment of a note as and when due or for deposit in the applicable sinking fund or note retirement fund at the times and in the amounts specified in the note. Any state or local public official in possession of any taxes or revenues which are pledged shall make payment, against receipt therefor, directly to the holder of the notes and shall be discharged from any further liability or responsibility for taxes or revenues. If the payment is a payment in full of the notes, it shall be made against surrender of the notes to the state or local public official for delivery to the governmental agency in the case of payment in full, otherwise it shall be made against production of the notes for notation thereon of the amount of the payment.
(Enact. Acts 1990, ch. 76, § 7, effective July 13, 1990.)

65.7715. Estimate of revenues available for securing notes.
Prior to each authorization of notes, authorized officers of the governmental agency shall make an estimate of the taxes or revenues, or both, whichever is to secure the payment of the notes, which are estimated to be received during the period when the notes will be outstanding. The estimate shall take due account of the past and anticipated collection experience of the governmental agency and of current economic conditions. The estimate shall be certified by the officer as of a date not more than thirty (30) days prior to the effective date of the legislation authorizing the notes.
(Enact. Acts 1990, ch. 76, § 8, effective July 13, 1990.)

65.7717. Sale — Award to be made by legislation.
Notes may be sold at public, private, or invited sale as the governing body of the governmental agency may determine. Any public sale shall be advertised and conducted in the manner and subject to the conditions provided for a public sale of bonds pursuant to KRS Chapter 424. The governing body of the governmental agency shall award the notes by legislation to specified purchasers at a specified price.
(Enact. Acts 1990, ch. 76, § 9, effective July 13, 1990.)

65.7719. Notification of prescribed note information to state local debt officer.
Without first notifying the state local debt officer in writing, no note shall be valid or obligatory. Notification shall contain the terms of the notes, including the interest rates or method of determining rates, the approximate date of issue, the maturity dates, the trustee or paying agent, if any, and shall include a copy of the certificate of the governmental agency as to taxes or revenues to be collected during the term of the notes. No approval of the state local debt officer shall be required.
(Enact. Acts 1990, ch. 76, § 10, effective July 13, 1990; 1994, ch. 508, § 23, effective July 15, 1994.)

65.7721. Short title.
KRS 65.7701 to 65.7721 may be cited as the Short-term Borrowing Act.
(Enact. Acts 1990, ch. 76, § 11, effective July 13, 1990.)

Governmental Leasing Act

65.940. Definitions for KRS 65.942 to 65.956.
As used in KRS 65.942 to 65.956, unless the context otherwise requires:
(1) "Acquire" means to purchase, install, equip, or improve personal property or real property pursuant to KRS 65.942 to 65.956.
(2) "City" means any municipal corporation of any class incorporated in the Commonwealth.
(3) "Construct" means building reconstruction, replacement, extension, repairing, betterment, development, equipment, embellishment, or improvement.
(4) "County" means a political subdivision of the Commonwealth created and established by the laws of the Commonwealth.
(5) "Governmental agency" means any county, urban-county government, consolidated local government, city, taxing district, special district, school district, or other political subdivision of the Commonwealth or body corporate or politic or any instrumentality of the foregoing.
(6) "Governing body" means the board, council, commission, fiscal court, or other body or group that is authorized by law to acquire property for each respective governmental agency.
(7) "Lease" means a lease, lease-purchase, lease with option to purchase, installment sale agreement, or other similar agreement entered into pursuant to KRS 65.942 to 65.956.
(8) "Lease price" means the total of amounts designated as payments of principal under a lease.
(9) "Net interest cost" means the total of all interest to accrue and fall due through the last payment due date on a lease, plus any discount or minus any premium included in the lease price.
(10) "Person" means any individual, corporation, organization, government or governmental subdivision, or agency, business trust, estate, trust, partnership, association, and any other legal entity.
(11) "Personal property" means personal property, appliances, equipment, or furnishings, or an interest therein, whether movable or fixed, deemed by the governing body of a governmental agency to be necessary, useful, or appropriate to one (1) or more purposes of the governmental agency, but shall not include real property.
(12) "Real property" means land, buildings, fixtures, and interests in real property, deemed by the governing body of the governmental agency to be

necessary, useful, or appropriate to one (1) or more purposes of the governmental agency.

(13) "Revenue" means all funds received by a governmental agency which are not taxes, including but not limited to excises, transfers, service fees, assessments, and occupational license fees.

(14) "School district" means any county school district or independent school district organized and existing pursuant to the laws of the Commonwealth.

(15) "Special district" means any agency, authority, or political subdivision of the Commonwealth which exercises less than statewide jurisdiction and which is organized for the purpose of performing governmental or other prescribed functions within limited boundaries. It includes all political subdivisions of the Commonwealth except a city, county, or school district.

(16) "State local debt officer" means the officer so designated in KRS 66.045.

(17) "Taxes" means taxes properly levied upon real or personal property.

(18) "Taxing district" means any taxing district created under KRS 65.180 to 65.190.

(Enact. Acts 1990, ch. 81, § 1, effective July 13, 1990; 1994, ch. 508, § 24, effective July 15, 1994; 2002, ch. 346, § 36, effective July 15, 2002.)

65.942. Terms and conditions of leases — Leasing for financing property purchases — Sinking fund.

(1) The governing body of a governmental agency may approve by ordinance, order, or resolution and may execute, perform, and make payments under a lease with any person, to acquire or construct personal property or real property for any public purpose. The lease may be on the terms and conditions that are deemed appropriate by the governing body. Leases may be payable in whole or in part from taxes and may be obligations of the governmental agency for the entire term of the lease or for a period that does not exceed one (1) year. Leases may contain an option or options to renew or extend the term and may be made payable from a pledge of all or any part of any revenues, funds, or taxes or any combination of any revenues, funds, or taxes, which are available to the governmental agency for its public purposes.

(2) A governmental agency may pledge any revenues or taxes as security for payment under leases, and the leases may provide that the governmental agency may terminate its obligations under the lease at the expiration of each year during the term of the lease. A governmental agency may pledge any revenue or taxes as security for payment under a lease regardless of any right to terminate. The lease may provide for the payment of interest on the unpaid amount of the lease price at a rate, rates, or method of determining rates and may contain prepayment provisions, termination penalties, and other provisions determined by the governing body of the governmental agency.

(3) Prior to entering into a lease for the financing of the purchase of any personal property or real property, a governmental agency shall comply with other provisions of law regarding the purchase of property for public purposes. The lease shall be deemed an instrument for financing and provisions of law regarding purchases of property for public use shall not apply to the lease itself. Leases may be entered into on a publicly advertised competitive basis or on a private negotiated basis without advertisement.

(4) A sinking fund prescribed by KRS 66.081 shall be established for the payment of leases which are not annually renewable and which are payable in whole or in part from taxes and lease payments under those leases shall be made from the sinking fund.

(Enact. Acts 1990, ch. 81, § 2, effective July 13, 1990; 1996, ch. 280, § 29, effective July 15, 1996.)

65.944. Notification or approval of state local debt officer, when required — Approval by chief state school officer, when required.

(1) (a) Without first notifying the state local debt officer in writing, no lease may be entered into if the lease price exceeds one hundred thousand dollars ($100,000). The notification shall contain the terms of the lease, including the lease price, number of optional renewal periods, interest rate, date of issue, purpose, any trustee or paying agent, if any, and any other information the state local debt officer may require. The state local debt officer may prescribe a form for providing the information required by this paragraph.

(b) In addition to the notification required by this subsection, no county, except an urban-county, shall enter into a lease if the lease price exceeds five hundred thousand dollars ($500,000) without first receiving the approval of the lease from the state local debt officer. The state local debt officer may prescribe procedures and adopt regulations for granting approval of the leases.

(c) In addition to the notification required by this subsection, no school district shall enter into a lease if the lease price exceeds one hundred thousand dollars ($100,000) without first receiving the approval of the lease from the chief state school officer. The chief state school officer shall recommend administrative regulations to the State Board of Education for implementation of KRS 65.940 to 65.956.

(2) The state local debt officer may provide technical and advisory assistance regarding the entering into leases by a governmental agency whose governing body requests assistance.

(Enact. Acts 1990, ch. 81, § 3, effective July 13, 1990; 1992, ch. 27, § 6, effective March 2, 1992; 1994, ch. 508, § 25, effective July 15, 1994.)

Cross-References. Approval for school district lease agreements, 702 KAR 3:300.

65.946. Maximum term for leases.

A lease for real property may have any term, including renewals, not to exceed forty (40) years. A lease for

personal property may have any term, including renewals, not to exceed the useful life of the personal property financed, determined in accordance with generally accepted accounting principles.
(Enact. Acts 1990, ch. 81, § 4, effective July 13, 1990.)

Cross-References. Approval for school district lease agreements, 702 KAR 3:300.

65.948. Leased property exempt from state and local taxation.
A governmental agency shall be considered the equitable owner of any personal or real property leased under KRS 65.952 where the property is used solely for public purposes, unless the governmental agency is vested with legal ownership pursuant to KRS 65.952. Personal or real property which is equitably or legally owned by a governmental agency shall be exempt from all taxation by the Commonwealth and any of its political subdivisions. Leases and interests therein and payments received by lessors or their assigns which are identified as interest shall be exempt from taxation by the Commonwealth and any of its political subdivisions to the same extent as bonds or notes issued by the Commonwealth and any governmental agency.
(Enact. Acts 1990, ch. 81, § 5, effective July 13, 1990.)

65.950. Leases as a legal and authorized investment.
A lease or any interest therein entered into pursuant to KRS 65.940 to 65.956 shall be a legal and authorized investment for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, and trustees.
(Enact. Acts 1990, ch. 81, § 6, effective July 13, 1990.)

65.952. Title to property subject to the lease.
A lease may provide that legal title to the real property or personal property subject to the lease may be vested in the governmental agency or in the person acting as lessor under the lease and may be transferred from one to the other under terms provided in the lease.
(Enact. Acts 1990, ch. 81, § 7, effective July 13, 1990.)

65.954. Construction of KRS 65.940 to 65.956.
KRS 65.940 to 65.956 shall be authority for entering into leases and the performance of the other acts and procedures authorized by KRS 65.940 to 65.956, without reference to any other laws, or any restrictions or limitations contained therein, except as specifically provided in KRS 65.940 to 65.956. If leases are entered into under KRS 65.940 to 65.956, to the extent of any conflict or inconsistency between any provisions of KRS 65.940 to 65.956 and any provisions of any other law, the provisions of KRS 65.940 to 65.956 shall prevail and control, except that any governmental agency may use the provisions of any other law, not in conflict with the provisions of KRS 65.940 to 65.956, to the extent convenient or necessary to carry out any power or authority, express or implied, granted by KRS 65.940 to 65.956. KRS 65.940 to 65.956 shall be liberally construed to effectuate its purpose.
(Enact. Acts 1990, ch. 81, § 8, effective July 13, 1990.)

65.956. Short title.
KRS 65.940 to 65.956 may be cited as the Governmental Leasing Act.
(Enact. Acts 1990, ch. 81, § 9, effective July 13, 1990.)

CHAPTER 66

ISSUANCE OF BONDS AND CONTROL OF FUNDS

SECTION.

INVESTMENTS

66.480. Investment of public funds — Limitations — Written investment policy — Duties of state local debt officer — Investment pool.

INVESTMENTS

66.480. Investment of public funds — Limitations — Written investment policy — Duties of state local debt officer — Investment pool.

(1) The governing body of a city, county, urban-county, charter county, school district (provided that its general procedure for action is approved by the Kentucky Board of Education), or other local governmental unit or political subdivision, may invest and reinvest money subject to its control and jurisdiction in:
   (a) Obligations of the United States and of its agencies and instrumentalities, including obligations subject to repurchase agreements, if delivery of these obligations subject to repurchase agreements is taken either directly or through an authorized custodian. These investments may be accomplished through repurchase agreements reached with sources including, but not limited to, national or state banks chartered in Kentucky;
   (b) Obligations and contracts for future delivery or purchase of obligations backed by the full faith and credit of the United States or a United States government agency, including but not limited to:
      1. United States Treasury;
      2. Export-Import Bank of the United States;
      3. Farmers Home Administration;
      4. Government National Mortgage Corporation; and
      5. Merchant Marine bonds;
   (c) Obligations of any corporation of the United States government, including but not limited to:
      1. Federal Home Loan Mortgage Corporation;
      2. Federal Farm Credit Banks;
      3. Bank for Cooperatives;
      4. Federal Intermediate Credit Banks;
      5. Federal Land Banks;
      6. Federal Home Loan Banks;

7. Federal National Mortgage Association; and
8. Tennessee Valley Authority;

(d) Certificates of deposit issued by or other interest-bearing accounts of any bank or savings and loan institution which are insured by the Federal Deposit Insurance Corporation or similar entity or which are collateralized, to the extent uninsured, by any obligations, including surety bonds, permitted by KRS 41.240(4);

(e) Uncollateralized certificates of deposit issued by any bank or savings and loan institution rated in one (1) of the three (3) highest categories by a nationally recognized rating agency;

(f) Bankers' acceptances for banks rated in one (1) of the three (3) highest categories by a nationally recognized rating agency;

(g) Commercial paper rated in the highest category by a nationally recognized rating agency;

(h) Bonds or certificates of indebtedness of this state and of its agencies and instrumentalities;

(i) Securities issued by a state or local government, or any instrumentality of agency thereof, in the United States, and rated in one (1) of the three (3) highest categories by a nationally recognized rating agency; and

(j) Shares of mutual funds, each of which shall have the following characteristics:

1. The mutual fund shall be an open-end diversified investment company registered under the Federal Investment Company Act of 1940, as amended;
2. The management company of the investment company shall have been in operation for at least five (5) years; and
3. All of the securities in the mutual fund shall be eligible investments pursuant to this section.

(2) The investment authority provided by subsection (1) of this section shall be subject to the following limitations:

(a) The amount of money invested at any time by a local government or political subdivision in one (1) or more of the categories of investments authorized by subsections (1)(e), (f), (g), and (i) of this section shall not exceed twenty percent (20%) of the total amount of money invested by the local government; and

(b) No local government or political subdivision shall purchase any investment authorized by subsection (1) on a margin basis or through the use of any similar leveraging technique.

(3) The governing body of every local government or political subdivision that invests or reinvests money subject to its control or jurisdiction according to the provisions of subsection (1) of this section shall by January 1, 1995, adopt a written investment policy that shall govern the investment of funds by the local government or political subdivision. The written investment policy shall include, but shall not be limited to the following:

(a) A designation of the officer or officers of the local government or political subdivision who are authorized to invest and oversee the investment of funds;

(b) A list of the permitted types of investments;

(c) Procedures designed to secure the local government's or political subdivision's financial interest in the investments;

(d) Standards for written agreements pursuant to which investments are to be made;

(e) Procedures for monitoring, control, deposit, and retention of investments and collateral;

(f) Standards for the diversification of investments, including diversification with respect to the types of investments and firms with whom the local government or political subdivision transacts business;

(g) Standards for the qualification of investment agents which transact business with the local government, such as criteria covering creditworthiness, experience, capitalization, size, and any other factors that make a firm capable and qualified to transact business with the local government or political subdivision; and

(h) Requirements for periodic reporting to the governing body on the status of invested funds.

(4) Sheriffs, county clerks, and jailers, who for the purposes of this section shall be known as county officials, may, and at the direction of the fiscal court shall, invest and reinvest money subject to their control and jurisdiction, including tax dollars subject to the provisions of KRS 134.300, 134.320, and 160.510, as permitted by this section.

(5) The provisions of this section are not intended to impair the power of a county official, city, county, urban-county, charter county, school district, or other local governmental unit or political subdivision to hold funds in deposit accounts with banking institutions as otherwise authorized by law.

(6) The governing body or county official may delegate the investment authority provided by this section to the treasurer or other financial officer or officers charged with custody of the funds of the local government, and the officer or officers shall thereafter assume full responsibility for all investment transactions until the delegation of authority terminates or is revoked.

(7) All county officials shall report the earnings of any investments at the time of their annual reports and settlements with the fiscal courts for excess income of their offices.

(8) The state local debt officer is authorized and directed to assist county officials and local governments (except school districts) in investing funds that are temporarily in excess of operating needs by:

(a) Explaining investment opportunities to county officials and local governments through publication and other appropriate means; and

(b) Providing technical assistance in investment of idle funds to county officials and local governments that request that assistance.

(9) (a) The state local debt officer may create an investment pool for local governments (except school districts) and county officials; and coun-

ties and county officials and cities may associate to create an investment pool. If counties and county officials and cities create a pool, each group may select a manager to administer their pool and invest the assets. Each county and each county official and each city may invest in a pool created pursuant to this subsection. Investments shall be limited to those investment instruments permitted by this section. The funds of each local government and county official shall be properly accounted for, and earnings and charges shall be assigned to each participant in a uniform manner according to the amount invested. Charges to any local government or county official shall not exceed one percent (1%) annually on the principal amount invested, and charges on investments of less than a year's duration shall be prorated. Any investment pool created pursuant to this subsection shall be audited each year by an independent certified public accountant, or by the Auditor of Public Accounts. A copy of the audit report shall be provided to each local government or county official participating in the pool. In the case of an audit by an independent certified public accountant, a copy of the audit report shall be provided to the Auditor of Public Accounts, and to the state local debt officer. The Auditor of Public Accounts may review the report of the independent certified public accountant. After preliminary review, should discrepancies be found, the Auditor of Public Accounts may make his own investigative report or audit to verify the findings of the independent certified public accountant's report.

(b) If the state local debt officer creates an investment pool, he shall establish an account in the Treasury for the pool. He shall also establish a separate trust and agency account for the purpose of covering management costs, and he shall deposit management charges in this account. The state local debt officer may issue regulations, pursuant to KRS Chapter 13A, governing the operation of the investment pool, including but not limited to provisions on minimum allowable investments and investment periods, and method and timing of investments, withdrawals, payment of earnings, and assignment of charges.

(c) Before investing in an investment pool created pursuant to this subsection, a local government or county official shall allow any savings and loan association or bank in the county, as described in subsection (1)(d) of this section, to bid for the deposits, but the local government or county official shall not be required to seek bids more often than once in each six (6) month period.

(10) (a) With the approval of the Kentucky Board of Education, local boards of education, or any of them that desire to do so, may associate to create an investment pool. Each local school board which associates itself with other local school boards for the purpose of creating the investment pool may invest its funds in the pool so created and so managed. Investments shall be limited to those investment instruments permitted by this section. The funds of each local school board shall be properly accounted for, and earnings and charges shall be assigned to each participant in a uniform manner according to the amount invested. Charges to any local school board shall not exceed one percent (1%) annually on the principal amount invested, and charges on investments of less than a year's duration shall be prorated. Any investment pool created pursuant to this subsection shall be audited each year by an independent certified public accountant, or by the Auditor of Public Accounts. A copy of the audit report shall be provided to each local school board participating in the pool. In the case of an audit by an independent certified public accountant, a copy of the audit report shall be provided to the Auditor of Public Accounts, and to the Kentucky Board of Education. The Auditor of Public Accounts may review the report of the independent certified public accountant. After preliminary review, should discrepancies be found, the Auditor of Public Accounts may make his own investigative report or audit to verify the findings of the independent certified public accountant's report.

(b) The Kentucky Board of Education may issue administrative regulations governing the operation of the investment pool including, but not limited to, provisions on minimum allowable investments and investment periods, and methods and timing of investments, withdrawals, payment of earnings, and assignment of charges.

(Enact. Acts 1966, ch. 205; 1982, ch. 57, § 1, effective March 9, 1982; 1986, ch. 261, § 1, effective July 1, 1986; 1988, ch. 393, § 3, effective July 15, 1988; 1990, ch. 291, § 2, effective July 13, 1990; 1990, ch. 476, Pt. V, § 298, effective July 13, 1990; 1994, ch. 275, § 1, effective July 15, 1994; 1994, ch. 508, § 39, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 554, § 3, effective July 15, 1998.)

Legislative Research Commission Note. (7/15/94). This section was amended by 1994 Ky. Acts chs. 275 and 508. Where these Acts are not in conflict, they have been codifed together. In cases where stylistic changes made in Acts ch. 508 conflict with substantive changes in Acts ch. 275, the provisions of Acts ch. 275 have prevailed. Cf. KRS 7.123(1).

(7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to section 653(1) of Acts Ch. 476.

Compiler's Notes. The Federal Investment Company Act of 1940 referred to in subdivision (1)(j)1. of this section is compiled as 15 U.S.C. §§ 80a-1 — 80a-52.

The reference to State Board of Elementary and Secondary Education in this section has been changed to Kentucky Board of Education on authority of Acts 1996, ch. 362, § 6, effective July 15, 1996.

Opinions of Attorney General. A county may invest in school revenue bonds, either city or county, pursuant to subsection (b) of this section which authorizes investments in bonds or certificates of indebtedness of this state and of its agencies and instrumentalities, for all county and municipal school boards are state agencies. OAG 79-317.

CHAPTER 68

COUNTY FINANCE AND COUNTY TREASURER

SECTION.

LICENSE TAXES

68.180. Occupational license tax in counties containing 300,000 population.
68.185. Fiscal court's function in collection and appropriation of tax.
68.190. Credit for payment of similar city tax.
68.199. County that attains population of 30,000 — Credit against occupational license fee — Voluntary credit — New fee or increase in fee.

PENALTIES

68.990. Penalties.

LICENSE TAXES

68.180. Occupational license tax in counties containing 300,000 population.

(1) The fiscal court of each county having a population of three hundred thousand (300,000) or more may by order or resolution impose license fees on franchises, provide for licensing any business, trade, occupation, or profession, and the using, holding, or exhibiting of any animal, article, or other thing. License fees on such business, trade, occupation, or profession for revenue purposes, except those of the common schools, shall be imposed at a percentage rate or rates not to exceed one and one-fourth percent (1.25%) of (a) salaries, wages, commissions, and other compensation earned by persons within the county for work done and services performed or rendered in the county, and (b) the net profits of businesses, trades, professions, or occupations from activities conducted in the county. License fees imposed for regulatory purposes shall not be subject to such limitations as to form and amount. No public service company that pays an ad valorem tax shall be required to pay a license tax, and no license tax shall be imposed upon or collected from any bank, trust company, combined bank and trust company, combined trust, banking and title business in this state, any savings and loan association, whether state or federally chartered, or upon income received by members of the Kentucky National Guard for active duty training, unit training assemblies, and annual field training, or upon income received by precinct workers for election training or work at election booths in state, county, and local primary, regular, or special elections, or upon any profits, earnings, or distributions of an investment fund which would qualify under KRS 154.20-250 to 154.20-284 to the extent any profits, earnings, or distributions would not be taxable to an individual investor, or in other cases where the county is prohibited by law from imposing a license tax.

(2) The provisions and limitations of subsection (1) shall not apply to the license fees authorized by KRS 160.482 to 160.488.

(Enact. Acts 1960, ch. 80, § 1; 1965 (1st Ex. Sess.), ch. 2, § 23; 1976, ch. 104, § 1; 1976, ch. 301, § 2; 1990, ch. 476, Pt. IV, § 120, effective July 13, 1990; 1998, ch. 509, § 1, effective July 15, 1998; 2002, ch. 230, § 1, effective July 15, 2002.)

Compiler's Notes. Section 10 of Acts 1998, ch. 509, provided that the 1998 amendments to this section "apply to tax years beginning after December 31, 1997."

Cross-References. License taxes, KRS ch. 137.

68.185. Fiscal court's function in collection and appropriation of tax.

(1) The fiscal court of each county having a population of three hundred thousand (300,000) or more may provide for the levy, assessment, and collection of the license fees authorized by KRS 68.180 and 160.482 to 160.488, provide for the issuance and enforcement of licenses, and specify the county governmental purposes to which the revenue derived from license fees authorized by KRS 68.180 shall be applied.

(2) In making the provisions described in subsection (1), and without limiting them, the fiscal court may, by resolution or order, adopt reasonable rules or regulations requiring the preparation and filing of timely, accurate, and truthful returns, accounts, and license applications which will aid in the determination of the amount of the fee.

(Enact. Acts 1960, ch. 80, § 2; 1964, ch. 111, § 1; 1965 (1st Ex. Sess.), ch. 2, § 24; 1990, ch. 476, Pt. IV, § 121, effective July 13, 1990.)

68.190. Credit for payment of similar city tax.

Any amount paid to any city of the first class within such county as a license fee, for the same privilege and for the same period, shall be credited against the county license fee payable under subsection (1) of KRS 68.180. Any amount paid to any other city within such county as a license fee, for the same privilege and for the same period, shall be credited against the county license fee payable under subsection (1) of KRS 68.180, provided that such city, at least thirty (30) days prior to the beginning of any county fiscal year, has contracted with the fiscal court to contribute annually to the support of joint agencies of such county and one or more cities in the county, an amount which bears the same ratio to the annual appropriation made for such joint agencies by a city of the first class in the county, as the assessed valuations for county tax purposes, as determined by the property valuation administrator, of the real and tangible personal property, excluding franchises, located within the corporate limits of such other cities, respectively, bears to the same assessed valuations within a city of the first class in said county.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 299, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1960, ch. 80, § 3; 1965 (1st Ex. Sess.), ch. 2, § 25) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 299, effective July 13, 1990.

68.199. County that attains population of 30,000 — Credit against occupational license fee — Voluntary credit — New fee or increase in fee.

(1) Notwithstanding the provisions of KRS 68.197(4), a county that enacts an occupational license fee under the authority of KRS 67.083 prior to attaining a population of thirty thousand (30,000) shall not be required to allow a credit against the county occupational license fee for an occupational license fee paid to a city within the county when it is determined that the population of the county exceeds thirty thousand (30,000).

(2) If prior to July 15, 2002, a county voluntarily granted a credit against the county occupational license fee under the terms of an ordinance, interlocal agreement, or other agreement with a city, the county shall not eliminate the credit after it is determined that the population of the county exceeds thirty thousand (30,000).

(3) After July 15, 2002, a county that enacts a new county occupational license fee or increases a county occupational license fee, after it is determined that the county population exceeds thirty thousand (30,000), shall be required to allow the credit against the city fee required by KRS 68.197(4) to the extent of the increase or new fee.

(4) For purposes of this section, the county population shall be determined based only on the official decennial census by the United States Bureau of the Census.

(Enact. Acts 2002, ch. 161, § 1, effective July 15, 2002.)

PENALTIES

68.990. Penalties.

(1) Any outgoing county treasurer who fails for ten (10) days to comply with any of the provisions of KRS 68.050 shall be fined not less than fifty (50) nor more than five hundred dollars ($500).

(2) The fiscal court and each of its members who fails or refuses to comply with any of the provisions of KRS 68.080 shall be fined fifty dollars ($50) for each offense.

(3) Any county officer or member of a fiscal court who violates any of the provisions of KRS 68.110(3) shall be fined not less than one hundred ($100) nor more than five hundred dollars ($500), or imprisoned in the county jail for not less than one (1) month nor more than twelve (12) months, or both.

(4) The fiscal court and each of its members who fails or refuses to implement a system of uniform accounts as prescribed by the state local finance officer pursuant to KRS 68.210 shall be fined one hundred dollars ($100) for each offense.

(5) Any local government official who fails to submit a financial report requested by the state local finance officer pursuant to KRS 68.210 shall, fifteen (15) days after written notice of noncompliance by the state local finance officer, be fined two hundred fifty dollars ($250) per day until compliance.

(6) Any county or state officer who knowingly violates any of the provisions of KRS 68.250(4), 68.270, 68.280, 68.310, or 68.320 shall, in addition to the specific liabilities imposed for violating any of the provisions of those sections, be guilty of a misdemeanor and, upon conviction thereof, shall have his office declared vacant, and may also be fined not more than five hundred dollars ($500) or imprisoned for not more than ninety (90) days, or both.

(7) Any county officer who willfully violates any of the provisions of KRS 68.010, 68.020(4), 68.220 to 68.260, 68.290, 68.300, or 68.360 shall be fined not less than fifty (50) nor more than two hundred dollars ($200).

(8) Any person, including a corporation, who willfully fails to prepare or file a timely return, account, or license application described in KRS 68.185, or who willfully prepares or files a false or inaccurate return, account, or license application shall be fined not more than one hundred dollars ($100).

(937, 938h-58, 938q-21, 1846, 1851b-4, 1851c-11, 4281a-4: amend. Acts 1962, ch. 210, § 16; 1964, ch. 111, § 2; 1978, ch. 197, § 10, effective June 17, 1978; 1980, ch. 19, § 8, effective July 15, 1980; 1984, ch. 14, § 4, effective July 13, 1984; 1984, ch. 111, § 48, effective July 13, 1984; 1990, ch. 476, Pt. IV, § 122, effective July 13, 1990.)

Cross-References. County officers, penalty for misfeasance, malfeasance or nelgect of duty, KRS 61.170.

Diversion of funds, liability, KRS 68.100.

Warrant in excess of budget fund, liability of treasurer countersigning, KRS 68.300.

CHAPTER 78

COUNTY EMPLOYEES' CIVIL SERVICE AND RETIREMENT

SECTION.

COUNTY EMPLOYEES RETIREMENT SYSTEM

78.606. Service credit earned upon retirement of noncertified employee — Recalculation of benefits.

78.615. Deduction of employee contributions — Service credit — Employer's report — Picked-up employee contributions.

COUNTY EMPLOYEES RETIREMENT SYSTEM

78.606. Service credit earned upon retirement of noncertified employee — Recalculation of benefits.

(1) Upon retirement, a noncertified employee shall have his service credit earned after July 1, 1998, recalculated in accordance with KRS 78.615 except

that the employee shall receive service credit determined by dividing the actual number of contracted days worked by twenty (20) and rounding any remainder to the next whole month, provided that the number of hours worked during the period averages eighty (80) or more hours.

(2) The Kentucky Retirement Systems shall adjust the service credit for all affected members who earned service credit for the school years 1996-97 and 1997-98 by recomputing the members' service based on the rounding method provided in subsection (1) of this section.

(Enact. Acts 1998, ch. 246, § 1, effective July 15, 1998; 2002, ch. 52, § 19, effective July 15, 2002.)

78.615. Deduction of employee contributions — Service credit — Employer's report — Picked-up employee contributions.

(1) Employee contributions shall be deducted each payroll period from the creditable compensation of each employee of an agency participating in the system while he is classified as regular full-time as defined in KRS 78.510 unless the person did not elect to become a member as provided by KRS 61.545(3) or by KRS 78.540(2). After August 1, 1982, employee contributions shall be picked up by the employer pursuant to KRS 78.610(4).

(a) For employees who are not employed by a school board, service credit shall be allowed for each month contributions are deducted or picked up during a fiscal or calendar year, if the employee receives creditable compensation for an average of one hundred (100) hours or more of work per month based on the actual hours worked in a calendar or fiscal year. If the average number of hours of work is less than one hundred (100) hours per month, the employee shall be allowed credit only for those months he receives creditable compensation for one hundred (100) hours of work.

(b) For noncertified employees of school boards, for service prior to July 1, 2000, service credit shall be allowed for each month contributions are deducted or picked up under the employee's employment contract during a school year determined by dividing the actual number of contracted calendar days worked by twenty (20) and rounded to the nearest whole month if the employee receives creditable compensation for an average of eighty (80) or more hours of work per month based on the employee's employment contract. The school board shall certify the number of calendar days worked, the rate of pay, and the hours in a work day for each employee monthly or annually. The employer shall file at the retirement office the final monthly report or the annual report for a fiscal year no later than twenty (20) days following the completion of the fiscal year. The retirement system shall impose a penalty on the employer of one thousand dollars ($1,000) if the information is not submitted by the date required with an additional two hundred and fifty dollars ($250) for each additional thirty (30) day period the information is reported late.

1. If the employee works fewer than the number of contracted calendar days, the employee shall receive service credit determined by dividing the actual number of contracted calendar days worked by twenty (20) and rounded to the nearest whole month, provided that the number of hours worked during the period averages eighty (80) or more hours.
2. If the employee works fewer than the number of contracted calendar days and the average number of hours worked is less than eighty (80) per month, then the employee shall receive service credit for each calendar month in which he worked eighty (80) or more hours.
3. The retirement system shall refund contributions and service credit for any period for which the employee is not given credit under this subsection.

(c) For noncertified employees of school boards, for service on and after July 1, 2000, at the close of each fiscal year, the retirement system shall add service credit to the account of each employee who made contributions to his or her account during the year. Employees shall be entitled to a full year of service credit if their total paid calendar days were not less than one hundred eighty (180) calendar days for a regular school or fiscal year. In the event an employee is paid for less than one hundred eighty (180) calendar days, the employee may purchase credit according to administrative regulations promulgated by the system. In no case shall more than one (1) year of service be credited for all service performed in one (1) fiscal year. Employees who complete their employment contract prior to the close of a fiscal year and elect to retire prior to the close of a fiscal year shall have their service credit reduced by eight percent (8%) for each calendar month that the retirement becomes effective prior to July 1. Employees who are employed and paid for less than the number of calendar days required in their normal employment year shall be entitled to pro rata service credit for the fractional service. This credit shall be based upon the number of calendar days employed and the number of calendar days in the employee's annual employment agreement or normal employment year. Service credit may not exceed the ratio between the school or fiscal year and the number of months or fraction of a month the employee is employed during that year.

(d) Notwithstanding paragraph (c) of this subsection, a noncertified employee of a school board who retires between July 1, 2000, and August 1, 2001, may choose to have service earned between July 1, 2000, and August 1, 2001, credited as described in paragraph (b) of this subsection, if the employee or retired member notifies the retirement system within one (1) year of his initial retirement. The decision once made shall be irrevocable.

(2) Employee contributions shall not be deducted from the creditable compensation of any employee or picked up by the employer while he is seasonal, emergency, temporary, or part-time. No service credit shall be earned.

(3) Contributions shall not be made or picked up by the employer and no service credit shall be earned by a member while on leave except:

(a) A member on military leave shall be entitled to service credit in accordance with KRS 61.555; and

(b) A member on educational leave who meets the criteria established by the state Personnel Cabinet for approved educational leave, who is receiving seventy-five percent (75%) or more of full salary, shall receive service credit and shall pay member contributions in accordance with KRS 78.610, and his employer shall pay employer contributions or the contributions shall be picked up in accordance with KRS 61.565. If a tuition agreement is broken by the member, the member and employer contributions paid or picked up during the period of educational leave shall be refunded.

(4) The retirement office, upon detection, shall refund any erroneous employer and employee contributions made to the retirement system and any interest credited in accordance with KRS 78.640.

(Enact. Acts 1972, ch. 116, § 67; 1976, ch. 321, § 34; 1978, ch. 311, § 24, effective June 17, 1978; 1982, ch. 166, § 10, effective July 15, 1982; 1982, ch. 423, § 18, effective July 15, 1982; 1986, ch. 176, § 3, effective July 15, 1986; 1990, ch. 117, § 3, effective July 13, 1990; 1990, ch. 222, § 8, effective July 13, 1990; 1992, ch. 240, § 57, effective July 14, 1992; 1994, ch. 485, § 29, effective July 15, 1994; 1996, ch. 167, § 25, effective July 15, 1996; 1998, ch. 105, § 23, effective July 15, 1998; 1998, ch. 154, § 73, effective July 15, 1998; 2000, ch. 299, § 1, effective July 14, 2000; 2001, ch. 151, § 1, effective June 21, 2001; 2002, ch. 52, § 20, effective July 15, 2002.)

Compiler's Notes. Section 10 of Acts 1990, ch. 222 provides that: "Any employee or former employee not retired who participated in more than one (1) retirement system administered by the Kentucky Retirement Systems prior to July 15, 1990, may retroactively choose to receive and shall be granted full service credit for time served in one (1) of those systems, and thereby shall relinquish service credit in the other systems for the same time period, and his contributions related to the relinquished credit shall be refunded."

CHAPTER 79

INTERCITY, INTERCOUNTY AND CITY-COUNTY COMPACTS FOR PURCHASING AND MERIT SYSTEMS — RETIREMENT AND DISABILITY PLANS FOR EMPLOYEES OF COUNTIES AND CITIES

SECTION.

79.080. Retirement, disability, health maintenance organization coverage, or hospitalization benefits for employees and elected officers — Participation in state health insurance coverage program for state employees — Coverage provided in County Employees Retirement System after August 1, 1988.

79.080. Retirement, disability, health maintenance organization coverage, or hospitalization benefits for employees and elected officers — Participation in state health insurance coverage program for state employees — Coverage provided in County Employees Retirement System after August 1, 1988.

(1) The term "health maintenance organization" for the purposes of this section, means a health maintenance organization as defined in KRS 304.38-030, which has been licensed by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board and issued a certificate of authority by the Department of Insurance as a health maintenance organization and which is qualified under the requirements of the United States Department of Health, Education and Welfare, except as provided in subsection (4) of this section.

(2) Cities of all classes, counties, and urban-county governments and the agencies of cities, counties, charter county, and urban-county governments are authorized to establish and operate plans for the payment of retirement, disability, health maintenance organization coverage, or hospitalization benefits to their employees and elected officers, and health maintenance organization coverage or hospitalization benefits to the immediate families of their employees and elected officers. The plan may require employees to pay a percentage of their salaries into a fund from which coverage or benefits are paid, or the city, county, charter county, urban-county government, or agency may pay out of its own funds the entire cost of the coverage or benefits. A plan may include a combination of contributions by employees and elected officers and by the city, county, charter county, urban-county government, or agency into a fund from which coverage or benefits are paid, or it may take any form desired by the city, county, charter county,

urban-county government, or agency. Each city, county, charter county, urban-county government, or agency may make rules and regulations and do all other things necessary in the establishment and operation of the plan.

(3) Cities of all classes, counties, charter counties, urban-county governments, the agencies of cities, counties, charter counties, and urban-county governments, and all other political subdivisions of the state may provide disability, hospitalization, or other health or medical care coverage to their officers and employees, including their elected officers, through independent or cooperative self-insurance programs and may cooperatively purchase the coverages.

(4) Any city, county, charter county, or urban-county government which is a contributing member to any one (1) of the retirement systems administered by the state may participate in the state health insurance coverage program for state employees as defined in KRS 18A.225 to 18A.229. Should any city, county, charter county, or urban-county government opt at any time to participate in the state health insurance coverage program, it shall do so for a minimum of three (3) consecutive years. If after the three (3) year participation period, the city, county, charter county, or urban-county government chooses to terminate participation in the state health insurance coverage program, it will be excluded from further participation for a period of three (3) consecutive years. If a city, county, charter county, or urban-county government, or one (1) of its agencies, terminates participation of its active employees in the state health insurance coverage program and there is a state appropriation for the employer's contribution for active employees' health insurance coverage, neither the unit of government, or its agency, nor the employees shall receive the state-funded contribution after termination from the state employee health insurance program. The three (3) year participation and exclusion cycles shall take effect each time a city, county, charter county, or urban-county government changes its participation status.

(5) Any city, county, charter county, urban-county government, or other political subdivision of the state which employs more than twenty-five (25) persons and which provides hospitalization benefits or health maintenance organization coverage to its employees and elected officers, shall annually give its employees an option to elect either standard hospitalization benefits or membership in a qualified health maintenance organization which is engaged in providing basic health services in a health maintenance service area in which at least twenty-five (25) of the employees reside; except that if any city, county, charter county, urban-county government, or agencies of any city, county, charter county, urban-county government, or any other political subdivision of the state which does not have a qualified health maintenance organization engaged in providing basic health services in a health maintenance service area in which at least twenty-five (25) of the employees reside, the city, county, charter county, urban-county government, or agencies of the city, county, charter county, urban-county government, or any other political subdivision of the state may annually give its employees an option to elect either standard hospitalization benefits or membership in a health maintenance organization which has been licensed by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board and issued a certificate of authority by the Department of Insurance as a health maintenance organization and which is engaged in providing basic health services in a health maintenance service area in which at least twenty-five (25) of the employees reside. Any premium due for health maintenance organization coverage over the amount contributed by the city, county, charter county, urban-county government, or other political subdivision of the state which employs more than twenty-five (25) persons for any other hospitalization benefit shall be paid by the employee.

(6) If an employee moves his place of residence or employment out of the service area of a health maintenance organization, under which he has elected coverage, into either the service area of another health maintenance organization or into an area of the state not within a health maintenance organization service area, the employee shall be given an option, at the time of the move or transfer, to elect coverage either by the health maintenance organization into which service area he moves or is transferred or to elect standard hospitalization coverage offered by the employer.

(7) Any plan adopted shall provide that any officer or member of a paid fire or police department who has completed five (5) years or more as a member of the department, but who is unable to perform his duties by reason of heart disease or any disease of the lungs or respiratory tract, is presumed to have contracted his disease while on active duty as a result of strain or the inhalation of noxious fumes, poison or gases, and shall be retired by the pension board under terms of the pension system of which he is a member, if the member passed an entrance physical examination and was found to be in good health as required.

(8) The term "agency" as used herein shall include boards appointed to operate waterworks, electric plants, hospitals, airports, housing projects, golf courses, parks, health departments, or any other public project.

(9) After August 1, 1988, except as permitted by KRS 65.156, no new retirement plan shall be created pursuant to this section, and cities which were covered by this section on or prior to August 1, 1988, shall participate in the County Employees Retirement System effective August 1, 1988. Any city, county, charter county, urban-county, or agency thereof which provided a retirement plan for its employees, pursuant to this section, on or prior to August 1, 1988, shall place employees hired after August 1, 1988, in the County Employees Retirement System. The city, county, charter county, urban-county, or agency thereof shall offer

employees hired on or prior to August 1, 1988, membership in the County Employees Retirement System under the alternate participation plan as described in KRS 78.530(3), but such employees may elect to retain coverage under this section.

(Enact. Acts 1948, ch. 129, § 1; 1966, ch. 10; 1970, ch. 212, § 1; 1976 (Ex. Sess.), ch. 35, § 3; 1984, ch. 177, § 10, effective July 13, 1984; 1986, ch. 292, § 1, effective July 15, 1986; 1988, ch. 11, § 7, effective July 15, 1988; 1994, ch. 350, § 5, effective July 15, 1994; 2000, ch. 438, § 5, effective April 21, 2000.)

Cross-References. Civil service for city employees, KRS Chapter 90.

Disability benefits for policemen and firemen, KRS 95.290, 95.550, 95.773.

Disability, medical and hospital benefits for police and firemen of cities of third and fourth classes, KRS 95.850.

CHAPTER 96

UTILITIES IN CITIES

SECTION.

FURNISHING WATER OR LIGHT TO ANOTHER CITY OR OUTSIDE LIMITS

96.150. Extending water supply or sanitary sewer system outside city limits — Limitation — Consideration of installation of fire hydrants on extended lines.

MISCELLANEOUS PROVISIONS

96.536. City owned light, water, or gas plant may pay tax equivalent to school district.

T. V. A. ACT

96.820. Payment of sums equivalent to taxes based on book value.

96.895. Proration and distribution of payments of sums equivalent to taxes based on book value among the state, counties, cities, and school districts.

FURNISHING WATER OR LIGHT TO ANOTHER CITY OR OUTSIDE LIMITS

96.150. Extending water supply or sanitary sewer system outside city limits — Limitation — Consideration of installation of fire hydrants on extended lines.

(1) Any city that owns or operates a water supply or sanitary sewer system may extend the system into, and furnish and sell water and provide sanitary sewers to any person within, any territory contiguous to the city, and may install within that territory necessary apparatus; provided, however, that the extension of a water supply or sanitary sewer system shall not enter into any territory served by an existing water supply or sanitary sewer district unless such district requests the extension of water or sewer services from a city. For these purposes the city or sanitation authority established by an interlocal agreement may condemn or otherwise acquire franchises, rights, and rights-of-way, as private corporations may do.

(2) When extending the system to any person, water district, or water association, the city may consider the installation of fire hydrants on the extended lines. The city may extend water lines which are incapable of servicing fire hydrants only if the city determines that servicing hydrants is not feasible. The determination shall include consideration of the incremental costs of adequately sized pipe and associated pumps and towers, and the benefits of real estate development, water sales, the availability of fire protection insurance, and the reduction in fire insurance premiums which may result from the installation of hydrants at specified intervals. When extending lines to a water district or water association, the determination may be made in consultation with the district or association, taking into consideration their fiscal capacity.

(2741a-4: amend. Acts 1962, ch. 233, § 1; 1964, ch. 31, § 1; 1974, ch. 36, § 1; 1986, ch. 34, § 1, effective July 15, 1986; 1992, ch. 122, § 1, effective July 14, 1992.)

Cross-References. City may contract with county water district to receive water, KRS 74.120.

MISCELLANEOUS PROVISIONS

96.536. City owned light, water, or gas plant may pay tax equivalent to school district.

(1) Each board of education of a public school district in which is located the property or properties of a publicly-owned light, water, or gas plant may each year be paid by the governing board of the plant from the proceeds of the sale of electrical energy, water, or gas an amount which shall not exceed that determined by multiplying the book value of the property or properties of the publicly-owned light, water, or gas plant as of the beginning of each year by the current tax rate levied for school purposes for the school district in which the property or properties may be located. "Book value," as used in this section, means the cost of tangible property plus additions, extensions, and betterments, less reasonable depreciation or retirement reserve, and "year" as herein used shall mean the twelve (12) month period ending June 30. The book value so determined shall be in accordance with standard accounting practices. No payment may be made under this section except pursuant to a resolution of the governing board of the plant, adopted by a unanimous vote of the members of the board.

(2) Amounts for any year, as provided in subsection (1) of this section, shall be paid to the board of education on or before January 1 of each year.

(3) This section shall not apply to any publicly owned electric plant that is subject to the provisions of KRS 96.820.

(4) This section shall be construed only as an enabling act and shall in no way confer upon any board of education of a public school district authority to require this money to be paid to it.

(Enact. Acts 1948, ch. 54; 1990, ch. 476, Pt. IV, § 123, effective July 13, 1990.)

T. V. A. ACT

96.820. Payment of sums equivalent to taxes based on book value.

(1) For the purposes of this section, unless the context requires otherwise:

(a) "Taxing jurisdiction" shall mean each county, each school district, each municipality, and each other special taxing district located within the state.

(b) "State" shall mean the Commonwealth of Kentucky.

(c) "Tax equivalent" shall mean the amount in lieu of taxes computed according to this section which is required to be paid by each board to the state and to each taxing jurisdiction in which the board operates and required by subsection (11) of KRS 96.570 to be included in resale rates.

(d) "Tax year" shall mean the twelve (12) calendar-month period ending with December 31.

(e) "Current tax rate" shall mean the actual levied ad valorem property tax rate of the state and of each taxing jurisdiction which is applicable to all property of the same class as a board's property subject to taxation for the tax year involved.

(f) "Book value of property" or "book value of property owned by the board" shall mean the sum of:

1. The original cost (less reasonable depreciation or retirement reserve) of a board's electric plant in service on December 31 of the immediately preceding calendar year located within the state, used and held for use in the transmission, distribution, and generation of electric energy, and

2. The cost of the material and supplies owned by a board on December 31 of the immediately preceding calendar year. For the purpose of this definition, "electric plant in service" shall mean those items included in the "electric plant in service" account prescribed by the Federal Energy Regulatory Commission uniform system of accounts for electric utilities, and "material and supplies" shall mean those items included in the accounts grouped under the heading "material and supplies" in the said system of accounts.

(g) "Adjusted book value of property" or "adjusted book value of property owned by the board" shall mean the book value of property owned by the board excluding manufacturing machinery as interpreted by the Revenue Cabinet for franchise tax determination purposes.

(h) The "adjustment factor" shall be one hundred twenty-five percent (125%) for the tax year 1970. For each tax year thereafter, it shall be the duty of the Revenue Cabinet to compute the adjustment factor for that tax year as follows: For each five (5) percentage points or major fraction thereof by which the adjustment ratio for electric utility property for the immediately preceding tax year exceeded or was less than one hundred sixteen percent (116%), five (5) percentage points shall be added to or subtracted from one hundred twenty-five percent (125%). For the purposes of this computation, "adjustment ratio for electric utility property" shall mean the ratio of total assessed value to total property value for all public service corporations distributing electric energy to more than fifty thousand (50,000) retail electric customers within the state. "Total assessed value" shall mean the total actual cash value assigned by the Revenue Cabinet for ad valorem property tax purposes to the property of such corporations located within the state (properly adjusted for property under construction). "Total property value" shall mean the sum of:

1. The depreciated original cost of the total utility plant in service of such corporations within the state, and

2. The book value of material and supplies of such corporations located within the state, both as derived from published reports of the Federal Energy Regulatory Commission, or in the absence thereof, from information provided to the Revenue Cabinet by such corporations.

(i) "Electric operations" shall mean all activities associated with the establishment, development, administration, and operation of any electric system and the supplying of electric energy and associated services to the public, including without limitation the generation, purchase, sale, and resale of electric energy and the purchase, use, and consumption thereof by ultimate consumers.

(2) It shall be the duty of each board, on or before April 30, to certify to the Revenue Cabinet the book value of property owned by the board and the adjusted book value of property owned by the board and located within the state and within each taxing jurisdiction in which the board operates. A copy of the certification shall also be sent by the board to each such taxing jurisdiction. The book value of property and adjusted book value of property shall be determined, and the books and records of the board shall be kept in accordance with standard accounting practices, and the books and records of each board shall be subject to inspection by the Revenue Cabinet and by representatives of the affected taxing jurisdictions and to adjustment by the Revenue Cabinet if found not to comply with the provisions of this section. Upon the receipt of the required certification from a board, the Revenue Cabinet shall make any inspection and adjustment, hereinabove authorized, as it deems necessary, and no earlier than September 1 of each year the Revenue Cabinet shall certify to the board and to the county clerk of each county in which the board operates the book value of property owned by the board and the adjusted book value of property owned by the board, located within each taxing jurisdiction in which the board

operates and within the state. At the same time, the Revenue Cabinet shall certify to the board and to the county clerk the adjustment factor for the tax year. The county clerk shall promptly certify the book value of property, the adjusted book value of property, and the adjustment factor certified by the Revenue Cabinet, to the respective taxing jurisdiction in which the board operates.

(3) (a) Each board shall pay for each tax year, beginning with the tax year 1970, to the state and to each taxing jurisdiction in which the board operates, a tax equivalent from the revenues derived from the board's electric operations for that tax year, computed according to this subsection.

(b) The tax equivalent for each tax year payable to the state shall be the total of:

1. The book value of the property owned by the board within the state, multiplied by the adjustment factor, multiplied by the current tax rate of the state, less thirty cents ($0.30), plus
2. The state's portion of the amount payable under paragraph (d) of this subsection.

(c) The tax equivalent for each tax year payable to each taxing jurisdiction in which the board operates shall be the total of:

1. The adjusted book value of property owned by the board within the taxing jurisdiction, multiplied by the adjustment factor, multiplied by the current tax rate of the taxing jurisdiction; provided, however, for the purpose of this calculation the tax rate for school districts shall be increased by thirty cents ($0.30), plus
2. The taxing jurisdiction's portion of the amount payable under paragraph (d) of this subsection.

(d) For purposes of this subsection, "amount payable" shall mean four-tenths of one percent (0.4%) of the book value of property owned by the board located within the state. The state shall be paid the same proportion of the amount payable as the payment to the state under subparagraph 1. of paragraph (b) of this subsection represents of the total payments to the state and all taxing jurisdictions in which the board operates required by subparagraph 1. of paragraph (b) and subparagraph 1. of paragraph (c) of this subsection. Each taxing jurisdiction in which the board operates shall be paid the same proportion of the amount payable as the payment to the taxing jurisdiction under subparagraph 1. of paragraph (c) of this subsection represents of the total payments to the state and all taxing jurisdictions in which the board operates required by subparagraph 1. of paragraph (b) and subparagraph 1. of paragraph (c) of this subsection. Under the regulations the Revenue Cabinet may prescribe, upon the board's receipt from the state and taxing jurisdictions of notice of the amount due under subparagraph 1. of paragraph (b) and subparagraph 1. of paragraph (c) of this subsection, the board shall compute the portion of the amount payable which is due the state and each taxing jurisdiction in which the board operates.

(e) Payment of the tax equivalent under this section for each tax year shall be made by each board to the state within thirty (30) days after receipt by the board of the certification from the Revenue Cabinet required by subsection (2) of this section and shall be made directly to each taxing jurisdiction in which the board operates within thirty (30) days from the date of the certifications by the county clerk required by subsection (2) of this section. The state and each taxing jurisdiction in which a board operates shall have a superior lien upon the proceeds of the sale of electric energy by that board for the amounts required by this section to be paid to it.

(4) Except as hereinafter provided, the tax equivalents computed under this section shall be in lieu of all state, municipal, county, school district, special taxing district, other taxing district, and other state and local taxes or charges on the tangible and intangible property, the income, franchises, rights, and resources of every kind and description of any municipal electric system operating under KRS 96.550 to 96.900 and on the electric operations of any board established pursuant thereto, and the tax equivalent for any tax year computed and payable under this section to the state or to any taxing jurisdiction in which any board operates shall be reduced by the aggregate amount of any tax or charge within the meaning of this sentence which is imposed by the state, or by any taxing jurisdiction in which a board operates, on the board, the electric system, or the board's electric operations. Provided, however, that if any school district in which property of a board is located has elected, or does hereafter elect, to apply the utility gross receipts license tax for schools to all utility services as provided by KRS 160.613 through KRS 160.617, or as may hereafter be provided by other statutes, the amount of such utility gross receipts license tax shall not reduce, or in any manner affect, the amount payable to any such board or boards under the provisions of this section. It is the intent and purpose of this provision to eliminate all sums received by any such board or boards by reason of the utility gross receipts license tax from any computation of the amount payable under this section to any such board or boards, irrespective of the manner in which that payment is computed, so that, in no event, shall any sum received by any school district by reason of the utility gross receipts license tax reduce, directly or indirectly, the amount payable to such district under this chapter. Provided, further, that if the state shall levy a statewide retail sales or use tax on electric power or energy, collected by retailers of the energy from the vendees or users thereof, and imposed at the same rate or rates as are generally applicable to the sale or use of personal property or services, including natural or artificial gas, fuel oil, and coal

as well as electric power or energy, the retail sales or use tax shall not be deemed to be a tax or charge within the meaning of the first sentence of this subsection, and the tax equivalent payable for the tax year to the state under this section shall not be reduced on account of such retail sales or use tax.

(5) (a) Notwithstanding subsection (3) of this section, until the first tax year in which the total of:

1. The tax equivalent payable to the state, or to any taxing jurisdiction in which the board operates, computed under subsection (3) of this section, plus
2. The additional amounts permitted to be paid to the state or taxing jurisdiction without deduction under the second and third sentences of subsection (4) of this section, exceeds the minimum payment to the state or taxing jurisdiction specified in paragraph (b) of this subsection, the tax equivalent for each tax year payable to the state or taxing jurisdiction shall be an amount equal to the minimum payment computed under paragraph (b) of this subsection.

(b) For purposes of this subsection, the minimum payment to the state or to any taxing jurisdiction in which the board operates shall mean an amount equal to the total of:

1. The largest actual payment made by the board pursuant to this section to the state or to the taxing jurisdiction for any of the tax years 1964, 1965, or 1966, plus
2. The state's or taxing jurisdiction's pro rata share of an amount equal to four-tenths of one percent (0.4%) of the increase since July 1, 1964, in the book value of property owned by the board within the state. For the purposes of this paragraph "pro rata share" shall mean the same proportion of the amount computed under this subparagraph as the largest actual payment in lieu of taxes made by the board to the state or taxing jurisdiction for the applicable tax year under subparagraph 1. of this paragraph represents of the total amount of the largest actual payments in lieu of taxes made by the board to the state and to all taxing jurisdictions in which it operated for any of the applicable tax years.

(c) The provisions of paragraph (e) of subsection (3) of this section shall apply to all payments required under this subsection.

(d) This subsection shall not be applicable for the first tax year specified in paragraph (a) of this subsection or for any tax year thereafter, except however, that tax year 1977 shall not be deemed as the "first tax year" as specified in paragraph (a) and this subsection shall continue to apply in such cases.

(Enact. Acts 1942, ch. 18, § 25; 1966, ch. 165, § 2; 1968, ch. 170; 1970, ch. 286, § 2; 1972, ch. 219, § 1; 1978, ch. 163, § 1, effective June 17, 1978; 1978, ch. 384, § 223, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 124, effective July 13, 1990; 2002, ch. 89, § 2, effective July 15, 2002.)

Opinions of Attorney General. Revenue received by school districts from electric plant boards is not ad valorem tax revenue for purposes of KRS 160.470 and a plant board does not have net assessment growth that can be included in the department of revenue's certification of net assessment growth as required in subsec. (3)(b) of KRS 160.470. OAG 66-441.

96.895. Proration and distribution of payments of sums equivalent to taxes based on book value among the state, counties, cities, and school districts.

(1) Except for payments made directly by the Tennessee Valley Authority to counties, the total fiscal year payment received by the Commonwealth of Kentucky from the Tennessee Valley Authority, as authorized by section 13 of the Tennessee Valley Authority Act, as amended, shall be prorated thirty percent (30%) to the general fund of the Commonwealth and seventy percent (70%) among counties, cities, and school districts, as provided in subsection (2) of this section.

(2) The payment to each county, city, and school district shall be determined by the proportion that the book value of Tennessee Valley Authority property in such taxing district, multiplied by the current tax rate, bears to the total of the book values of Tennessee Valley Authority property in all such taxing districts in the Commonwealth, multiplied by their respective tax rates, provided, however, each public school district for the purposes of this calculation shall have their tax rate increased by thirty (30) cents.

(3) As soon as practicable after the amount of payment to be made to the Commonwealth of Kentucky is finally determined by the Tennessee Valley Authority, the Kentucky Revenue Cabinet shall determine the book value of Tennessee Valley Authority property in each county, city, and school district and shall prorate the total payments received from the Tennessee Valley Authority, except payments received directly from the Tennessee Valley Authority, among the distributees as provided in subsection (2) of this section. The Revenue Cabinet shall certify the payment due each taxing district to the Finance and Administration Cabinet which shall make the payment to such district.

(4) As used in subsections (2) and (3) of this section, "Tennessee Valley Authority Property" means land owned by the United States and in the custody of the Tennessee Valley Authority, together with such improvements (including work in progress but excluding temporary construction facilities) as have a fixed situs thereon if and to the extent that such improvements either:

(a) Were in existence when title to the land on which they are situated was acquired by the United States; or

(b) Are allocated by the Tennessee Valley Authority or determined by it to be allocable to power;

provided, however, that manufacturing machinery as interpreted by the Revenue Cabinet for franchise tax determination shall be excluded along with ash disposal systems and, coal handling facilities, including railroads, cranes and hoists, crushing and conveying equipment. As used in said subsections "book value" means original cost unadjusted for depreciation as reflected in Tennessee Valley Authority's books of account. "Book value" shall be determined, for purposes of applying said subsections, as of the June 30 used by the Tennessee Valley Authority in computing the annual payment to the Commonwealth which is subject to redistribution by the Commonwealth.

(5) This section shall be applicable to all payments received after September 30, 1985 from the Tennessee Valley Authority under Section 13 of the Tennessee Valley Authority Act as amended.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 301, effective July 13, 1990.)

Compiler's Notes. Section 13 of the Tennessee Valley Authority Act, referred to in subsections (1) and (5) of this section, is compiled as 16 U.S.C. § 831 *l*.

CHAPTER 97

PARKS, PLAYGROUNDS, AND RECREATION

SECTION.

97.010. City and county recreation facilities.
97.020. Establishment of local recreational facilities.

97.010. City and county recreation facilities.

(1) The acquisition, development, maintenance and operation of parks, playgrounds and recreation centers, which may include but is not limited to zoos and museums, is a proper municipal purpose for all cities and counties. The legislative body of any city or the fiscal court of any county may dedicate for use as parks, playgrounds and recreation centers any lands or buildings owned or leased by the city or county and not devoted to an inconsistent public use and may acquire real property for such purpose by purchases, lease, condemnation or otherwise, at any place reasonably accessible to the inhabitants of the city or county and either within or without the boundaries of the city or the county.

(2) Any two (2) or more cities, or any city and county, may jointly establish, maintain and conduct a park and recreation system. Any school district may join with any city or county in providing and conducting public parks, playgrounds and recreation centers.

(3909a-1, 3909a-4: amend. Acts 1958, ch. 124, § 1; 1978, ch. 382, § 1, effective June 17, 1978.)

Cross-References. Acquisition and development of public projects by governmental units and agencies through revenue bonds, KRS ch. 58.

Housing projects, cities may cooperate in furnishing park facilities for, KRS 80.290.

Interlocal cooperation act, KRS 65.210 to 65.300.

Issuance of bonds and control of funds, KRS ch. 66.

State and national parks, KRS ch. 148.

State planning board, functions with respect to parks, KRS 147.070, 147.100.

Opinions of Attorney General. In view of Const., § 179, a city cannot legally appropriate funds to assist a women's civic club to construct an amphitheater on land owned by the board of education, a separate public entity. The city could, however, build the amphitheater as a public project, or jointly establish a recreational system with the school district pursuant to this section which could include the amphitheater or, pursuant to the same statute, the city could lease land from the school board to establish a recreational center. OAG 70-514.

A proposed community center to be constructed with funds partly supplied by the federal government, the county and the school board and to be operated when complete by the board of education and superintendent of schools as agent of the fiscal court does not meet the criterion of a multi-educational program, and, in view of the projects and activities to be conducted and the mix of school and nonschool purposes projected for the proposed community center, goes far beyond the limitations established by the case law and this section and the school board cannot spend money for such purposes. OAG 71-184.

While a school board may furnish property and cooperate in many ways to provide recreational facilities and programs as an official function of the governmental unit and, while a school board has authority to sell school property for its fair market value, it would be a violation of Const., § 3 for a school board to sell school property to any person or organization for a nominal sum simply because the purchaser proposed to use the property for laudable public purposes and although KRS 45.360 does not apply to school boards, such a board and its members would be well advised to follow the procedure prescribed therein for their own protection. OAG 72-30.

A school board may not make a contribution to a park commission which is seeking to accumulate a fund in order to secure matching federal funds for development of a community recreation park as the school board would have no ownership or control over the property, this would not be the kind of cooperative enterprise envisioned in subsection (2) of this section and such action is unconstitutional under §§ 180 and 186 of the Kentucky constitution. OAG 72-95.

The joint use of school-owned property as a mini-park by both school pupils and city residents is permissible as long as title to property stays in the school board. OAG 72-376.

Where the board of education desires to lease to the city council six-tenths of an acre of school property for the construction of tennis courts for a minimum of ten years so that a federal grant may be secured but the state department of education has refused to grant approval for a lease of more than one year, a board of education may lease surplus property for any duration if it receives a fair rental for said property and it may do so even if the state board of education disapproves as there is no statutory authority which requires that the state board of education give its approval to the sale or leasing of property by a school board. OAG 73-177.

A city may lease land from a school board over a long term, and may install recreational facilities thereon, when those facilities will be beneficial to the school district. OAG 78-472.

An expenditure of common school funds or a donation of school property for a public purpose other than for the benefit of public education is not permissible under Const., §§ 180, 184 and 186; therefore, under Const., §§ 180, 184, and 186, any transfer of surplus school buildings to community service organizations must be based on the fair market value of the property. OAG 91-85.

Cited: Board of Educ. v. Williams, 256 S.W.2d 29 (Ky. 1953).

NOTES TO DECISIONS

ANALYSIS

2. Use of school funds.
3. Lease of school facilities.

2. Use of School Funds.

While there is no explicit provision for the expenditure by the board of education of public school funds in such amount as may appear to it in the exercise of reasonable discretion necessary to further the purpose of maintenance of a joint recreation plan with the county, the power and authority granted by this section includes that which is necessarily implied as incident to the accomplishment of those things which are expressly authorized, and therefore board may appropriate funds for such project. Dodge v. Jefferson County Bd. of Educ., 298 Ky. 1, 181 S.W.2d 406 (1944).

Purchase by a school district, acting alone, of land in another county for the establishment of a recreation center for the joint benefit of school children and 4-H club members was an arbitrary administration of public funds and, thus illegal. Wilson v. Graves County Bd. of Educ., 307 Ky. 203, 210 S.W.2d 350 (1948).

3. Lease of School Facilities.

Action of fiscal court which leased school buildings and lands for recreational purposes and agreed to pay annual rental was authorized by law and not violative of constitutional provisions. Sawyer v. Jefferson County Fiscal Court, 392 S.W.2d 83 (Ky. 1965).

97.020. Establishment of local recreational facilities.

The legislative body of any city or the fiscal court of any county may establish a park, playground and recreation system and may vest the power to provide, maintain and conduct parks, playgrounds and recreation centers in a park board, board of education, playground and recreation board or other existing board. Any board so designated may maintain and equip parks, playgrounds and recreation centers and the buildings thereon, and may employ trained and qualified park superintendents, playground directors, supervisors, recreation superintendents or other officers and employees as it deems proper.

(3309a-2: amend. Acts 1958, ch. 124, § 2.)

CHAPTER 107

MUNICIPAL IMPROVEMENTS — ALTERNATE METHODS

SECTION.

107.140. Benefited property, what constitutes, assessment of governmental property — Procedure against state.

107.140. Benefited property, what constitutes, assessment of governmental property — Procedure against state.

(1) (a) In the case of improvements of public ways, the benefited property shall consist of all real property abutting upon both sides of the improvement project, and the cost of improving intersections shall be included in the total costs to be assessed and apportioned, unless and to the extent the city shall appropriate, within constitutional limitations, from available funds, a definite and specified sum as a contribution thereto, or a portion of the aggregate cost, or the cost of specified portions of the improvement; provided, however, that if provisions shall be made for sidewalk improvements, as an integral part of the improvement of a "public way,"" as defined in subsection (3) of KRS 107.020, upon only one side of the project, the costs of the sidewalk improvement shall be ascertained and assessed separately against the property abutting upon that side only, but the governing body may provide that such assessment shall include a fair share of the over-all costs as herein defined, other than the amounts of the actual construction contracts.

(b) In the case of improvements for draining sewage, storm water, or a combination thereof, the benefited properties shall consist of all properties which are thereby afforded a means of drainage, including not only the properties which may be contiguous to the improvements, but also adjacent properties within a reasonable distance therefrom as the governing body may in the proceedings set forth.

(c) In the case of an improvement project consisting in whole or in part of a sewage treatment plant, or enlargement or substantial reconstruction of an existing sewage treatment plant, the benefited properties shall be all those properties the sewage from which is treated in such plant, including properties already provided with sewer drainage facilities as well as those properties which the improvement project will provide with such drainage facilities, but the governing body may classify properties according to the extent of benefits to be afforded to them, and may establish one (1) rate of assessment applicable to all properties participating in the benefits of the sewage treatment installations, and an additional rate of assessment applicable to properties for which the improvement project will also provide sewer drainage facilities. In relation to wastewater collection projects constructed by metropolitan sewer districts, benefited property shall consist of all property whether improved or unimproved to which the project affords a means of discharging wastewater.

(d) The governing body may, either in the proceedings initiating an improvement project, or in subsequent proceedings, recognize the necessity or desirability in the interest of the public health, safety and general welfare, that properties other than the properties originally benefited by an improvement under paragraphs (b) or (c) of this subsection, be permitted to connect to such sewer drainage and/or treatment facilities, and may make equitable provisions which may be adjustable from year to year as bonds are retired, whereby the

owners of such later-connecting properties, may, by paying charges for the privilege of connecting, and/or by assuming a share of improvement assessments, or otherwise, be placed as nearly as practicable on a basis of financial equity with the owners of properties initially provided to be assessed.

(e) The governing body may, either in the proceedings initiating an improvement project, or in subsequent proceedings, recognize the necessity or desirability in the interest of the public health, safety and general welfare that residential properties within one thousand feet (1000′), measured along paved roads, of a fire hydrant in cities of the third through sixth classes may be assessed on the same basis as property abutting upon a street where a fire hydrant is to be installed.

(2) (a) Benefited property owned by the city or county, or owned by the United States government or any of its agencies, if such property is subject to assessment by Act of Congress, shall be assessed annually the same as private property, and the amount of the annual assessment shall be paid by the city, county, or United States government, as the case may be. The same right of action shall lie against the county as against a private owner.

(b) Benefited property owned by the state, except property the title to which is vested in the Commonwealth for the benefit of a district board of education pursuant to KRS 162.010, shall be assessed as follows: Before assessing the state, the governing body shall serve written notice on the secretary of the Finance and Administration Cabinet setting forth specific details including the estimated total amount of any improvement assessment proposed to be levied against any state property relative to any proposed improvement project. Said written notice shall be served prior to the next even-numbered-year regular session of the General Assembly so that the amount of any specific improvement assessment may be included in the biennial executive branch budget recommendation to be submitted to the General Assembly. Payment of any assessment shall be made only from funds specifically appropriated for that assessment. If an amount sufficient to pay the total amount of any assessment has been appropriated, then the total amount shall be paid; if an amount sufficient only to pay annual assessments has been appropriated, then only the amount of the annual assessment shall be paid. The amount of the assessment shall be certified by the city treasurer to the Finance and Administration Cabinet, which shall thereupon draw a warrant upon the State Treasurer, payable to the city treasurer, and the State Treasurer shall pay the same.

(c) In the case of property the title to which is vested in the Commonwealth for the benefit of a district board of education, the amount of the annual assessment shall be paid by the city or other local governmental agency or authority which undertook the improvement project.

(3) No benefited property shall be exempt from assessment.

(Enact. Acts 1956, ch. 239, § 14; 1960, ch. 226, § 5; 1964, ch. 161, § 3; 1964, ch. 175, § 1; 1976 (Ex. Sess.), ch. 13, § 20; 1982, ch. 450, § 64, effective July 1, 1983; 2001, ch. 58, § 14, effective June 21, 2001.)

Legislative Research Commission Note. (1982). A technical correction has been made in this section by the Reviser of Statutes pursuant to KRS 7.136.

Cross-References. Title to all property owned by a school district is vested in the Commonwealth for the benefit of the district board of education, KRS 162.010.

Opinions of Attorney General. Where the fee simple title to school property was owned by the county and the city wanted to blacktop certain roads on the property, the county was liable for its apportionate cost of the improvement as a benefited property owner. OAG 60-377.

The city council's requiring the board of education to make repairs in the sidewalk in front of the high school would be in direct violation of Const., § 184. OAG 68-67.

Eastern Kentucky University was not exempt from payment of a sewer bond assessment tax levied by the city of Richmond. OAG 70-377.

TITLE X

ELECTIONS

CHAPTER 116

VOTER REGISTRATION

SECTION.

116.046. Voter registration forms for high school students — Public education program.
116.200. Roster of voters eligible to vote in city and school board elections.

116.046. Voter registration forms for high school students — Public education program.

(1) The county clerk shall provide voter registration forms to each principal or assistant principal of every public high school, each area vocational school, and upon request, private schools, who shall designate a person in each school who shall be responsible for informing students and school personnel of the availability of the registration forms and assist them in properly registering. The completed forms shall be returned to the county clerk, for official registration by the county clerk.

(2) Any person designated to assist in registration in subsection (1) of this section shall fulfill this responsibility in an impartial and fair manner and shall not recruit a registrant for any particular party.

(3) The State Board of Education shall implement programs of public education regarding elections, voting procedures, and election fraud, which shall include an audio-visual presentation for high school juniors and seniors. The State Board of Education, after consultation with the State Board of Elections, shall update the public education programs required by this section as relevant statutory changes occur, as different types of voting machines are used, or as more effective methods of presentation shall be developed.

(Enact. Acts 1988, ch. 341, §§ 5, 6, effective July 15, 1988; 1990, ch. 48, § 4, effective July 13, 1990.)

116.200. Roster of voters eligible to vote in city and school board elections.

(1) Each city and school district board shall provide the clerk of the county in which the city or school district is located with whatever information the county clerk requires to maintain a roster of voters who are eligible to vote in city and school board elections. This information shall be provided to the county clerk not later than sixty (60) days preceding the date of a primary election in each year in which an election for city officers or school board members shall be held in that county.

(2) Each county clerk shall code all registered voters in that county in such a manner that precinct election officers may determine their eligibility to vote in city and school board elections.

(Enact. Acts 1994, ch. 394, § 1, effective July 15, 1994.)

CHAPTER 117

REGULATION OF ELECTIONS

SECTION.

MISCELLANEOUS PROVISIONS

117.315. Appointment of challengers and inspectors.

PENALTIES

117.995. Penalties.

MISCELLANEOUS PROVISIONS

117.315. Appointment of challengers and inspectors.

(1) Each political party is entitled to have not exceeding two (2) challengers at each precinct during the holding of the primary election. Any group of bona fide candidates, as defined in KRS 118.176, of the same political party equal to twenty-five percent (25%) of all the candidates for that party to be voted for in a county in any primary, including state, district, and all other candidates, may recommend to the county committee or governing authority of the party for the county a list of persons whom they desire to have appointed as challengers in each precinct in the county. If more than two (2) such lists are furnished, the committee or governing authority, in making appointments of challengers, shall alternate between the several lists so furnished so as to give to each list an equal amount or proportion of the appointments, but in no event shall there be appointed more than one (1) challenger for any precinct from any one (1) list. The list of challengers shall be presented to the chairman or secretary of the party committee of the county not less than thirty (30) days before the date on which the primary is to be held, and the committee or the chairman thereof shall make the appointments, certify to same, and present a list of certified challengers to the county clerk at least twenty (20) days before the date on which the primary is held. The appointment of challengers shall be certified in all respects as challengers at regular elections, except as otherwise provided in this section. The challengers shall be registered voters of the county in which the primary is held and shall be subject to the same penalties and possess the same rights and privileges as challengers at regular elections, except that the challengers of one political party shall not be entitled to challenge persons who offer to vote for candidates of any other party in the primary. The provisions of this section shall be enforceable against the chairman of the political party committees by a mandatory summary proceeding instituted in the Circuit Court. The order of the court may be reviewed by the Court of Appeals as provided for the granting or dissolving of temporary injunctions.

(2) Any school board candidate, any independent ticket or candidate for city office, any nonpartisan city candidate, or candidate for an office of the Court of Justice at the primary or regular election may designate not more than one (1) challenger to be present at and witness the holding of primaries or elections in each precinct in the county. A candidate who designates a challenger shall present the county clerk with the name of the challenger at least twenty (20) days preceding the primary or regular election. The challenger shall be entitled to stay in the room or at the door. The challenger shall be a registered voter of the county in which the primary or election is held, shall be appointed in writing by the chairman of the committee, independent candidate, or candidates representing a ticket, and shall produce written appointment on demand of any election officer.

(3) The county executive committee of any political party having a ticket to elect at any regular election may designate not more than two (2) challengers to be present at and witness the holding of the election in each precinct in the county. The challengers shall be entitled to stay in the room or at the door. The challengers shall be registered voters of the county in which the election is held, shall be appointed in writing signed by the chairman of the committee, and shall produce written appointments on demand of any election officer. The committee or chairman shall present the county clerk with a list of designated challengers at least twenty (20) days preceding a regular election.

(4) Except as provided in KRS Chapter 242, not later than the fourth Tuesday preceding an election at

which constitutional amendments or other public questions are to be submitted to the vote of the people, any committee that in good faith advocates or opposes an amendment or public question may file a petition with the clerk of the county asking that the petitioners be recognized as the committee entitled to nominate inspectors and challengers to serve at the election at which the constitutional amendment or public question is to be voted on. If more than one (1) committee alleging itself to advocate or oppose the same amendment file such a petition, the county board of elections shall decide, and announce by certified mail, return receipt requested, to each committee not less than the third Tuesday preceding the election, which committee is entitled to nominate the challengers and inspectors. The decision shall not be final, but any aggrieved party may institute proceedings with the county judge/executive and upon hearing the county judge/executive shall determine which of the committees shall be recognized as the one to select inspectors and challengers at the election.

(5) The committee shall file the names of the persons nominated by it with the clerk of the county at least twenty (20) days before the election. The county board of elections shall, not later than the Thursday preceding the election, certify the nominees of the committee for the respective precincts to serve as challengers and inspectors at the election where any constitutional amendment or public question is to be voted upon. If more than one (1) amendment or question is to be voted upon, the county board of elections may designate, on the petition of the committee, one (1) person for each amendment and question to serve as inspector at the election and one (1) person for each amendment and question to serve as challenger at the election.

(6) The challengers and inspectors shall perform their duties in the same manner and be subject to the same privileges as other inspectors and challengers at an election.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 302, effective July 13, 1990; 1992, ch. 288, § 49, effective July 14, 1992; 1992, ch. 296, § 6, effective July 14, 1992; 1996, ch. 195, § 8, effective July 15, 1996.)

Penalties

117.995. Penalties.

(1) Any person appointed to serve as an election officer but who shall knowingly and willfully fail to serve and who is not excused by the county board of elections for the reasons specified in this chapter shall be guilty of a violation and shall be ineligible to serve as an election officer for a period of five (5) years.

(2) Any county clerk or member of the county board of elections who knowingly and willfully violates any of the provisions of this chapter, including furnishing applications for absentee ballots to persons other than those specified by the provisions of this chapter and failure to type the name of the voter on the application form as required by the provisions of this chapter, shall be guilty of a Class D felony.

(3) Any officer who willfully fails to prepare or furnish ballot labels or absentee ballots or fails to allow a qualified voter to cast his vote on the machine as required of him by this chapter shall be guilty of a Class A misdemeanor.

(4) Any election officer who knowingly and willfully violates any of the provisions of this chapter, including failure to enforce the prohibition against electioneering established by KRS 117.235, shall be guilty of a Class A misdemeanor for the first offense and a Class D felony for each subsequent offense.

(5) Any person who signs a name other than his own on an application for an absentee ballot or on the verification form for the ballot or on an emergency absentee ballot affidavit, or any person who votes an absentee ballot other than the one issued in his name, or any person who applies for the ballot for the use of anyone other than himself or the person designated by the provisions of this chapter, or any person who makes a false statement on an application for an absentee ballot or on an emergency absentee ballot affidavit shall be guilty of a Class D felony.

(6) Any person who violates any provision of KRS 117.235 related to prohibited activities on election day, after he has been duly notified of the provisions by any precinct election officer, county clerk, deputy county clerk, or other law enforcement official, shall, for each offense, be guilty of a Class A misdemeanor.

(7) Any person who knowingly and willfully prepares or assists in the preparation of an inaccurate or incomplete voter assistance form or fails to complete a voter assistance form when required shall be guilty of a Class A misdemeanor for the first offense and a Class D felony for each subsequent offense; however, if a voter has been permanently certified as requiring voting assistance, there shall be no offense for the failure of the voter to complete the form.

(8) The members of a county board of elections that fails to provide the training to precinct election officers required by KRS 117.187(2) shall be subject to removal by the State Board of Elections.

(Enact. Acts 1974, ch. 130, § 62; 1978, ch. 71, § 4, effective June 17, 1978; 1978, ch. 224, § 2, effective June 17, 1978; 1986, ch. 287, § 11, effective July 15, 1986; 1988, ch. 341, § 34, effective July 15, 1988; 1990, ch. 48, § 34, effective July 13, 1990; 1990, ch. 476, Pt. V, § 303, effective July 13, 1990; 1992, ch. 65, § 4, effective March 19, 1992; 1994, ch. 394, § 19, effective July 15, 1994.)

Legislative Research Commission Note. (7/13/90) The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts ch. 476, pursuant to Section 653(1) of Acts ch. 476.

CHAPTER 118

CONDUCT OF ELECTIONS

SECTION.
118.025. Voting to be by secret ballot on voting machines — General laws applicable — Time for holding elections.

REGULAR ELECTIONS

118.315. Nomination for regular election by petition — Form of petition — Examination of petition.
118.365. Time for filing certificates and petitions of nomination — Petitions for recall elections or elections on public questions.

118.025. Voting to be by secret ballot on voting machines — General laws applicable — Time for holding elections.

(1) Except as otherwise provided by law, voting in all elections shall be by secret ballot on voting machines.

(2) The general laws applying to regular, special, primary, and runoff primary elections shall apply to elections conducted with the use of voting machines, and all provisions of the general laws applying to the custody of ballot boxes shall apply, as far as applicable, to the custody of the voting machine.

(3) Primary elections for the nomination of candidates or slates of candidates to be voted for at the next regular election shall be held on the first Tuesday after the third Monday in May of each year.

(4) A runoff primary shall be held thirty-five (35) days after the date of the May primary, if it shall be necessary, pursuant to KRS 118.245, unless that date falls on a holiday; in that case, a runoff primary shall be held on the succeeding Tuesday. However, if either a primary election is contested or a recount of the votes cast in a primary is requested, a runoff primary shall be held on the first Tuesday following the thirty-fifth day following the conclusion of any contest proceeding or recount, if it shall be necessary, unless that date falls on a holiday; in that case, a runoff primary shall be held on the succeeding Tuesday. The election of all officers of all governmental units shall be held on the first Tuesday after the first Monday in November.

(5) If the law authorizes the calling of a special election on a day other than the day of the regular election in November, the election shall be held on a Tuesday.

(6) If the law requires that a special election be held within a period of time during which the voting machines must be locked as required by KRS 117.295, the special election shall be held on the fourth Tuesday following the expiration of the period during which the voting machines are locked.

(Enact. Acts 1974, ch. 130, § 98; 1982, ch. 402, § 3, effective January 1, 1984; 1984, ch. 44, § 6, effective March 2, 1984; 1986, ch. 29, § 12, effective July 15, 1986; 1990, ch. 431, § 1, effective July 13, 1990; 1992, ch. 288, § 38, effective July 14, 1992; 1992, ch. 296, § 7, effective July 14, 1992; 1994, ch. 394, § 20, effective July 15, 1994; 1996, ch. 195, § 13, effective July 15, 1996; 2000, ch. 261, § 2, effective July 14, 2000; 2002, ch. 262, § 1, effective July 15, 2002.)

DECISIONS UNDER PRIOR LAW

ANALYSIS

4. School elections.
5. School subdistrict tax elections.

4. School Elections.

School elections are exempted from the general requirement of a secret ballot by Const., § 155. Moss v. Riley, 102 Ky. 1, 19 Ky. L. Rptr. 1829, 43 S.W. 421 (1897).

5. School Subdistrict Tax Elections.

In school subdistrict tax elections, secret ballot should be used. Gill v. Board of Educ., 288 Ky. 790, 156 S.W.2d 844 (1941).

REGULAR ELECTIONS

118.315. Nomination for regular election by petition — Form of petition — Examination of petition.

(1) A candidate for any office to be voted for at any regular election may be nominated by a petition of electors qualified to vote for him, complying with the provisions of subsection (2) of this section. No person who is a registered member of a political party shall be eligible to election as an independent candidate, nor shall any person be eligible to election as an independent candidate who was a registered member of a political party on December 31 immediately preceding the regular election for which the person seeks to be a candidate. This restriction shall not apply to candidates to those offices specified in KRS 118.105(5), for supervisor of a soil and water conservation district, for candidates for mayor or legislative body in cities of the second to sixth class, or to candidates participating in nonpartisan elections.

(2) The form of the petition shall be prescribed by the State Board of Elections. It shall be signed by the candidate and by registered voters from the district or jurisdiction from which the candidate seeks nomination. The petition shall include a declaration, sworn to by the candidate, that he or she possesses all the constitutional and statutory requirements of the office for which the candidate has filed. Signatures for a petition of nomination for a candidate seeking any office shall not be solicited prior to the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot. A petition of nomination for a state officer, or any officer for whom all the electors of the state are entitled to vote, shall contain five thousand (5,000) petitioners; for a representative in Congress from any congressional district, or for any officer from any other district except as herein provided, four hundred (400) petitioners; for a county officer, member of the General Assembly, or Commonwealth's attorney, one hundred (100) petitioners;

for a soil and water conservation district supervisor, twenty-five (25) petitioners; for a city officer, two (2) petitioners; and for an officer of a division less than a county, except as herein provided, twenty (20) petitioners. It shall not be necessary that the signatures of the petition be appended to one (1) paper. Each petitioner shall include his residence, Social Security number or date of birth, and post-office address. Failure of a voter to include his Social Security number or date of birth and address shall result in his signature not being counted. If any person joins in nominating, by petition, more than one (1) nominee for any office to be filled, he shall be counted as a petitioner for the candidate whose petition is filed first, except a petitioner for the nomination of candidates for soil and water conservation district supervisors may be counted for every petition to which his signature is affixed.

(3) Titles, ranks, or spurious phrases shall not be accepted on the filing papers and shall not be printed on the ballots as part of the candidate's name; however, nicknames, initials, and contractions of given names may be accepted as the candidate's name.

(4) The Secretary of State and county clerks shall examine the petitions of all candidates who file with them to determine whether each petition is regular on its face. If there is an error, the Secretary of State or the county clerk shall notify the candidate by certified mail within twenty-four (24) hours of filing.

(Enact. Acts 1974, ch. 130, § 117; 1978, ch. 318, § 7, effective June 17, 1978; 1982, ch. 394, § 26, effective July 15, 1982; 1984, ch. 185, § 17, effective July 13, 1984; 1986, ch. 287, § 14, effective July 15, 1986; 1986, ch. 470, § 27, effective July 15, 1986; 1988, ch. 17, § 11, effective July 15, 1988; 1990, ch. 48, § 45, effective July 13, 1990; 1990, ch. 166, § 1, effective July 13, 1990; 1990, ch. 476, Pt. V, § 304, effective July 13, 1990; 1992, ch. 296, § 11, effective July 14, 1992; 1998, ch. 2, § 5, effective July 15, 1998; 1998, ch. 243, § 2, effective April 1, 1998; 2000, ch. 275, § 2, effective July 14, 2000.)

Legislative Research Commission Note. (10/23/90) Pursuant to KRS 7.136(1), the prior reference in subsection (1) of this statute to KRS 118.105(4) has been changed to KRS 118.105(5) because of the renumbering of that subsection in 1990 Ky. Acts 49, § 1, which inserted new material at subsection (4) and renumbered the existing text as subsection (5).

(7/13/90) The two Acts amending this section prevail over the repeal and reenactment in House Bill 940, Acts ch. 476, pursuant to Section 653(1) of acts ch. 476. The two amending Acts do not appear to be in conflict and have been compiled together.

Opinions of Attorney General. The nominating petitions filed by candidates for the board of education of an independent school district, parts of which lie in two counties, must be filed with the county clerks of each of the two counties, the original copy with one county clerk and a duplicate copy with the other county clerk, not less than 55 days prior to the November election. OAG 74-647.

School board candidates, as well as other candidates for nomination, should use the filing form prescribed by the state board pursuant to this section, copies of which are in the clerk's office. OAG 74-676.

A petition which fails to indicate the residence of the signers or that they are qualified voters of the school district is insufficient to entitle the nominee's name to be placed on the ballot. OAG 74-677.

The only candidates who may file for office as independents after the May primary under KRS 118.365 would be those candidates seeking a city or school board office and any other independent candidates must file their petition pursuant to this section. OAG 75-441.

Since school board candidates nominated by petition under this section may not, under KRS 160.230, be represented by any political organization, the petitioners of such candidates may not fill vacancies occurring after the deadline for filing in the manner prescribed in KRS 118.325. OAG 75-612.

If there is sufficient address stated beside the petitioner's name to satisfy the county clerk that he is in fact a resident of the school district, the clerk should accept the nominating petition of a school board candidate as being in compliance with the requirements of this section. OAG 76-519.

118.365. Time for filing certificates and petitions of nomination — Petitions for recall elections or elections on public questions.

(1) Certificates of nomination issued by the State Board of Elections shall be filed by that board with the Secretary of State immediately. The certificates issued by the county board of elections shall be filed by that board with the county clerk immediately.

(2) Petitions of nomination for candidates for city offices except as provided in KRS 83A.047, for candidates for members of boards of education, and for candidates for supervisors of soil and water conservation districts shall be filed with the county clerk not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot and not later than the second Tuesday in August preceding the day fixed by law for the holding of regular elections for the offices sought.

(3) Candidates for an office, the nomination to which is to be made by a convention pursuant to KRS 118.325(1) and (2), except for the office of electors of President and Vice President of the United States, shall file the statements required by KRS 118.325(3), with the official designated in KRS 118.165 with whom notification and declaration are filed for the office, not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot and not later than the second Tuesday in August preceding the regular election for the office sought.

(4) Certificates of nomination made by the governing authority of a political party within the meaning of KRS 118.015 or a political organization not constituting a political party within the meaning of KRS 118.015 but whose candidate received two percent (2%) of the vote of the state at the last preceding election for presidential electors to fill vacancies in office, as provided in KRS 118.115 and 118.325, shall be filed as required with the Secretary of State or county clerk not earlier than the first

Wednesday after the first Monday in November of the year preceding the year in which the offices will appear on the ballot and not later than the second Tuesday in August preceding the day fixed by law for the election of the person in nomination.

(5) Except as otherwise provided in this section, petitions of nomination shall be filed as required with the Secretary of State or county clerk not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the offices will appear on the ballot and not later than the second Tuesday in August preceding the day fixed by law for the holding of general elections for the offices sought. Certificates of nomination shall be filed with the Secretary of State or county clerk, as required by law, not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the offices will appear on the ballot and not later than the second Tuesday in August preceding the day fixed by law for the holding of general elections for the offices sought.

(6) Petitions and certificates of nomination for electors of President and Vice President of the United States shall be filed with the Secretary of State not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which there is an election for President and Vice President of the United States and not later than the first Tuesday in September preceding the date fixed by law for the election of the electors.

(7) Petitions for recall elections or elections on public questions shall be filed as required with the county clerk not later than the second Tuesday in August preceding the day fixed by law for holding a general election.

(8) Petitions of any kind named in this section, statements, and certificates of nomination shall be filed no later than 4 p.m. local time at the place of filing when filed on the last date on which such papers are permitted to be filed.

(Enact. Acts 1974, ch. 130, § 122; 1978, ch. 384, § 254, effective June 17, 1978; 1982, ch. 394, § 28, effective July 15, 1982; 1984, ch. 185, § 20, effective July 13, 1984; 1984, ch. 185, § 21, effective January 2, 1985; 1986, ch. 185, § 2, effective January 1, 1987; 1986, ch. 470, § 28, effective July 15, 1986; 1988, ch. 238, § 2, effective July 15, 1988; 1990, ch. 48, § 47, effective July 13, 1990; 1990, ch. 169, § 9, effective July 13, 1990; 1990, ch. 476 Pt. V, § 305, effective July 13, 1990; 1992, ch. 296, § 12, effective July 14, 1992; 1996, ch. 195, § 17, effective July 15, 1996; 1998, ch. 2, § 7, effective July 15, 1998.)

Opinions of Attorney General. The nominating petitions filed by candidates for the board of education of an independent school district, parts of which lie in two counties, must be filed with the county clerks of each of the two counties, the original copy with one county clerk and a duplicate copy with the other county clerk, not less than 55 days prior to the November election. OAG 74-647.

The only candidates who may file for office as an independent after the May primary would be those candidates seeking a city or school board office and any other independent candidates must file their petition pursuant to the requirements of KRS 118.315. OAG 75-441.

Where a school board member's resignation is not tendered in writing to and accepted by the board prior to 55 days before the general election, there is no vacancy and the office need not be placed on the ballot until the following election. OAG 75-635.

Decisions Under Prior Law

10. Municipal and School Elections.

In elections for municipal offices, boards of education, or school trustees, candidates may file their nominating papers with the county court clerk at any time prior to 15 days before the election. Logsdon v. Howard, 280 Ky. 342, 133 S.W.2d 60 (1939).

TITLE XI

REVENUE AND TAXATION

CHAPTER 131

REVENUE CABINET

SECTION.

General Provisions

131.110. Protest of assessment by Revenue Cabinet — Review — Appeal.

General Provisions

131.110. Protest of assessment by Revenue Cabinet — Review — Appeal.

(1) The Revenue Cabinet shall mail to the taxpayer a notice of any tax assessed by it. The assessment shall be due and payable if not protested in writing to the cabinet within forty-five (45) days from the date of notice. Claims for refund of paid assessments may be made under KRS 134.580 and denials appealed under KRS 131.340. The protest shall be accompanied by a supporting statement setting forth the grounds upon which the protest is made. Upon written request, the cabinet may extend the time for filing the supporting statement if it appears the delay is necessary and unavoidable. The refusal of the extension may be reviewed in the same manner as a protested assessment.

(2) After a timely protest has been filed, the taxpayer may request a conference with the cabinet. The request shall be granted in writing stating the date and time set for the conference. The taxpayer may appear in person or by representative. Further conferences may be held by mutual agreement.

(3) After considering the taxpayer's protest, including any matters presented at the final conference, the cabinet shall issue a final ruling on any matter still in controversy, which shall be mailed to the taxpayer. The ruling shall state that it is a final ruling of the cabinet, generally state the issues in controversy, the cabinet's position thereon and set forth

the procedure for prosecuting an appeal to the Kentucky Board of Tax Appeals.

(4) The taxpayer may request in writing a final ruling at any time after filing a timely protest and supporting statement. When a final ruling is requested, the cabinet shall issue such ruling within thirty (30) days from the date the request is received by the cabinet.

(5) After a final ruling has been issued, the taxpayer may appeal to the Kentucky Board of Tax Appeals pursuant to the provisions of KRS 131.340.

(4114h-4, 4114h-5: amend. Acts 1946, ch. 233, § 1; 1958, ch. 69, § 1; 1964, ch. 141, § 13; 1978, ch. 233, § 32, effective June 17, 1978; 1990, ch. 120, § 1, effective July 13, 1990; 1990, ch. 423, § 9, effective July 13, 1990; 1992, ch. 361, § 4, effective July 14, 1992.)

Legislative Research Commission Note. (7/13/90) This section was amended by two 1990 Acts (ch. 120 and ch. 423) which are in conflict. Pursuant to KRS 446.250, the Act which was last enacted by the General Assembly (ch. 423) prevails.

Cross-References. Appeal to commission from board of supervisors, KRS 133.120.

CHAPTER 132

LEVY AND ASSESSMENT OF PROPERTY TAXES

SECTION.
132.010. Definitions for chapter.
132.017. Recall petition — Reconsideration — Election — Second billing.
132.018. Reduction of tax rate on personal property.
132.020. State ad valorem taxes.
132.0225. Deadline for establishing final tax rate — Procedure if increased revenue is greater than four percent.
132.023. Limits for certain districts — Procedure for exceeding limits.
132.024. Limits for certain districts on personal property tax rate.
132.025. Cumulative increase for 1982-83 only by taxing district — Limit — Public hearing and recall provisions not applicable.
132.027. City and urban-county government tax rate limitation — Levy exceeding compensating tax rate subject to recall vote or reconsideration.
132.030. Financial institution deposit tax.
132.130. Distilled spirits in bonded warehouses to be reported by proprietor or custodian.
132.140. Assessment of distilled spirits by cabinet.
132.150. Valuation of distilled spirits certified to county clerks — Local tax rate.
132.160. Taxes on distilled spirits and spirits on which federal taxes not paid, when due — Removal of spirits — Interest.
132.190. Property subject to taxation — Situs.
132.193. Assessment of possessory interests in tax-exempt personal property — Lessee's liability.
132.195. Assessment of possessory interest in tax-exempt property — Lessee's liability.
132.200. Property subject to state tax only.
132.210. Exemption of fraternal benefit societies' funds.
132.215. Right to receive income — Basis of assessment — Rate of tax.
132.220. Assessment dates — Extension of filing date for intangible property tax return — Listing — Owner — Liability — Exemptions, listing, annual review.
132.260. Rental space for parking mobile homes and recreational vehicles — Report — Right to inspect.
132.280. County tax levy to be based on state assessment — Exception for special taxing district.
132.486. Assessment system for tangible and intangible personal property — Administrative regulations — Appeals — Effect of appeal on payment of taxes.
132.487. Centralized ad valorem tax system for all motor vehicles — General and compensating tax rates — Access to records — Property valuation administrator to assess motor vehicles.
132.550. County clerk to compute amount due from each taxpayer — Compensation of clerk.
132.670. Mapping of property — Biennial review by Revenue Cabinet.
132.690. Annual revaluation of real property — Quadrennial physical examination of real property.
132.720. Definitions for KRS 132.260 and 132.751.
132.730. Mobile homes and recreational vehicles subject to ad valorem taxation — Exception.
132.751. Classification of certain mobile homes or manufactured homes and certain recreational vehicles as real property.
132.810. Homestead exemption — Application — Qualification.
132.815. Monthly reports from certified electrical inspectors — Use of information.
132.820. Assessment of unmined coal, oil, and gas reserves held separately from surface real property — Exceptions — Effect of appeal on payment of taxes.

PENALTIES

132.990. Penalties.

Compiler's Notes. Under authority of Acts 1984, ch. 404, §§ 6, 10, and 26, "Revenue Cabinet" should be substituted for "Department of Revenue" and "Secretary of Revenue" should be substituted for "Commissioner of Revenue" throughout this chapter wherever they appear.

132.010. Definitions for chapter.

As used in this chapter, unless the context otherwise requires:

(1) "Cabinet" means the Revenue Cabinet.

(2) "Taxpayer" means any person made liable by law to file a return or pay a tax.

(3) "Real property" includes all lands within this state and improvements thereon.

(4) "Personal property" includes every species and character of property, tangible and intangible, other than real property.

(5) "Resident" means any person who has taken up a place of abode within this state with the intention of continuing to abide in this state; any person who has had his actual or habitual place of abode in this state for the larger portion of the twelve (12) months next preceding the date as of which an assessment is due to be made shall be deemed to have intended to become a resident of this state.

(6) "Compensating tax rate" means that rate which, rounded to the next higher one-tenth of one cent ($0.001) per one hundred dollars ($100) of assessed value and applied to the current year's assessment of the property subject to taxation by a taxing district, excluding new property and personal property, produces an amount of revenue approximately equal to that produced in the preceding year from real property. However, in no event shall the compensating tax rate be a rate which, when applied to the total current year assessment of all classes of taxable property, produces an amount of revenue less than was produced in the preceding year from all classes of taxable property. For purposes of this subsection, "property subject to taxation" means the total fair cash value of all property subject to full local rates, less the total valuation exempted from taxation by the homestead exemption provision of the Constitution and the difference between the fair cash value and agricultural or horticultural value of agricultural or horticultural land.

(7) "Net assessment growth" means the difference between:

(a) The total valuation of property subject to taxation by the county, city, school district, or special district in the preceding year, less the total valuation exempted from taxation by the homestead exemption provision of the Constitution in the current year over that exempted in the preceding year, and

(b) The total valuation of property subject to taxation by the county, city, school district, or special district for the current year.

(8) "New property" means the net difference in taxable value between real property additions and deletions to the property tax roll for the current year. "Real property additions" shall mean:

(a) Property annexed or incorporated by a municipal corporation, or any other taxing jurisdiction; however, this definition shall not apply to property acquired through the merger or consolidation of school districts, or the transfer of property from one (1) school district to another;

(b) Property, the ownership of which has been transferred from a tax-exempt entity to a nontax-exempt entity;

(c) The value of improvements to existing nonresidential property;

(d) The value of new residential improvements to property;

(e) The value of improvements to existing residential property when the improvement increases the assessed value of the property by fifty percent (50%) or more;

(f) Property created by the subdivision of unimproved property, provided, that when such property is reclassified from farm to subdivision by the property valuation administrator, the value of such property as a farm shall be a deletion from that category;

(g) Property exempt from taxation, as an inducement for industrial or business use, at the expiration of its tax exempt status;

(h) Property, the tax rate of which will change, according to the provisions of KRS 82.085, to reflect additional urban services to be provided by the taxing jurisdiction, provided, however, that such property shall be considered "real property additions" only in proportion to the additional urban services to be provided to the property over the urban services previously provided; and

(i) The value of improvements to real property previously under assessment moratorium.

"Real property deletions" shall be limited to the value of real property removed from, or reduced over the preceding year on, the property tax roll for the current year.

(9) "Agricultural land" means:

(a) Any tract of land, including all income-producing improvements, of at least ten (10) contiguous acres in area used for the production of livestock, livestock products, poultry, poultry products and/or the growing of tobacco and/or other crops including timber;

(b) Any tract of land, including all income-producing improvements, of at least five (5) contiguous acres in area commercially used for aquaculture; or

(c) Any tract of land devoted to and meeting the requirements and qualifications for payments pursuant to agriculture programs under an agreement with the state or federal government.

(10) "Horticultural land" means any tract of land, including all income-producing improvements, of at least five (5) contiguous acres in area commercially used for the cultivation of a garden, orchard, or the raising of fruits or nuts, vegetables, flowers, or ornamental plants.

(11) "Agricultural or horticultural value" means the use value of "agricultural or horticultural land" based upon income-producing capability and comparable sales of farmland purchased for farm purposes where the price is indicative of farm use value, excluding sales representing purchases for farm expansion, better accessibility, and other factors which inflate the purchase price beyond farm use value, if any, considering the following factors as they affect a taxable unit:

(a) Relative percentages of tillable land, pasture land, and woodland;

(b) Degree of productivity of the soil;

(c) Risk of flooding;

(d) Improvements to and on the land that relate to the production of income;

(e) Row crop capability including allotted crops other than tobacco;

(f) Accessibility to all-weather roads and markets; and

(g) Factors which affect the general agricultural or horticultural economy, such as: interest, price of farm products, cost of farm materials and supplies, labor, or any economic factor which would affect net farm income.

(12) "Deferred tax" means the difference in the tax based on agricultural or horticultural value and the tax based on fair cash value.

(13) "Homestead" means real property maintained as the permanent residence of the owner with all land and improvements adjoining and contiguous thereto including, but not limited to, lawns, drives, flower or vegetable gardens, outbuildings, and all other land connected thereto.

(14) "Residential unit" means all or that part of real property occupied as the permanent residence of the owner.

(15) "Special benefits" are those which are provided by public works not financed through the general tax levy but through special assessments against the benefited property.

(16) "Mobile home" means a structure, transportable in one (1) or more sections, which when erected on site measures eight (8) body feet or more in width and thirty-two (32) body feet or more in length, and which is built on a permanent chassis and designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. It may be used as a place of residence, business, profession, or trade by the owner, lessee, or their assigns and may consist of one (1) or more units that can be attached or joined together to comprise an integral unit or condominium structure.

(17) "Recreational vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The basic entities are: travel trailer, camping trailer, truck camper, and motor home.

(a) Travel trailer: A vehicular unit, mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, and of such size or weight as not to require special highway movement permits when drawn by a motorized vehicle, and with a living area of less than two hundred twenty (220) square feet, excluding built-in equipment (such as wardrobes, closets, cabinets, kitchen units or fixtures) and bath and toilet rooms.

(b) Camping trailer: A vehicular portable unit mounted on wheels and constructed with collapsible partial side walls which fold for towing by another vehicle and unfold at the camp site to provide temporary living quarters for recreational, camping, or travel use.

(c) Truck camper: A portable unit constructed to provide temporary living quarters for recreational, travel, or camping use, consisting of a roof, floor, and sides, designed to be loaded onto and unloaded from the bed of a pick-up truck.

(d) Motor home: A vehicular unit designed to provide temporary living quarters for recreational, camping, or travel use built on or permanently attached to a self-propelled motor vehicle chassis or on a chassis cab or van which is an integral part of the completed vehicle.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 306, effective July 13, 1990; 1992, ch. 397, § 1, effective July 14, 1992; 1994, ch. 263, § 2, effective July 15, 1994; 2002, ch. 198, § 1, effective July 15, 2002.)

Compiler's Notes. Former KRS 132.010 (4020a-1, 4022, 4114h-1: amend. Acts 1964, ch. 141, § 39; 1965 (1st Ex. Sess.), ch. 2, § 11; 1970, ch. 249, § 1; 1972, ch. 285, § 1; 1976, ch. 260, § 1; 1976, ch. 315, § 1; 1979 (Ex. Sess.), ch. 25, § 1, effective February 13, 1979; 1980, ch. 319, § 1, effective July 15, 1980; 1982, ch. 327, § 5, effective July 15, 1982; 1982, ch. 395, § 1, effective July 15, 1982; 1984, ch. 111, § 72, effective July 13, 1984) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 306, effective July 13, 1990.

Cross-References. Assessments by Revenue Cabinet; protest against; when final; appeal from, KRS 131.110.

City taxes, levy and assessment of:

Cities of first class, KRS 91.200, 91.260, 91.310.

Cities of second class, KRS 92.280, 92.330, 92.420.

Cities of third class, KRS 92.280, 92.290, 92.410, 92.420, 92.460, 92.470.

Cities of fourth class, KRS 92.280, 92.410, 92.420, 92.490, 92.500.

Cities of fifth class, KRS 92.280, 92.290, 92.420, 92.520, 92.540.

Cities of sixth class, KRS 92.280, 92.290, 92.410, 92.420, 92.520.

Classification of property for taxation, referendum, Const., § 171.

Corporate property to pay same rate as individual property, Const., § 174.

Corporation and utility taxes, KRS ch. 136.

County revenue limits, procedure for increase, KRS 68.245.

County road bonds, retirement, local tax levy, KRS 178.200.

County taxes, levy of, KRS 68.090.

Revenue Cabinet, powers and duties in tax assessment, KRS 131.030, 131.130, 131.140.

District cooperative extension education tax, local tax levy, KRS 164.655.

Excise taxes, KRS ch. 138.

Finance and revenue of cities of other than the first class, KRS ch. 92.

Finance and revenue of cities of the first class, KRS ch. 91.

Flood control districts, local tax levy, KRS 104.670.

Governor's cabinet to prepare long range financial programs, real property inventories, tax maps, KRS 147.100.

Income taxes, KRS ch. 141.

Inheritance and estate taxes, KRS ch. 140.

Jefferson County children's home, local tax levy, KRS 201.160, 201.170.

Levees, local tax levy, KRS 266.150, 266.190.

License and excise taxes on distilled spirits, KRS ch. 243.

License taxes, KRS ch. 137.

Municipal band or orchestra, local tax levy, KRS 97.610.

Municipal universities and colleges, local tax levy, KRS 165.030, 165.160, 165.170.

Payment, collection, and refund of taxes, KRS ch. 134.

Power to tax may be conferred on local authorities, Const., § 181.

Purposes for which county and city taxes are levied must be specified, KRS 68.100, 92.330, 92.340.

"Real estate" and "land" defined, KRS 446.010.

Refunding bonds of cities, retirement of, local tax levy, KRS 66.150.

Roads, local tax levy, Const., § 157a; KRS 178.210.

Sanitation districts, local tax levy, KRS 220.360.

Schools, local tax levy, KRS 160.460 to 160.530.

Supervision, equalization and review of assessments, KRS ch. 133.

Uniformity of taxes on property required, Const., § 171.

Value of property for taxation, how estimated, tax to be based on value, Const., §§ 172, 174.

School district tax rate formulas, 702 KAR 3:275.

Kentucky Law Journal. Public Schools: Serrano v. Priest — A Challenge to Kentucky, 60 Ky. L.J. 156 (1971).

Cited: Fayette County Bd. of Educ. v. White, 410 S.W.2d 612 (Ky. 1966); Board of Educ. v. Harville, 416 S.W.2d 730 (Ky. 1967).

DECISIONS UNDER PRIOR LAW

ANALYSIS

2. Construction.
11. Compensating tax rate.
12. Roll back.

2. Construction.

In enacting subsection (1) of KRS 160.477 and subsection (6) of this section in the same special session, the legislature was expressing its intention that the authorization for a levy of 50¢ should yet prevail notwithstanding the "roll-back" provisions also enacted. Mullen v. Board of Educ., 440 S.W.2d 261 (Ky. 1969).

11. Compensating Tax Rate.

Where the legislation established a maximum of 50¢ and the district had obtained a 50¢ authorization by a 1953 election, the effect of the 1965 "roll back" legislation was to reduce that authorization from 50¢ to 13.8¢ leaving the school board with an unused authorization of 36.2¢. Mullen v. Board of Educ., 440 S.W.2d 261 (Ky. 1969).

The special school tax election was proper as being within the unused statutory authorization for the special tax where 13.8¢ already being levied and the 15¢ to be levied still fell short of the 50¢ statutory maximum. Mullen v. Board of Educ., 440 S.W.2d 261 (Ky. 1969).

12. Roll Back.

Although the "roll back" prevented the governmental body from levying a greatly increased tax by application of an old voted rate to greatly increased assessments, the voters possessed power to impose upon themselves an additional tax, levied pursuant to current assessments so long as the rate of the combined voted taxes did not exceed the statutorily permitted limit of 50¢ per $100. Mullen v. Board of Educ., 440 S.W.2d 261 (Ky. 1969).

A tax voted in 1968 after enactment of the "roll back" provision, was not subject to being "rolled back." Mullen v. Board of Educ., 440 S.W.2d 261 (Ky. 1969).

132.017. Recall petition — Reconsideration — Election — Second billing.

(1) (a) That portion of a tax rate levied by an ordinance, order, resolution, or motion of a county fiscal court, district board of education, or legislative body of a city, urban-county government, consolidated local government, or other taxing district subject to recall as provided for in KRS 68.245, 132.023, 132.027, and 160.470, shall go into effect forty-five (45) days after its passage. If during the forty-five (45) days next following the passage of the order, resolution, or motion, a petition signed by a number of registered and qualified voters equal to ten percent (10%) of the voters voting in the last presidential election is presented to the county clerk or his authorized deputy protesting against passage of the ordinance, order, resolution, or motion, the ordinance, order, resolution, or motion shall be suspended from going into effect until after the election referred to in subsection (2) of this section. When the petition is presented to the county clerk or his authorized deputy, the officer shall immediately notify the presiding officer of the appropriate fiscal court, district board of education, legislative body of a city, consolidated local government, urban-county government, or other taxing district, as the case may be. Each sheet of the petition shall contain the names, residence addresses, and Social Security numbers or dates of birth of voters in but one (1) voting precinct, and each sheet shall state the name, number, or designation of the precinct and, where applicable, the name, designation, or number of the district or ward wherein the precinct is situated. The county clerk shall make the conclusive determination of whether the petition contains enough signatures of qualified voters to suspend the effect of the order or resolution.

(b) The county fiscal court, district board of education, or legislative body of a city, urban-county government, consolidated local government, or other taxing district may cause the cancellation of the election by reconsidering the ordinance, order, resolution, or motion and amending the ordinance, order, resolution, or motion to levy a tax rate which will produce no more revenue from real property, exclusive of revenue from new property as defined in KRS 132.010, than four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010 from real property. The action by the county fiscal court, district board of education, legislative body of a city, urban-county government, consolidated local government, or other taxing district shall be valid only if taken within fifteen (15) days following the date of the presentation of the petition.

(2) (a) If an election is necessary under the provisions of subsection (1) of this section, the county fiscal court, legislative body of a city, urban-county government, consolidated local government, or other taxing district shall cause to be submitted to the voters of the county, district, consolidated local government, or urban-county at the next regular election, the question as to whether the property tax rate shall be levied. The question shall be submitted to the county clerk not later than the second Tuesday in August preceding the regular election. The question shall be so framed that the voter may by his vote answer "for" or "against." If a majority of the votes cast upon the question oppose its passage, the order, resolution, or motion shall not go into effect. If a majority of the votes cast upon the question favor its passage, the order, resolution, or motion shall go into effect.

(b) If an election is necessary for a school district under the provisions of subsection (1) of this

section, the district board of education may cause to be submitted to the voters of the district in a called common school election not less than twenty (20) days nor more than thirty (30) days from the date the signatures on the petition are validated by the county clerk, or at the next regular election, at the option of the district board of education, the question as to whether the property tax rate shall be levied. If the election is held in conjunction with a regular election, the question shall be submitted to the county clerk not later than the second Tuesday in August preceding the regular election. The question shall be so framed that the voter may by his vote answer "for" or "against." If a majority of the votes cast upon the question oppose its passage, the order, resolution, or motion shall not go into effect, and the property tax rate which will produce four percent (4%) more revenues from real property, exclusive of revenue from new property as defined in KRS 132.010, than the amount of revenue produced by the compensating tax rate defined in KRS 132.010, shall be levied without further approval by the county fiscal court, district board of education, or legislative body of a city, consolidated local government, urban-county government, or other taxing district, as the case may be. If a majority of the votes cast upon the question favor its passage, the order, resolution, or motion shall go into effect. The cost of a called common school election shall be borne by the school district causing the election to be held.

(3) Notwithstanding any statutory provision to the contrary, if a city, county, school district, or other taxing district has not established a final tax rate as of September 15, due to the recall provisions of this section, KRS 68.245, 132.027, or 160.470, regular tax bills shall be prepared as required in KRS 133.220 for all districts having a tax rate established by that date; and a second set of bills shall be prepared and collected in the regular manner, according to the provisions of KRS Chapter 132, upon establishment of final tax rates by the remaining districts.

(4) If a second billing is necessary, the collection period shall be extended to conform with the second billing date.

(5) All costs associated with the second billing shall be paid by the taxing district or districts requiring the second billing.

(Enact. Acts 1979 (Ex. Sess.), ch. 25, § 8, effective February 13, 1979; 1980, ch. 270, § 2, effective July 15, 1980; 1980, ch. 319, § 7, effective July 15, 1980; 1990, ch. 48, § 83, effective July 13, 1990; 1990, ch. 476, Pt. V, § 308, effective July 13, 1990; 1996, ch. 195, § 54, effective July 15, 1996; 2002, ch. 346, § 162, effective July 15, 2002.)

Legislative Research Commission Note. (7/13/90) The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

Opinions of Attorney General. Even though, due to a delay in certifying the county assessment, the advertising and hearing requirements necessary to levying a school district's tax rate would not be completed 45 days before the date of the next regular election, the school district, of its own volition, could waive the petition and place the question on the ballet. OAG 82-485.

If a Board of Education desires to increase the rate of tax levied pursuant to KRS 160.477, it must comply with the terms of KRS 160.470. This provides for hearings and in certain cases makes the setting of the rate subject to a recall vote or reconsideration as provided for in this section. OAG 83-201.

132.018. Reduction of tax rate on personal property.

(1) If the tax rate applicable to real property levied by a county fiscal court, district board of education, or legislative body of a city, consolidated local government, urban-county government, or other taxing district is reduced as a result of reconsideration by the county fiscal court, district board of education, or legislative body of a city, consolidated local government, urban-county government, or other taxing district under the provisions of KRS 132.017(1)(b), the tax rate applicable to personal property levied under the provisions of KRS 68.248(1), 132.024(1), 132.029(1), and 160.473(1) shall be reduced by the respective county fiscal court, district board of education, or legislative body of a city, consolidated local government, urban-county government, or other taxing district to an amount which will produce the same percentage increase in revenue from personal property as the percentage increase in revenue from real property resulting from the reduced tax rate applicable to real property.

(2) If the tax rate applicable to real property levied by a county fiscal court, district board of education, or legislative body of a city, consolidated local government, urban-county government, or other taxing district is reduced, under the provisions of KRS 132.017(2)(b), as a result of a majority of votes cast in an election being opposed to such a rate, the tax rate applicable to personal property levied by the respective county fiscal court, district board of education, or legislative body of a city, consolidated local government, urban-county government, or other taxing district shall be reduced, without further action by the levying body, to an amount which will produce the same percentage increase in revenue from personal property as the percentage increase in revenue from real property resulting from the reduced tax rate applicable to real property.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 309, effective July 13, 1990; 2002, ch. 346, § 163, effective July 15, 2002.)

Compiler's Notes. Former KRS 132.018 (Enact. Acts 1982, ch. 397, § 9, effective July 15, 1982) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 309, effective July 13, 1990.

132.020. State ad valorem taxes.

(1) An annual ad valorem tax for state purposes of thirty-one and one-half cents ($0.315) upon each

one hundred dollars ($100) of value of all real property directed to be assessed for taxation, and one and one-half cents ($0.015) upon each one hundred dollars ($100) of value of all privately-owned leasehold interests in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103, upon the prior approval of the Kentucky Economic Development Finance Authority, except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing, and one and one-half cents ($0.015) upon each one hundred dollars ($100) of value of all tobacco directed to be assessed for taxation, and twenty-five cents ($0.25) upon each one hundred dollars ($100) of value of all money in hand, notes, bonds, accounts, and other credits, whether secured by mortgage, pledge, or otherwise, or unsecured, except as otherwise provided in subsection (2) of this section, and one and one-half cents ($0.015) upon each one hundred dollars ($100) of value of unmanufactured agricultural products, one-tenth of one cent ($0.001) upon each one hundred dollars ($100) of value of all farm implements and farm machinery owned by or leased to a person actually engaged in farming and used in his farm operations, one-tenth of one cent ($0.001) upon each one hundred dollars ($100) of value of all livestock and domestic fowl, one-tenth of one cent ($0.001) upon each one hundred dollars ($100) of value of all tangible personal property located in a foreign trade zone established pursuant to 19 U.S.C. sec. 81, provided that the zone is activated in accordance with the regulations of the United States Customs SErvice and the Foreign Trade Zones Board, fifteen cents ($0.15) upon machinery actually engaged in manufacturing, fifteen cents ($0.15) upon commercial radio, television, and telephonic equipment directly used or associated with electronic equipment which broadcasts electronic signals to an antenna, fifteen cents ($0.15) upon property which has been certified as a pollution control facility as defined in KRS 224.01-300, one-tenth of one cent ($0.001) upon property which has been certified as an alcohol production facility as defined in KRS 247.910, or as a fluidized bed energy production facility as defined in KRS 211.390, twenty-five cents ($0.25) upon each one hundred dollars ($100) of value of motor vehicles qualifying for permanent registration as historic motor vehicles under the provisions of KRS 186.043, and forty-five cents ($0.45) upon each one hundred dollars ($100) of value of all other property directed to be assessed for taxation shall be paid by the owner or person assessed, except as provided in subsection (2) of this section and KRS 132.030, 132.050, 132.200, 136.300, 136.320, and other sections providing a different tax rate for particular property.

(2) (a) An annual ad valorem tax for state purposes of one and one-half cents ($0.015) upon each one hundred dollars ($100) of value shall be paid upon the following classes of intangible personal properties, when the intangible personal properties have not acquired a taxable situs without this state:

1. Accounts receivable, notes, bonds, credits, and any other intangible property rights arising out of or created in the course of regular and continuing business transactions substantially performed outside this state;
2. Patents, trademarks, copyrights, and licensing or royalty agreements relating to these;
3. Notes, bonds, accounts receivable, and all other intercompany intangible personal property due from any affiliated company; and
4. Tobacco base allotments.

(b) An annual ad valorem tax for state purposes of one-thousandth of one percent (0.001%) shall be paid upon money in hand, notes, bonds, accounts, credits, and other intangible assets, whether by mortgage, pledge, or otherwise, or unsecured, of financial institutions, as defined in KRS 136.500.

(3) "Affiliated company" shall mean a parent corporation or subsidiary corporation, and any corporation principally engaged in business outside the United States in which the owner or the person assessed directly or indirectly owns or controls not less than ten percent (10%) of the outstanding voting stock.

(4) With respect to the intangible properties taxed pursuant to subsection (2) of this section, no other ad valorem tax shall be levied by the state or any county, city, school, or other taxing district on the intangible properties, or directly or indirectly against the owner.

(5) Thirty cents ($0.30) of the thirty-one and one-half cents ($0.315) state tax rate on real property and thirty cents ($0.30) of the forty-five cents ($0.45) state tax on tangible personalty subject to local taxation shall be considered as local school district tax levies for purposes of computing any direct payments of state or federal funds to said districts as replacement for ad valorem taxes lost on property acquired by a governmental agency. Should the equivalency ever be less than thirty cents ($0.30), as certified by the Department of Education, the direct payments shall be reduced proportionately.

(6) The provisions of subsection (1) of this section notwithstanding, the state tax rate on real property shall be reduced to compensate for any increase in the aggregate assessed value of real property to the extent that the increase exceeds the preceding year's assessment by more than four percent (4%), excluding the assessment from property which is subject to tax increment financing pursuant to KRS Chapter 65 and the assessment from leasehold property which is owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103 and entitled to the reduced rate of one and one-half cents ($0.015) pursuant to subsection (1) of this section. In any

year in which the aggregate assessed value of real property is less than the preceding year, the state rate shall be increased to the extent necessary to produce the approximate amount of revenue that was produced in the preceding year from real property.

(7) By July 1 each year, the cabinet shall compute the state tax rate applicable to real property for the current year in accordance with the provisions of subsection (5) of this section and certify the rate to the county clerks for their use in preparing the tax bills. If the assessments for all counties have not been certified by July 1, the cabinet shall, when either real property assessments of at least seventy-five percent (75%) of the total number of counties of the Commonwealth have been determined to be acceptable by the cabinet, or when the number of counties having at least seventy-five percent (75%) of the total real property assessment for the previous year have been determined to be acceptable by the cabinet, make an estimate of the real property assessments of the uncertified counties and compute the state tax rate.

(8) If the tax rate set by the cabinet as provided in subsection (6) of this section produces more than a four percent (4%) increase in real property tax revenues, excluding the revenue from property which is subject to tax increment financing pursuant to KRS Chapter 65 and the revenue from leasehold property which is owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103 and entitled to the reduced rate of one and one-half cents ($0.015) pursuant to subsection (1) of this section, the rate shall be adjusted in the succeeding year so that the cumulative total of each year's property tax revenue increase shall not exceed four percent (4%) per year.

(9) The provisions of subsection (6) of this section notwithstanding, the assessed value of unmined coal certified by the cabinet after July 1, 1994, shall not be included with the assessed value of other real property in determining the state real property tax rate. All omitted unmined coal assessments made after July 1, 1994, shall also be excluded from the provisions of subsection (6) of this section. The calculated rate shall, however, be applied to unmined coal property, and the state revenue shall be devoted to the program described in KRS 146.550 to 146.570, except that four hundred thousand dollars ($400,000) of the state revenue shall be paid annually to the State Treasury and credited to the Kentucky Coal Council for the purpose of public education of coal-related issues.

(10) Effective on or after January 1, 1990, an ad valorem tax for state purposes of five cents ($0.05) upon each one hundred dollars ($100) of value shall be paid upon goods held for sale in the regular course of business, which, on or after January 1, 1999, includes machinery and equipment held in a retailer's inventory for sale or lease originating under a floor plan financing arrangement; and raw materials, which includes distilled spirits and distilled spirits inventory, and in-process materials, which includes distilled spirits and distilled spirits inventory, held for incorporation in finished goods held for sale in the regular course of business.

(11) An ad valorem tax for state purposes of ten cents ($0.10) per one hundred dollars ($100) of assessed value shall be paid on the operating property of railroads or railway companies that operate solely within the Commonwealth.

(12) An ad valorem tax for state purposes of one and one-half cents ($0.015) per one hundred dollars ($100) of assessed value shall be paid on aircraft not used in the business of transporting persons or property for compensation or hire.

(13) An ad valorem tax for state purposes of one and one-half cents ($0.015) per one hundred dollars ($100) of assessed value shall be paid on federally documented vessels not used in the business of transporting persons or property for compensation or hire, or for other commercial purposes.

(4019: amend. Acts 1948, ch. 95, § 1; 1950, ch. 186; 1954, ch. 161; 1965 (1st Ex. Sess.), ch. 2, § 1; 1968, ch. 207, § 1; 1976, ch. 84, § 7, effective March 29, 1976; 1976, ch. 93, § 9, effective January 1, 1977; 1978, ch. 116, § 3, effective January 1, 1979; 1978, ch. 404, § 1, effective March 30, 1978; 1979 (Ex. Sess.), ch. 3, § 1, effective May 12, 1979; 1979 (Ex. Sess.), ch. 25, § 3, effective February 13, 1979; 1980, ch. 188, § 102, effective July 15, 1980; 1980, ch. 210, § 6, effective July 15, 1980; 1980, ch. 317, § 1, effective July 15, 1980; 1980, ch. 319, § 3, effective July 15, 1980; 1980, ch. 395, § 1, effective July 15, 1980; 1982, ch. 229, § 1, effective July 15, 1982; 1984, ch. 169, § 1, effective July 13, 1984; Acts 1985 (1st Ex. Sess.), ch. 6, part 1, § 1, effective July 29, 1985; 1986, ch. 359, § 1, effective July 15, 1986; 1986, ch. 431, § 16, effective July 15, 1986; 1986, ch. 476, § 5, effective July 15, 1986; 1990, ch. 345, § 1, effective July 13, 1990; 1990, ch. 437, § 4, effective July 13, 1990; 1990, ch. 461, § 1, effective July 13, 1990; 1990, ch. 476, Pt. V, § 310, effective July 13, 1990; 1992, ch. 338, § 21, effective July 14, 1992; 1994, ch. 65, § 2, effective July 15, 1994; 1994, ch. 263, § 3, effective July 15, 1994; 1994, ch. 328, § 4, effective July 15, 1994; 1996, ch. 254, § 22, effective July 15, 1996; 1998, ch. 55, § 1, effective July 15, 1998; 1998, ch. 72, § 1, effective July 15, 1998; 1998, ch. 266, § 1, effective July 15, 1998; 1998, ch. 385, § 1, effective July 15, 1998; 2000, ch. 2, § 2, effective July 14, 2000; 2000, ch. 327, § 1, effective July 14, 2000; 2002, ch. 324, § 1, effective July 15, 2002; 2002, ch. 338, § 17, effective July 15, 2002.)

Legislative Research Commission Note. (7/15/2002). This section was amended by 2002 Ky. Acts chs. 324 and 338, which do not appear to be in conflict and have been codified together.

(7/13/90). The three 1990 Acts amending this section prevail over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476. The amending Acts do not appear to be in conflict and have been compiled together.

Compiler's Notes. Section 4 of Acts 1994, ch. 263, provided that the 1994 amendment to this section "shall apply for the 1994 tax assessment year."

Cross-References. Power to tax may be conferred on local authorities, Const., § 181.

State taxes shall be levied by general laws and for public purposes only, uniformity required, Const., § 171.

Surrender of power to tax, Const., § 175.

Taxes to be paid into state treasury and credited to general fund, KRS 47.010.

Tax rate of local taxing units, Const., § 157.

Opinions of Attorney General. Payments made, pursuant to a lease for a building constructed by a city beyond its boundaries under the provisions of KRS 103.200 et seq., are in lieu of all other taxes except those under this section, and, as such payments are not technically city revenue, the city is free to designate the local school district as beneficiary of the contract if it so desires. OAG 79-132.

132.0225. Deadline for establishing final tax rate — Procedure if increased revenue is greater than four percent.

(1) A taxing district that does not elect to attempt to set a rate that will produce more than four percent (4%) in additional revenue, exclusive of revenue from new property as defined in KRS 132.010, over the amount of revenue produced by the compensating tax rate as defined in KRS 132.010 shall establish a final tax rate within forty-five (45) days of the cabinet's certification of the county's property tax roll. Any taxing district that fails to meet this deadline shall be required to use the compensating tax rate for that year's property tax bills.

(2) A taxing district that elects to attempt to set a rate that will produce more than four percent (4%) in additional revenue, exclusive of revenue from new property as defined in KRS 132.010, over the amount of revenue produced by the compensating tax rate as defined in KRS 132.010 shall follow the provisions of KRS 132.017.

(Enact. Acts 1994, ch. 9, § 3, effective July 15, 1994.)

Compiler's Notes. Section 4 of Acts 1994, ch. 9, provided that this section and the 1994 amendment to KRS 132.487 "shall be effective for property assessed on or after January 1, 1995."

132.023. Limits for certain districts — Procedure for exceeding limits.

(1) No taxing district, other than the state, counties, school districts, cities, consolidated local governments, and urban-county governments, shall levy a tax rate which exceeds the compensating tax rate defined in KRS 132.010, until the taxing district has complied with the provisions of subsection (2) of this section.

(2) (a) A taxing district, other than the state, counties, school districts, cities, consolidated local governments, and urban-county governments, proposing to levy a tax rate which exceeds the compensating tax rate defined in KRS 132.010, shall hold a public hearing to hear comments from the public regarding the proposed tax rate. The hearing shall be held in the principal office of the taxing district, or, in the event the taxing district has no office, or the office is not suitable for a hearing, the hearing shall be held in a suitable facility as near as possible to the geographic center of the district.

(b) The taxing district shall advertise the hearing by causing to be published at least twice in two (2) consecutive weeks, in the newspaper of largest circulation in the county, a display type advertisement of not less than twelve (12) column inches, the following:

1. The tax rate levied in the preceding year, and the revenue produced by that rate;
2. The tax rate proposed for the current year and the revenue expected to be produced by that rate;
3. The compensating tax rate and the revenue expected from it;
4. The revenue expected from new property and personal property;
5. The general areas to which revenue in excess of the revenue produced in the preceding year is to be allocated;
6. A time and place for the public hearing which shall be held not less than seven (7) days, nor more than ten (10) days, after the day that the second advertisement is published;
7. The purpose of the hearing; and
8. A statement to the effect that the General Assembly has required publication of the advertisement and the information contained therein.

(c) In lieu of the two (2) published notices, a single notice containing the required information may be sent by first-class mail to each person owning real property in the taxing district, addressed to the property owner at his residence or principal place of business as shown on the current year property tax roll.

(d) The hearing shall be open to the public. All persons desiring to be heard shall be given an opportunity to present oral testimony. The taxing district may set reasonable time limits for testimony.

(3) (a) That portion of a tax rate levied by an action of a tax district, other than the state, counties, school districts, cities, consolidated local governments, and urban-county governments which will produce revenue from real property, exclusive of revenue from new property, more than four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010 shall be subject to a recall vote or reconsideration by the taxing district, as provided for in KRS 132.017, and shall be advertised as provided for in paragraph (b) of this subsection.

(b) The taxing district, other than the state, counties, school districts, cities, consolidated local governments, and urban-county governments shall, within seven (7) days following adoption of an ordinance, order, resolution, or motion to levy a tax rate which will produce revenue from real property, exclusive of revenue from new property as defined in KRS 132.010, more than four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010, cause to be

published, in the newspaper of largest circulation in the county, a display type advertisement of not less than twelve (12) column inches the following:

1. The fact that the taxing district has adopted a rate;
2. The fact that the part of the rate which will produce revenue from real property, exclusive of new property as defined in KRS 132.010, in excess of four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010 is subject to recall; and
3. The name, address, and telephone number of the county clerk of the county in which the taxing district is located, with a notation to the effect that that official can provide the necessary information about the petition required to initiate recall of the tax rate.

(Enact. Acts 1965 (1st Ex. Sess.), ch. 2, § 13; 1966, ch. 62, § 1; 1972, ch. 285, § 2; 1979 (Ex. Sess.), ch. 25, § 4, effective February 13, 1979; 1980, ch. 319, § 8, effective July 15, 1980; 1990, ch. 343, § 5, effective July 13, 1990; 1990, ch. 476, Pt. V, § 311, effective July 13, 1990; 2002, ch. 346, § 164, effective July 15, 2002.)

Legislative Research Commission Note. (7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

Compiler's Notes. Section 11 of Acts 1990, ch. 343 provided: "The provisions of this Act shall be effective for tax years with assessment dates on or after January 1, 1991."

132.024. Limits for certain districts on personal property tax rate.

(1) In the event that the tax rate applicable to real property levied by a taxing district, other than the state, counties, school districts, cities, and urban-county governments, will produce a percentage increase in revenue from personal property less than the percentage increase in revenue from real property, the taxing district, other than the state, counties, school districts, cities, and urban-county governments, may levy a tax rate applicable to personal property which will produce the same percentage increase in revenue from personal property as the percentage increase in revenue from real property.

(2) The tax rate applicable to personal property levied by a taxing district, other than the state, counties, school districts, cities, and urban-county governments, under the provisions of subsection (1) of this section shall not be subject to the public hearing provisions of KRS 132.023(2) and to the recall provisions of KRS 132.023(3).

(Enact. Acts 1982, ch. 397, § 3, effective July 15, 1982; 1990, ch. 343, § 6, effective July 13, 1990; 1990, ch. 476, Pt. V, § 312, effective July 13, 1990.)

Legislative Research Commission Note. (7/13/90) The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

Compiler's Notes. Section 11 of Acts 1990, ch. 343 provided: "The provisions of this Act shall be effective for tax years with assessment dates on or after January 1, 1991."

132.025. Cumulative increase for 1982-83 only by taxing district — Limit — Public hearing and recall provisions not applicable.

(1) In the event that the tax rate levied by an action of a taxing district, other than the state, counties, school districts, cities, and urban-county governments, for 1979-80, 1980-81, or 1981-82 produced a percentage increase in revenue from personal property less than the percentage increase in revenue from real property for the respective year, the taxing district, other than the state, counties, school districts, cities, and urban-county governments, may levy a tax rate applicable to personal property for 1982-83 only, which will produce the same cumulative percentage increase in revenue from personal property as was produced from real property in 1979-80, 1980-81 and 1981-82. Such a tax rate may be in addition to the tax rate levied under the provisions of KRS 132.024.

(2) The tax rate levied under the provision of KRS 132.024 and subsection (1) of this section shall not exceed the tax rate applicable to personal property levied by the respective taxing district, other than the state, counties, school districts, cities, and urban-county governments, in 1981-82.

(3) The tax rate applicable to personal property levied by a taxing district, other than the state, counties, school districts, cities, and urban-county governments shall not be subject to the public hearing provisions of KRS 132.023(3) and to the recall provisions of KRS 132.023(4).

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 313, effective July 13, 1990.)

Legislative Research Commission Note. (7/13/90) Pursuant to Section 653(2) of 1990 House Bill 940, Acts Ch. 476, the repeal and reenactment of this section in that Act prevails over its repeal in another Act (ch. 343, § 10) of the 1990 Regular Session.

Compiler's Notes. Former KRS 132.025 (Enact. Acts 1982, ch. 397, § 4, effective July 15, 1982) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 313, effective July 13, 1990.

132.027. City and urban-county government tax rate limitation — Levy exceeding compensating tax rate subject to recall vote or reconsideration.

(1) No city or urban-county government shall levy a tax rate which exceeds the compensating tax rate defined in KRS 132.010 until the city or urban-county government has complied with the provisions of subsection (2) of this section.

(2) (a) Cities or urban-county governments proposing to levy a tax rate which exceeds the compensating tax rate defined in KRS 132.010 shall hold a public hearing to hear comments from the public regarding the proposed tax rate. The hearing shall be held in the principal office of the taxing district, or, in the event the

taxing district has no office, or the office is not suitable for a hearing, the hearing shall be held in a suitable facility as near as possible to the geographic center of the district.

(b) The city or urban-county government shall advertise the hearing by causing to be published at least twice in two (2) consecutive weeks, in the newspaper of largest circulation in the county, a display type advertisement of not less than twelve (12) column inches, the following:

1. The tax rate levied in the preceding year, and the revenue produced by that rate;
2. The tax rate proposed for the current year and the revenue expected to be produced by that rate;
3. The compensating tax rate and the revenue expected from it;
4. The revenue expected from new property and personal property;
5. The general areas to which revenue in excess of the revenue produced in the preceding year is to be allocated;
6. A time and place for the public hearing which shall be held not less than seven (7) days nor more than ten (10) days after the day the second advertisement is published;
7. The purpose of the hearing; and
8. A statement to the effect that the General Assembly has required publication of the advertisement and the information contained therein.

(c) In lieu of the two (2) published notices, a single notice containing the required information may be sent by first-class mail to each person owning real property in the taxing district, addressed to the property owner at his residence or principal place of business as shown on the current year property tax roll.

(d) The hearing shall be open to the public. All persons desiring to be heard shall be given an opportunity to present oral testimony. The taxing district may set reasonable time limits for testimony.

(3) (a) That portion of a tax rate levied by an action of a city or urban-county government which will produce revenue from real property, exclusive of revenue from new property, more than four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010 shall be subject to a recall vote or reconsideration by the taxing district, as provided for in KRS 132.017, and shall be advertised as provided for in paragraph (b) of this subsection.

(b) The city or urban-county government shall, within seven (7) days following adoption of an ordinance to levy a tax rate which will produce revenue from real property, exclusive of revenue from new property as defined in KRS 132.010, more than four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010, cause to be published, in the newspaper of largest circulation in the county, a display type advertisement of not less than twelve (12) column inches the following:

1. The fact that the city or urban-county government has adopted a rate;
2. The fact that the part of the rate which will produce revenue from real property, exclusive of new property as defined in KRS 132.010, in excess of four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010 is subject to recall, and
3. The name, address, and telephone number of the county clerk of the county or urban-county in which the taxing district is located, with a notation to the effect that that official can provide the necessary information about the petition required to initiate recall of the tax rate.

(Enact. Acts 1965 (1st Ex. Sess.), ch. 2, § 14; 1972, ch. 285, § 3; 1974, ch. 316, § 5; 1979 (Ex. Sess.), ch. 25, § 5, effective February 13, 1979; 1980, ch. 319, § 9, effective July 15, 1980; 1990, ch. 343, § 7, effective July 13, 1990; 1990, ch. 476, Pt. V, § 314, effective July 13, 1990.)

Legislative Research Commission Note. (7/13/90) The Act amending this section prevails over its repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts 476 Ch. 476.

Compiler's Notes. Section 11 of Acts 1990, ch. 343 provided: "The provisions of this Act shall be effective for tax years with assessment dates on or after January 1, 1991."

132.030. Financial institution deposit tax.

(1) Every person having a deposit in any financial institution, as defined in KRS 136.500, on January 1 of any year shall pay an annual tax to the state equal to one-thousandth of one percent (0.001%) upon the amount of the deposit, and no deduction shall be made for any indebtedness. The deposit tax shall be paid to the cabinet by the financial institution with which the deposit is made, as the agent of the depositor, on or before March 1 following the date of the report provided for in KRS 132.040.

(2) No other tax shall be assessed by the state or any county, city, or other taxing district on the deposits or against the depositor on account of the deposits, except as provided in KRS 136.575.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 315, effective July 13, 1990; 1996, ch. 254, § 23, effective July 15, 1996.)

Compiler's Notes. Former KRS 132.030 (4019a-1, 4019a-2: amend. Acts 1949 (Ex. Sess.), ch. 4, § 1; 1960, ch. 186, Art. I, § 1, effective June 16, 1960) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 315, effective July 13, 1990.

Cross-References. Bank shares, tax on, KRS 136.270.

132.130. Distilled spirits in bonded warehouses to be reported by proprietor or custodian.

(1) Effective January 1, 1967, every owner, proprietor, or custodian of a bonded warehouse or of premises

under the control and supervision of the United States Internal Revenue Service, in which distilled spirits are stored shall between January 1 and February 1 of each year file with the Revenue Cabinet a report sworn to by him showing the quantity and kind of distilled spirits in the bonded warehouse or premises as of January 1 of that year; the quantity and kind of spirits on which the federal tax has been paid or is due; what distilled spirits have been removed from the bonded warehouse or premises for transfer in bond out of this state during the preceding twelve (12) months; the county, city, and taxing district in which such distilled spirits were certified for taxation; the fair cash value of the distilled spirits estimated at a price it would bring at a fair voluntary sale; and such other facts pertaining to the distilled spirits as the cabinet may require.

(2) On January 1, May 1, and September 1, after the federal tax has been paid or becomes due, or after any of the distilled spirits are removed from the bonded warehouse or premises for transfer in bond out of this state, every owner, proprietor, or custodian of a bonded warehouse or premises in which distilled spirits are stored upon which taxes have accrued on assessments prior to January 1, 1967, shall file with the Revenue Cabinet and the county clerk, in which county the distilled spirits were at the time of the assessment, a statement, sworn to by him, showing the quantity of the distilled spirits on which the federal tax has been paid or is due; what distilled spirits have been removed from the bonded warehouse or premises or transferred in bond out of this state during the preceding four (4) months; the years in which such distilled spirits were assessed for taxation; and the county, city, or taxing district in which the distilled spirits were stored at the time of the assessment. At the same time, all taxes and interest on such distilled spirits due the state, county, or other taxing district shall be paid to the officers entitled to receive them. The report required by this section shall be made whether or not any distilled spirits are stored in the bonded warehouse or premises at the time the report is due.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 316, effective July 13, 1990.)

Compiler's Notes. Former KRS 132.130 (4105: amend. Acts 1949 (Ex. Sess.), ch. 4, § 4 ½; 1966, ch. 254, § 1; 1978, ch. 384, § 258, effective June 17, 1978) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 316, effective July 13, 1990.

Cross-References. License and excise taxes on distilled spirits, KRS ch. 243.

132.140. Assessment of distilled spirits by cabinet.

(1) The Revenue Cabinet shall fix the value of the distilled spirits for the purpose of taxation, assess the same at its fair cash value, estimated at the price it would bring at a fair voluntary sale, and keep a record of its valuations and assessments. The cabinet shall immediately notify the owner or proprietor of the bonded warehouse or premises of the amount fixed.

(2) If any owner, proprietor, or custodian of a bonded warehouse or premises fails to make the report required by KRS 132.130, the cabinet shall ascertain the necessary facts required to be reported. For that purpose the cabinet shall have access to the records of the owner, proprietor, or custodian; and the assessment shall be made and taxes collected thereon, with interest and penalties, as though regularly reported.

(3) The assessment made under (1) of this section shall be reviewed according to KRS 131.110.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 317, effective July 13, 1990.)

Compiler's Notes. Former KRS 132.140 (4106, 4107, 4113: amend. Acts 1964, ch. 141, § 33; 1966, ch. 254, § 2) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 317, effective July 13, 1990.

Cross-References. Review of assessment, KRS 131.110.

132.150. Valuation of distilled spirits certified to county clerks — Local tax rate.

Immediately after the valuation of the distilled spirits has been finally fixed, the cabinet shall certify to the county clerks of the respective counties the amount liable for county, city, or district taxation, and the date when the bonded period will expire on the spirits. The report shall be filed by the county clerk in his office, and certified by him to the proper collecting officer of the county, city, or taxing district for collection. The spirits, in addition to the tax for state purposes, shall be taxed for county, school, and city purposes at the prevailing rates of taxation on tangible personal property in the respective counties, school districts, and cities in which the spirits are stored, but the combined rate of taxation for city and school purposes in cities of the first class shall not exceed one dollar and twenty-five cents ($1.25) on each one hundred dollars ($100) of assessed value of the spirits.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 318, effective July 13, 1990.)

Compiler's Notes. Former KRS 132.150 (4108) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 318, effective July 13, 1990.

132.160. Taxes on distilled spirits and spirits on which federal taxes not paid, when due — Removal of spirits — Interest.

(1) (a) Taxes on distilled spirits that shall be assessed while in a bonded warehouse or premises as of January 1, 1967, and January 1 of each year thereafter, shall become due September 15 following the assessment date and shall become delinquent on January 1. Delinquent taxes on such distilled spirits shall be subject to the same penalties as provided by law for other tangible personal property, and the collecting officer shall have all the powers and duties to collect such delinquent taxes, penalties, and interest as provided by law for other

tangible personal property in such taxing jurisdiction.

(b) Taxes and interest on distilled spirits assessed while in a bonded warehouse or premises for each year prior to January 1, 1967, on which the federal tax has not been paid, shall be due on January 1, May 1, and September 1 next after the federal tax becomes due or is paid, or after the distilled spirits are removed from the bonded warehouse or premises for transfer in bond out of this state. Provided, however, the remaining state taxes and interest on distilled spirits assessed while in a bonded warehouse or premises as of January 1, 1966, and January 1, 1965, shall be due on or before January 15, 1968; the remaining state taxes and interest on distilled spirits assessed while in a bonded warehouse or premises as of January 1, 1964, shall be due on or before January 15, 1969; the remaining state taxes and interest on distilled spirits assessed while in a bonded warehouse or premises as of January 1, 1963, shall become due on or before January 15, 1970; the remaining state taxes and interest on distilled spirits assessed while in a bonded warehouse or premises as of January 1, 1962, and all prior years shall become due on or before January 15, 1971. After July 1, 1970, any owner or proprietor, or custodian of a bonded warehouse or premises may elect to pay at one (1) time all accrued ad valorem taxes and interest. Such taxes and interest paid under this subsection shall be used for capital outlay by all local taxing jurisdictions.

(2) The taxes shall not become due by reason of a mere removal of the distilled spirits from one bonded warehouse or premises to another bonded warehouse or premises within this state, but in that event the owner or proprietor from whose bonded warehouse or premises the distilled spirits are moved shall execute a bond with good and sufficient surety conditioned upon a payment of all taxes that have accrued upon the distilled spirits prior to removal from the county, city, or taxing district from which the distilled spirits are removed. The bond shall be in an amount sufficient to protect the county, city, or taxing district and shall be approved by the county judge/executive for the county, the mayor for the city, the superintendent of any school district involved, and by the person whose duty it is to collect taxes for any other taxing district. Prior to removal of any distilled spirits, the owner or proprietor from whose bonded warehouse or premises they are to be removed shall give written notice of such intention to the county, city, or taxing district, addressed to the officer thereof abovementioned and stating the quantity of distilled spirits to be moved and the name and address of the bonded warehouse or premises to which they are to be taken. After the distilled spirits are moved, the owner or proprietor shall notify the same officers of the county, city, or taxing district of the amount of accrued taxes on the distilled spirits, together with interest on the taxes. After any distilled spirits have once been moved as provided in this section and are moved again, all taxes that have accrued thereon up to the time of the second removal shall immediately become due and payable to any county, city, or taxing district to which any taxes have accrued.

(3) The taxes on each year's assessment shall bear interest at the tax interest rate as defined in KRS 131.010(6) until paid.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 319, effective July 13, 1990.)

Compiler's Notes. Former KRS 138.160 (4110: amend. Acts 1949 (Ex. Sess.), ch. 4, § 5; 1966, ch. 254, § 3; 1982, ch. 452, § 5, effective July 1, 1982) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 319, effective July 13, 1990.

132.190. Property subject to taxation — Situs.

(1) The property subject to taxation, unless exempted by the Constitution or personal property exempted by statute, shall be as follows:

(a) All real and personal property within this state, including intangible personal property of nonresidents and corporations not organized under the laws of this state that has acquired a business situs within this state, except that twenty-five (25) domestic fowl to each family shall be exempt from taxation for any purpose.

(b) All intangible personal property of individuals residing in this state and of corporations organized under the laws of this state unless it has acquired a business situs without this state.

(2) The property enumerated in paragraph (b) of subsection (1) of this section shall be considered and estimated in fixing the valuation of corporate franchises.

(3) Property shall be assessed for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale, except the following: real property qualifying for an assessment moratorium shall not have its fair cash value assessment changed while under the assessment moratorium unless the assessment moratorium expires or is otherwise canceled or revoked.

(4) The situs of intangible personal property for purposes of taxation shall be at the residence of the real or beneficial owner, and not at the residence of the fiduciary or agent having custody or possession. Any intangible property owned by a resident shall be taxable in this state, unless by the date of assessment he has changed his place of abode to a place without this state with the bona fide intention of continuing actually to abide permanently without this state. The fact that a person again abides within this state within six (6) months from so changing his actual place of abode shall be prima facie evidence that he did not intend permanently to have his actual place of abode without this state. A person so changing his actual place of abode and not intending permanently to continue it without this state and not having listed his property for taxation as a resident of this state

shall, for the purpose of having his property assessed for taxation within this state, be deemed to have resided, on the day when his property should have been so assessed, at his last actual or habitual place of abode within this state. The fact that a person does not claim or exercise the right to vote at public elections within this state shall not of itself constitute him a nonresident of this state.

(5) An administrator, executor, trustee, guardian, conservator, curator, or agent residing in this state shall not be liable for taxes on intangible personal property held by him if the real or beneficial owner of the property resides outside of this state. This exemption shall not apply in the case of an executor or administrator in the exercise of his office as personal representative while the estate of a deceased person is in process of settlement and before the share of the nonresident legatee or beneficiary is set apart to him, or before the legatee or beneficiary is entitled to be paid his share.

(6) Nothing contained in this section shall affect the liability for franchise taxes payable by corporations organized under the laws of this state; nor the method of taxation of financial institutions provided in KRS 136.505; nor the method of taxation of savings and loan associations provided in KRS 136.300; and nothing contained in this section shall alter or repeal KRS 136.030.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 320, effective July 13, 1990; 1996, ch. 254, § 25, effective July 15, 1996; 2000, ch. 274, § 1, effective July 14, 2000.)

Compiler's Notes. Former KRS 132.190 (4019a-5, 4020, 4020a-1, 4023: amend. Acts 1948, ch. 33; 1960, ch. 186, Art. I, § 3; 1966, ch. 255, § 127; 1982, ch. 141, § 58, effective July 1, 1982; 1982, ch. 327, § 6, effective July 15, 1982) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 320, effective July 13, 1990.

Section 5 of Acts 2000, ch. 274, effective July 14, 2000, read: "The provisions of Section 1 of this Act [this section] shall apply for tax assessments made on or after January 1, 2000."

Cross-References. Classification of property for taxation, referendum, Const., § 171.

Corporate property to pay same rate as individual property, Const., § 174.

Electric and water plant of a third-class city may pay tax equivalent, KRS 96.179.

Power to tax, general assembly may confer on local authorities, Const., § 181.

Power to tax property, surrender of, Const., § 175.

Property exempt from taxation:

Airport revenue bonds, KRS 183.650.

Airports, city and county, KRS 97.252.

Bonds of housing authorities, KRS 80.560.

Bonds of public road districts, KRS 184.260.

Bonds of state, counties, cities and taxing districts, Const., § 171.

Credit unions, partial exemption, KRS 290.300.

Generally, Const., §§ 3, 170.

Parks, recreational projects, memorials and federal areas, KRS 97.130, 97.160, 97.252, 97.670, 97.750.

School building bonds, KRS 162.190, 162.300.

Sewer district for city of first class and surrounding area, property and bonds of, KRS 76.210.

State fair board bonds, KRS 247.180.

State teachers college building bonds, KRS 162.350.

State warrants, KRS 41.200.

Teacher retirement system funds and rights, KRS 161.700.

Special and local legislation regarding taxation not permitted, Const., § 59(15).

Turnpikes, properties of and bonds for, KRS 177.510.

Uniformity of taxes on property required, Const., § 171.

Value of property for taxation, how estimated, tax to be based on value, Const., §§ 172, 174.

132.193. Assessment of possessory interests in tax-exempt personal property — Lessee's liability.

(1) Leased personal property exempt from taxation, when such property is held by a natural person, association, or corporation in connection with a business conducted for profit, shall be subject to taxation in the same amount and to the same extent as though the lessee were the owner of the property, except for personal property used in vending stands operated by blind persons under the auspices of the Department for the Blind.

(2) Taxes shall be assessed to lessees of exempt personal property and collected in the same manner as taxes assessed to owners of other personal property, except that taxes due under this section shall not become a lien against the personal property. When due, such taxes shall constitute a debt due from the lessee to the state, county, school district, special district, city, or urban-county government for which the taxes were assessed and if unpaid shall be recoverable by the state as provided in KRS 134.500.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 321, effective July 13, 1990.)

Legislative Research Commission Note. (7/13/90) Pursuant to Section 653(2) of 1990 House Bill 940, Acts Ch. 476, the repeal and reenactment of this section by that Act prevails over its repeal in another Act of the 1990 Regular Session.

Compiler's Notes. This section (Enact. Acts 1988, ch. 146, § 1, effective July 15, 1988) was also repealed by Acts 1990, ch. 415, § 2, effective July 13, 1990.

132.195. Assessment of possessory interest in tax-exempt property — Lessee's liability.

(1) When any real or personal property which for any reason is exempt from taxation is leased or possession otherwise transferred to a natural person, association, partnership, or corporation in connection with a business conducted for profit, the leasehold or other interest in the property shall be subject to state and local taxation at the rate applicable to real or personal property levied by each taxing jurisdiction.

(2) Subsection (1) of this section shall not apply to interests in:

(a) Industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit or tax-exempt statutory authority under the provisions of KRS Chapter 103, the taxation of which is provided for under the provisions of KRS 132.020 and 132.200;

(b) Federal property for which payments are made in lieu of taxes in amounts equivalent to taxes which might otherwise be lawfully assessed;
(c) Property of any state-supported educational institution;
(d) Vending stand locations and facilities operated by blind persons under the auspices of the Department for the Blind, regardless of whether the property is owned by the federal, state, or a local government; or
(e) Property of any free public library.

(3) Taxes shall be assessed to lessees of exempt real or personal property and collected in the same manner as taxes assessed to owners of other real or personal property, except that taxes due under this section shall not become a lien against the property. When due, such taxes shall constitute a debt due from the lessee to the state, county, school district, special district, or urban-county government for which the taxes were assessed and if unpaid shall be recoverable by the state as provided in KRS 134.500.

(Enact. Acts 1988, ch. 146, § 2, effective July 15, 1988; 1990, ch. 415, § 1, effective July 13, 1990; 1990, ch. 476, Pt. V, § 322, effective July 13, 1990.)

Legislative Research Commission Note. (7/13/90) The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

132.200. Property subject to state tax only.

All property subject to taxation for state purposes shall also be subject to taxation in the county, city, school, or other taxing district in which it has a taxable situs, except the classes of property described in KRS 132.030 and 132.050, and the following classes of property, which shall be subject to taxation for state purposes only:

(1) Farm implements and farm machinery owned by or leased to a person actually engaged in farming and used in his farm operation;
(2) Livestock, ratite birds, and domestic fowl;
(3) Capital stock of savings and loan associations;
(4) Machinery actually engaged in manufacturing, products in the course of manufacture, and raw material actually on hand at the plant for the purpose of manufacture. The printing, publication, and distribution of a newspaper or operating a job printing plant shall be deemed to be manufacturing;
(5) Commercial radio, television, and telephonic equipment directly used or associated with electronic equipment which broadcasts electronic signals to an antenna; however, radio or television towers not essential to the production of the wave or signal broadcast shall not be included;
(6) Unmanufactured agricultural products. They shall be exempt from taxation for state purposes to the extent of the value, or amount, of any unpaid nonrecourse loans thereon granted by the United States government or any agency thereof, and except that cities and counties may each impose an ad valorem tax of not exceeding one and one-half cents ($0.015) on each one hundred dollars ($100) of the fair cash value of all unmanufactured tobacco and not exceeding four and one-half cents ($0.045) on each one hundred dollars ($100) of the fair cash value of all other unmanufactured agricultural products, subject to taxation within their limits that are not actually on hand at the plants of manufacturing concerns for the purpose of manufacture, nor in the hands of the producer or any agent of the producer to whom the products have been conveyed or assigned for the purpose of sale;
(7) Money in hand, notes, bonds, accounts, and other credits, whether secured by mortgage, pledge, or otherwise, or unsecured. Nothing in this section shall forbid local taxation of franchises of corporations or of financial institutions, as provided for in KRS 136.575, or domestic life insurance companies;
(8) All privately-owned leasehold interest in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103, except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing;
(9) Property which has been certified as a pollution control facility as defined in KRS 224.01-300;
(10) Property which has been certified as an alcohol production facility as defined in KRS 247.910;
(11) On and after January 1, 1977, the assessed value of unmined coal shall be included in the formula contained in KRS 132.590(9) in determining the amount of county appropriation to the office of the property valuation administrator;
(12) Tangible personal property located in a foreign trade zone established pursuant to 19 U.S.C. sec. 81, provided that the zone is activated in accordance with the regulations of the United States Customs Service and the Foreign Trade Zones Board;
(13) Motor vehicles qualifying for permanent registration as historic motor vehicles under the provisions of KRS 186.043. However, nothing herein shall be construed to exempt historical motor vehicles from the usage tax imposed by KRS 138.460;
(14) Property which has been certified as a fluidized bed energy production facility as defined in KRS 211.390;
(15) All motor vehicles held for sale in the inventory of a licensed motor vehicle dealer, which are not currently titled and registered in Kentucky and are held on an assignment pursuant to the provisions of KRS 186A.230, and all motor vehicles with a salvage title held by an insurance company;
(16) Machinery or equipment owned by a business, industry, or organization in order to collect, source separate, compress, bale, shred, or otherwise handle waste materials if the machinery or equipment is primarily used for recycling purposes as defined in KRS 139.095;
(17) New farm machinery and other equipment held in the retailer's inventory for sale under a floor

plan financing arrangement by a retailer, as defined under KRS 365.800;

(18) New boats and new marine equipment held for retail sale under a floor plan financing arrangement by a dealer registered under KRS 235.220;

(19) Aircraft not used in the business of transporting persons or property for compensation or hire if an exemption is approved by the county, city, school, or other taxing district in which the aircraft has its taxable situs;

(20) Federally documented vessels not used in the business of transporting persons or property for compensation or hire or for other commercial purposes, if an exemption is approved by the county, city, school, or other taxing district in which the federally documented vessel has its taxable situs; and

(21) Any nonferrous metal that conforms to the quality, shape, and weight specifications set by the New York Mercantile Exchange's special contract rules for metals, and which is located or stored in a commodity warehouse and held on warrant, or for which a written request has been made to a commodity warehouse to place it on warrant, according to the rules and regulations of a trading facility. In this subsection:

(a) "Commodity warehouse" means a warehouse, shipping plant, depository, or other facility that has been designated or approved by a trading facility as a regular delivery point for a commodity on contracts of sale for future delivery; and

(b) "Trading facility" means a facility that is designated by or registered with the federal Commodity Futures Trading Commission under 7 U.S.C. secs. 1 et seq. "Trading facility" includes the Board of Trade of the City of Chicago, the Chicago Mercantile Exchange, and the New York Mercantile Exchange.

(4019a-5, 4019a-10, 4019a-16: amend. Acts 1948, ch. 207; 1954, ch. 159, § 1; 1965 (1st Ex. Sess.), ch. 2, § 12; 1968, ch. 152, § 103; 1970, ch. 185, § 1; 1974, ch. 137, § 5, effective June 21, 1974; 1976, ch. 84, § 5, effective March 29, 1976; 1978, ch. 116, § 1, effective June 17, 1978; 1978, ch. 404, § 2, effective March 30, 1978; 1980, ch. 210, § 7, effective July 15, 1980; 1982, ch. 229, § 2, effective July 15, 1982; 1984, ch. 169, § 2, effective July 13, 1984; 1986, ch. 359, § 2, effective July 15, 1986; 1986, ch. 431, § 17, effective Ju1y 15, 1986; 1986, ch. 476, § 6, effective July 15, 1986; 1990, ch. 106, § 3, effective July 13, 1990; 1990, ch. 461, § 2, effective July 13, 1990; 1990, ch. 476, Pt. V, § 323, effective July 13, 1990; 1991 (1st Ex. Sess.), ch. 12, § 47, effective February 26, 1991; 1992, ch. 8, § 1, effective July 14, 1992; 1992, ch. 338, § 22, effective July 14, 1992; 1994, ch. 68, § 3, effective July 15, 1994; 1996, ch. 254, § 26, effective July 15, 1996; 1998, ch. 55, § 2, effective July 15, 1998; 1998, ch. 168, § 2, effective July 15, 1998; 1998, ch. 266, § 2, effective July 15, 1998; 1998, ch. 385, § 2, effective July 15, 1998; 1998, ch. 600, § 9, effective April 14, 1998; 2000, ch. 327, § 3, effective July 14, 2000; 2001, ch. 55, § 1, effective June 21, 2001; 2002, ch. 324, § 2, effective July 15, 2002.)

Legislative Research Commission Note. (6/21/2001). Under KRS 446.280, the words "or leased to" have been restored to subsection (1) of this statute after the words "owned by." The phrase was added to subsection (1) by 1986 Ky. Acts ch. 359, sec. 2, but was inavertently omitted from the drafting database. Because of this, several subsequent acts amending this statute failed to include the phrase, and it mistakenly was not included in some codifications of this statute, although it had not been deleted by legislative action using the requisite brackets and strikethrough.

(7/13/90) The two Acts amending this section prevail over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts ch. 476. The amending acts do not appear to conflict and have been compiled together.

Compiler's Notes. Section 2 of Chapter 55 of the Acts of the 2001 Regular Session read: "This Act shall apply for property assessed on or after January 1, 2001."

Cross-References. General Assembly may authorize cities to exempt manufacturing establishments, Const., § 170.

NOTES TO DECISIONS

8. Exemption.

The property exempted from local taxation by this section is exempt from school taxes, although school taxes are ordinarily considered to be state taxes. Kentucky & W. Va. Power Co. v. Holliday, 216 Ky. 78, 287 S.W. 212 (1926).

132.210. Exemption of fraternal benefit societies' funds.

Every fraternal benefit society organized or licensed under Subtitle 29 of KRS Chapter 304 is a charitable and benevolent institution, and its funds shall be exempt from all state, county, district, city, and school taxes, other than taxes on real property and office equipment.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 324, effective July 13, 1990.)

Compiler's Notes. Former KRS 132.210 (681c-30: amend. Acts 1972, ch. 203, § 7; 1982, ch. 320, § 51, effective July 15, 1982) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 324, effective July 13, 1990.

132.215. Right to receive income — Basis of assessment — Rate of tax.

(1) To the extent that the present right to receive income for the period of a life or lives, or other indeterminate period, may be held to be subject to assessment and taxation, the basis of the assessment value shall be the fair cash value.

(2) To the extent that a present right to receive income from any source for a life or lives or other indeterminate period, including the right to receive installment payments, even though for a determinate period, under the terms of a life insurance policy, payable by reason of the death of the insured, but not including future lump-sum payments, may be held to be subject to assessment for ad valorem taxes, the owner or person enjoying such right on January 1 of each year shall pay a tax to the state of one-tenth of one cent ($0.001) upon each one hundred dollars ($100) of the fair cash value of his right on the assessment date. No other tax shall be assessed by the state or by any county, city, school district, or other taxing district on any

such right, or against the holder of any such right on account thereof.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 325, effective July 13, 1990.)

Compiler's Notes. Former KRS 132.215 (681c-30: amend. Acts 1972, ch. 203, § 7; 1982, ch. 320, § 51, effective July 15, 1982; 1988, ch. 310, § 38, effective January 1, 1989) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 325, effective July 13, 1990.

132.220. Assessment dates — Extension of filing date for intangible property tax return — Listing — Owner — Liability — Exemptions, listing, annual review.

(1) Deposits belonging to a resident of Kentucky in any financial institution, as defined in KRS 136.500, and unmanufactured tobacco insofar as it is subject to taxation by KRS 132.190 and 132.200, shall be listed, assessed, and valued as of January 1 of each year. Money in hand shall be listed, assessed, and valued as of January 1 of each year. Notes, bonds, accounts, and other credits, whether secured by mortgage, pledge, or otherwise, or unsecured, and all interest in the property, unless otherwise provided by law, shall be listed, assessed, and valued as of the beginning of business on January 1 of each year. All other taxable property and all interest in other taxable property, unless otherwise specifically provided by law, shall be listed, assessed, and valued as of January 1 of each year. It shall be the duty of all persons owning or having any interest in any real property taxable in this state to list or have listed the property with the property valuation administrator of the county where it is located between January 1 and March 1 in each year, except as otherwise provided by law. It shall be the duty of all persons owning or having any interest in any intangible personal property or tangible personal property taxable in this state to list or have listed the property with the property valuation administrator of the county of taxable situs or with the cabinet between January 1 and May 15 in each year, except as otherwise prescribed by law. The filing date for an individual's intangible property tax return may be extended to the extended federal income filing date approved by the Internal Revenue Service for that individual. If an individual extends the filing date for the intangible return, no discount shall be allowed upon the payment of the intangible tax. All persons in whose name property is properly assessed shall remain bound for the tax, notwithstanding they may have sold or parted with it.

(2) Any taxpayer may list his property in person before the property valuation administrator or his deputy, or may file a property tax return by first class mail. Any real property correctly and completely described in the assessment record for the previous year, or purchased during the preceding year and for which a value was stated in the deed according to the provisions of KRS 382.135, may be considered by the owner to be listed for the current year if no changes that could potentially affect the assessed value have been made to the property. However, if requested in writing by the property valuation administrator or by the cabinet, any real property owner shall submit a property tax return to verify existing information or to provide additional information for assessment purposes. Any real property which has been underassessed as a result of the owner intentionally failing to provide information, or intentionally providing erroneous information, shall be subject to revaluation, and the difference in value shall be assessed as omitted property under the provisions of KRS 132.290.

(3) If the owner fails to list the property, the property valuation administrator shall nevertheless assess it. The property valuation administrator may swear witnesses in order to ascertain the person in whose name to make the list. The property valuation administrator, his employee, or employees of the cabinet may physically inspect and revalue land and buildings in the absence of the property owner or resident. The exterior dimensions of buildings may be measured and building photographs may be taken; however, with the exception of buildings under construction or not yet occupied, an interior inspection of residential and farm buildings, and of the nonpublic portions of commercial buildings shall not be conducted in the absence or without the permission of the owner or resident.

(4) Real property shall be assessed in the name of the owner, if ascertainable by the property valuation administrator, otherwise in the name of the occupant, if ascertainable, and otherwise to "unknown owner." The undivided real estate of any deceased person may be assessed to the heirs or devisees of the person without designating them by name.

(5) Real property tax roll entries for which tax bills have not been collected at the expiration of the one (1) year tolling period provided for in KRS 134.470, and for which the property valuation administrator cannot physically locate and identify the real property, shall be deleted from the tax roll and the assessment shall be exonerated. The property valuation administrator shall keep a record of these exonerations, which shall be open under the provisions of KRS 61.870 to 61.884. If, at any time, one of these entries is determined to represent a valid parcel of property it shall be assessed as omitted property under the provisions of KRS 132.290. Notwithstanding other provisions of the Kentucky Revised Statutes to the contrary, any loss of ad valorem tax revenue suffered by a taxing district due to the exoneration of these uncollectable tax bills may be recovered through an adjustment in the tax rate for the following year.

(6) All real property exempt from taxation by Section 170 of the Constitution shall be listed with the property valuation administrator in the same manner and at the same time as taxable real property. The property valuation administrator shall maintain an inventory record of the tax-exempt property, but the property shall not be placed on the tax rolls. A copy of this tax-exempt inventory shall be filed annually with the cabinet within thirty (30)

days of the close of the listing period. This inventory shall be in the form prescribed by the cabinet. The cabinet shall make an annual report itemizing all exempt properties to the Governor and the Legislative Research Commission within sixty (60) days of the close of the listing period.

(7) Each property valuation administrator, under the direction of the cabinet, shall review annually all real property listed with him under subsection (6) of this section and claimed to be exempt from taxation by Section 170 of the Constitution. The property valuation administrator shall place on the tax rolls all property that is not exempt. Any property valuation administrator who fails to comply with this subsection shall be subject to the penalties prescribed in KRS 132.990(2).

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 326, effective July 13, 1990; 1992, ch. 263, § 2, effective July 14, 1992; 1994, ch. 423, § 3, effective July 15, 1994; 1996, ch. 254, § 27, effective July 15, 1996; 1998, ch. 209, § 1, effective March 30, 1998; 2000, ch. 327, § 4, effective July 14, 2000.)

Compiler's Notes. Former KRS 132.220 (4024, 4025, 4042a-13, 4049, 4052: amend. Acts 1942, ch. 131, §§ 7, 32; 1948, ch. 95, § 3; 1949 (Ex. Sess.), ch. 4, § 7; 1960, ch. 186, Art. I, § 5; 1962, ch. 29, § 1; 1968, ch. 189, § 1; 1982, ch. 46, § 1, effective July 15, 1982; 1984, ch. 85, § 1, effective July 13, 1984; 1986, ch. 371, § 2, effective July 15, 1986; 1986, ch. 459, § 1, effective July 15, 1986; 1986, ch. 496, § 1, effective August 1, 1986; 1988, ch. 303, § 1, effective July 15, 1988) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 326, effective July 13, 1990.

Section 21 of Acts 1998, ch. 209, provided that the 1998 amendments to this section "shall apply for assessments made on or after January 1, 1998."

Cross-References. Apportionment of assessment among joint owners of land, KRS 134.485.

Assessor of first-class city may take property lists jointly with property valuation administrator, KRS 91.320.

Jeopardy assessments by Revenue Cabinet, KRS 131.150.

132.260. Rental space for parking mobile homes and recreational vehicles — Report — Right to inspect.

Every person providing rental space for the parking of mobile homes and recreational vehicles shall by February 1 of each year report the name of the owner and type and size of all mobile homes and recreational vehicles not registered in this state under KRS 186.655 on his premises on the prior January 1 to the property valuation administrator of the county in which the property is located.

The report shall be made in accordance with forms prescribed by the Revenue Cabinet and shall be signed and verified by the chief officer or person in charge of the business.

The property valuation administrator may make a personal inspection and investigation of the premises on which mobile homes and recreational vehicles are located, for the purpose of identifying and assessing such property. No person in charge of such premises shall refuse to permit the inspection and investigation.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 327, effective July 13, 1990; 1996, ch. 317, § 1, effective July 15, 1996.)

Compiler's Notes. Former KRS 132.260 (4777a-1 to 4777a-3, 4777a-5: amend. Acts 1949 (Ex. Sess.), ch. 4, § 8; 1960, ch. 186, Art. I, § 6; 1962, ch. 262, § 3; 1982, ch. 395, § 2, effective July 15, 1982) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 327, effective July 13, 1990.

Cross-References. "Housetrailer" and "trailer park" defined, KRS 132.720.

132.280. County tax levy to be based on state assessment — Exception for special taxing district.

The assessment made for state purposes, when supervised as required by law, shall be the basis for the levy of the ad valorem tax for county, school district and all special taxing district purposes; except that any special taxing district established within an incorporated city under existing statutory or any independent school district whose January 1, 1975, assessment per pupil in average daily attendance would have been reduced because of the use of the assessment made for state purposes as of January 1, 1975, shall continue to use the assessment made for city purposes.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 328, effective July 13, 1990.)

Compiler's Notes. Former KRS 132.280 (1883: amend. Acts 1976, ch. 186, § 1) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 328, effective July 13, 1990.

Cross-References. County ad valorem tax, levy, KRS 68.090.

Opinions of Attorney General. Where a board of education has had its taxes collected by a second class city that is using its city assessments, the base upon which the school tax rate will be collected for the tax year 1976 is calculated on the July 1, 1975 city assessment, and the first time the county property valuation administrator's assessment can be used as the tax base is the assessment made as of January 1, 1977 for the 1977-78 school year. OAG 76-274.

132.486. Assessment system for tangible and intangible personal property — Administrative regulations — Appeals — Effect of appeal on payment of taxes.

(1) The Revenue Cabinet shall develop and administer a centralized ad valorem assessment system for intangible personal property and tangible personal property. This system shall be designed to provide on-line computer terminals and accessory equipment in every property valuation administrator's office in the state in order to create and maintain a centralized personal property tax roll database.

(2) State income tax returns and return preparation instructions shall be revised to facilitate the preparation of the personal property tax return; however, the personal property tax return shall be a separate document and shall be listed with the property valuation administrator in the county of taxable situs according to the provisions of KRS 132.220(1) or with the Revenue Cabinet. The Revenue Cabinet shall promulgate administrative regulations and develop forms for the listing and assessment of personal property.

(3) Appeals of personal property assessments shall not be made to the county board of assessment appeals. Personal property taxpayers shall be

served notice under the provisions of KRS 132.450(4) and shall have the protest and appeal rights granted under the provision of KRS 131.110.

(4) No appeal shall delay the collection or payment of taxes based upon the assessment in controversy. The taxpayer shall pay all state, county, and district taxes due on the valuation which the taxpayer claims as the true value as stated in a protest filed under KRS 131.110. When the valuation is finally determined upon appeal, the taxpayer shall be billed for any additional tax and interest at the tax interest rate as defined in KRS 131.010(6), from the date the tax would have become due if no appeal had been taken. The provisions of KRS 134.390 shall apply to the tax bill.

(Enact. Acts 1986, ch. 371, § 1, effective July 15, 1986; 1988, ch. 303, § 6, effective July 15, 1988; 1998, ch. 391, § 2, effective July 15, 1998.)

132.487. Centralized ad valorem tax system for all motor vehicles — General and compensating tax rates — Access to records — Property valuation administrator to assess motor vehicles.

(1) The cabinet shall develop and administer a centralized ad valorem tax system for all motor vehicles as defined in KRS 186.010. This system shall be designed to allow the collection of state, county, city, urban-county government, school, and special taxing district ad valorem taxes due on each motor vehicle at the time of registration of the motor vehicle by the party charged with issuing the registration. The cabinet shall supervise and instruct the property valuation administrators and other officials with respect to their duties in relation to this system.

(2) Except as otherwise provided by law, the tax rate levied by the state, counties, schools, cities, and special tax districts on motor vehicles shall not exceed the rate that could have been levied on motor vehicles by the district on the January 1, 1983 assessments. All counties, schools, cities, and special taxing districts proposing to levy an ad valorem tax on motor vehicles shall submit to the cabinet on or before October 1 of the year preceding the assessment date, the tax rate to be levied against valuations as of that assessment date. Any district that fails to timely submit the tax rate shall receive the rate in effect for the prior year.

(3) The compensating tax rate and maximum possible tax rate allowable for counties, schools, cities, and special taxing districts on property other than motor vehicles for the 1984 and subsequent tax periods shall be calculated excluding all valuations of and tax revenues from motor vehicles from the base amounts used in arriving at these general rates.

(4) The Transportation Cabinet shall provide access to all records of motor vehicle registrations to the cabinet and the property valuation administrators as necessary to prepare and maintain a complete tax roll of motor vehicles throughout each year.

(5) The property valuation administrator shall, subject to the direction, instruction, and supervision of the cabinet, have responsibility for assessing all motor vehicles other than those assessed under KRS Chapter 136 as part of public service companies. The cabinet may provide standard valuation guidelines for use in valuation of motor vehicles.

(6) The property valuation administrator shall provide to the cabinet by December 1 of each year a recapitulation of motor vehicles to be assessed as of January 1 of the next year.

(7) Procedures for protest, appeal, and correction of erroneous assessments shall be the same for motor vehicles as for other properties subject to ad valorem taxes.

(Enact. Acts 1982, ch. 264, § 4, effective January 1, 1984; 1984, ch. 54, § 7, effective January 1, 1985; 1994, ch. 9, § 1, effective July 15, 1994.)

Legislative Research Commission Note. (7/15/94). The 1994 changes to this statute are "effective for property assessed on or after January 1, 1995." See 1994 Ky. Acts ch. 9, sec. 4.

NOTES TO DECISIONS

3. State Tax Rate.

KRS 133.185, which relates to the imposition of a tax rate for a taxing district, such as a city, county or school, has no relationship to Const., § 171 which requires that the General Assembly shall provide an annual tax sufficient to defray the estimated expenses of the Commonwealth; the state tax rate on all personal property, including motor vehicles, is not fixed by the processes outlined in KRS 133.185, or in subsections (2) or (6) of this section which provide for submission of a proposal, recapitulation of motor vehicles by the property valuation administrator, and certification by the Department of Revenue (now Revenue Cabinet), but rather, the state tax rate is fixed by the General Assembly and is currently embodied in KRS 132.020. There is no conflict between subsections (2) and (6) of this section with the constitutional provision that the taxes shall be sufficient to defray the expenses of the state. Kling v. Geary, 667 S.W.2d 379 (Ky. 1984).

132.550. County clerk to compute amount due from each taxpayer — Compensation of clerk.

(1) After the county clerk has completed the services required of him upon delivery of the tax rolls and schedules to him by the property valuation administrator, he shall then calculate the taxes due the state, county, school, county polls, and school polls, for each individual taxpayer, opposite their name in the tax rolls, upon the form prescribed by the Revenue Cabinet. The rolls and forms shall be a permanent record of the county clerk's office.

(2) For performing the services required by this section the county clerk shall be paid the sum of fifteen cents ($0.15) for each tax list on the tax rolls, one-half (½) of this sum to be paid by the state, and the other one-half (½) to be paid by the county.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 329, effective July 13, 1990.)

Compiler's Notes. Former KRS 132.550 (4076a-1, 4076a-2: amend. Acts 1952, ch. 203, § 1) was repealed and

reenacted by Acts 1990, ch. 476, Pt. V, § 329, effective July 13, 1990.

Cross-References. Collection of taxes by sheriff, after property valuation administrator's lists received from county clerk, KRS 134.140.

Tax bills, how made out, KRS 133.220.

132.670. Mapping of property — Biennial review by Revenue Cabinet.

(1) The Revenue Cabinet shall prepare detailed maps identifying every parcel of real property within each county of the state. Each county shall furnish to the cabinet adequate facilities in the county courthouse in which to work. The Revenue Cabinet shall prescribe methods and specifications for the mapping of property. Personnel authorized to assist in making property identification maps under this section may be given the same authority as a deputy property valuation administrator. Locally employed mapping project personnel shall be compensated in the same manner as deputies or assistants in the property valuation administrator's office.

(2) The Revenue Cabinet shall conduct a biennial review of the quality of maps and ownership records in each county. If, in the first review conducted under these provisions, the maps and records in any county fail to meet the minimum standards established by the cabinet, the cabinet shall assume responsibility for remapping, revision, and updating under the provisions of subsection (1) of this section. Minimum maintenance standards to be followed by each property valuation administrator shall be established by the cabinet.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 330, effective July 13, 1990.)

Compiler's Notes. Former KRS 132.670 (Enact. Acts 1949 (Ex. Sess.), ch. 5, § 3; 1956, ch. 5; 1960, ch. 186, Art. I, § 15; 1972, ch. 364, § 1; 1974, ch. 308, § 29; 1980, ch. 261, § 1, effective July 15, 1980; 1982, ch. 388, § 3, effective July 15, 1982; 1988, ch. 418, § 5, effective July 15, 1988) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 330, effective July 13, 1990.

132.690. Annual revaluation of real property — Quadrennial physical examination of real property.

(1) Each parcel of taxable real property or interest therein subject to assessment by the property valuation administrator shall be revalued during each year of each term of office by the property valuation administrator at its fair cash value in accordance with standards prescribed by the Revenue Cabinet and shall be physically examined no less than once every four (4) years by the property valuation administrator or his assessing personnel. In accordance with procedures prescribed by the Revenue Cabinet, the property valuation administrator shall submit an assessment schedule to the cabinet and shall maintain a record of physical examination and revaluation for each parcel of real property which includes, in addition to other relevant information, the inspection dates.

(2) The right of any individual to appeal the assessment on his property in any year as provided in KRS 133.120 shall in no way be affected by this section.

(3) If the property valuation administrator fails to revalue property as required by this section, the Revenue Cabinet shall have the authority to order an emergency revaluation in the same manner as provided for emergency assessments by KRS 132.660. Any property valuation administrator willfully violating the provisions of subsection (1) of this section or who refuses to comply with the directions of the Revenue Cabinet to correct the assessment shall have his compensation suspended by the cabinet and shall be subject to removal from office as provided by KRS 132.370(4) and shall be subject to the provisions of KRS 132.620 and 61.120.

(4) Nothing in this section shall prohibit action by the Revenue Cabinet under the provisions of KRS 133.150 or 132.660 in any year in which the cabinet determines such action to be necessary.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 331, effective July 13, 1990.)

Compiler's Notes. Former KRS 132.690 (Enact. Acts 1960, ch. 186, Art. I, § 16; 1979 (Ex. Sess.), ch. 25, § 9, effective February 13, 1979; 1980, ch. 319, § 4, effective July 15, 1980; 1988, ch. 418, § 6, effective July 15, 1988) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 331, effective July 13, 1990.

Kentucky Bench & Bar. Keating, You Get What You Pay For: Financing Public Schools in Kentucky, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 6.

132.720. Definitions for KRS 132.260 and 132.751.

As used in KRS 132.260 and 132.751, unless the context otherwise requires:

(1) "Manufactured home" has the same meaning as in KRS 186.650.

(2) "Mobile home," "recreational vehicle," "mobile home park," and "recreational vehicle park" have the same meanings as in KRS 219.320.

(3) "Unit" means any single mobile home, manufactured home, or recreational vehicle.

(4) "Permanent, fixed foundation" means a foundation permanent in nature which is so constructed as to be fixed upon the surface of the land.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 332, effective July 13, 1990; 1992, ch. 338, § 12, effective July 14, 1992; 2000, ch. 166, § 2, effective July 14, 2000.)

Compiler's Notes. Former KRS 132.720 (Enact. Acts 1962, ch. 262, § 1; 1982, ch. 395, § 4, effective July 15, 1982) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 332, effective July 13, 1990.

132.730. Mobile homes and recreational vehicles subject to ad valorem taxation — Exception.

All mobile homes and recreational vehicles which are within this state on January 1 each year shall be subject to all ad valorem tax levies applicable to other property subject to full state and local rates, except

that any mobile home and recreational vehicle not licensed in this state and not remaining within this state for a period of more than ninety (90) days in any twelve (12) month period shall not have a taxable situs in this state unless an occupant is employed in this state.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 333, effective July 13, 1990; 1992, ch. 338, § 13, effective July 14, 1992.)

Compiler's Notes. Former KRS 132.730 (Enact. Acts 1962, ch. 262, § 2; 1982, ch. 395, § 5, effective July 15, 1982) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 333, effective July 13, 1990.

Cross-References. Trailer park operators to keep register and furnish reports on housetrailers, KRS 132.260.

132.751. Classification of certain mobile homes or manufactured homes and certain recreational vehicles as real property.

(1) Mobile homes or manufactured homes not held for resale by a dealer shall be classified as real property for the purpose of the levy and assessment of ad valorem taxes, regardless of whether or not the wheels or mobile parts have been removed and whether or not the unit rests on a permanent, fixed foundation.

(2) Recreational vehicles shall be classified as real property if the wheels or mobile parts have been removed and the unit rests on a permanent, fixed foundation.

(Enact. Acts 1992, ch. 338, § 11, effective July 14, 1992; 2000, ch. 166, § 3, effective July 14, 2000.)

132.810. Homestead exemption — Application — Qualification.

(1) To qualify under the homestead exemption provision of the Constitution, each person claiming the exemption shall file an application with the property valuation administrator of the county in which the applicant resides, on forms prescribed by the Revenue Cabinet. The assessed value of property on which homestead exemption is claimed shall not be increased because of valuation expressed on the application form filed with the property valuation administrator, and whenever it becomes known that the valuation of property subject to the homestead tax exemption has been increased because of valuation expressed on the application form, adjustment shall be made the following year so that the total tax paid by the taxpayer is the same as if the increase had not been made.

(2) (a) Every person filing an application for exemption under the homestead exemption provision must be sixty-five (65) years of age or older during the year for which application is made or must have been classified as totally disabled under a program authorized or administered by an agency of the United States government or by any retirement system either within or without the Commonwealth of Kentucky on January 1 of the year in which application is made.

(b) Every person filing an application for exemption under the homestead exemption provision must own and maintain the property for which the exemption is sought as his personal residence.

(c) Every person filing an application for exemption under the disability provision of the homestead exemption must have received disability payments pursuant to the disability and must maintain the disability classification for the entirety of the particular taxation period.

(d) Every person filing for the homestead exemption who is totally disabled and is less than sixty-five (65) years of age must apply for the homestead exemption on an annual basis.

(e) Only one (1) exemption per residential unit shall be allowed even though the resident may be sixty-five (65) years of age and also totally disabled, and regardless of the number of residents sixty-five (65) years of age or older occupying the unit, but the sixty-five hundred dollars ($6,500) exemption shall be construed to mean sixty-five hundred dollars ($6,500) in terms of the purchasing power of the dollar in 1972. Every two (2) years thereafter, if the cost of living index of the United States Department of Labor has changed as much as one percent (1%), the maximum exemption shall be adjusted accordingly.

(f) The real property may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by the stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight (98) years. The exemption shall apply only to the value of the real property assessable to the owner or, in case of ownership through stock or membership in a corporation, the value of the proportion which his interest in the corporation bears to the assessed value of the property.

(g) A mobile home, recreational vehicle, when classified as real property as provided for in KRS 132.751, or a manufactured house shall qualify as a residential unit for purposes of the homestead exemption provision.

(h) When title to property which is exempted, either in whole or in part, under the homestead exemption is transferred, the owner, administrator, executor, trustee, guardian, conservator, curator, or agent shall report such transfer to the property valuation administrator.

(3) Notwithstanding any statutory provisions to the contrary, the provisions of this section shall apply to the assessment and taxation of property under the homestead exemption provision for state, county, city, or special district purposes.

(4) The provisions of this section shall become effective with the 1982 taxable year and persons eligi-

ble for a homestead exemption under this section, who have not previously filed under the age provision of the homestead exemption, shall file applications by December 31 of the taxation period.

(a) The homestead exemption for disabled persons shall terminate whenever those persons no longer meet the total disability classification at the end of the taxation period for which the homestead exemption has been granted. In no case shall the exemption be prorated for persons who maintained the total disability classification at the end of the taxation period.

(b) Any totally disabled person granted the homestead exemption under the disability provision shall report any change in disability classification to the property valuation administrator in the county in which the homestead exemption is authorized.

(c) Any person making application and qualifying for the homestead exemption before payment of his property tax bills for the year in question shall be entitled to a full or partial exoneration, as the case may be, of the property tax due to reflect the taxable assessment after allowance for the homestead exemption.

(d) Any person making application and qualifying for the homestead exemption after property tax bills have been paid shall be entitled to a refund of the property taxes applicable to the value of the homestead exemption.

(5) In this section, "taxation period" means the period from January 1 through December 31 of the year in which application is made, unless the person maintaining the classification dies before December 31, in which case "taxation period" means the period from January 1 to the date of death.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 335, effective July 13, 1990; 1992, ch. 338, § 14, effective July 14, 1992; 2000, ch. 149, § 1, effective July 14, 2000.)

Compiler's Notes. Former KRS 132.810 (Enact. Acts 1972, ch. 285, § 4; 1974, ch. 140, § 1; 1974, ch. 314, § 1; 1976, ch. 315, § 2; 1982, ch. 42, § 1, effective July 15, 1982; 1982, ch. 141, § 60, effective July 1, 1982; 1982, ch. 395, § 7, effective July 15, 1982.) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 335.

Section 2 of Acts 2000, ch. 149, effective July 14, 2000, read: "This Act shall apply for tax assessments made on or after January 1, 2001."

Cross-References. Property exempt from taxation, Const., § 170.

132.815. Monthly reports from certified electrical inspectors — Use of information.

(1) Each electrical inspector certified under KRS 227.489 shall submit a monthly report to the Revenue Cabinet showing the names and addresses of all persons, firms, or corporations for which inspections were conducted for new buildings, new or relocated mobile homes, and other new or relocated structures during the preceding month. Each building, mobile home, or other structure shall be identified by county and property address, or property location in those instances where the address is insufficient to reveal the physical location of the property.

(2) The information provided shall be used for the purpose of making and maintaining accurate assessment records. The Revenue Cabinet shall provide to each electrical inspector the necessary forms and instructions for filing the report required under subsection (1).

(Enact. Acts 1992, ch. 263, § 1, effective July 14, 1992.)

132.820. Assessment of unmined coal, oil, and gas reserves held separately from surface real property — Exceptions — Effect of appeal on payment of taxes.

(1) The cabinet shall value and assess unmined coal, oil, and gas reserves, and any other mineral or energy resources which are owned, leased, or otherwise controlled separately from the surface real property at no more than fair market value in place, considering all relevant circumstances. Unmined coal, oil, and gas reserves and other mineral or energy resources shall in all cases be valued and assessed by the Revenue Cabinet as a distinct interest in real property, separate and apart from the surface real estate unless:

(a) The unmined coal, oil and gas reserves, and other mineral or energy resources are owned in their entirety by the surface owner;

(b) The surface owner is neither engaged in the severance, extraction, processing, or leasing of mineral or other energy resources nor is he an affiliate of a person who engages in those activities; and

(c) The surface is being used by the surface owner primarily for the purpose of raising for sale agricultural crops, including planted and managed timberland, or livestock or poultry.

For purposes of this section, "affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another individual, partnership, committee, association, corporation, or any other organization or group of persons.

(2) Each owner or lessee of property assessed under subsection (1) of this section shall annually, between January 1 and April 15, file a return with the cabinet in a form as the cabinet may prescribe. Other individuals or corporations having knowledge of the property defined in subsection (1) of this section gained through contracting, extracting, or similar means may also be required by the cabinet to file a return.

(3) Any property subject to assessment by the cabinet under subsection (1) of this section which has not been listed for taxation, for any year in which it is taxable, by April 15 of that year shall be omitted property.

(4) After the valuation of unmined minerals or other energy sources has been finally fixed by the cabinet, the cabinet shall certify to the county clerk of each county the amount liable for county, city, or district taxation. The report shall be filed by the

county clerk in his office, and shall be certified by the county clerk to the proper collecting officer of the county, city, or taxing district for collection.

(5) The notification, protest, and appeal of assessments under subsection (1) of this section shall be made pursuant to the provisions of KRS Chapter 131.

(6) No appeal shall delay the collection or payment of taxes based upon the assessment in controversy. The taxpayer shall pay all state, county, and district taxes due on the valuation which the taxpayer claims as the true value as stated in the protest filed under KRS 131.110. When the valuation is finally determined upon appeal, the taxpayer shall be billed for any additional tax and interest at the tax interest rate as defined in KRS 131.010(6), from the date the tax would have become due if no appeal had been taken. The provisions of KRS 134.390 shall apply to the tax bill.

(7) The collection of tax bills generated from the assessments made under subsection (1) of this section shall be made pursuant to the provisions of KRS Chapter 134.

(Enact. Acts 1994, ch. 263, § 1, effective July 15, 1994; 1998, ch. 391, § 3, effective July 15, 1998; 2002, ch. 234, § 1, effective July 15, 2002.)

Legislative Research Commission Note. (7/15/2002). The amendments made to subsection (1) of this statute in 2002 Ky. Acts ch. 234, sec. 1, "shall apply to tax assessments made on or after January 1, 2003." 2002 Ky. Acts ch. 234, sec. 3.

(7/14/2000). 2000 Ky. Acts ch. 446 (Senate Bill 323), sec. 1, purports to amend this statute, and the General Assembly version of that bill was signed by both presiding officers and by the Governor. The Journals of the House of Representatives and Senate will reflect, however, that House Floor Amendment 1 was adopted by the House on March 27, 2000, but was not transmitted to the Senate for its concurrence when the bill was returned to that body. Thus, the bill signed did not pass both chambers of the General Assembly in the same form and did not become law. Ky. Const. secs. 46 and 88; see also Mason's Manual of Legislative Procedure sec. 737, at 508-509 (1989 ed.). Because the General Assembly's own official records establish this constitutional deficiency, the provisions of 2000 Ky. Acts ch. 446 have not been codified into the Kentucky Revised Statutes. See KRS 7.131(2).

PENALTIES

132.990. Penalties.

(1) Any person who willfully fails to supply the property valuation administrator or the Revenue Cabinet with a complete list of his property and such facts with regard thereto as may be required or who violates any of the provisions of KRS 132.570 shall be fined not more than five hundred dollars ($500).

(2) Any property valuation administrator who willfully fails or neglects to perform any duty legally imposed upon him shall be fined not more than five hundred dollars ($500) for each offense.

(3) Any county clerk who willfully fails or neglects to perform any duty required of him by KRS 132.480 or by KRS 132.490 shall be fined not more than fifty dollars ($50) for each offense.

(4) Any person who willfully falsifies application for exemption or who fails to notify the property valuation administrator of any changes in qualifying requirements under the provision of KRS 132.810 shall be fined not more than five hundred dollars ($500).

(1777, 1778, 4019a-10c, 4019a-11, 4029, 4037, 4039, 4042-2, 4042a-3, 4042a-11, 4042a-12, 4051, 4051a, 4066, 4076a, 4114, 4248, 4777a-4, 4777a-5: amend. Acts 1942, ch. 131, § 32; 1949 (Ex. Sess.), ch. 2, § 6; 1982, ch. 42, § 2, effective July 15, 1982; 1990, ch. 411, § 3, effective July 13, 1990; 1990, ch. 476, Pt. V, § 336, effective July 13, 1990.)

Legislative Research Commission Note. (7/13/90) The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

Cross-References. Penalties, civil and criminal, for failure to make tax report or return, or pay tax, where no specific penalty provided, KRS 131.180, 131.990.

CHAPTER 133

SUPERVISION, EQUALIZATION, AND REVIEW OF ASSESSMENTS

SECTION.

133.010. Definitions.
133.070. Assessment where property is annexed by another civil division.
133.120. Appeal procedure.
133.160. Notice of assessment raised by Revenue Cabinet — To whom given — Contents.
133.170. Certification of equalization — Appeal by fiscal court — Exoneration from increase in value — Application — Procedure — Appeal.
133.180. Certification by cabinet to county clerk — Certification of tax books — Effect.
133.185. Tax rate not to be fixed until assessment is certified under KRS 133.180 — Exception.
133.220. Tax bill forms — Attestation of bills — Duties of sheriff or collector — Treatment of undeliverable notices.

133.010. Definitions.

As used in this chapter, unless the context requires otherwise:

(1) "Board" means the county board of assessment appeals.

(2) "Cabinet" means the Revenue Cabinet.

(3) "Taxpayer" means any person made liable by law to file a return or pay a tax.

(4) "Real property" includes all lands within this state and improvements thereon.

(5) "Personal property" includes every species and character of property, tangible and intangible, other than real property.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 337, effective July 13, 1990.)

Compiler's Notes. Former KRS 133.010 (4022, 4114h-1: amend. Acts 1974, ch. 326, § 1) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 337.

Cross-References. Collection of public claims by action, KRS ch. 135.
Corporation and utility taxes, KRS ch. 136.
Revenue cabinet, KRS ch. 131.
Excise taxes, KRS ch. 138.
Finance and revenue of cities of the first class, KRS ch. 91.
Finance and revenue of cities other than the first class, KRS ch. 92.
Income taxes, KRS ch. 141.
Inheritance and estate taxes, KRS ch. 140.
Levy and assessment of property tax, KRS ch. 132.
License taxes, KRS ch. 137.
Miscellaneous taxes, KRS ch. 142.
Payment, collection and refund of taxes, KRS ch. 134.

133.070. Assessment where property is annexed by another civil division.

Property in territory annexed by another civil division shall not be subject to ad valorem taxation in the annexing civil division until the assessment date next following the date of annexation.
(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 338, effective July 13, 1990.)

Compiler's Notes. Former KRS 133.070 (4128-1, 4128-2: amend. Acts 1962, ch. 28) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 338, effective July 13, 1990.
Cross-References. Annexation of territory by cities, KRS ch. 81.

133.120. Appeal procedure.

(1) Any taxpayer desiring to appeal an assessment on real property made by the property valuation administrator shall first request a conference with the property valuation administrator or his designated deputy. The conference shall be held prior to or during the inspection period provided for in KRS 133.045. Any person receiving compensation to represent a property owner at a conference with the property valuation administrator for a real property assessment shall be an attorney, a certified public accountant, a certified real estate broker, a Kentucky licensed real estate broker, an employee of the property owner, or any other individual possessing a professional appraisal designation recognized by the cabinet. A person representing a property owner before the property valuation administrator shall present written authorization from the property owner which sets forth his professional capacity and shall disclose to the property valuation administrator any personal or private interests he may have in the matter, including any contingency fee arrangements. Provided however, attorneys shall not be required to disclose the terms and conditions of any contingency fee arrangement. During this conference, the property valuation administrator or his deputy shall provide an explanation to the taxpayer of the constitutional and statutory provisions governing property tax administration, including the appeal process, as well as an explanation of the procedures followed in deriving the assessed value for the taxpayer's property. The property valuation administrator or his deputy shall keep a record of each conference which shall include, but shall not be limited to, the initial assessed value, the value claimed by the taxpayer, an explanation of any changes offered or agreed to by each party, and a brief account of the outcome of the conference. At the request of the taxpayer, the conference may be held by telephone.

(2) Any taxpayer still aggrieved by an assessment on real property made by the property valuation administrator after complying with the provisions of subsection (1) of this section may appeal to the board of assessment appeals. The taxpayer shall appeal his assessment by filing in person or sending a letter or other written petition stating the reasons for appeal, identifying the property for which the appeal is filed, and stating to the county clerk the taxpayer's opinion of the fair cash value of the property. The appeal shall be filed no later than one (1) workday following the conclusion of the inspection period provided for in KRS 133.045. The county clerk shall notify the cabinet of all assessment appeals and of the date and times of the hearings. The board of assessment appeals may review and change any assessment made by the property valuation administrator upon recommendation of the county judge/executive, mayor of any city using the county assessment, or the superintendent of any school district in which the property is located, if the recommendation is made to the board in writing specifying the individual properties recommended for review and is made no later than one (1) work day following the conclusion of the inspection period provided for in KRS 133.045, or upon the written recommendation of the cabinet. If the board of assessment appeals determines that the assessment should be increased, it shall give the taxpayer notice in the manner required by subsection (4) of KRS 132.450, specifying a date when the board will hear the taxpayer, if he so desires, in protest of an increase. Any real property owner who has listed his property with the property valuation administrator at its fair cash value may ask the county board of assessment appeals to review the assessments of real properties he believes to be assessed at less than fair cash value, if he specifies in writing the individual properties for which the review is sought and factual information upon which his request is based, such as comparable sales or cost data and if the request is made no later than one (1) work day following the conclusion of the inspection period provided for in KRS 133.045. Nothing in this section shall be construed as granting any property owner the right to request a blanket review of properties or the board the power to conduct such a review.

(3) The board of assessment appeals shall hold a public hearing for each individual taxpayer appeal in protest of the assessment by the property valuation administrator filed in accordance with the provisions of subsection (2) of this section, and after hearing all the evidence, shall fix the assessment of the property at its fair cash value. The cabinet may be present at the hearing and present any pertinent evidence as it pertains to the appeal.

The taxpayer shall provide factual evidence to support his appeal. If the taxpayer fails to provide reasonable information pertaining to the value of the property requested by the property valuation administrator, the cabinet, or any member of the board, his appeal shall be denied. This information shall include, but shall not be limited to, the physical characteristics of land and improvements, insurance policies, cost of construction, real estate sales listings and contracts, income and expense statements for commercial property, and loans or mortgages. The board of assessment appeals shall only hear and consider evidence which has been submitted to it in the presence of both the property valuation administrator or his designated deputy and the taxpayer or his authorized representative.

(4) Any person receiving compensation to represent a property owner in an appeal before the board shall be an attorney, a certified public accountant, a certified real estate appraiser, a Kentucky licensed real estate broker, an employee of the taxpayer, or any other individual possessing a professional appraisal designation recognized by the cabinet. A person representing a property owner before the county board of assessment appeals shall present a written authorization from the property owner which sets forth his professional capacity and shall disclose to the county board of assessment appeals any personal or private interests he may have in the matter, including any contingency fee arrangements. Provided however, attorneys shall not be required to disclose the terms and conditions of any contingency fee arrangement.

(5) The board shall provide a written opinion justifying its action for each assessment either decreased or increased in the record of its proceedings and orders required in KRS 133.125 on forms or in a format provided or approved by the cabinet.

(6) The board shall report to the property valuation administrator any real property omitted from the tax roll. The property valuation administrator shall assess the property and immediately give notice to the taxpayer in the manner required by KRS 132.450(4), specifying a date when the board of assessment appeals will hear the taxpayer, if he so desires, in protest of the action of the property valuation administrator.

(7) The board of assessment appeals shall have power to issue subpoenas, compel the attendance of witnesses, and adopt rules and regulations concerning the conduct of its business. Any member of the board shall have power to administer oaths to any witness in proceedings before the board.

(8) The powers of the board of assessment appeals shall be limited to those specifically granted by this section.

(9) No appeal shall delay the collection or payment of any taxes based upon the assessment in controversy. The taxpayer shall pay all state, county, and district taxes due on the valuation which he claims as true value and stated in the petition of appeal filed in accordance with the provisions of subsection (1) of this section. When the valuation is finally determined upon appeal, the taxpayer shall be billed for any additional tax and interest at the tax interest rate as defined in KRS 131.010(6) from the date when the tax would have become due if no appeal had been taken. The provisions of KRS 134.390 shall apply to the tax bill.

(10) Any member of the county board of assessment appeals may be required to give evidence in support of the board's findings in any appeal from its actions to the Kentucky Board of Tax Appeals. Any persons aggrieved by a decision of the board, including the property valuation administrator, taxpayer, and cabinet, may appeal the decision to the Kentucky Board of Tax Appeals. Any taxpayer failing to appeal to the county board of assessment appeals, or failing to appear before the board, either in person or by designated representative, shall not be eligible to appeal directly to the Kentucky Board of Tax Appeals.

(11) The county attorney shall represent the interest of the state and county in all hearings before the board of assessment appeals and on all appeals prosecuted from its decision. If the county attorney is unable to represent the state and county, he or the fiscal court shall arrange for substitute representation.

(12) Taxpayers shall have the right to make audio recordings of the hearing before the county board of assessment appeals. The property valuation administrator may make similar audio recordings only if prior written notice is given to the taxpayer. The taxpayer shall be entitled to a copy of the cabinet's recording as provided in KRS 61.874.

(13) The county board of assessment appeals shall physically inspect a property upon the request of the property owner or property valuation administrator.

(Enact. Acts 1942, ch. 131, § 16, 32; 1944, ch. 99; 1949 (Ex. Sess.), ch. 2, § 7; 1950, ch. 18, § 1; 1964, ch. 141, § 34; 1974, ch. 326, § 6; 1976 (Ex. Sess.), ch. 20, § 6, effective January 2, 1978; 1978, ch. 384, § 264, effective June 17, 1978; 1980, ch. 317, § 5, effective July 15, 1980; 1982, ch. 452, § 7, effective July 1, 1982; 1988, ch. 303, § 11, effective July 15, 1988; 1990, ch. 411, § 11, effective July 13, 1990; 1990, ch. 476, Pt. V, § 339, effective July 13, 1990; 1992, ch. 397, § 3, effective July 14, 1992; 1992, ch. 449, § 6, effective April 13, 1992; 1994, ch. 85, § 5, effective July 15, 1994.)

Legislative Research Commission Note. (7/14/92). Pursuant to KRS 7.136(1), in codifying this section the Reviser of Statutes has corrected an erroneous cross-reference that resulted from the amendment process in the enactment of 1992 Ky. Acts ch. 397, sec. 3. That Act and Acts ch. 449 both amend this statute and not otherwise being in conflict have been compiled together.

(7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

133.160. Notice of assessment raised by Revenue Cabinet — To whom given — Contents.

When it is contemplated by the Revenue Cabinet that it will be necessary to raise the assessed valuation of property in any county, it shall give notice of the

contemplated action to the county judge/executive, the superintendent of any school district affected by such action, the mayor of any city which is affected and which has adopted the assessment, and to the taxpayers of that county through the county judge/executive, who shall post the notice sent him on the courthouse door and certify to the Revenue Cabinet that this has been done, and it shall fix a time and place for a hearing which may be in Frankfort or any convenient place in or nearer the county seat.
(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 340, effective July 13, 1990.)

Compiler's Notes. Former KRS 133.160 (Enact. Acts 1942, ch. 131, §§ 24, 32; 1946, ch. 233, § 3; 1964, ch. 141, § 17; 1968, ch. 179, § 3; 1976 (Ex. Sess.), ch. 20, § 6, effective January 2, 1978; 1978, ch. 384, § 267, effective June 17, 1978) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 340, effective July 13, 1990.

133.170. Certification of equalization — Appeal by fiscal court — Exoneration from increase in value — Application — Procedure — Appeal.

(1) When the Revenue Cabinet has completed its equalization of the assessment of the property in any county, it shall certify its action to the county judge/executive, with a copy of the certification for the county clerk, to be laid before the fiscal court of the county.
(2) If the fiscal court deems it proper to ask for a review of the aggregate equalization of any class or subclass of property, it shall direct the county attorney to prosecute an appeal of the aggregate increase to the Kentucky Board of Tax Appeals within ten (10) days from the date of the certification.
(3) Within ten (10) days from the date that the cabinet's aggregate equalization of any or all classes or subclasses of property becomes final by failure of the fiscal court to prosecute an appeal or by order of the Kentucky Board of Tax Appeals or the courts, the fiscal court shall cause to be published, at least one (1) time, in the newspaper having the largest circulation within the county, a public notice of the cabinet's action.
(4) Within ten (10) days from the date of the publication of the notice required in subsection (3) of this section, any individual taxpayer whose property assessment is increased above its fair cash value by the equalization action may file with the county clerk an application for exoneration of his property assessment from the increase. The application shall be filed in duplicate and shall include the name and address of the person in whose name the property is assessed; the assessment of the property before the increase; the description and location of the property including the description shown on the tax roll; the property owner's reason for appeal; and all other pertinent facts having a bearing upon its value. The county clerk shall forward one (1) copy, of each application for exoneration to the Revenue Cabinet and shall exclude the amount of the equalization increase from the assessment in the preparation of the property tax bill for each property for which an application for exoneration has been filed.
(5) The county judge/executive shall reconvene the board of supervisors immediately following the close of the period for filing applications for exoneration from the increase. The board shall schedule and conduct hearings on all applications in the manner prescribed for hearing appeals by KRS 133.120; however, the board shall not have authority to reduce any assessment to an amount less than that listed for the property at the time of adjournment of the regular board session.
(6) The county clerk shall act as clerk of the reconvened board and shall keep an accurate record of the proceedings in the same manner as provided by KRS 133.125. Within five (5) days of the adjournment of the reconvened board, he shall notify each property owner in writing of the final action of the board with relation to the equalization increase and shall forward a copy of the proceedings certified by the chairman of the board and attested by him to the Revenue Cabinet and to the other taxing districts participating in the tax.
(7) Any taxpayer whose application has been denied, in whole or in part, may appeal to the Kentucky Board of Tax Appeals as provided in KRS 131.340, and appeals thereafter may be taken to the courts as provided in KRS 131.370.
(8) The provisions of KRS 133.120(9) shall apply to the payment of taxes upon any property assessment for which an application for exoneration has been filed.
(9) The provisions of subsections (4), (5), (6), (7), and (8) of this section shall only apply to appeals growing out of equalization action by the Revenue Cabinet under the provisions of KRS 133.150.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 341, effective July 13, 1990; 1992, ch. 449, § 8, effective April 13, 1992.)

Compiler's Notes. Former KRS 133.170 (4118i-18: Acts 1964, ch. 141, § 18; 1968, ch. 179, § 4) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 341, effective July 13, 1990.

133.180. Certification by cabinet to county clerk — Certification of tax books — Effect.

When the Revenue Cabinet has completed its action on the assessment of property in any county, it shall immediately certify to the county clerk the assessment and the amount of taxes due. The Revenue Cabinet shall charge the amount of taxes due from the county to the sheriff of the county. When any item of property is in process of appeal and the valuation has not been finally determined, the certification of such property shall be based on the valuation claimed by the taxpayer as the true value. The county clerk shall affix the certification to the tax books and enter it of record in the order book, and it shall be the sheriff's or collector's warrant for the collection of taxes.
(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 342, effective July 13, 1990.)

Compiler's Notes. Former KRS 133.180 (4128a-2: amend. Acts 1949 (Ex. Sess.), ch. 2, § 9; 1960, ch. 186, Art. I, § 38; 1964, ch. 141, § 19; 1974, ch. 326, § 9) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 342, effective July 13, 1990.

133.185. Tax rate not to be fixed until assessment is certified under KRS 133.180 — Exception.

Except as provided in KRS 132.487, no tax rate for any taxing district imposing a levy upon the county assessment shall be determined before the assessment is certified by the Revenue Cabinet to the county clerk as provided in KRS 133.180.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 343, effective July 13, 1990.)

Compiler's Notes. Former KRS 133.185 (Enact. Acts 1942, ch. 131, §§ 26, 32; 1949 (Ex. Sess.), ch. 2, § 10; 1964, ch. 141, § 21; 1978, ch. 384, § 269, effective June 17, 1978; 1984, ch. 54, § 9, effective January 1, 1985) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 343, effective July 13, 1990.

NOTES TO DECISIONS

2. State Tax Rate.

This section, which relates to the imposition of a tax rate for a taxing district, such as a city, county or school, has no relationship to Const., § 171 which requires that the General Assembly shall provide an annual tax sufficient to defray the estimated expenses of the commonwealth; the state tax rate on all personal property, including motor vehicles, is not fixed by the processes outlined in this section, KRS 132.487(2), or 132.487(6) which provide for submission of a proposal, recapitulation of motor vehicles by the property valuation administrator, and certification by the Department of Revenue (now Revenue Cabinet), but rather, the state tax rate is fixed by the General Assembly and is currently embodied in KRS 132.020. There is no conflict between KRS 132.487(2) and 132.487(6) with the constitutional provision that the taxes shall be sufficient to defray the expenses of the state. Kling v. Geary, 667 S.W.2d 379 (Ky. 1984).

133.220. Tax bill forms — Attestation of bills — Duties of sheriff or collector — Treatment of undeliverable notices.

(1) The Revenue Cabinet annually shall furnish to each county clerk tax bill forms designed for adequate accounting control sufficient to cover the taxable property on the rolls.

(2) After receiving the forms, the county clerk shall prepare for the use of the sheriff or collector a correct tax bill for each taxpayer in the county whose property has been assessed and whose valuation is included in the certification provided in KRS 133.180. If the bills are bound, the cost of binding shall be paid out of the county levy. Each tax bill shall show the rate of tax upon each one hundred dollars ($100) worth of property for state, county, and school purposes; the name of the taxpayer and his mailing address; the number of acres of farm land and its value; the number of lots and their value; the amount and value of notes and money; the value of mixed personal property; and the total amount of taxes due the state, county, school fund, and other levies. Provision shall be made for the sheriff to have a stub, duplicate, or other proper evidence of receipt of payment of each tax bill.

(3) Tax bills prepared in accordance with the certification of the Revenue Cabinet shall be delivered to the sheriff or collector by the county clerk before September 15 of each year. The clerk shall take a receipt showing the number of tax bills and the total amount of tax due each taxing district as shown upon the tax bills. The receipt shall be signed and acknowledged by the sheriff or collector before the county clerk, filed with the county judge/executive, and recorded in the order book of the county judge/executive in the manner required by law for recording the official bond of the sheriff.

(4) Upon delivery to him of the tax bills, the sheriff or collector shall mail a notice to each taxpayer, showing the total amount of taxes due the state, county, school fund, and other levies, the date on which the taxes are due, and any discount to which the taxpayer may be entitled upon payment of the taxes prior to a designated date.

(5) All notices returned as undeliverable shall be submitted no later than the following work day to the property valuation administrator. The property valuation administrator shall correct inadequate or erroneous addresses if the information to do so is available and, if property has been transferred, shall determine the new owner and the current mailing address. The property valuation administrator shall return the corrected notices to the sheriff or collector on a daily basis as corrections are made, but no later than fifteen (15) days after receipt. Uncorrected notices shall be submitted to the cabinet by the property valuation administrator.

(4128a-2, 4239a, 4239h, 4239i-1, 4239ii: amend. Acts 1944, ch. 2; 1949 (Ex. Sess.), ch. 2, § 11; 1954, ch. 92; 1960, ch. 186, Art. I, § 23; 1962, ch. 29, § 4; 1964, ch. 141, § 23; 1978, ch. 384, § 270, effective June 17, 1978; 1990, ch. 27, § 3, effective July 13, 1990; 1998, ch. 209, § 2, effective March 30, 1998.)

Compiler's Notes. Section 21 of Acts 1998, ch. 209, provided that the 1998 amendments to this section "shall apply for assessments made on or after January 1, 1998."

Cross-References. Revenue Cabinet to prescribe style, layout, use and manner of keeping tax forms and records, KRS 131.130.

Informality or irregularity in making tax bills does not vitiate them, KRS 132.650.

Tax bill to be delivered to taxpayer when taxes are paid, KRS 134.170.

Opinions of Attorney General. Under the literal language of this section, when read together with KRS 132.017(3), (4) and (5), a county clerk was not required to wait until the library board established a final tax rate in order to get out the tax bills in the regular way envisioned by this section but should make up the tax bills, based upon the already established tax rates relating to the state, county, school and other taxing districts, and place the bills with the sheriff; in connection with the library district tax levy, which had not been established because of the recall provisions of KRS 132.017, a second set of bills must be prepared in the regular manner upon the establishment of the final tax rate by any remaining districts and all costs associated with the

second billing must be paid by the taxing district or districts requiring the second billing. OAG 80-503.

CHAPTER 134

PAYMENT, COLLECTION, AND REFUND OF TAXES

SECTION.
134.020. Due date of taxes — Discount — Partial payment — Delinquent taxes — Penalty — Revised collection schedule — Collection efforts.
134.230. Fiscal court's authority to require bond of sheriff.
134.270. Limitation of action against sheriff and sureties.
134.290. Compensation of sheriff for collecting state and county taxes.
134.295. Supplementation of sheriff's commission.
134.300. Reports, payments by sheriff.
134.310. Sheriff's annual settlement with county — Objections — Action in Circuit Court — Statement of funds and expenditures — Settlement for excess fees — Applicability of KRS 64.368 if population decreases below 70,000.
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134.360. Credit to sheriff for uncollectible delinquent taxes and certificates of delinquency.
134.380. Collection of delinquent taxes and assessment of omitted property.
134.420. Lien for taxes.
134.430. Sale of personal property and delinquent tax claims against real property — Compensation for services.
134.440. Advertisement of sale of tax claims — Compensation of sheriff.
134.450. Sale of tax claims — Offers of purchase — Certificate of delinquency.
134.470. Liability of taxpayer on uncollectible tax bill or certificate of delinquency — Action to enforce — Operation of statute of limitations.
134.480. Who may pay certificates of delinquency — Assignment — Clerk to receive and record payments — Records as evidence.
134.490. Actions by owner of certificate of delinquency to collect or foreclose certificate — Sale and deed on foreclosure — No redemption — Additional rights if owner is a taxing unit.
134.500. Interest on uncollectible tax claims — Collection of amount due on certificate of delinquency and delinquent personal property tax bills — Technical resources from cabinet.
134.590. Refund of ad valorem taxes or taxes held unconstitutional.

AD VALOREM TAXES ON MOTOR VEHICLES AND MOTORBOATS

134.800. County clerk to collect ad valorem taxes on motor vehicles registered by him — Acceptable means of payment.

PENALTIES

134.990. Penalties.

134.020. Due date of taxes — Discount — Partial payment — Delinquent taxes — Penalty — Revised collection schedule — Collection efforts.

(1) All state, county, and district taxes, except as otherwise provided by law, shall be due and payable on September 15 following the assessment; except that all taxes in any year on unmanufactured tobacco, money in hand, or money on deposit outside this state, shall be due and payable on the second succeeding September 15 following the assessment, unless otherwise provided by law.

(2) Any taxpayer who pays his state, county, or district taxes by November 1 after they become due in any year shall be entitled to two percent (2%) discount thereon, and the sheriff shall allow the discount and give a receipt in full to the taxpayer. The sheriff may, at any time after the taxes mentioned in this section become due, receive less than the face amount of the tax bill as a credit on the amount due, including the amount of any penalties then due; and every payment shall be credited upon the tax bill or upon sheets annexed thereto for that purpose, and acknowledged in writing or by a rubber stamp, indicating the amount so paid to the sheriff. The sheriff or any authorized collector of property taxes may accept payment of taxes due by any commercially acceptable means, including credit cards.

(3) All state, county, and district taxes, except as otherwise provided by law, shall become delinquent on January 1 following their due date.

(4) Any taxes which are not paid by the date when they become delinquent shall be subject to a penalty of ten percent (10%) on the taxes due and unpaid; except that taxes which became delinquent on January 1 shall be subject to a penalty of only five percent (5%) on the taxes due and unpaid, if paid on or before the last day of January. The sheriff shall collect the penalty and account for it as he is required to collect and account for taxes.

(5) When the tax collection schedule is delayed, through no fault of the taxpayers, the Revenue Cabinet may institute a revised collection schedule. The revised collection dates shall allow a two percent (2%) discount for all payments made within thirty (30) calendar days of the date the tax bills were mailed. Upon expiration of the time period to pay the tax bill with a discount, the face amount of the tax bill shall be due during the next thirty (30) days. If the time period to pay the face amount has lapsed, a five percent (5%) penalty shall be added to the tax bill for payments made during the next thirty (30) day period. Upon expiration of this time period, a ten percent (10%) penalty shall be added to all tax bills paid thereafter.

(6) If, upon expiration of the five percent (5%) penalty period, the real property tax delinquencies of the sheriff exceed fifteen percent (15%), the sheriff shall be required to make additional reasonable collection efforts. If the sheriff fails to initiate additional reasonable collection efforts within fifteen (15) business days following the expiration of the five percent (5%) penalty period, the secretary of the cabinet may act in the name of and on behalf of the cities, counties, schools, and other taxing districts to collect the delinquent taxes. In the performance of any tax collection duties under-

taken by the cabinet, the cabinet shall have all the powers, rights, and authority for the collection of taxes established in Chapters 131, 132, 133, and 134 of the Kentucky Revised Statutes. If the cabinet assumes collection duties, all fees and commissions which the sheriff would have been entitled to receive from the taxing districts after the expiration of the five percent (5%) penalty period shall be paid to the cabinet for deposit in the delinquent tax fund as provided in KRS 134.400.

(1885, 4148: amend. Acts 1949 (Ex. Sess.), ch. 4, § 15; 1960, ch. 186, Art. I, § 24; 1962, ch. 29, § 5; 1976, ch. 36, § 1; 1990, ch. 27, § 4, effective July 13, 1990; 1998, ch. 209, § 3, effective March 30, 1998.)

Compiler's Notes. Section 21 of Acts 1998, ch. 209, provided that the 1998 amendments to this section "shall apply for assessments made on or after January 1, 1998."

Cross-References. Flood control and drainage purposes, collection of taxes for, KRS 104.670.

Nonpayment of taxes, penalties and interest where no specific penalty is provided, KRS 131.180.

Sheriff not to receive or collect taxes until he receives tax bills, KRS 134.140.

When taxes due on assessment by revenue cabinet or board of tax appeals, KRS 131.110.

NOTES TO DECISIONS

2. Application.

School taxes levied by fiscal court for school district which embraced property of fourth-class city, but whose limits were not coterminous with city limits, were governed by this section and not by the laws relating to city taxes. Farmer's Nat'l Bank v. Board of Educ., 238 Ky. 433, 38 S.W.2d 263 (1931).

School taxes are governed by this section. Fidelity & Deposit Co. v. Commonwealth, 249 Ky. 170, 60 S.W.2d 345 (1933).

134.230. Fiscal court's authority to require bond of sheriff.

The fiscal court may require the sheriff to enter into bond, with good surety to be approved by the fiscal court, when the fiscal court deems it necessary in the interest of the state or county.

(4130, 4134: amend. Acts 1954, ch. 145; 1964, ch. 131, § 1; 1976 (Ex. Sess.), ch. 20, § 6, effective January 2, 1978; 1978, ch. 384, § 275, effective June 17, 1978; 1982, ch. 112, § 1, effective July 15, 1982; 1990, ch. 27, § 6, effective July 13, 1990; 1990, ch. 183, § 1, effective July 13, 1990; 1994, ch. 9, § 2, effective July 15, 1994.)

134.270. Limitation of action against sheriff and sureties.

Neither the sheriff nor a surety shall be liable for any act or default of the sheriff in connection with his revenue duties unless notice of the act or default of the sheriff giving rise to a claim upon the bond has been given to the surety by the Revenue Cabinet, the county judge/executive, the county attorney, or other person asserting the claim within ninety (90) days after discovery or at the latest within one (1) year after the end of the year within which the bond was executed.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 344, effective July 13, 1990.)

Compiler's Notes. Former KRS 134.270 (4134) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 344, effective July 13, 1990.

134.290. Compensation of sheriff for collecting state and county taxes.

(1) In counties where the state taxes charged to the sheriff for the year are less than seventy-five thousand dollars ($75,000), he shall be allowed by the Revenue Cabinet, for collecting such taxes, a commission of ten percent (10%) upon the first ten thousand dollars ($10,000) and four and one-quarter percent (4.25%) upon the residue. In all other counties, he shall be allowed ten percent (10%) upon the first five thousand dollars ($5,000) and four and one-quarter percent (4.25%) upon the residue.

(2) In counties where county taxes and special district taxes, excluding school taxes, charged to the sheriff for the year are less than one hundred fifty thousand dollars ($150,000), he shall be allowed by the county treasurer for collecting such taxes ten percent (10%) upon the first ten thousand dollars ($10,000) and four and one-quarter percent (4.25%) upon the residue. In all other counties, he shall be allowed ten percent (10%) upon the first five thousand dollars ($5,000) and four and one-quarter percent (4.25%) upon the residue.

(3) Notwithstanding the provisions of subsection (1) of this section, the Revenue Cabinet shall allow the sheriff a commission for 1996 and subsequent years equal to the amount allowed the sheriff in 1995, or the amount required by the provisions of subsection (1) of this section, whichever is greater.

(4) Notwithstanding the provisions of subsection (2) of this section, the county treasurer shall allow the sheriff a commission for 1996 and subsequent years equal to the amount allowed the sheriff in 1995, or the amount required by the provisions of subsection (2) of this section, whichever is greater.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 345, effective July 13, 1990; 1996, ch. 254, § 20, effective July 15, 1996.)

Compiler's Notes. Former KRS 134.290 (4168: amend. Acts 1954, ch. 179, § 1; 1962, ch. 256; 1966, ch. 223, § 1; 1982, ch. 264, § 6, effective January 1, 1984; 1984, ch. 3, § 1, effective January 1, 1984) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 345, effective July 13, 1990.

Cross-References. Compensation for collecting fire protection district tax, KRS 75.040.

Compensation for collecting road tax, KRS 178.230.

Compensation for collecting school taxes, KRS 160.500.

Opinions of Attorney General. If the county taxes and special district taxes, excluding school taxes and excluding a special road tax, charged to the sheriff for the year are less than $150,000, the sheriff will be allowed by the county treasurer for collecting such taxes 10% upon the first $10,000 and 4% on the remainder, but if the amount is $150,000 or more, the sheriff will be allowed 10% upon the first $5,000 and 4% on the residue and the sheriff's fee for collecting the special road tax is 1% of the amount collected. OAG 74-64.

134.295. Supplementation of sheriff's commission.

If, in the collection of state and school property taxes for 1977-78 any sheriff's commission is less than he would have received if KRS 132.020 had not been

enacted, the state shall supplement his commission for collecting state taxes to the extent of the difference. (Enact. Acts 1976, ch. 93, § 18, effective January 1, 1977.)

134.300. Reports, payments by sheriff.

(1) The sheriff shall, by the tenth day of each month, or more often if required by the county judge/executive to prevent the sheriff from having funds in his possession in excess of the amount of his bond, report under oath to the county judge/executive the amount of state and county taxes he has collected during the month preceding, together with all fines, forfeitures, or money on any other account that has been received or collected by him for the preceding month. He shall show in this report the amount collected for and belonging to each particular fund for which the revenue or money may be intended, and the disposition of such revenue or money collected by him. The reports shall be filed and recorded in separate books furnished by the county judge/executive for that purpose, and they shall be open for inspection in the office of the county clerk.

(2) At the time of making the report to the county judge/executive, the sheriff shall pay to the county treasurer, or other officer designated by the fiscal court, all funds belonging to the county that were collected by him during the period covered in the report. He shall take a receipt from the county treasurer for the amount so paid, in duplicate, one (1) duplicate to be retained by the sheriff and the other to be delivered by him to the county judge/executive who shall file it in his office.

(3) Any sheriff failing to pay over taxes collected by him and due the county, as provided by law, shall be required by the fiscal court to pay a penalty of one percent (1%) for each thirty (30) day period or fraction thereof plus interest at the legal rate per annum on such taxes. The fiscal court in its settlement with the sheriff shall charge him with such penalties and interest.

(4) The county judge/executive may grant an extension of time, not to exceed fifteen (15) days, for filing the report required by subsection (1) and the reports for all other levies made by the fiscal court whenever, in his judgment, good cause therefor exists. The extension shall be in writing and shall be recorded in the office of the county clerk. The extension when granted shall suspend the penalty and interest for the duration of the extension. The penalty and interest shall apply at the expiration of the extension.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 346, effective July 13, 1990.)

Compiler's Notes. Former KRS 134.300 (932, 4147: amend. Acts 1960, ch. 186, Art. I, § 26; 1976 (Ex. Sess.), ch. 20, § 6, effective January 2, 1978; 1978, ch. 384, § 278, effective June 17, 1978) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 346, effective July 13, 1990.

Cross-References. Commonwealth's attorney to advise concerning, and prosecute action against, delinquent tax officer, KRS 69.030.

County treasurer to receive and record county tax money; to institute action against delinquent sheriff, KRS 68.020.

Decisions Under Prior Law

Analysis

1. Application.
8. Penalty and interest.

1. Application.

This section does not apply to school taxes. Fidelity & Deposit Co. v. Commonwealth, 249 Ky. 170, 60 S.W.2d 345 (1933). See Commonwealth ex rel. McCreary County Bd. of Educ. v. Walker, 246 Ky. 679, 55 S.W.2d 914 (1932).

8. Penalty and Interest.

There is no penalty upon the sheriff for failing to pay over school taxes at the time required by KRS 160.510, but the sheriff is liable for interest at the legal rate on all such taxes not paid over at the time required by that section. Commonwealth ex rel. McCreary County Bd. of Educ. v. Walker, 246 Ky. 679, 55 S.W.2d 914 (1932).

134.310. Sheriff's annual settlement with county — Objections — Action in Circuit Court — Statement of funds and expenditures — Settlement for excess fees — Applicability of KRS 64.368 if population decreases below 70,000.

(1) The sheriff shall annually settle his accounts for county and district taxes with the fiscal court after making settlement with the Revenue Cabinet. The fiscal court shall appoint some competent person other than the Commonwealth's or county attorney to settle the accounts of the sheriff for money due the county or district. The cabinet, at the request of the fiscal court or any school district, may conduct the local settlement. If no local settlement has been initiated by July 1 of any year, the cabinet may initiate the local settlement on behalf of the local district. Upon completion of the local settlement, the cabinet may receive reasonable reimbursement for expenses incurred. The report of the state and local settlement shall be filed in the county clerk's office and approved by the county judge/executive no later than September 1 of each year. The settlement shall show the amount of ad valorem tax collected, and an itemized statement of the money disbursed.

(2) The settlement shall be published pursuant to KRS Chapter 424. The report of the settlement shall be subject to objections by the sheriff or by the county attorney, who shall represent the state and county, and the county judge/executive shall determine the objections. Objections shall be submitted to the county judge/executive within fifteen (15) days of the filing of the settlement in the clerk's office. If no objections are submitted, the settlement will become final.

(3) If the county judge/executive denies the objections, the sheriff may institute an action in Circuit Court within fifteen (15) days of receipt of the denial for review of the settlement and objections. Upon review, the Circuit Court shall issue its determination and the settlement shall become final. The

final settlement shall be subject to correction by audit conducted pursuant to KRS 43.070 or 64.810.

(4) On the final settlement, the sheriff shall pay to the county treasurer all money that remains in his hands, and take receipts as provided in KRS 134.300, and shall pay any additional amounts charged against him as a result of the settlements. If the sheriff fails to remit amounts charged against him the cabinet may issue bills for the subsequent year and may assume all collection duties in the name of and on behalf of the cities, counties, school districts, and other taxing districts to collect the taxes. In the performance of any tax collection duties undertaken by the cabinet, the cabinet shall have all the powers, rights, and authority for the collection of taxes established in Chapters 131, 132, 133, and 134 of the Kentucky Revised Statutes. The fees and commissions which the sheriff would have been entitled to receive from the taxing districts shall be paid to the cabinet.

(5) In counties containing a population of less than seventy thousand (70,000), the sheriff shall file annually with his final settlement:

(a) A complete statement of all funds received by his office for official services, showing separately the total income received by his office for services rendered, exclusive of his commissions for collecting taxes, and the total funds received as commissions for collecting state, county, and school taxes; and

(b) A complete statement of all expenditures of his office, including his salary, compensation of deputies and assistants, and reasonable expenses.

(6) At the time he files the statements required by subsection (5) of this section, the sheriff shall pay to the fiscal court any fees, commissions, and other income of his office, including income from investments, which exceed the sum of his maximum salary as permitted by the Constitution and other reasonable expenses, including compensation of deputies and assistants. The settlement for excess fees and commissions and other income shall be subject to correction by audit conducted pursuant to KRS 43.070 or 64.810, and the provisions of this subsection shall not be construed to amend KRS 64.820 or 64.830.

(7) If a county's population that equaled or exceeded seventy thousand (70,000) is less than seventy thousand (70,000) after the most recent federal decennial census, then the provisions of KRS 64.368 shall apply.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 347, effective July 13, 1990; 1992, ch. 220, § 11, effective January 1, 1994; 1998, ch. 209, § 4, effective March 30, 1998; 2002, ch. 71, § 8, effective July 15, 2002.)

Compiler's Notes. Former KRS 134.310 (932, 1884, 4146, 4251: amend. Acts 1954, ch. 179, § 2; 1966, ch. 239, § 137; 1976 (Ex. Sess.), ch. 14, § 148, effective January 2, 1978; 1978, ch. 384, § 279, effective June 17, 1978; 1982, ch. 8, § 1, effective July 15, 1982) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 347, effective July 13, 1990.

Section 21 of Acts 1998, ch. 209, provided that the 1998 amendments to subsection (4) of this section "shall apply to settlements completed after December 31, 1997" and that the remainder of the 1998 amendments to this section "shall apply for assessments made on or after January 1, 1998."

Opinions of Attorney General. A statement by the sheriff to the county board of education for collecting school taxes showing that he withheld X amount, being three percent of the amount collected, that "the actual cost to the board" was Y amount, and that Z amount was to be returned to the board as excess is not an adequate statement as to the actual costs of collecting the school taxes. OAG 75-353.

DECISIONS UNDER PRIOR LAW

30. Procedure.

County board of education, county treasurer and county itself could properly join as parties plaintiff in action to surcharge sheriff's settlement. Knox County v. Lewis' Adm'r, 253 Ky. 652, 69 S.W.2d 1000 (1934).

134.325. Sheriff's settlement for taxes collected. Each sheriff shall conduct the sale of delinquent tax bills required by KRS 134.430 and make his records available for settlement with the Revenue Cabinet for all taxes collected for the Commonwealth before April 30 of each year during his term of office. In the event that any sheriff resigns, dies, or otherwise vacates his office, the books and records shall be made available within thirty (30) days from the date that the office is vacated. Any sheriff who fails to make the settlement books and records available or fails to remit any amounts which are due to the taxing districts as required by law shall be subject to indictment in the county of his residence and fined not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000).

(Enact. Acts 1942, ch. 131, § 27; 1952, ch. 220; 1990, ch. 183, § 2, effective July 13, 1990; 1998, ch. 209, § 5, effective March 30, 1998.)

Compiler's Notes. Section 21 of Acts 1998, ch. 209, provided that the 1998 amendments to this section "shall apply for sales of delinquent tax bills made on or after March 1, 1998."

134.330. Quietus and bond of sheriff — Settlement on recertified tax bills.

(1) No tax bill or tax book shall be delivered to the sheriff during the second or any subsequent calendar year of the sheriff's regular term until he exhibits a quietus from the Revenue Cabinet and from the fiscal court of his county for the preceding tax period and his revenue bond, if bonding is required by the fiscal court, for the next tax year.

(2) If the tax records of a county are destroyed by fire, lost, stolen, or mutilated so as to require reassessment of the property in the county or a recertification of the tax bills, the sheriff shall have five (5) months from the time he receives the recertified tax bills within which to make settlement with the cabinet and the fiscal court, and to receive his quietus from the cabinet and the fiscal court.

(4130: amend. Acts 1990, ch. 183, § 3, effective July 13, 1990; 1998, ch. 209, § 6, effective March 30, 1998.)

Compiler's Notes. Section 21 of Acts 1998, ch. 209, provided that the 1998 amendments to this section "shall apply for assessments made on or after January 1, 1998."

Cross-References. Tax collector ineligible for general assembly unless he obtains quietus, Const., § 45.

134.360. Credit to sheriff for uncollectible delinquent taxes and certificates of delinquency.

In making his settlements with the fiscal court and the Revenue Cabinet, the sheriff shall file a list of uncollectible delinquent taxes, which shall entitle the sheriff to a credit in his official settlement. The sheriff shall also be allowed credit in his official settlement for the tax bills on which certificates of delinquency have properly been issued to the state, county, and taxing districts.

(4251; 1998, ch. 209, § 7, effective March 30, 1998.)

Compiler's Notes. Section 21 of Acts 1998, ch. 209, provided that the 1998 amendments to this section "shall apply for assessments made on or after January 1, 1998."

134.380. Collection of delinquent taxes and assessment of omitted property.

(1) The secretary may act in the name of and in behalf of the state and in the name of and in behalf of any and all counties, consolidated local government, school, and other taxing districts in the state to institute and prosecute any action or proceeding for the collection of delinquent taxes and the assessment of omitted property. If the cabinet assumes the duties of collecting the delinquent taxes assessed under the authority of KRS Chapter 132, it shall have all the powers, rights, duties, and authority conferred generally upon the cabinet by the Kentucky Revised Statutes, including but not limited to Chapters 131, 134, and 135.

(2) Field agents, accountants, and attorneys of the cabinet shall prosecute all actions and proceedings under the direction of the secretary. Field agents, accountants, attorneys, and all other employees of the cabinet engaged in the prosecution of the actions shall not be hired by personal service contract. The secretary shall prosecute diligently, or cause to be prosecuted by field agents, accountants, and attorneys employed by him, the collection of all delinquent taxes due the state.

(3) Nothing contained in this chapter shall prevent the secretary of revenue from assessing any property in accordance with the provisions of KRS 136.020, 136.030, 136.050, or 136.120 to 136.180.

(4) The cabinet may require the use of any reports, forms, or databases necessary to administer the law in connection with the collection of delinquent taxes. The cabinet shall require an index to be kept of all certificates of delinquency.

(4149b-12, 4257a-1, 4257a-2, 4267: amend. Acts 1968, ch. 152, § 107; 1984, ch. 405, § 3, effective July 13, 1984; 1990, ch. 27, § 7, effective July 13, 1990; 1990, ch. 411, § 7, effective July 13, 1990; 1996, ch. 254, § 28, effective July 15, 1996; 1998, ch. 209, § 8, effective March 30, 1998; 2002, ch. 346, § 171, effective July 15, 2002.)

Compiler's Notes. Section 21 of Acts 1998, ch. 209, provided that the 1998 amendments to this section "shall apply for assessments made on or after January 1, 1998."

Cross-References. Action by secretary of revenue to collect taxes due the state, KRS 135.050.

Assessment of omitted property in action to enforce certificate of delinquency or to invalidate tax sale, KRS 134.495.

Attorneys for assessment of property and collection of taxes, employment of, KRS 12.220.

County attorney to prosecute action to assess omitted property, KRS 132.350.

Revenue Cabinet to prescribe forms for tax records, KRS 131.030, 131.130, 131.140.

Income taxes, assessment of excess or omitted, KRS 141.210.

Inheritance taxes, limitation on action to collect, KRS 140.160.

134.420. Lien for taxes.

(1) The state and each county, city, or other taxing district shall have a lien on the property assessed for taxes due them respectively for ten (10) years following the date when the taxes become delinquent, and also on any real property owned by a delinquent taxpayer at the date when the sheriff offers the tax claims for sale as provided in KRS 134.430 and 134.440. This lien shall not be defeated by gift, devise, sale, alienation, or any means except by sale to a bona fide purchaser, but no purchase of property made before final settlement for taxes for a particular assessment date has been made by the sheriff shall preclude the lien covering the taxes. The lien shall include all interest, penalties, fees, commissions, charges, and other expenses incurred by reason of delinquency in payment of the tax bill or in the process of collecting it, and shall have priority over any other obligation or liability for which the property is liable. The lien of any city, county, or other taxing district shall be of equal rank with that of the state. When any proceeding is instituted to enforce the lien provided in this subsection, it shall continue in force until the matter is judicially terminated. Every city of the third, fourth, fifth, and sixth class shall file notice of the delinquent tax liens with the county clerk of any county or counties in which the taxpayer's business or residence is located, or in any county in which the taxpayer has an interest in property. The notice shall be recorded in the same manner as notices of lis pendens are filed, and the file shall be designated miscellaneous state and city delinquent and unpaid tax liens.

(2) If any person liable to pay any tax administered by the Revenue Cabinet, other than a tax subject to the provisions of subsection (1) of this section, neglects or refuses to pay the tax after demand, the tax due together with all penalties, interest, and other costs applicable provided by law shall be a lien in favor of the Commonwealth of Kentucky. The lien shall attach to all property and rights to property owned or subsequently acquired by the person neglecting or refusing to pay the tax.

(3) The lien imposed by subsection (2) of this section shall remain in force for ten (10) years from the date the notice of tax lien has been filed by the secretary of the Revenue Cabinet, or his delegate with the county clerk of any county or counties in

which the taxpayer's business or residence is located, or any county in which the taxpayer has an interest in property.

(4) The tax lien imposed by subsection (2) of this section shall not be valid as against any purchaser, judgment lien creditor, or holder of a security interest or mechanic's lien until notice of the tax lien has been filed by the secretary of the Revenue Cabinet or his delegate with the county clerk of any county or counties in which the taxpayer's business or residence is located, or in any county in which the taxpayer has an interest in property. The recording of the tax lien shall constitute notice of both the original assessment and all subsequent assessments of liability against the same taxpayer. Upon request, the Revenue Cabinet shall disclose the specific amount of liability at a given date to any interested party legally entitled to the information.

(5) Even though notice of a tax lien has been filed as provided by subsection (4) of this section, and notwithstanding the provisions of KRS 382.520, the tax lien imposed by subsection (2) of this section shall not be valid with respect to a security interest which came into existence after tax lien filing by reason of disbursements made within forty-five (45) days after the date of tax lien filing or the date the person making the disbursements had actual notice or knowledge of tax lien filing, whichever is earlier, provided the security interest:

(a) Is in property which:

1. At the time of tax lien filing is subject to the tax lien imposed by subsection (2) of this section; and
2. Is covered by the terms of a written agreement entered into before tax lien filing; and

(b) Is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

(4021, 4257a-7: amend. Acts 1962, ch. 210, § 22; 1974, ch. 319, § 1; 1978, ch. 84, § 3, effective June 17, 1978; 1982, ch. 238, § 6, effective July 15, 1982; 1990, ch. 164, § 2, effective July 13, 1990; 1990, ch. 476, Pt. V, § 349, effective July 13, 1990; 1996, ch. 344, § 9, effective July 15, 1996; 1998, ch. 209, § 9, effective March 30, 1998.)

Legislative Research Commission Note. (7/13/90) The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

Compiler's Notes. Section 21 of Acts 1998, ch. 209, provided that the 1998 amendments to this section "shall apply for assessments made on or after January 1, 1998."

Cross-References. Department of vehicle regulation may file lien notice for certain taxes, KRS 281.602.

Lien on retrospective assessment of omitted property, KRS 132.290.

Notice of lien of federal tax, filing, KRS 382.480, 382.500.

NOTES TO DECISIONS

15. School Taxes.

A board of education has authority to maintain an action in its own name, against delinquent taxpayers, to recover judgment for delinquent school taxes and to enforce the tax lien, and is not required to await the ordinary process of distraint and sale by the tax collector as the statutes make the tax a debt of the delinquent taxpayer in favor of the particular taxing authority. Board of Educ. v. Ballard, 299 Ky. 370, 185 S.W.2d 538 (1945).

134.430. Sale of personal property and delinquent tax claims against real property — Compensation for services.

(1) All personal property owned by a delinquent taxpayer shall be subject to distraint, and all property owned by him shall be subject to levy and sale by the proper collecting officer at any time from February 1 after the tax claim becomes delinquent until the tax claim is barred by limitations, unless otherwise provided by law.

(2) When any taxpayer becomes delinquent in the payment of a tax bill covering any property assessed by the property valuation administrator, the county board of assessment appeals, the cabinet, or any omitted property irrespective of by whom assessed, the sheriff may distrain a sufficient quantity of the delinquent's personal property in the county to pay the tax claim, and a necessary part of this property shall be sold as under execution for cash. Neglect on the part of the sheriff to distrain and sell personal property shall not affect the validity of the sale of the tax claim, or the lien or the rights of any purchaser. If personal property sufficient to satisfy the tax claim cannot be found in the county, the sheriff may sell so much of the personal property as is found and enter proper credit on the tax bill.

(3) As compensation for services, the sheriff shall be entitled to an additional ten percent (10%) of that part of the tax claim represented by the total taxes plus ten percent (10%) penalty, for all delinquent taxes collected from the time the ten percent (10%) penalty becomes applicable through the sale of the tax claims. This fee shall be added to the total amount due and paid by the person paying the delinquent tax bill.

(4) If no personal property is found, or the amount found is insufficient, the sheriff shall, no later than the first full week in April, advertise for sale the tax claims of the state, county, and other taxing districts, if there is any real property subject to the lien provided in subsection (1) of KRS 134.420. The sheriff shall receive offers for the purchase of tax claims up to fifteen (15) business days following the date of the initial advertisement or no later than April 30, or the last business day prior to April 30, if April 30 falls on a weekend or holiday.

(5) No sheriff shall knowingly sell a tax claim on the same tract of land more than once for the same tax.

(4149b-2, 4149b-3, 4166: amend. Acts 1952, ch. 220; 1994, ch. 65, § 4, effective July 15, 1994; 1998, ch. 209, § 10, effective March 30, 1998.)

Compiler's Notes. Section 21 of Acts 1998, ch. 209, provided that the 1998 amendments to subsection (4) of this section "shall apply for sales of delinquent tax bills made on or after March 1, 1998" and that the remainder of the 1998

amendments to this section "shall apply for assessments made on or after January 1, 1998."

NOTES TO DECISIONS

6. Action by Taxing District.

A board of education has authority to maintain an action in its own name, against delinquent taxpayers, to recover judgment for delinquent school taxes and to enforce the tax lien, and is not required to await the ordinary process of distraint and sale by the tax collector as the statutes make the tax a debt of the delinquent taxpayer in favor of the particular taxing authority. Board of Educ. v. Ballard, 299 Ky. 370, 185 S.W.2d 538 (1945).

134.440. Advertisement of sale of tax claims — Compensation of sheriff.

(1) The advertisement of sale of tax claims shall be published pursuant to KRS Chapter 424. The advertisement may in addition consist of the posting of printed notices containing the same information in three (3) or more conspicuous places in the county, fifteen (15) days before the sale. The sheriff shall place a copy of the advertisement at the courthouse door in a conspicuous place at least fifteen (15) days before the sale. The sale shall be at the courthouse door. The sheriff shall, not less than twelve (12) days before the sale, mail to the delinquent taxpayer's place of residence or business, if it can be ascertained, a notice of the time and place of sale. Failure to send the notice shall have no effect on the validity of the sale.

(2) As compensation for his services, the sheriff shall receive five dollars ($5) for each tax claim advertised. The fees shall be added to the amount of the tax claim as a part of the certificate of delinquency and paid by the person who pays the tax claim, and shall not be paid by the state, county, or taxing district. Any additional expenses incurred that must be paid before the sale of a tax claim or the settlement of an action by the state, county, or taxing district shall be paid by the county, and this sum shall be a preferred claim of the county on any proceeds eventually recovered.

(4149b-3: amend. Acts 1966, ch. 239, § 138; 1990, ch. 27, § 9, effective July 13, 1990; 1998, ch. 209, § 11, effective March 30, 1998.)

Compiler's Notes. Section 21 of Acts 1998, ch. 209, provided that the 1998 amendments to this section "shall apply for assessments made on or after January 1, 1998."

134.450. Sale of tax claims — Offers of purchase — Certificate of delinquency.

(1) The sheriff shall sell all tax claims for which payment by the delinquent taxpayer has not been made by the closing date for the acceptance by the sheriff of offers to purchase delinquent tax claims. If there is more than one (1) willing purchaser who has made an offer, the one having made the most recent purchase of a tax claim against the same delinquent or the same property shall have preference; if there is no such person, the person being the first, in the judgment of the sheriff, to offer to pay cash in the full amount of the tax claim shall receive priority for the purchase of the tax claim. If the total of all offers to purchase exceeds ten percent (10%) of the total dollar amount of the delinquent bills offered for sale, or the sum of two hundred thousand dollars ($200,000), whichever is less, the sheriff shall notify the Finance and Administration Cabinet of the offers of purchase within five (5) business days of the closing date when the offers were received. Upon receipt of the notice, the Finance and Administration Cabinet shall purchase the delinquent tax bills upon which the sheriff has received an offer of purchase and shall tender payment to the sheriff within fifteen (15) business days of the receipt of the sheriff's notice. Upon purchase of the tax claims, the state shall be the owner of the tax bills and may contract with the county attorney to collect all amounts due on its behalf under the terms and conditions of the county attorney's contract with the Revenue Cabinet to collect delinquent taxes. If the county attorney has not contracted with the Revenue Cabinet to collect delinquent taxes, the Revenue Cabinet shall collect all amounts due on behalf of the Finance and Administration Cabinet. If the Finance and Administration Cabinet does not purchase all of the delinquent tax bills, within fifteen (15) days of the closing date, the sheriff shall complete the sale of those tax claims for which the sheriff has received responsible offers to purchase. When a sale is made the tax bill shall be known as a certificate of delinquency and the sheriff shall inscribe thereon the date of sale, the sale price, and the name and address of the purchaser, in the place and manner prescribed by the Revenue Cabinet, and the purchaser shall be entitled to a certified copy of the certificate of delinquency.

(2) If no responsible offer in the amount of the tax claim is received, the sheriff shall purchase it for the state, county, and taxing districts having an interest in the tax claim. In such case, the tax bill shall also be known as a certificate of delinquency, and the sheriff shall inscribe thereon the same information required when one other than the state, county, or taxing district is the purchaser.

(3) The sheriff shall file all certificates of delinquency in the county clerk's office immediately upon completion of the tax sale, or in a county containing a city of the first class or consolidated local government, within fourteen (14) working days of the sale, and the clerk shall retain them. The county clerk shall acknowledge receipt of the certificates by signing a receipt form that has been prepared in a manner prescribed by the Revenue Cabinet. If the sheriff fails to file the certificates, he shall be liable on his official bond for the aggregate amount of the certificates not returned, but the claim of the purchaser shall not be affected by this neglect. If the sheriff fails to return any certificate, the purchaser may file his certified copy with the clerk, with the same effect as the original.

(4) The clerk shall make, execute, and deliver a certified copy of a certificate of delinquency to the payor, or the clerk may provide for a certified electronic register of the certificates of delinquency

in the clerk's record in lieu of delivering a certified copy of the certificate of delinquency.

(5) The certificate of delinquency is assignable by endorsement. The clerk shall note the assignment on the certificate of delinquency or the clerk may provide for a certified electronic certificate of delinquency in the clerk's records in lieu of delivering a certified copy of the certificate of delinquency. An assignment when noted on the record in the office of the county clerk vests in the assignee all rights and title of the original purchaser.

(4149b-4, 4163: amend. Acts 1990, ch. 183, § 5, effective July 13, 1990; 1992, ch. 391, § 4, effective July 14, 1992; 1998, ch. 209, § 12, effective March 30, 1998; 2000, ch. 357, § 2, effective July 14, 2000; 2002, ch. 248, § 1, effective April 8, 2002.)

Compiler's Notes. Section 21 of Acts 1998, ch. 209, provided that the 1998 amendments to this section "shall apply for sales of delinquent tax bills made on or after March 1, 1998."

134.470. Liability of taxpayer on uncollectible tax bill or certificate of delinquency — Action to enforce — Operation of statute of limitations.

An uncollectible tax bill or a certificate of delinquency shall embrace the entire tax claim, including the lien provided in subsection (1) of KRS 134.420, and shall continue to be a personal obligation of the delinquent taxpayer. Any property while owned by him shall be subject to foreclosure or execution in satisfaction of a judgment pursuant to an action in rem or an action in personam, or both, to enforce the obligation, and shall also be subject to distraint or levy as provided in subsection (1) of KRS 134.430, but no action may be brought to enforce a certificate of delinquency until one (1) year after the issuance thereof, and the action shall be instituted within ten (10) years after the expiration of that one (1) year period. During the one (1) year period the statute of limitations shall be suspended in all respects and shall be continued in all respects for ten (10) years thereafter. If the owner of a certificate of delinquency proceeds to enforce satisfaction of the certificate, he may include all other certificates held by him against the same delinquent taxpayer; but insofar as the proceedings may undertake to effect a lien foreclosure, they shall be governed by the time applicable to the particular property subject to the lien, if that property is no longer owned by the delinquent.

(4149b-5: amend. Acts 1990, ch. 27, § 10, effective July 13, 1990; 1998, ch. 209, § 13, effective March 30, 1998.)

Compiler's Notes. Section 21 of Acts 1998, ch. 209, provided that the 1998 amendments to this section "shall apply for assessments made on or after January 1, 1998."

NOTES TO DECISIONS

2. Action by Taxing District.

A board of education has authority to maintain an action in its own name, against delinquent taxpayers, to recover judgment for delinquent school taxes and to enforce the tax lien, and is not required to await the ordinary process of distraint and sale by the tax collector as the statutes make the tax debt of the delinquent taxpayer in favor of the particular taxing authority. Board of Educ. v. Ballard, 299 Ky. 370, 185 S.W.2d 538 (1945).

134.480. Who may pay certificates of delinquency — Assignment — Clerk to receive and record payments — Records as evidence.

(1) The delinquent taxpayer or any person owning or having a legal or equitable interest in real property covered by a certificate of delinquency may at any time pay the total amount of the certificate to any purchaser thereof, and any person whatsoever may likewise pay a certificate of delinquency when the state, county, or taxing district was the purchaser. When a certificate is paid to an owner other than the state, county, or taxing district, the assignee shall mark paid in full on the certified copy of the certificate and shall surrender the certified copy of the certificate of delinquency to the person making payment, and if he is the person primarily liable on the certificate he may file it with the county clerk and have the certificate released of record. When a certificate of delinquency has been fully paid to the state, county, and taxing districts, the clerk shall note the name and address of the person making the payment, the amount paid by him, and such other information as the Revenue Cabinet may require. The clerk shall mark the certificate of delinquency paid in full. Payment in such instance by one other than the person primarily liable on the certificate will amount to an assignment thereof. The clerk shall note the assignment on the certificate of delinquency and provide the assignee a certified copy of the certificate of delinquency, or the clerk may provide for a certified electronic certificate of delinquency in the clerk's records in lieu of delivering a certified copy of the certificate of delinquency. Anyone other than the person primarily liable who pays a certificate or purchases it from an owner other than the state, county, and taxing district may, by paying a fee of fifty cents ($0.50), have the clerk record the payment or purchase and such recordation shall constitute an assignment thereof. Failure to obtain such an assignment shall render the claim of such payor or purchaser to any real estate represented thereby inferior to rights of other bona fide purchasers, payors, or creditors. Any owner of a certificate of delinquency once having paid the assignment fee may have a change of his address noted of record by the clerk without paying an additional charge, otherwise he shall pay a fee of fifty cents ($0.50) to the clerk for entering such change on the certificate.

(2) The county clerk may receive payment of the amount due on certificates of delinquency owned by the state, county, and taxing districts, and he shall give a receipt to the payor and make a report to the Revenue Cabinet, the county treasurer, and the proper officials of the taxing districts as often as such units may require, and not less than once in every thirty (30) days. The clerk may accept payment of taxes due by any commercially accept-

able means, including credit cards. He shall pay to the Revenue Cabinet for deposit with the State Treasurer all moneys collected by him due the state, to the county treasurer all moneys due the county, and to the authorized officers of the taxing districts the amount due each such district. He shall pay the amount of fees, costs, commissions, and penalties to the persons, agencies, or parties entitled thereto. He shall retain ten percent (10%) of the amount due each taxing unit for his services as a fee. This fee shall be added to the amount of the tax claim and paid by the persons paying the tax claim.

(3) If the person entitled to pay a certificate of delinquency sends a registered letter addressed to the owner of record of the certificate, other than the state, county, or taxing district, and the letter is returned by mail unclaimed, the sender thereof may make payment to the county clerk, who shall make the necessary assignment or release and deposit the money to the account of the owner of record in the nearest bank having its deposits insured with the Federal Deposit Insurance Corporation. The clerk may deduct the sum of fifty cents ($0.50) as a fee for such service. The name of the bank in which the money is deposited shall be noted on the certificate.

(4) If any clerk fails to pay to the person entitled thereto, upon demand, the money received in payment of a certificate of delinquency, he and his sureties shall be liable for the same and twenty percent (20%) interest thereon annually from the time he received it until paid.

(5) Copies of the records provided for in KRS 134.450 and this section, certified by the county clerk, shall be evidence of the facts stated in them in all the courts of this state.

(4149b-4, 4161, 4164, 4165; 1998, ch. 209, § 14, effective March 30, 1998; 2000, ch. 357, § 4, effective July 14, 2000.)

Compiler's Notes. Section 21 of Acts 1998, ch. 209, provided that the 1998 amendments to this section "shall apply for assessments made on or after January 1, 1998."

134.490. Actions by owner of certificate of delinquency to collect or foreclose certificate — Sale and deed on foreclosure — No redemption — Additional rights if owner is a taxing unit.

(1) Within fifty (50) days after the issuance of a certificate of delinquency to a private purchaser, the private purchaser shall give the same notice as required of a county attorney in KRS 134.500(2). The notice shall advise the owner that the certificate is a lien of record against all property of the owner, and bears interest at the rate of twelve percent (12%) per annum, and if the certificate is not paid, it will be subject to collection as provided by law.

(2) If a private person is the owner of a certificate of delinquency, he may, after the expiration of the one (1) year period provided in KRS 134.470:

(a) Institute an action against the delinquent taxpayer to collect the amount of the certificate, and any other certificates subsequently issued to the same owner against the same delinquent, and shall have all the remedies available for the enforcement of a debt; or

(b) Institute an action to enforce the lien provided in subsection (1) of KRS 134.420, represented by the certificate that is more than one (1) year of age, and those certificates subsequently held by the same owner against the same delinquent or property; or

(c) Institute one (1) action including both types of actions mentioned in paragraphs (a) and (b) of this subsection, and the joinder of actions shall not be defeated if the delinquent taxpayer has disposed of any property covered by the lien, but the purchaser of the property shall be made a defendant if the judgment is to affect his interest in the property, and as between them the delinquent taxpayer shall be responsible.

(3) If the state, county, or a taxing district is the owner of a certificate of delinquency, it shall have, after the expiration of the one (1) year period provided in KRS 134.470, in addition to the remedies mentioned in subsection (2) of this section, the right to distrain and sell any property owned by the delinquent, including that on which the lien provided in subsection (1) of KRS 134.420 has attached. Any property sold under distraint proceedings shall be sold in the same manner as provided in KRS 134.430 and 134.440, except that the exercise of the power shall be vested in the county attorney.

(4) If property is sold pursuant to a judgment of foreclosure, it shall be appraised pursuant to the provisions of KRS 426.520 and there shall be a right of redemption as provided in KRS 426.530. If there is no purchaser at a foreclosure sale, the master commissioner shall make a deed to the person or persons shown by record to be the owner of the certificate or certificates of delinquency, and they shall have a pro rata interest in accordance with the amount of their respective certificates.

(4149b-7: amend. Acts 1990, ch. 27, § 11, effective July 13, 1990; 1994, ch. 65, § 5, effective July 15, 1994; 1998, ch. 209, § 15, effective March 30, 1998.)

Compiler's Notes. Section 21 of Acts 1998, ch. 209, provided that the 1998 amendments to subsection (1) of this section "shall apply for sales of delinquent tax bills made on or after March 1, 1998" and that the remainder of the 1998 amendments to this section "shall apply for assessments made on or after January 1, 1998."

134.500. Interest on uncollectible tax claims — Collection of amount due on certificate of delinquency and delinquent personal property tax bills — Technical resources from cabinet.

(1) Uncollectible tax claims shall bear interest at twelve percent (12%) per annum simple interest

from the date the certificate of delinquency is issued. A fraction of a month is counted as an entire month. The sheriff's add-on fee provided in KRS 134.430, the clerk's add-on fee provided in KRS 134.480, and the county attorney's add-on fee provided in this section shall be excluded from the interest calculation except in counties containing cities of the first class or consolidated local government. All tax bills on omitted property that were not turned over to the sheriff in time to be collected or to make the sale provided for in KRS 134.430 and 134.440 shall also be submitted to the fiscal court but shall be carried over as a charge against the sheriff at the time he makes his next regular settlement.

(2) The cabinet shall be responsible for the collection of certificates of delinquency and delinquent personal property tax bills; however, the cabinet shall first offer the collection duties to the county attorney, unless the cabinet determines that the county attorney has previously failed to perform collection duties in a reasonable and acceptable manner. Any county attorney desiring to perform the duties associated with the collection of delinquent tax claims shall enter into a contract with the cabinet on an annual basis. The terms of the contract shall specify the duties to be undertaken by the county attorney. These duties shall include but are not limited to the following actions:

(a) Within fifty (50) days after the issuance of a certificate of delinquency to the state, county, and taxing district, the county attorney or the Revenue Cabinet shall cause a notice of the purchase to be mailed by regular mail to the property owner at the address on the records of the property valuation administrator. The notice shall advise the owner that the certificate is a lien of record against all property of the owner, and bears interest at the rate of twelve percent (12%) per annum, and if not paid will be subject to collection by the county attorney as provided by law.

(b) The county attorney shall file in the office of the county clerk a list of the names and addresses to which the notice was mailed along with a certificate that the notice was mailed in accordance with the requirements of this section.

(c) All notices returned as undeliverable shall be submitted to the property valuation administrator. The property valuation administrator shall attempt to correct inadequate or erroneous addresses and, if property has been transferred, shall determine the new owner and the current mailing address. The property valuation administrator shall return the notices with the corrected information to the county attorney prior to the expiration of the one (1) year tolling period provided in KRS 134.470.

(d) Within ninety (90) days after the expiration of the one (1) year tolling period provided in KRS 134.470, the county attorney shall cause a notice of his intention to enforce the lien to be mailed to all owners whose tax bills remain delinquent. No second notice shall be required for addresses previously determined to be undeliverable and for which the property valuation administrator has not provided corrected information.

(e) Failure to mail the notices shall not affect the validity of the claim of the state, county, and taxing district. The postal cost of mailing the notices shall be added to the certificate of delinquency and, upon collection, the county attorney shall be reimbursed for the postage. The county attorney shall deliver at the same time a list of the owners whose tax bills remain delinquent to the property valuation administrator. The property valuation administrator shall review this list in accordance with the provisions of KRS 132.220 to establish that the properties on the list can be identified and physically located.

(3) The county attorney who enters into a contract with the cabinet shall have a period of two (2) years after the expiration of the one (1) year tolling period provided in KRS 134.470 to collect delinquent tax bills or to initiate court action for their collection. At the expiration of the two (2) years the cabinet may assume responsibility for all uncollected bills except those with pending court action.

(4) The county attorney who enters into a contract with the cabinet and performs his duties in respect to the certificate of delinquency and delinquent personal property tax bills shall be entitled to twenty percent (20%) of the amount due each taxing unit, whether the tax claim is voluntarily paid or is paid through sale or under court order, and the fee shall be paid to him by the county clerk when making distribution, as provided in KRS 134.480. This fee shall be added to the amount of the tax claims and paid by the persons paying the tax claims. They shall not be paid by the taxing districts or deducted from the taxes due the taxing districts. This fee shall be waived if the certificate of delinquency is paid by the taxpayer only within five (5) days of the sheriff's sale. If more than one (1) county attorney renders necessary services in an effort to collect a tax claim, the attorney serving the last notice or rendering the last substantial service preceding collection shall be entitled to the fee. When the county attorney's office, in an effort to collect a certificate of delinquency, or delinquent personal property tax bills files a court action which is litigated by the taxpayer, an additional county's attorney fee equal to thirteen percent (13%) of the total tax plus ten percent (10%) penalty, may be added to the certificate or the bill and shall become part of the tax claim.

(5) If a county attorney chooses not to contract for these collection duties or if a county attorney fails to perform the duties required by the contract, the cabinet shall assume responsibility for the collection process. In the performance of those duties, the cabinet shall have all the powers, rights, duties, and authority with respect to the collection, refund, and administration of the amount due on the certificate of delinquency conferred generally

upon the cabinet by Kentucky Revised Statutes including, but not limited to, KRS Chapters 131, 134, and 135. The twenty percent (20%) fee that would have otherwise been paid to the county attorney shall be paid to the cabinet for deposit in the delinquent tax fund provided for under KRS 134.400.

(6) Any action on behalf of the state, county, and taxing districts authorized by this section or by KRS 134.470, 134.490, or 134.540 shall be filed on relation of the secretary, and the petition may be sent to the cabinet, which may require revision in instances where it deems revision or amendment necessary. The cabinet shall advise the county attorney in all actions, and may send him special assistance when the secretary deems assistance necessary. A copy of the judgment shall also be sent to the cabinet. If the cabinet sends assistance to a county attorney who contracts to prosecute the suits or proceedings, the county attorney shall be entitled to his full fee. On the same day that suit is filed, the county clerk shall be given notice of its filing. Costs incident to the suit shall become a part of the tax claim.

(7) The cabinet may make its delinquent tax collection databases and other technical resources, including but not limited to income tax refund offsetting, available to the county attorney upon request from the county attorney. The county attorney seeking assistance shall enter into any agreements required by the cabinet to protect taxpayer confidentiality, to ensure database integrity, or to address other concerns of the cabinet.

(8) The county attorney may, at any time after assuming collection duties, enter into an agreement with the delinquent taxpayer to accept installment payments on the delinquent tax bill. The agreement shall not waive the county attorney's right to initiate court action or other authorized collection activities if the taxpayer does not make payments in accordance with the agreement.

(4149b-8: amend. Acts 1976 (Ex. Sess.), ch. 17, § 39, effective January 1, 1978; 1978, ch. 400, § 4, effective June 17, 1978; 1986, ch. 329, § 1, effective July 15, 1986; 1990, ch. 27, § 12, effective July 13, 1990; 1990, ch. 183, § 6, effective July 13, 1990; 1992, ch. 81, § 1, effective July 14, 1992; 1994, ch. 73, § 1, effective July 15, 1994; 1998, ch. 209, § 16, effective March 30, 1998; 2000, ch. 155, § 1, effective July 14, 2000; 2000, ch. 281, § 1, effective July 14, 2000; 2000, ch. 357, § 5, effective July 14, 2000; 2002, ch. 248, § 2, effective April 8, 2002.)

Compiler's Notes. Section 21 of Acts 1998, ch. 209, provided that the 1998 amendments to subsection (4) of this section "shall apply for sales of delinquent tax bills made on or after March 1, 1998" and that the remainder of the 1998 amendments to this section "shall apply for assessments made on or after January 1, 1998."

134.590. Refund of ad valorem taxes or taxes held unconstitutional.

(1) When it appears to the appropriate agency of state government that money has been paid into the State Treasury for ad valorem taxes when no taxes were in fact due or for taxes of any kind paid under a statute held unconstitutional, the agency of state government which administers the tax shall refund the money, or cause it to be refunded, to the person who paid the tax. No refund or credit shall be authorized to a person who has made payment of the tax due on any tract of land unless the entire tax due the state on the land has been paid.

(2) No refund shall be made unless an application for refund is made within two (2) years from the time payment was made. No refund for ad valorem taxes, except those held unconstitutional, shall be made unless the taxpayer has properly followed the administrative remedy procedures established through the protest provisions of KRS 131.110, the appeal provisions of KRS 133.120, the correction provisions of KRS 133.110 and 133.130, or other administrative remedy procedures.

(3) When it has been determined that city, urban-county, county, school district, consolidated local government, or special district ad valorem taxes have been paid to a city, urban-county, county, school district, consolidated local government, or special district when no taxes were due or the amount paid was in excess of the amount finally determined to be due, the taxes shall be refunded to the person who paid the tax.

(4) Refunds of ad valorem taxes shall be authorized by the mayor or chief finance officer of any city, consolidated local government, or urban-county government for the city, consolidated local government, or urban-county government or for any special district for which the city, consolidated local government, or urban-county government is the levying authority, by the county judge/executive of any county for the county or special district for which the fiscal court is the levying authority, or by the chairman or finance officer of any district board of education.

(5) Upon proper authorization, the sheriff or collector shall refund the taxes from current tax collections held by the sheriff or collector. If there are no such funds, refunds shall be made by the finance officer of the district. The sheriff or collector shall receive credit for any refunds made by the sheriff or collector on the next collection report to the district.

(6) No refund shall be made unless an application is made within two (2) years from the date payment was made. If the amount of taxes due is in litigation, the application for refund shall be made within two (2) years from the date the amount due is finally determined. No refund for ad valorem taxes, except those held unconstitutional, shall be made unless the taxpayer has properly followed the administrative remedy procedures established through the protest provisions of KRS 131.110, the appeal provisions of KRS 133.120, the correction provisions of KRS 133.110 and 133.130, or other administrative remedy procedures.

(7) Notwithstanding other statutory provisions, for property subject to a tax rate that is set each year based on the certified assessment, any loss of ad

valorem tax revenue suffered by a taxing district due to the issuance of refunds may be recovered by making an adjustment in the tax rate for the following tax year.

(162, 163, 4114h-7: amend. Acts 1954, ch. 5, § 1; 1966, ch. 187, part I, § 2; 1980, ch. 270, § 1, effective July 15, 1980; 1990, ch. 177, § 2, effective July 13, 1990; 1992, ch. 391, § 5, effective July 14, 1992; 1996, ch. 344, § 2, effective July 15, 1996; 2002, ch. 346, § 172, effective July 15, 2002.)

Compiler's Notes. Section 11 of Acts 1996, ch. 344 read, "The provisions of this act shall apply for taxable years beginning after December 31, 1995."

Cross-References. School district tax rate formulas, 702 KAR 3:275.

NOTES TO DECISIONS

Analysis

5. Application for refund.
6. —Time limitation.

5. Application for Refund.

6. —Time Limitation.

The right to file for a refund under this section against the Board of Education expired two (2) years after the taxes were paid because the Board of Education was not a party to the litigation which held that taxes had been assessed by an unconstitutional method and were subject to refund; however, those taxpayers, members of the class whose taxes were collected by an unconstitutional method of assessment, had two (2) years from the finality date to apply for a refund for ad valorem taxes paid to other taxing agencies named in that law suit. Griggs v. Dolan, 759 S.W.2d 593 (Ky. 1988).

Ad Valorem Taxes on Motor Vehicles and Motorboats

134.800. County clerk to collect ad valorem taxes on motor vehicles registered by him — Acceptable means of payment.

The county clerk shall be collector of all state, county, city, urban-county government, school, and special taxing district ad valorem taxes on motor vehicles registered by him. The clerk may accept payment of taxes due by any commercially acceptable means including credit cards.

(Enact. Acts 1982, ch. 264, § 7, effective January 1, 1984; 1986, ch. 431, § 1, effective July 15, 1986; 1998, ch. 209, § 17, effective March 30, 1998.)

Compiler's Notes. Section 21 of Acts 1998, ch. 209, provided that the 1998 amendments to this section "shall apply for assessments made on or after January 1, 1998."

Penalties

134.990. Penalties.

(1) Any sheriff who violates subsection (2) of KRS 134.140 shall be fined one hundred dollars ($100) for each offense.

(2) Any person who violates the provisions of KRS 134.150 shall, upon indictment and conviction in the county in which the act was done, be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500), and be removed from office.

(3) Any sheriff who violates subsection (3) of KRS 134.170 shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for each offense.

(4) Any sheriff who violates subsection (2) of KRS 134.200 shall be fined not less than five hundred dollars ($500) for each offense.

(5) Any outgoing sheriff who fails for ten (10) days to comply with the provisions of KRS 134.215 shall be fined not less than fifty dollars ($50) nor more than five hundred dollars ($500), and be liable on his bond for any default.

(6) Any sheriff who fails to report as required in KRS 134.300 shall be liable to indictment in the county of his residence, and upon conviction shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500).

(7) Any sheriff who fails to report as provided in KRS 134.320 shall be liable to indictment in the Franklin Circuit Court, and upon conviction shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for each offense.

(8) Any person who willfully fails to comply with any rule or regulation promulgated under subsection (4) of KRS 134.380 shall be fined not less than twenty dollars ($20) nor more than one thousand dollars ($1,000).

(9) Any sheriff who violates subsection (5) of KRS 134.430 shall be fined one hundred dollars ($100) and be liable on his official bond for the damages sustained by any person aggrieved.

(10) Any county attorney who fails to prepare, and any sheriff who fails to serve, the notice provided for in subsection (2) of KRS 134.500 shall be fined not less than ten dollars ($10) nor more than one hundred dollars ($100).

(11) Any sheriff who intentionally fails to keep his books in an intelligible manner and according to the form prescribed by the Revenue Cabinet, or to make the entries required by law, shall be fined not less than fifty dollars ($50) nor more than two hundred dollars ($200) for each offense.

(12) Any person who fails to do an act required, or does an act forbidden, by any provision of this chapter for which no other penalty is provided shall be fined not less than ten dollars ($10) nor more than five hundred dollars ($500).

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 350, effective July 13, 1990; 1994, ch. 73, § 3, effective July 15, 1994; 1998, ch. 209, § 18, effective March 30, 1998.)

Compiler's Notes. Former KRS 134.990 (4029, 4037, 4067, 4135, 4139, 4143, 4145, 4147, 4149b-8, 4149b-12, 4166, 4260c: amend. Acts 1958, ch. 126, § 10; 1978, ch. 371, § 10, effective January 1, 1981; 1980, ch. 240, § 5, effective July 15, 1980) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 350, effective July 13, 1990.

Section 21 of Acts 1998, ch. 209, provided that the 1998 amendments to this section "shall apply for assessments made on or after January 1, 1998."

Cross-References. Penalty upon sheriff or collector for failing to make settlement with state, KRS 134.325.

CHAPTER 136

CORPORATION AND UTILITY TAXES

SECTION.

136.050. Time of payment of corporation, property, and franchise taxes — Interest — Penalties.
136.120. Public service corporation property tax — Classification — Assessment — Certification.
136.180. Notice and certification of valuation — Payment of fee by any district which has value certified by cabinet — Effect of appeal on payment of taxes.
136.1877. Appeal from notice of tentative assessment — Collection of state taxes — Aggregate local rate to be set annually — Distribution — Effect of appeal on payment of taxes.
136.190. Boundary report of cities and taxing districts.
136.200. Allocation of railroad bridge assessment.
136.320. Tax on taxable capital of domestic life insurance companies in lieu of other taxes — State and local rates.

PENALTIES

136.990. Penalties.

136.050. Time of payment of corporation, property, and franchise taxes — Interest — Penalties.

(1) Except where otherwise specially provided, all corporations required to make reports to the Revenue Cabinet shall pay all taxes due the state from them into the State Treasury at the same time as natural persons are required to pay taxes, and when delinquent shall pay the same rate of interest and penalties as natural persons who are delinquent.

(2) All state taxes assessed against any corporation under the provisions of KRS 136.120 to 136.200 shall be due and payable as provided in KRS 131.110. All county, city, school, and other taxes so assessed shall be due and payable thirty (30) days after notice of the amount of the tax is given by the collecting officer. The state, county, city, school, and other taxes found to be due on any protested assessment or portion thereof shall begin to bear legal interest on the sixty-first day after the Kentucky Board of Tax Appeals acknowledges receipt of a protest of any assessment or enters an order to certify the unprotested portion of any assessment until paid, except that in no event shall interest begin to accrue prior to January 1 following April 30 of the year in which the report is due. Every corporation so assessed that fails to pay its taxes when due shall be deemed delinquent, a penalty of ten percent (10%) on the amount of the tax shall attach, and thereafter the tax shall bear interest at the tax interest rate as defined in KRS 131.010(6).

(4086, 4091, 4103: amend. Acts 1958, ch. 69, § 2; 1990, ch. 163, § 5, effective July 13, 1990; 1990, ch. 476, Pt. V, § 351, effective July 13, 1990; 1992, ch. 338, § 2, effective August 1, 1992.)

Legislative Research Commission Note. (7/13/90) The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

Cross-References. When property taxes are due, KRS 134.020.

Withdrawal of privilege to do business on failure of corporation to pay taxes, KRS 304.4-040.

136.120. Public service corporation property tax — Classification — Assessment — Certification.

(1) Every railway company, sleeping car company, chair car company, dining car company, gas company, water company, ferry company, bridge company, street railway company, interurban electric railroad company, express company, electric light company, electric power company, telephone company, telegraph company, commercial air carrier, air freight carrier, pipeline company, common carrier water transportation company, privately owned regulated sewer company, cable television company, municipal solid waste disposal facility, as defined by KRS 224.01-010(15), where solid waste is disposed by landfilling, railroad car line company, which means any company, other than a railroad company, which owns, uses, furnishes, leases, rents, or operates to, from, through, in, or across this state or any part thereof, any kind of railroad car including, but not limited to, flat, tank, refrigerator, passenger, or similar type car, and every other like company or business performing any public service, except bus line companies, regular and irregular route common carrier trucking companies, and taxicab companies, shall annually pay a tax on its operating property to the state and to the extent the property is liable to taxation shall pay a local tax thereon to the county, incorporated city, and taxing district in which its operating property is located.

(2) The property of the taxpayers shall be classified as operating property, nonoperating tangible property, and nonoperating intangible property. Nonoperating intangible property within the taxing jurisdiction of the Commonwealth shall be taxable for state purposes only at the same rate as the intangible property of other taxpayers not performing public services, and operating property and nonoperating tangible property shall be subject to state and local taxes at the same rate as the tangible property of other taxpayers not performing public services.

(3) The Revenue Cabinet shall have sole power to value and assess all of the property of every corporation, company, association, partnership, or person performing any public service, including those enumerated above and all others to whom this section may apply, whether or not the operating property, nonoperating tangible property, or nonoperating intangible property has heretofore been assessed by the cabinet, and shall allocate the assessment as provided by KRS 136.170, and shall

certify operating property liable to local taxation and nonoperating tangible property to the counties, cities, and taxing districts as provided in KRS 136.180. All of the property assessed by the cabinet pursuant to this section shall be assessed as of December 31 each year for the following year's taxes, and the lien therefor shall attach as of the assessment date. In the case of a taxpayer whose business is predominantly nonpublic service and the public service business in which he is engaged is merely incidental to his principal business, the cabinet shall in the exercise of its judgment and discretion determine, from evidence which it may have or obtain, what portion of the operating property is devoted to the public service business subject to assessment by the cabinet under this section and shall require the remainder of the property not so engaged to be assessed by the local taxing authorities.

(842a-3, 4077, 4082: amend. Acts 1942, ch. 80, §§ 1, 2; 1960, ch. 186, Art. II, § 2; 1962, ch. 29, § 6; 1965 (1st Ex. Sess.), ch. 2, § 2; 1976, ch. 169, § 1; 1982, ch. 264, § 12, effective January 1, 1984; 1990, ch. 437, § 5, effective July 13, 1990; 1990, ch. 476, Pt. V, § 352, effective July 13, 1990; 1991 (1st Ex. Sess.), ch. 12, § 50, effective February 26, 1991.)

Legislative Research Commission Note. (7/14/2000). 2000 Ky. Acts ch. 446 (Senate Bill 323), sec. 2, purports to amend this statute, and the General Assembly version of that bill was signed by both presiding officers and by the Governor. The Journals of the House of Representatives and Senate will reflect, however, that House Floor Amendment 1 was adopted by the House on March 27, 2000, but was not transmitted to the Senate for its concurrence when the bill was returned to that body. Thus, the bill signed did not pass both chambers of the General Assembly in the same form and did not become law. Ky. Const. secs. 46 and 88; see also Mason's Manual of Legislative Procedure sec. 737, at 508-509 (1989 ed.). Because the General Assembly's own official records establish this constitutional deficiency, the provisions of 2000 Ky. Acts ch. 446 have not been codified into the Kentucky Revised Statutes. See KRS 7.131(2).

(7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

Cross-References. Expenses of public service commission, assessment of public utilities for, KRS 278.130.

Railroad taxes, assessment and collection, Const., § 182.

Rural electric cooperative corporations, taxes and exemptions, KRS 279.200, 279.220.

Taxation, situs of property for, KRS 132.190.

136.180. Notice and certification of valuation — Payment of fee by any district which has value certified by cabinet — Effect of appeal on payment of taxes.

(1) The Revenue Cabinet shall, immediately after fixing the assessed value of the operating property and other property of a public service corporation for taxation, notify the corporation of the valuation and the amount of assessment for state and local purposes. When the valuation has been finally determined, the cabinet shall immediately certify, unless otherwise specified, to the county clerk of each county in which any of the operating property or nonoperating tangible property assessment of the corporation is liable to local taxation, the amount of property liable for county, city, or district tax.

(2) No appeal shall delay the collection or payment of taxes based upon the assessment in controversy. The taxpayer shall pay all state, county, and district taxes due on the valuation which the taxpayer claims as the true value as stated in the protest filed under KRS 131.110. When the valuation is finally determined upon appeal, the taxpayer shall be billed for any additional tax and interest at the tax interest rate as defined in KRS 131.010(6), from the date the tax would have become due if no appeal had been taken. The provisions of KRS 134.390 shall apply to the tax bill.

(3) The Revenue Cabinet shall compute annually a multiplier for use in establishing the local tax rate for the operating property of railroads or railway companies that operate solely within the Commonwealth. The applicable local tax rates on the operating property shall be adjusted by the multiplier. The multiplier shall be calculated by dividing the statewide locally taxable business tangible personal property by the total statewide business tangible personal property.

(4) The Revenue Cabinet shall annually calculate an aggregate local rate for each local taxing district to be used in determining local taxes to be collected for railroad carlines. The rate shall be the statewide tangible tax rate for each type of local taxing district multiplied by a fraction, the numerator of which is the commercial and industrial tangible property assessment subject to full local rates and the denominator of which is the total commercial and industrial tangible personal property assessment. Effective January 1, 1994, state and local taxes on railroad carline property shall become due forty-five (45) days from the date of notice and shall be collected directly by the Revenue Cabinet. The local taxes collected by the Revenue Cabinet shall be distributed to each local taxing district levying a tax on railroad carlines based on the statewide average rate for each type of local taxing district. However, prior to distribution any fees owed to the Revenue Cabinet by any local taxing district under the provisions of subsection (4) of this section shall be deducted.

(5) The certification of valuation shall be filed by each county clerk in his office, and shall be certified by the county clerk to the proper collecting officer of the county, city, or taxing district for collection. Any district which has the value certified by the cabinet shall pay an annual fee to the cabinet which represents an allocation of cabinet operating and overhead expenses incurred in generating the valuations. This fee shall be determined by the cabinet and shall apply to valuations for tax periods beginning on or after December 31, 1981.

(4083, 4084, 4102: amend. Acts 1960, ch. 186, Art. II, § 7; 1982, ch. 388, § 6, effective July 15, 1982; 1990, ch. 345, § 2, effective July 13, 1990; 1990, ch. 437, § 7, effective July 13, 1990; 1990, ch. 476, Pt. V, § 353,

effective July 13, 1990; 1994, ch. 64, § 1, effective July 15, 1994; 1998, ch. 391, § 5, effective July 15, 1998.)

Legislative Research Commission Note. (11/1/90). The two Acts amending this section prevail over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476. The two amending Acts do not appear to be in conflict and have been compiled together. Under the authority of KRS 7.136(a), the Reviser of Statutes has divided the text of this section into the indicated subdivisions. The original 1990 codification of KRS 136.180 and its accompanying note dated July 13, 1990, are superseded and without effect.

Decisions Under Prior Law

1. Collection Before Certification.

Sheriff who accepted railroad franchise taxes due school district was chargeable with amount there, although the assessment had not, at the time of such acceptance, been certified to the county clerk. Fidelity & Deposit Co. v. Commonwealth, 249 Ky. 170, 60 S.W.2d 345 (1933).

136.1877. Appeal from notice of tentative assessment — Collection of state taxes — Aggregate local rate to be set annually — Distribution — Effect of appeal on payment of taxes.

(1) The Revenue Cabinet shall immediately, after fixing the assessed value of the trucks, tractors, trailers, semitrailers, and buses, notify the taxpayer of the valuation determined. Any taxpayer who has been assessed by the cabinet in the manner outlined in KRS 136.1873 shall have forty-five (45) days from the date of the cabinet's notice of the tentative assessment to protest as provided by KRS 131.110.

(2) No appeal shall delay the collection or payment of taxes based upon the assessment in controversy. The taxpayer shall pay all state, county, and district taxes due on the valuation which the taxpayer claims as the true value as stated in the protest filed under KRS 131.110. When the valuation is finally determined upon appeal, the taxpayer shall be billed for any additional tax and interest at the tax interest rate as defined in KRS 131.010(6), from the date the tax would have become due if no appeal had been taken. The provisions of KRS 134.390 shall apply to the tax bill.

(3) The state and local taxes on the property are due forty-five (45) days from the date of notice and shall be collected directly by the Revenue Cabinet.

(4) The Revenue Cabinet shall annually calculate an aggregate local rate to be used in determining the local taxes to be collected. The rate shall be the statewide average motor vehicle tax rate for each type of local taxing district multiplied by a fraction, the numerator of which is the commercial and industrial tangible personal property assessment subject to full local rates and the denominator of which is the total commercial and industrial tangible personal property assessment.

(5) The local taxes collected by the Revenue Cabinet shall be distributed to each local taxing district levying a tax on motor vehicles based on the statewide average rate for each type of local taxing district. However, prior to distribution any fees owed to the Revenue Cabinet by any local taxing district under the provisions of KRS 136.180(5) shall be deducted.

(Enact. Acts 1990, ch. 437, § 3, effective July 13, 1990; 1992, ch. 391, § 8, effective July 14, 1992; 1998, ch. 391, § 4, effective July 15, 1998.)

136.190. Boundary report of cities and taxing districts.

(1) The superintendent of schools in each district in which any individual, group of individuals or corporation, operates public utility or other franchise taxpaying property assessed under KRS 136.120 shall, on or before the first day of January, 1957, furnish to the county clerk of the county in which the district is situated, to each franchise taxpayer within the district, and to the Revenue Cabinet, the boundary of his school district. The superintendent of schools in each district in which any franchise-paying corporation, individual, or group of individuals operates shall, on or before the first day of January, 1958, and each year thereafter, furnish to the county clerk, to each franchise taxpayer within the district, and to the Revenue Cabinet, any changes made in the boundary of his school district during the immediately preceding twelve (12) months.

(2) The engineer of cities of the first class and the city clerk of cities of the second, third, fourth, fifth, and sixth classes shall notify the county clerk, each franchise taxpayer within the city, and the Revenue Cabinet of their boundaries in the same manner as required of the superintendent of schools in subsection (1).

(3) The responsible governing official or the chairman of the governing body of any taxing district other than the county, school district, or city shall notify the county clerk, each franchise taxpayer within the district, and the Revenue Cabinet of their boundaries in the same manner as required of the superintendent of schools in subsection (1).

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 354, effective July 13, 1990.)

Compiler's Notes. Former KRS 136.190 (4009, 4339-16: amend. Acts 1956, ch. 170; 1960, ch. 186, Art. II, § 8) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 354, effective July 13, 1990.

136.200. Allocation of railroad bridge assessment.

The assessment of railroad bridges spanning any river that constitutes a boundary of the state shall be allocated to the counties in which they are located, and the local tax derived therefrom shall be applied to each city, county, or taxing district in which the bridges are located.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 355, effective July 13, 1990.)

Compiler's Notes. Former KRS 139.200 (4102: amend. Acts 1960, ch. 186, Art. II, § 9) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 355, effective July 13, 1990.

136.320. Tax on taxable capital of domestic life insurance companies in lieu of other taxes — State and local rates.

(1) Each life insurance company incorporated under the laws of and doing business in Kentucky shall value as of January 1 and report to the Revenue Cabinet by April 1 each year, on forms prescribed by the Revenue Cabinet, the following:

(a) The fair cash value of the company's intangible personal property, hereinafter referred to as "capital," consisting of all money in hand, shares of stock, notes, bonds, accounts, and other credits, exclusive of due and deferred premiums, whether secured by mortgage, pledge, or otherwise, or unsecured.

(b) The fair cash value of the company's intangible personal property exempt from taxation by law.

(c) The aggregate amount of the company's reserves, reduced by the amount of due and deferred premiums, maintained in accordance with the applicable provisions of KRS 304.6-040 and 304.6-130 to 304.6-180, on all outstanding policies and contracts supplementary thereto.

(d) Other information as may be required by the Revenue Cabinet to accurately determine the fair cash value of each company's "taxable capital" and "taxable reserves."

(2) Based on information supplied by each company and other information that may be available, the Revenue Cabinet shall value each company's "taxable capital" and "taxable reserves" as follows:

(a) "Taxable capital" shall be determined by deducting "taxable reserves" from "capital," less exempt intangible personal property.

(b) "Taxable reserves" shall be determined by multiplying the aggregate amount of reserves as computed in subsection (1)(c) of this section by the percentage determined by dividing "capital," less exempt intangible personal property, by "capital," including exempt intangible personal property.

(3) (a) An annual tax for state purposes shall be imposed against the fair cash value of "taxable capital" for calendar years beginning before 2000, at a rate of seventy cents ($0.70) on each one hundred dollars ($100).

(b) An annual tax for state purposes shall be imposed against every company making an election pursuant to KRS 136.335 to be taxed under this section, against the fair cash value of taxable capital for calendar years beginning in 2000 as follows:

1. For calendar year 2000, fifty-six cents ($0.56) on each one hundred dollars ($100);
2. For calendar year 2001, forty-two cents ($0.42) on each one hundred dollars ($100);
3. For calendar year 2002, twenty-eight cents ($0.28) on each one hundred dollars ($100);
4. For calendar year 2003, fourteen cents ($0.14) on each one hundred dollars ($100); and
5. For calendar year 2004 and each calendar year thereafter, one tenth of one cent ($0.001) on each one hundred dollars ($100).

(c) An annual tax for state purposes shall be imposed at a rate of one-tenth of one cent ($0.001) on each one hundred dollars ($100) of the fair cash value of "taxable reserves".

(d) Beginning in tax year 2004 an insurer may offset the tax liability imposed under this subsection against the tax liability imposed under subsection (4) of this section.

(4) For calendar year 2000, and each calendar year thereafter, every company subject to the tax imposed by subsection (3) of this section, and making an election pursuant to KRS 136.335 to be taxed under this section, shall pay the following rates of tax upon each one hundred dollars ($100) of premium receipts:

(a) For calendar year 2000, thirty-eight cents ($0.38);

(b) For calendar year 2001, seventy-two cents ($0.72);

(c) For calendar year 2002, one dollar and two cents ($1.02);

(d) For calendar year 2003, one dollar and twenty-eight cents ($1.28); and

(e) For calendar year 2004 and each calendar year thereafter, one dollar and fifty cents ($1.50).

Every company subject to the tax imposed by this subsection shall, by March 1 of each year, return to the Revenue Cabinet a statement under oath of all premium receipts on business done in this state during the preceding calendar year or since the last return was made. "Premium receipts" includes single premiums, premiums received for original insurance, premiums received for renewal, revival, or reinstatement of the policies, annual and periodical premiums, dividends applied for premiums and additions, and all other premium payments received on policies that have been written in this state, or on the lives of residents of this state, or out of this state on business done in this state, less returned premiums. No deduction shall be made for dividends on life insurance but dividends on accident and health insurance policies may be deducted.

(5) The taxes imposed under subsections (3) and (4) of this section shall be in lieu of all excise, license, occupational, or other taxes imposed by the state, county, city, or other taxing district, except as provided in subsections (6) and (7) of this section.

(6) The county in which the principal office of the company is located may impose a tax of fifteen cents ($0.15) on each one hundred dollars ($100) of "taxable capital."

(7) The city in which the principal office of the company is located may impose a tax of fifteen cents ($0.15) on each one hundred dollars ($100) of "taxable capital."

(8) The Revenue Cabinet shall by September 1 each year bill each company for the state taxes. It shall immediately certify to the county clerk of the county in which the principal office of the company is located the value of "taxable capital" subject to local taxation. The county clerk shall prepare and deliver a bill to the sheriff for collection of taxes collectible by the sheriff and shall certify the value to all other collecting officers of districts authorized to levy a tax.

(9) Each company's real and tangible personal property shall be subject to taxation at fair cash value by the state, county, school, and other taxing districts in which the property is located in the same manner and at the same rates as all other property of the same class.

(10) Taxes on property subject to taxation under this section shall be subject to the same discount and penalties as provided in KRS 134.020 and shall be collected in the same manner as taxes on property locally assessed, except that the state tax on the "taxable capital" and "taxable reserves" shall be collected directly by the Revenue Cabinet.

(11) Any taxpayer subject to taxation under this section may protest in the manner provided in KRS 131.110.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 358, effective July 13, 1990; 1998, ch. 233, § 1, effective July 15, 1998.)

Compiler's Notes. Former KRS 136.320 (4237a-1: amend. Acts 1966, ch. 160, §§ 1, 2; 1972, ch. 203, § 8; 1976, ch. 93, § 11, effective January 1, 1977; 1978, ch. 384, § 282, effective January 17, 1978) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 358, effective July 1, 1990.

Cross-References. City license taxes, insurance companies, KRS 91A.080.

Secretary of revenue, taxes due from insurance companies, duties concerning, KRS 134.410.

Retaliatory provision, domicile of alien insurer, KRS 304.3-270.

Revocation of authority, failure to pay taxes, KRS 304.3-200.

Penalties

136.990. Penalties.

(1) Any corporation that fails to pay its taxes, penalty, and interest as provided in subsection (2) of KRS 136.050, after becoming delinquent, shall be fined fifty dollars ($50) for each day the same remains unpaid, to be recovered by indictment or civil action, of which the Franklin Circuit Court shall have jurisdiction.

(2) Any public service corporation, or officer thereof, that willfully fails or refuses to make reports as required by KRS 136.130 and 136.140 shall be fined one thousand dollars ($1,000), and fifty dollars ($50) for each day the reports are not made after April 30 of each year.

(3) Any superintendent of schools or county clerk who fails to report as required by KRS 136.190, or who makes a false report, shall be fined not less than fifty dollars ($50) nor more than one hundred dollars ($100) for each offense.

(4) Any company or association that fails or refuses to return the statement or pay the taxes required by KRS 136.330 or 136.340 shall be fined one thousand dollars ($1,000) for each offense.

(5) Any insurance company that fails or refuses for thirty (30) days to return the statement required by KRS 136.330 or 136.340 and to pay the tax required by KRS 136.330 or 136.340, shall forfeit one hundred dollars ($100) for each offense. The commissioner of insurance shall revoke the authority of the company or its agents to do business in this state, and shall publish the revocation pursuant to KRS Chapter 424.

(6) Any person who violates subsection (3) of KRS 136.390 shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for each offense.

(7) Where no other penalty is mentioned for failing to do an act required, or for doing an act forbidden by this chapter, the penalty shall be not less than ten dollars ($10) nor more than five hundred dollars ($500).

(8) The Franklin Circuit Court shall have jurisdiction of all prosecutions under subsections (4) to (6) of this section.

(9) Any person who violates any of the provisions of KRS 136.073 or KRS 136.090 shall be subject to the uniform civil penalties imposed pursuant to KRS 131.180.

(10) If the tax imposed by KRS 136.070 or KRS 136.073, whether assessed by the cabinet or the taxpayer, or any installment or portion of the tax, is not paid on or before the date prescribed for its payment, interest shall be collected upon the nonpaid amount at the tax interest rate as defined in KRS 131.010(6) from the date prescribed for its payment until payment is actually made to the cabinet.

(4019a-15, 4029, 4087, 4091, 4099, 4103, 4230, 4231, 4232, 4236, 4237, 4281j-7: amend. Acts 1958, ch. 126, § 12; 1962, ch. 94, § 9; 1962, ch. 210, § 23; 1966, ch. 255, § 133; 1976, ch. 155, § 6; 1982, ch. 452, § 12, effective July 1, 1982; 1986, ch. 496, § 10, effective August 1, 1986; 1990, ch. 163, § 6, effective July 13, 1990; 1990, ch. 476, Pt. V, § 359, effective July 13, 1990; 1992, ch. 338, § 20, effective July 14, 1992; 1992, ch. 403, § 6, effective July 14, 1992.)

Legislative Research Commission Note. (7/14/92) This section was amended by two 1992 Acts which do not appear to be in conflict and have been compiled together.

(7/13/90) The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

Compiler's Notes. Section 17 of Acts 1976, ch. 155, provided that the provisions of the 1976 amendment to this section should apply to taxable years beginning after December 31, 1975.

Section 26 of Acts 1992, ch. 403, provides: "The provisions of this Act shall become effective for all tax returns or reports due on or after August 1, 1992 and all taxes assessed by the cabinet on or after December 31, 1992."

CHAPTER 139

SALES AND USE TAXES

SECTION.

EXEMPTIONS

139.496. Exemption of certain sales.
139.497. Exemption for sales by schools or school-sponsored clubs and organizations or affiliated groups and by certain nonprofit educational youth programs.

EXEMPTIONS

139.496. Exemption of certain sales.

(1) Notwithstanding any other provisions of this chapter, the taxes imposed herein do not apply to the first one thousand dollars ($1,000) of sales made in any calendar year by individuals or nonprofit organizations not engaged in the business of selling. This exemption is limited to the following types of transactions or activities:
   (a) Garage or yard sales of household items by an individual or family which are in no way associated with or related to the operation of a business;
   (b) Fundraising event held by nonprofit civic, governmental, or other nonprofit organizations, except as set forth in KRS 139.497.

(2) The exemption does not apply to activities in which all or substantially all the household goods of a person are offered for sale or where nonprofit organizations conduct regular selling activities in competition with private business.

(Enact. Acts 1976, ch. 77, part III, § 3, effective July 1, 1976; 1984, ch. 331, § 2, effective July 13, 1984; 1990, ch. 476, Pt. V, § 360; 1990, ch. 476, Pt. VII A, § 624, effective July 1, 1990.)

Legislative Research Commission Note. (7/13/90) The amendment to this section contained in Section 624 of Acts ch. 476 prevails over its repeal and reenactment in Section 360 of that Act, pursuant to Section 353(1) of the Act.

139.497. Exemption for sales by schools or school-sponsored clubs and organizations or affiliated groups and by certain nonprofit educational youth programs.

Notwithstanding any other provisions of this chapter, the taxes imposed herein do not apply to:

(1) Sales by elementary or secondary schools or nonprofit elementary or secondary school-sponsored clubs and organizations or any nonprofit, elementary, or secondary school-affiliated groups such as parent-teacher organizations and booster clubs, whose membership may be composed of individuals other than students, provided the net proceeds from the sales are used solely for the benefit of the elementary or secondary school or its students. Nontaxable sales shall include sales resulting from agreements or contracts entered into with resident or nonresident organizations to participate in fund-raising campaigns for a percentage of the gross receipts where students act as agents or salesmen for the organizations by selling or taking orders for the sale of tangible personal property, and no one shall be required to pay sales or use taxes on such sales; and

(2) Sales made by nonprofit educational youth programs affiliated with a land grant university cooperative extension service, if the net proceeds from the sales are used solely for the benefit of the affiliated programs.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 361, effective July 13, 1990; 1998, ch. 80, § 1, effective July 15, 1998.)

Compiler's Notes. Former KRS 139.497 (Enact. Acts 1984, ch. 331, § 1, effective July 13, 1984; 1986, ch. 167, § 1, effective July 15, 1986) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 361, effective July 13, 1990.

TITLE XII

CONSERVATION AND STATE DEVELOPMENT

CHAPTER 147A

PROGRAM DEVELOPMENT

SECTION.

147A.020. Powers and duties of state local debt officer and state local finance officer.

AREA DEVELOPMENT DISTRICTS

147A.050. Area development districts created.
147A.060. Board of directors for each district — Appointment — Terms — State officers and members of General Assembly may serve only in advisory capacity.
147A.070. Appointment of executive director — Election of executive committee, duties.
147A.080. Powers of board of directors.
147A.090. Duties of board of directors.
147A.100. Allocation of funds.
147A.110. District projects and property exempt from taxation.
147A.120. Limitation on districts' functions, powers and duties.

147A.020. Powers and duties of state local debt officer and state local finance officer.

(1) The state local debt officer and the state local finance officer within the Department for Local Government shall exercise the following administrative functions of the state:
   (a) The state local debt officer shall exercise all administrative functions as provided in the county debt act, KRS 66.280 to 66.390, and administrative functions relating to local government bonds as provided in KRS 66.045; and

(b) The state local finance officer shall exercise all administrative functions regarding county and local government budgets, as provided in KRS 68.210 to 68.360.

(2) The state local debt officer shall have the following powers and duties:

(a) To require reports from local governments to enable him to adequately provide the technical and advisory assistance authorized by this section. The reports shall provide the necessary information for a complete file on local government debt, which the state local debt officer shall keep open for public inspection at the Department for Local Government;

(b) To conduct studies in debt management, including ways and means of appraising the terms of alternative bids;

(c) To request assistance and information, which shall be provided by all departments, divisions, boards, bureaus, commissions, and other agencies of state government, to enable the state local debt officer to carry out his duties under this section; and

(d) To compile and publish annually a report which shall include detailed information on local government long-term debt issued and retired during the previous year and outstanding, and other available statistical data on local government finances.

(3) The state local finance officer shall have the following powers and duties:

(a) To coordinate for the Governor the state's responsibility for, and shall be responsible for liaison with the appropriate state and federal agencies with respect to, general revenue sharing for local government;

(b) To provide technical assistance and information to units of local government on matters including, but not limited to, fiscal management, purchases, and contracts; and

(c) To conduct training programs to instruct county and other local officials respecting their duties and responsibilities in the collection, expenditure, and management of public moneys subject to their control and jurisdiction.

(Enact. Acts 1970, ch. 66, § 2; 1974, ch. 74, Art. II, § 10; 1978, ch. 155, § 68, effective June 17, 1978; 1980, ch. 188, § 108, effective July 15, 1980; 1980, ch. 295, § 103, effective July 15, 1980; 1982, ch. 393, § 48, effective July 15, 1982; 1984, ch. 70, § 1, effective July 13, 1984; 1994, ch. 508, § 45, effective July 15, 1994; 1998, ch. 69, § 53, effective July 15, 1998; 1998, ch. 85, § 6, effective July 15, 1998.)

Legislative Research Commission Note. (7/15/98). This section was amended by 1998 Ky. Acts chs. 69 and 85 which do not appear to be in conflict and have been codified together.

Compiler's Notes. KRS 66.280 and 66.330 to 66.390 referred to in subsection (1)(a) of this section in the reference "KRS 66.280 to 66.390" were repealed by Acts 1996, ch. 280, § 30, effective July 15, 1996.

Area Development Districts

147A.050. Area development districts created. There is hereby created and established in the Commonwealth fifteen (15) area development districts consisting of the following counties:

(1) Purchase Area Development District which shall include the counties of Ballard, Carlisle, Hickman, Fulton, McCracken, Graves, Marshall, and Calloway;

(2) Pennyrile Area Development District which shall include the counties of Livingston, Crittenden, Lyon, Caldwell, Hopkins, Muhlenberg, Trigg, Christian and Todd;

(3) Green River Area Development District which shall include the counties of Union, Henderson, Webster, McLean, Daviess, Ohio and Hancock;

(4) Barren River Area Development District which shall include the counties of Logan, Simpson, Butler, Warren, Edmonson, Hart, Barren, Allen, Metcalfe and Monroe;

(5) Lincoln Trail Area Development District which shall include the counties of Breckinridge, Meade, Grayson, Hardin, Larue, Nelson, Washington, and Marion;

(6) Jefferson Area Development District which shall include the counties of Bullitt, Henry, Jefferson, Oldham, Shelby, Spencer and Trimble;

(7) Northern Kentucky Area Development District which shall include the counties of Boone, Kenton, Campbell, Carroll, Gallatin, Owen, Grant and Pendleton;

(8) Buffalo Trace Area Development District which shall include the counties of Bracken, Mason, Robertson, Fleming and Lewis;

(9) Gateway Area Development District which shall include the counties of Rowan, Bath, Montgomery, Menifee, and Morgan;

(10) Fivco Area Development District which shall include the counties of Greenup, Boyd, Carter, Elliott, and Lawrence;

(11) Big Sandy Area Development District which shall include the counties of Johnson, Magoffin, Martin, Floyd, and Pike;

(12) Kentucky River Area Development District which shall include the counties of Wolfe, Owsley, Lee, Breathitt, Leslie, Perry, Knott, and Letcher;

(13) Cumberland Valley Area Development District which shall include the counties of Jackson, Rockcastle, Laurel, Clay, Knox, Whitley, Bell, and Harlan;

(14) Lake Cumberland Area Development District which shall include the counties of Taylor, Adair, Green, Casey, Russell, Pulaski, Clinton, Cumberland, Wayne, and McCreary; and

(15) Bluegrass Area Development District which shall include the counties of Anderson, Franklin, Woodford, Mercer, Boyle, Lincoln, Garrard, Jessamine, Fayette, Scott, Harrison, Bourbon, Nicholas, Clark, Madison, Powell, and Estill.

(Enact. Acts 1972, ch. 125, § 1.)

Cross-References. Area development fund, KRS 42.350.

147A.060. Board of directors for each district — Appointment — Terms — State officers and members of General Assembly may serve only in advisory capacity.

There shall be in each area development district a board of directors. The composition of the board and the terms and appointments of its members in each district shall be specified by administrative regulation promulgated by the Department for Local Government in accordance with KRS Chapter 13A. The designee of a mayor or county judge/executive shall be a member of the designator's respective legislative body or their staff. Other persons who are not elected officials or members of their staffs may be designated as representatives with the consent of that body. The Department for Local Government in specifying the composition of the board shall conform to applicable federal requirements. A person who is a state officer, a deputy state officer, or a member of the General Assembly may serve only in a nonmember advisory capacity to the board of directors of an area development district. An area development district board of directors shall notify legislators of the provisions of this section and of their right to participate in the activities of the area development district. If a legislator chooses to participate in accordance with this section, the area development district shall send meeting notices to that legislator at the same time board members are notified of the meetings.

(Enact. Acts 1972, ch. 125, § 2; 1974, ch. 74, Art. II, § 9(4); 1978, ch. 155, § 69, effective June 17, 1978; 1984, ch. 187, § 1, effective July 13, 1984; 1998, ch. 69, § 58, effective July 15, 1998; 2000, ch. 450, § 1, effective July 14, 2000.)

147A.070. Appointment of executive director — Election of executive committee, duties.

(1) The board of directors in each district may appoint an executive director and fix his salary. The executive director shall perform, in the name of the board, such functions and duties and may exercise such authority of the board as the board may delegate to him.

(2) The board of directors in each district may elect from its membership an executive committee and delegate to the committee any of the following duties:
   (a) To employ such staff members as may be required for the operations of the district;
   (b) To manage the financial assets and obligations of the district;
   (c) To guide the activities of the district between meetings of the board; and
   (d) To perform such other duties as the board might delegate to it.

(Enact. Acts 1972, ch. 125, § 3.)

147A.080. Powers of board of directors.

Each board of directors shall have the power and authority to:

(1) Adopt and have a common seal and alter the same at pleasure;
(2) Sue and be sued;
(3) Adopt bylaws and make rules and regulations for the conduct of its business;
(4) Make and enter into all contracts or agreements necessary or incidental to the performance of its duties;
(5) Provide upon request basic administrative, research, and planning services for any planning and development body located within the district;
(6) Accept, receive, and administer loans, grants, or other funds or gifts from public and private agencies including the Commonwealth and the federal government for the purpose of carrying out the functions of the district;
(7) Expend such funds as may be considered by it to be advisable or necessary in the performance of its duties;
(8) Acquire, hold as may be necessary and convenient, encumber, or dispose of real and personal property, except that no board shall have the power of eminent domain;
(9) Charge fees, rents, and otherwise charge for services provided by the board, except that no board shall have any power to levy taxes;
(10) Enter into interlocal agreements or interstate compacts to the extent authorized by laws of the Commonwealth. An area development district organization shall be deemed a "public agency" as defined by the Interlocal Cooperation Act in KRS Chapter 65;
(11) Promote, organize, and advise special districts or other authorities in accordance with laws of the Commonwealth and act as the regional clearinghouse for such programs and projects as prescribed by federal regulation;
(12) Perform such other and further acts as may be necessary to carry out the duties and responsibilities created by KRS 147A.050 to 147A.120.

(Enact. Acts 1972, ch. 125, § 4; 1978, ch. 384, § 29, effective June 17, 1978.)

147A.090. Duties of board of directors.

Each district board of directors shall have the power, duty, and authority to:

(1) Establish such functional advisory committees as may be necessary and advisable. These functional advisory committees shall be organized to meet such guidelines as may be required for federal or state assistance.
(2) Conduct the necessary research and studies and coordinate and cooperate with all appropriate groups and agencies in order to develop, and adopt and revise, when necessary, a district development plan or series of plans, including, but not limited to, the following districtwide plan elements: goals and objectives; water and sewer; land-use; and open space and recreation. Such plans shall serve as a general guide for public and private actions and decisions to assure the development of public and private property in the most appropriate relationships.

(3) Prepare annually a report of its activities to the cities and counties within the district, the legislature, and the Governor. The board shall make copies of the report available to members of the public within the district.

(Enact. Acts 1972, ch. 125, § 5.)

147A.100. Allocation of funds.

The Finance and Administration Cabinet shall, subject to the availability of funds, allocate funds to each district for the purpose of carrying out the district's responsibilities and for matching federal and local funds.

(Enact. Acts 1972, ch. 125, § 6; 1974, ch. 74, Art. II, § 9(4).)

147A.110. District projects and property exempt from taxation.

As a public body, no area development district board shall be required to pay taxes or assessments upon any project or upon any property acquired or used by it or upon the income or proceeds therefrom.

(Enact. Acts 1972, ch. 125, § 7.)

147A.120. Limitation on districts' functions, powers and duties.

Nothing in KRS 147A.050 to 147A.120 shall be deemed to limit or authorize the limitation in any manner of the functions, powers, or duties of any department or agency of the Commonwealth or of any political subdivision. Nor shall anything in KRS 147A.050 to 147A.120 authorize the Finance and Administration Cabinet or an area development district to perform or discharge any powers, duties, or functions now reposed, or which may hereinafter be reposed, by law in the Kentucky Department of Education, local school districts, or other educational institutions.

(Enact. Acts 1972, ch. 125, § 8; 1974, ch. 74, Art. II, § 9(4).)

CHAPTER 149

FORESTRY

SECTION.

149.130. Federal forest reserve appropriations for county roads and schools.

149.130. Federal forest reserve appropriations for county roads and schools.

(1) All moneys paid to the state under an Act of Congress of May 23, 1908 (35 Stat. 260) as amended, and arising from any national forest reserve created in the state by the federal government, shall be paid over to the Finance and Administration Cabinet and be turned into the State Treasury. The Finance and Administration Cabinet shall keep a separate account of all funds so received.

(2) The treasurer of each county in which there is situated any part of a forest reserve owned by the United States shall ascertain and report to the Finance and Administration Cabinet the name and area of that part of each reserve located in his county. The Finance and Administration Cabinet shall apportion the amount received by reason of each reserve among the counties in which the reserve is located, according to the area of the reserve in each county. If a fund is received from a reserve which lies in only one (1) county, it shall all be apportioned to that county. The Finance and Administration Cabinet shall draw a warrant on the State Treasury in favor of the treasurer of each county for the amount apportioned to that county.

(3) The county treasurer shall place one-half (½) of the funds to the credit of the public roads of his county and the other half (½) shall be distributed among the school districts in the county according to the area of the reserve in each school district.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 362, effective July 13, 1990.)

Compiler's Notes. The Act of Congress of May 23, 1908 (35 Stat. 260) referred to in subsection (1) is compiled as 16 U.S.C. § 500.

Cross-References. Consent to acquisition of national forest reserves, KRS 3.080.

CHAPTER 151B

CABINET FOR WORKFORCE DEVELOPMENT

SECTION.

151B.120. Agreements for training workers.
151B.125. Equivalents to standard high school diploma — Diploma through examination — External diploma program.
151B.127. Legislative findings relating to need for high school equivalency diplomas — Incentives — Administrative regulations — Learning contracts — Tuition discounts — Income tax credit for employers.
151B.130. Foundation for Adult Education.
151B.165. Tuition and fees in secondary area vocational education and technology centers.
151B.170. Liability insurance for motor vehicles owned or operated by department in vocational schools and centers.
151B.175. Medical and accident insurance for students.
151B.180. Declaration of intent for KRS 151B.180 to 151B.210.
151B.185. Department of Vocational Rehabilitation — Divisions.
151B.190. Vocational rehabilitation services.
151B.195. Authority of the commissioner of the Department of Vocational Rehabilitation.
151B.200. Federal acts relating to vocational rehabilitation.
151B.205. State Treasurer designated as custodian of funds.
151B.210. Gifts may be received.
151B.250. School-to-Careers System — Department for Technical Education.
151B.255. Representative group for Office of School-to-Work.

ADULT EDUCATION LEARNING SYSTEM

151B.405. Definitions for KRS 151B.400 to 151B.410.
151B.410. Adult education learning system — Services —

Duties and responsibilities of the Department for Adult Education and Literacy.

151B.120. Agreements for training workers.

(1) The commissioner of the Department for Adult Education and Literacy and the commissioner of the Department for Technical Education may enter into agreements to train workers for new manufacturing jobs in new or expanding industries characterized by one (1) or more of the following criteria: a high average skill, a high average wage, rapid national growth, or jobs feasible and desirable for location in rural regions. Such agreements shall be subject to review and approval by the secretary of the Workforce Development Cabinet and shall not be subject to the requirements of KRS 45A.045 and KRS 45A.690 to 45A.725 when awarded on the basis of a detailed training plan approved by the appropriate commissioner. Reimbursement to the industry shall be made upon submission of documents validating actual training expenditure not to exceed the amount approved by the training plan.

(2) Each commissioner may approve authorization for his department to enter into agreement with industries whereby the industry may be reimbursed directly for the following services:

(a) The cost of instructors' salaries when the instructor is an employee of the industry to be served;

(b) Cost of only those supplies, materials, and equipment used exclusively in the training program; and

(c) Cost of leasing a training facility should a vocational education school or the industrial plant not be available.

(Repealed, reenact. and amend. Acts 1990, ch. 470, § 22, effective July 1, 1990; 1994, ch. 469, § 22, effective July 15, 1994; 2000, ch. 526, § 6, effective July 14, 2000.)

Legislative Research Commission Note. (7/13/90) The repeal, with reenactment and amendment, of this section prevailed over its amendment by two other Acts of the 1990 Regular Session pursuant to KRS 446.260. The Reviser has changed internal numbering references pursuant to KRS 7.136(1).

Compiler's Notes. This section (Enact. Acts 1980, ch. 31, § 1, effective March 12, 1980; 1984, ch. 111, § 90, effective July 13, 1984; 1988, ch. 361, § 11, effective July 15, 1988) was formerly compiled as KRS 156.253 and was repealed, reenacted, and amended as this section by Acts 1990, ch. 470, § 22, effective July 1, 1990.

Cross-References. Kentucky TECH guarantee, 780 KAR 4:060.

Repeal of 780 KAR 4:020, 780 KAR 4:040, 780 KAR 4:050, and 780 KAR 4:060, 780 KAR 4:011.

151B.125. Equivalents to standard high school diploma — Diploma through examination — External diploma program.

(1) For purposes of any public employment, a high school equivalency diploma or a regular high school diploma obtained through participation in the external diploma program shall be considered equal to a high school diploma issued under the provisions of KRS 158.140.

(a) A high school equivalency diploma shall be issued without charge upon successfully passing a test or tests given by the General Educational Development Testing Service of the American Council on Education or successor organization. A five dollar ($5) fee may be assessed by the State Board for Adult and Technical Education for the issuance of a duplicate high school equivalency diploma and for issuance of a duplicate score report. All fees collected for duplicate diplomas and score reports shall be used to support the adult education program.

(b) As an alternative to receiving a high school equivalency diploma, persons who are twenty-five (25) years or older may obtain a high school diploma through participation in the external diploma program. The diploma shall be issued upon achieving one hundred percent (100%) mastery on the competencies established by the American Council on Education. The Department for Adult Education and Literacy may enter into agreements with local school districts to confer the high school diploma on successful participants in the external diploma program.

(2) Sufficient funding shall be provided to comply with the American Council on Education's Commission on Educational Credit and Credentials requirement of an essay as an additional requirement on the GED examination. Funds shall be used for the following purposes:

(a) GED teachers in local districts shall receive training to teach writing skills to adults;

(b) The Department for Adult Education and Literacy is authorized to contract annually with an institution of higher education or other appropriate agency or entity for scoring the GED examination essay;

(c) Staff shall be employed and trained by the Department of Adult Education and Literacy to score approximately seventeen thousand (17,000) essays annually as a part of the requirement for the GED high school equivalency examination; and

(d) Essay readers will be assigned to the Division of Management Services to score essays daily.

(Repealed, reenact. and amend. Acts 1990, ch. 470, § 23, effective July 1, 1990; 1994, ch. 363, § 6, effective July 15, 1994; 1994, ch. 469, § 23, effective July 15, 1994; 1996, ch. 145, § 1, effective July 15, 1996; 1998, ch. 63, § 2, effective July 15, 1998.)

Legislative Research Commission Note. (7/15/94). This section was amended by 1994 Ky. Acts chs. 363 and 469. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 469, which was last enacted by the General Assembly, prevails under KRS 446.250.

(7/13/90) This section was amended by two 1990 Acts which are in conflict. Pursuant to KRS 446.250, the Act which was last enacted by the General Assembly prevails.

Compiler's Notes. This section (Enact. Acts 1972, ch. 192, § 1; 1986, ch. 311, § 1, effective July 15, 1986; 1988, ch. 361, § 12, effective July 15, 1988) was formerly compiled as KRS 156.485 and was repealed, reenacted and amended as this section by Acts 1990, ch. 470, § 23, effective July 1, 1990.

Cross-References. Approval of applications under English Literacy Program under the Adult Education Act as amended by the National Literacy Act of 1991, 20 USC 1201 et seq., 785 KAR 1:060.

High school equivalency diploma, 780 KAR 9:020.

High school equivalency diploma, 785 KAR 1:020.

Qualifications for progressing satisfactorily through a GED program, 785 KAR 1:110.

Repeal of 780 KAR 9:020, 780 KAR 9:011.

Testing program, 785 KAR 1:010.

151B.127. Legislative findings relating to need for high school equivalency diplomas — Incentives — Administrative regulations — Learning contracts — Tuition discounts — Income tax credit for employers.

The General Assembly recognizes the critical condition of the educational level of Kentucky's adult population and seeks to stimulate the attendance at, and successful completion of, programs that provide a high school equivalency diploma. Incentives shall be provided to full-time employees who complete a high school equivalency diploma program within one (1) year and their employers. For purposes of this section "equivalent diploma" means a high school equivalency diploma issued after successful completion of the General Educational Development tests.

(1) The Department for Adult Education and Literacy in conjunction with the Council on Postsecondary Education shall promulgate administrative regulations to establish the operational procedures for this section. The administrative regulations shall include, but not be limited to, the criteria for:
   (a) A learning contract that includes the process to develop a learning contract between the student and the adult education instructor with the employer's agreement to participate and support the student;
   (b) Attendance reports that validate that the student is studying for the high school equivalency diploma during the release time from work;
   (c) Final reports that qualify the student for the tuition discounts under subsection (2)(a) of this section and that qualify the employer for tax credits under subsection (3) of the section.

(2) (a) An individual who has been out of secondary school for at least three (3) years, develops and successfully completes a learning contract that requires a minimum of five (5) hours per week to study for the high school equivalency diploma tests, and passes the tests shall earn a tuition discount of two hundred fifty dollars ($250) per semester for a maximum of four (4) semesters at one (1) of Kentucky's public postsecondary institutions.
   (b) The department, with the cooperation of the Council on Postsecondary Education, shall work with the postsecondary institutions to establish notification procedures for students who qualify for the tuition discount.

(3) An employer who assists an individual to complete his or her learning contract under the provisions of this section shall receive a state income tax credit for a portion of the released time given to the employee to study for the tests. The application for the tax credit shall be supported with attendance documentation provided by the Department for Adult Education and Literacy and calculated by multiplying fifty percent (50%) of the hours released for study by the student's hourly salary, and not to exceed a credit of one thousand two hundred fifty dollars ($1250).

(Enact. Acts 2000, ch. 526, § 12, effective July 14, 2000.)

151B.130. Foundation for Adult Education.

(1) There is hereby established a nonprofit foundation to be known as the "Foundation for Adult Education." The purpose of the foundation shall be to supplement public funding for adult training in order to expand existing basic skills training programs.

(2) Funding for the foundation shall be obtained through contributions by the private sector. The foundation shall be empowered to solicit and accept funds from the private sector to be used for grants to local education agencies to fund adult basic education programs especially designed for business and industry. Contributors may specify that contributed funds be used to improve the educational level of their employees as it relates to the GED instruction program.

(3) The foundation shall be governed by a board of trustees to be appointed by the State Board for Adult and Technical Education with responsibility for adult education programs based on recommendations from business, industry, labor, education, and interested citizens. Staff for the board of trustees shall be provided by the agency with the responsibility for administering the adult education program.

(4) The foundation shall be attached to the office of the secretary of the Cabinet for Workforce Development for administrative purposes.

(Repealed, reenact. and amend. Acts 1990, ch. 470, § 24, effective July 1, 1990; 1996, ch. 217, § 3, effective July 15, 1996.)

Legislative Research Commission Note. (7/13/90) The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

Compiler's Notes. This section (Enact. Acts 1986, ch. 209, § 1, effective July 15, 1986) was formerly compiled as KRS 156.486 and was repealed, reenacted and amended as this section by Acts 1990, ch. 170, § 24, effective July 1, 1990.

151B.165. Tuition and fees in secondary area vocational education and technology centers.

Tuition and fees for secondary pupils enrolled in the state secondary area vocational education and technol-

ogy centers operated by the Department for Technical Education shall be free to all residents of Kentucky. The State Board for Adult and Technical Education shall fix the rate of tuition and fees for adults who are enrolled in secondary programs in the state-operated area vocational education and technology centers under its control. Adult students enrolled in full-time postsecondary programs under the jurisdiction of the Kentucky Community and Technical College System that are physically located in an area vocational education or technology center shall pay the tuition as established by the Council on Postsecondary Education and fees as established by the board of regents for the Kentucky Community and Technical College System.
(Repealed, reenact. and amend. Acts 1990, ch. 470, § 32, effective July 1, 1990; 1997 (1st Ex. Sess.), ch. 1, § 51, effective May 30, 1997.)

Legislative Research Commission Note. (7/13/90) The subsequent repeal, with reenactment and amendment, of this section prevails over its amendment by a prior Act of the 1990 Regular Session pursuant to KRS 446.260.

Compiler's Notes. This section (Enact. Acts 1976, ch. 327, § 5; 1978, ch. 155, § 83, effective June 1, 1978) was formerly compiled as KRS 163.087 and was repealed, reenacted and amended by Acts 1990, ch. 470, § 32, effective July 1, 1990.

Cross-References. Tuition and fees, 780 KAR 2:140.

151B.170. Liability insurance for motor vehicles owned or operated by department in vocational schools and centers.

The commissioner of the Department for Technical Education may provide liability insurance for licensed and nonlicensed motor vehicles owned or operated by the Department for Technical Education in vocational schools and centers. If the transportation of members of the student bodies is let out under contract, the contract shall require the contractor to carry an indemnity bond or liability insurance against negligence in such amounts as the commissioner of the Department for Technical Education designates. In either case the indemnity bond or insurance policy shall be issued by a surety or insurance company authorized to transact business in this state, and shall bind the company to pay any final judgment not to exceed the limits of the policy rendered against the insured for loss or damage to property of any student or other person, or death or injury of any student or other person.
(Repealed, reenact. and amend. Acts 1990, ch. 470, § 33, effective July 1, 1990; 1994, ch. 469, § 25, effective July 15, 1994.)

Legislative Research Commission Note. (7/13/90) The subsequent repeal, with reenactment and amendment, of this section prevails over its amendment by a prior Act of the 1990 Regular Session pursuant to KRS 446.260.

Compiler's Notes. This section (Enact. Acts 1986, ch. 416, § 1, effective April 10, 1986) was formerly compiled as KRS 163.088 and was repealed, reenacted and amended as this section by Acts 1990, ch. 470, § 33, effective July 1, 1990.

Cross-References. Department of Vocational Rehabilitation appeal procedures, 781 KAR 1:010.

151B.175. Medical and accident insurance for students.

(1) The commissioner of the Department for Technical Education is authorized to provide medical and accident insurance for students enrolled in the state secondary area technology centers and area vocational education centers. The Department for Technical Education may enter into a contract or contracts with one (1) or more sureties or insurance companies or their agents to provide appropriate medical and accident insurance coverage and to provide group coverage to all students enrolled in state-operated schools under its jurisdiction. The appropriate group coverage shall be issued by one (1) or more sureties or insurance companies authorized to transact business in this state, and such coverage shall be approved by the commissioner of insurance.

(2) The State Board for Adult and Technical Education, upon the recommendation of the commissioner of the Department for Technical Education, shall promulgate administrative regulations to implement the medical and accident insurance program. The State Board for Adult and Technical Education may fix the rate of fees for all secondary students, the provisions of KRS 151B.165 with respect to fees for secondary students notwithstanding, as it deems necessary to meet the expense in whole or in part for appropriate student medical and accident insurance.

(3) The limits of liability and other appropriate provisions for student medical and accident insurance authorized by this section shall be set by the State Board for Adult and Technical Education.

(Repealed, reenact. and amend. Acts 1990, ch. 470, § 34, effective July 1, 1990; 1994, ch. 469, § 26, effective July 15, 1994; 1997 (1st Ex. Sess.), ch. 1, § 52, effective May 30, 1997.)

Legislative Research Commission Note. (7/13/90) The subsequent repeal, with reenactment and amendment, of this section prevails over its amendment by a prior Act of the 1990 Regular Session pursuant to KRS 446.260.

Compiler's Notes. This section (Enact. Acts 1988, ch. 289, § 1, effective July 15, 1988) was formerly compiled as KRS 163.089 and was repealed, reenacted and amended as this section by Acts 1990, ch. 470, § 34, effective July 1, 1990.

Cross-References. Student medical and accident insurance, 780 KAR 2:110.

151B.180. Declaration of intent for KRS 151B.180 to 151B.210.

In enacting KRS 151B.180 to 151B.210, it is the intention of the General Assembly of Kentucky to provide for and improve the vocational rehabilitation of citizens of the Commonwealth of Kentucky with physical and mental disabilities in order that they may increase their social and economic well-being and the productive capacity of the Commonwealth and nation.
(Repealed, reenact. and amend. Acts 1990, ch. 470, § 35, effective July 1, 1990; 1994, ch. 405, § 20, effective July 15, 1994.)

Legislative Research Commission Note. (7/13/90) This section has been treated by two 1990 Acts; its repeal and reenactment with amendment in Acts ch. 470 renumbered the section into KRS ch. 151B.

Compiler's Notes. This section (Enact. Acts 1956, ch. 172, § 1; 1984, ch. 316, § 1, effective July 13, 1984) was formerly

compiled as KRS 163.110 and was repealed, reenacted and amended as this section by Acts 1990, ch. 470, § 35, effective July 1, 1990.

Cross-References. Education of physically handicapped, KRS ch. 167.

NOTES TO DECISIONS

ANALYSIS

1. Jurisdiction of court.
2. Contract binding.
3. Award of damages.
4. Rehabilitative products.

1. Jurisdiction of Court.

Foreign corporation which contracted with Department of Education to modify van of quadriplegic and which in action by quadriplegic for breach of express and implied warranties of said contract received service of summons and complaint by registered letter from Secretary of State was subject to jurisdiction of court since it transacted business and contracted to supply goods and services within the state. Commonwealth Dep't of Educ. v. Gravitt, 673 S.W.2d 428 (Ky. Ct. App. 1984).

2. Contract Binding.

Since signature of agent of Department of Education was necessary on contract to authorize the process which would pay company for services in modifying van of quadriplegic, and such agent intended that the five (5) conditions contained in the contract should be enforceable against quadriplegic should the need arise, therefore intending the document as a whole to be binding, agent had authority and intent to enter into contract with quadriplegic. Commonwealth Dep't of Educ. v. Gravitt, 673 S.W.2d 428 (Ky. Ct. App. 1984).

Document in which Department of Education promised to modify van of quadriplegic in exchange for his acceptance of five (5) conditions some of which would transfer title to the department should the quadriplegic fail to abide by department's directions constituted a lawfully authorized contract between department and quadriplegic, and since nothing in KRS 163.110 to 163.180 prohibited such contract, quadriplegic had valid cause of action against department under KRS 45A.245 for major defects which occurred as a result of the modification. Commonwealth Dep't of Educ. v. Gravitt, 673 S.W.2d 428 (Ky. Ct. App. 1984).

3. Award of Damages.

In an action by quadriplegic against Department of Education and foreign corporation for breach of warranties of contract between department and corporation for modification of quadriplegic's van, award of damages for use of rental vehicle during van's immobility and for assistance in transportation and remodification costs were proper but award for depreciation on personal property of quadriplegic and for payments on van were unrelated to the action and were improper. Commonwealth Dep't of Educ. v. Gravitt, 673 S.W.2d 428 (Ky. Ct. App. 1984).

In action by quadriplegic against Department of Education and foreign corporation for breach of express and implied warranties contained in contract for modification of quadriplegic's van, award of $10,200 damages was supported by the evidence where measure of damages was the difference in value of the van to the quadriplegic after it was modified as compared to its value before modification ($10,200), where quadriplegic introduced testimony that van had no value after modification and there was no direct testimony of department as to the value of the van after modification. Commonwealth Dep't of Educ. v. Gravitt, 673 S.W.2d 428 (Ky. Ct. App. 1984).

4. Rehabilitative Products.

The Department of Education is not a guarantor of products supplied as a rehabilitation service. Commonwealth Dep't of Educ. v. Gravitt, 673 S.W.2d 428 (Ky. Ct. App. 1984).

151B.185. Department of Vocational Rehabilitation — Divisions.

(1) The Department of Vocational Rehabilitation is hereby created and shall be attached to the Cabinet for Workforce Development. The department shall consist of a commissioner and those administrative bodies and employees provided or appointed pursuant to law. The department shall be composed of Divisions of Administrative Management, Program Planning and Development, Program Services, and the Carl D. Perkins Comprehensive Rehabilitation Center. Each division shall be headed by a director appointed by the commissioner of the Department of Vocational Rehabilitation, and shall be composed of organizational entities as deemed appropriate by the commissioner of the Department of Vocational Rehabilitation, as set forth by administrative order.

(2) The Department of Vocational Rehabilitation shall have such powers and duties as contained in KRS 151B.180 to 151B.210 and such other functions as may be established by administrative regulation.

(3) The department shall be the sole state agency for the purpose of developing and approving state plans required by state or federal laws and regulations as prerequisites to receiving federal funds for vocational rehabilitation.

(4) The chief executive officer of the department shall be the commissioner of the Department of Vocational Rehabilitation. The commissioner shall be appointed by the secretary of the Cabinet for Workforce Development. The commissioner shall have experience in vocational rehabilitation and supervision and shall have general supervision and direction over all functions of the department and its employees, and shall be responsible for carrying out the programs and policies of the department.

(5) Except as otherwise provided, the department shall be the state agency responsible for all rehabilitation services and for other services as deemed necessary. The department shall be the agency authorized to expend all state and federal funds designated for rehabilitation services. The office of the secretary of the Cabinet for Workforce Development is authorized as the state agency to receive all state and federal funds and gifts and bequests for the benefit of rehabilitation services.

(6) Employees under the jurisdiction of the Department of Vocational Rehabilitation who are members of a state retirement system as of June 30, 1990, shall remain in their respective retirement systems.

(Repealed, reenact. and amend. Acts 1990, ch. 470, § 36, effective July 1, 1990; 1994, ch. 469, § 27, effective July 15, 1994.)

Legislative Research Commission Note. (7/13/90) The subsequent repeal, with reenactment and amendment, of this section prevails over its amendment by a prior Act of the 1990 Regular Session pursuant to KRS 446.260.

Compiler's Notes. This section (Enact. Acts 1956, ch. 172, § 2; 1978, ch. 155, § 83, effective June 17, 1978; 1980, ch. 188, § 121, effective July 15, 1980; 1984, ch. 316, § 2, effective July 13, 1984; 1988, ch. 361, § 15, effective July 15, 1988) was formerly compiled as KRS 163.120 and was repealed, reenacted and amended as this section by Acts 1990, ch. 470, § 36, effective July 1, 1990.

Cross-References. Carl D. Perkins Comprehensive Rehabilitation Center, 781 KAR 1:050.

Department of Vocational Rehabilitation appeal procedures, 781 KAR 1:010.

Fees for service, 781 KAR 1:070.

General provisions for operation of the Department of Vocational Rehabilitation, 781 KAR 1:020.

Order of selection and economic need test for vocational rehabilitation services., 781 KAR 1:030.

Rehabilitation technology services, 781 KAR 1:040.

Opinions of Attorney General. The State Board of Education is without power to remove the Division of Services for the Blind from the administration of the State Rehabilitation Agency and attach it directly to the Office of the State Superintendent of Public Instruction but the Governor under KRS 12.025 (repealed) may make such reorganizational change by executive order, subject to legislative confirmation at the next session of the General Assembly. OAG 75-606.

Collateral References. 78 C.J.S., Schools and School Districts, § 85-88.

151B.190. Vocational rehabilitation services.

Vocational rehabilitation services shall be provided directly or through public or private instrumentalities to any individual with a physical or mental disability:

(1) Who maintains a domicile in the Commonwealth at the time of filing his application therefor, and whose vocational rehabilitation the State Vocational Rehabilitation Agency determines after full investigation can be satisfactorily achieved; or

(2) Who is eligible therefor under the terms of an agreement with another state or with the federal government.

(Repealed, reenact. and amend. Acts 1990, ch. 470, § 37, effective July 1, 1990; 1994, ch. 405, § 21, effective July 15, 1994; 1994, ch. 469, § 28, effective July 15, 1994.)

Legislative Research Commission Note. (7/15/94). This section was amended by 1994 Ky. Acts chs. 405 and 469 which appear to be identical and have been codified together.

(7/13/90) This section has been treated by two 1990 Acts; its repeal and reenactment in Acts ch. 470 renumbered the section into KRS ch. 151B.

Compiler's Notes. This section (Enact. Acts 1956, ch. 172, § 3; 1984, ch. 316, § 3, effective July 13, 1984) was formerly compiled as KRS 163.130 and was repealed, reenacted and amended as this section by Acts 1990, ch. 470, § 37, effective July 1, 1990.

Cross-References. Carl D. Perkins Comprehensive Rehabilitation Center, 781 KAR 1:050.

Department of Vocational Rehabilitation appeal procedures, 781 KAR 1:010.

Fees for service, 781 KAR 1:070.

General provisions for operation of the Department of Vocational Rehabilitation, 781 KAR 1:020.

Order of selection and economic need test for vocational rehabilitation services., 781 KAR 1:030.

Rehabilitation technology services, 781 KAR 1:040.

151B.195. Authority of the commissioner of the Department of Vocational Rehabilitation.

(1) The commissioner of the Department of Vocational Rehabilitation shall prescribe administrative regulations governing the services, personnel, and administration of the State Vocational Rehabilitation Agency; may enter into reciprocal agreements with other states to provide for the vocational rehabilitation of residents of the states concerned; may establish and supervise the operation of small businesses established pursuant to KRS 151B.180 to 151B.210 to be conducted by eligible individuals with severe disabilities; and may establish state funded special programs for vocational rehabilitation in the state vocational rehabilitation agency.

(2) Except as provided in KRS 151B.190, the commissioner may prescribe administrative regulations to establish fees for services provided to individuals or entities, public or private.

(3) The commissioner is authorized to provide liability insurance or an indemnity bond against the negligence of drivers of motor vehicles owned or operated by the department for the transportation of applicants or clients of the department. If the transportation is let out under contract, the contract shall require the contractor to carry an indemnity bond or liability insurance against negligence to such amounts as the commissioner designates. In either case, the indemnity bond or insurance policy shall be issued by a surety or insurance company authorized to transact business in this state, and shall bind the company to pay any final judgment not to exceed the limits of the policy rendered against the insured for loss or damage to property of any applicant or client or other person, or death or injury of any applicant or client or other person.

(4) The provisions of any other statute notwithstanding, the commissioner is authorized to use receipt of funds from the Social Security reimbursement program for a direct service delivery staff incentive program. Incentives may be awarded if case service costs are reimbursed for job placement of Social Security or Supplemental Security Income recipients at the Substantial Gainful Activity (SGA) level for nine (9) months pursuant to 42 U.S.C. sec. 422 and under those conditions and criteria as are established by the federal reimbursement program.

(Repealed, reenact. and amend. Acts 1990, ch. 470, § 38, effective July 1, 1990; 1998, ch. 33, § 1, effective July 15, 1998.)

Legislative Research Commission Note. (7/13/90) The subsequent repeal, with reenactment and amendment, of this section prevails over its amendment by a prior Act of the 1990 Regular Session pursuant to KRS 446.260.

Compiler's Notes. This section (Enact. Acts 1956, ch. 172, § 4; 1976, ch. 377, § 5; 1978, ch. 155, § 83, effective June 17, 1978; 1984, ch. 316, § 4, effective July 13, 1984) was formerly compiled as KRS 163.140 and was repealed, reenacted and amended as this section by Acts 1990, ch. 470, § 38, effective July 1, 1990.

Cross-References. Carl D. Perkins Comprehensive Rehabilitation Center, 781 KAR 1:050.

Department of Vocational Rehabilitation appeal procedures, 781 KAR 1:010.

Fees for service, 781 KAR 1:070.

General provisions for operation of the Department of Vocational Rehabilitation, 781 KAR 1:020.

Order of selection and economic need test for vocational rehabilitation services., 781 KAR 1:030.

Rehabilitation technology services, 781 KAR 1:040.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 85-88.

151B.200. Federal acts relating to vocational rehabilitation.

This state accepts and agrees to comply with all the provisions of the Acts of Congress of the United States approved June 2, 1920 (41 Stat. 735) relating to vocational rehabilitation and all subsequent acts when such acts apply to joint state and federally funded vocational rehabilitation programs.

(Repealed, reenact. and amend. Acts 1990, ch. 470, § 39, effective July 1, 1990; 1994, ch. 363, § 8, effective July 15, 1994.)

Legislative Research Commission Note. (7/13/90) The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts ch. 476, pursuant to Section 653(1) of Acts ch. 476.

Compiler's Notes. This section (Enact. Acts 1956, ch. 172, § 6, effective May 18, 1956; 1980, ch. 266, § 1, effective July 15, 1980; 1984, ch. 316, § 5, effective July 13, 1984) was formerly compiled as KRS 163.160 and was repealed, reenacted and amended as this section by Acts 1990, ch. 470, § 39, effective July 1, 1990.

Cross-References. Department of Vocational Rehabilitation appeal procedures, 781 KAR 1:010.

151B.205. State Treasurer designated as custodian of funds.

The State Treasurer is hereby designated as the custodian of all funds. The State Treasurer shall make disbursements for vocational rehabilitation purposes upon certification by the commissioner of the Department of Vocational Rehabilitation.

(Repealed, reenact. and amend. Acts 1990, ch. 470, § 40, effective July 1, 1990.)

Legislative Research Commission Note. (7/13/90) This section was amended by two 1990 Acts which are in conflict. Pursuant to KRS 446.250, the Act which was last enacted by the General Assembly prevails.

Compiler's Notes. This section (Enact. Acts 1956, ch. 172, § 7, effective May 18, 1956; 1984, ch. 316, § 6, effective July 13, 1984) was formerly compiled as KRS 163.170 and was repealed, reenacted and amended as this section by Acts 1990, ch. 470, § 40, effective July 1, 1990.

Collateral References. 78A C.J.S., Schools and School Districts, § 504.

151B.210. Gifts may be received.

The commissioner of the Department of Vocational Rehabilitation may, accept and use gifts made by will or otherwise for carrying out the purposes of KRS 151B.180 to 151B.210. Gifts made under such conditions as in the judgment of the commissioner of the Department of Vocational Rehabilitation are proper and consistent with the provisions of KRS 151B.180 to 151B.210 may be so accepted and shall be held, invested, reinvested, and used in accordance with the provisions of KRS 151B.180 to 151B.210.

(Repealed and reenact. Acts 1990, ch. 470, § 41, effective July 1, 1990.)

Legislative Research Commission Note. (7/13/90) This section was amended by two 1990 Acts which are in conflict. Pursuant to KRS 446.250, the Act which was last enacted by the General Assembly prevails.

Compiler's Notes. This section (Enact. Acts 1956, ch. 172, § 8, effective May 18, 1956; 1978, ch. 155, § 83, effective June 17, 1978; 1980, ch. 188, § 122, effective July 15, 1980) was formerly compiled as KRS 163.180 and was repealed, reenacted, and amended as this section by Acts 1990, ch. 470, § 41, effective July 1, 1990.

151B.250. School-to-Careers System — Department for Technical Education.

(1) It is the intent of the General Assembly to create and support a School-to-Careers System that involves business, labor, education, and government to prepare students for careers in an ever-changing economy.

(2) The Department for Technical Education within the Cabinet for Workforce Development shall coordinate the School-to-Work effort with the Kentucky Department of Education. As the School-to-Work effort is a federally supported program that fits within the overall mission of the School-to-Careers System, it is critical that collaboration and coordination occur. The following elements shall be coordinated when possible:

(a) Planning and partner involvement of business, labor, education, government, community-based organizations, employers, parents, and students;

(b) Career awareness, exploration, preparation, and guidance incorporated in the school curriculum;

(c) A comprehensive system approach from the primary through postsecondary levels with all students having the opportunity to participate;

(d) Applied learning experiences;

(e) Integration of academic and occupational education;

(f) Performance assessment;

(g) Actual or simulated learning at the school or the worksite;

(h) Curriculum based on skill standards representing all aspects of an industry;

(i) Secondary to postsecondary articulation;

(j) Postsecondary articulation; and

(k) Professional development opportunities for all partners.

(3) The Department for Technical Education may promulgate administrative regulations establishing policy for the development and implementation of a school-to-work transition system.

(4) The Department for Technical Education shall comply with the provisions of the federal School-

to-Work Opportunities Act, Pub.L. 103-239 as it is amended from time to time.

(Enact. Acts 1996, ch. 134, § 1, effective July 15, 1996; 1998, ch. 444, § 3, effective April 9, 1998; 2001, ch. 38, § 3, effective June 21, 2001.)

151B.255. Representative group for Office of School-to-Work.

The Office of School-to-Work in cooperation with the Kentucky Department of Education shall convene representatives of business, labor, education, and government to:

(1) Develop school curriculum and resource materials to assist educators, employers, and students with career planning and workplace training. The curriculum and materials shall define career-related courses that are necessary for each career cluster that may ultimately lead to a career major. The curriculum shall outline the academic and technical courses that are necessary for each career major;

(2) Advise the Office of School-to-Work on the design of model projects geographically placed across the state to test the curriculum for each career cluster. Each project shall include local representatives of business, labor, education, and government to advise on the specific skills and knowledge necessary to be a successful employee in the specific career; and

(3) Evaluate and disseminate the findings of each model project to all other school-to-work labor market areas.

(Enact. Acts 1996, ch. 134, § 2, effective July 15, 1996; 1998, ch. 444, § 4, effective April 9, 1998.)

ADULT EDUCATION LEARNING SYSTEM

151B.405. Definitions for KRS 151B.400 to 151B.410.

As used in KRS 151B.400 to 151B.410, unless the context indicates otherwise:

(1) "Adult education" means for programs funded under the Federal Workforce Investment Act of 1998, services or instruction below the postsecondary level for individuals:

(a) Who have attained the age of sixteen (16) years of age;

(b) Who are not enrolled or required to be enrolled in secondary school under state law; and

(c) Who:

1. Lack sufficient mastery of basic educational skills to enable the individuals to function effectively in society;

2. Are unable to speak, read, or write the English language; or

3. Do not have a secondary school diploma or its recognized equivalent, and have not achieved an equivalent level of education;

(2) "Family literacy services" means services that are of sufficient intensity in terms of hours, and of sufficient duration, to assist a family to make sustainable increases in its literacy level, and integrate the activities described in KRS 158.360; and

(3) "Literacy" means an individual's ability to read, write, and speak in English and compute and solve problems at levels of proficiency necessary to function on the job and in society to achieve one's goals and develop one's knowledge and potential.

(Enact. Acts 1994, ch. 487, § 2, effective July 15, 1994; 2000, ch. 526, § 9, effective July 14, 2000.)

151B.410. Adult education learning system — Services — Duties and responsibilities of the Department for Adult Education and Literacy.

(1) The Department for Adult Education and Literacy shall promulgate necessary administrative regulations and administer a statewide adult education and literacy system throughout the state. The adult education and literacy system shall include diverse educational services provided by credentialed professionals, based on the learners' current needs and a commitment to life-long learning.

(a) Services shall be provided at multiple sites appropriate for adult learning including vocational and technical colleges, community colleges, regional universities, adult education centers, public schools, libraries, family resource centers, adult correctional facilities, other institutions, and through the Kentucky Commonwealth Virtual University. Services shall be targeted to communities with the greatest need based on the number of adults at literacy levels I and II as defined by the 1997 Kentucky Adult Literacy Survey and other indicators of need.

(b) Access and referral services shall be initiated at multiple points including businesses, educational institutions, labor organizations, employment offices, and government offices.

(c) Multiple funding sources, program support, and partnerships to administer the adult education and literacy system may include student scholarship and grants; fees for services rendered; and other general, agency, local, state, federal, and private funds.

(2) Services included as part of the adult education and literacy system shall include, but not be limited to functionally-contexted workplace essential skills training based on employers' needs, leading to a competency-based certificate indicating proficiency in critical thinking, computating, reading, writing, communicating, problem-solving, team-building, and use of technology at various worksites regarding basic skills.

(3) In administering an adult education and literacy system, the Department for Adult Education and Literacy shall:

(a) Assist providers with the development of quality job-specific and workplace essential skills instruction for workers in business and industry, literacy and adult basic education, adult secondary education, including high school equivalency diploma preparation, the external diploma program, English as a second language, and family literacy programs, in

cooperation with local business, labor, economic development, educational, employment, and service support entities;

(b) Provide assessments of each student's skill and competency level allowing assessments to be shared with other educational and employment entities when necessary for providing additional educational programs, taking into consideration student confidentiality;

(c) Assist adult educators to meet professional standards;

(d) Create an awareness program in cooperation with the Administrative Office of the Courts to ensure that District and Circuit Court Judges are aware of the provisions of KRS 533.200 and the methods to access adult education and literacy programs for persons sentenced under the statute;

(e) Develop administrative regulations including those for business and industry service participation and mechanisms for service funding through all appropriate federal, state, local, and private resources;

(f) Require and monitor compliance with the department's administrative regulations and policies; and

(g) Develop and implement performance measures and benchmarks.

(Enact. Acts 1994, ch. 487, § 3, effective July 15, 1994; 1996, ch. 143, § 1, effective July 15, 1996; 1997 (1st Ex. Sess.), ch. 1, § 54, effective May 30, 1997; 2000, ch. 526, § 10, effective July 14, 2000.)

Compiler's Notes. Section 6 of Acts 1994, ch. 487 provides that: "Effective July 1, 1994, the federal Job Training Partnership Act program and all personnel, funds, equipment, and property related to this program shall transfer from the Cabinet for Human Resources to the Workforce Development Cabinet."

Cross-References. High school equivalency diploma, 785 KAR 1:020.

TITLE XIII

EDUCATION

CHAPTER 156

DEPARTMENT OF EDUCATION

SECTION.

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DEPARTMENT GENERALLY

156.005. Chief state school officer defined for KRS Chapters 156 to 168.

For purposes of KRS Chapters 156 through 168, "chief state school officer" shall mean the Superintendent of Public Instruction until the close of business on December 31, 1990, and after that date it shall mean the commissioner of education.

(Enact. Acts 1990, ch. 476, Pt. II, § 33, effective July 13, 1990.)

Kentucky Law Journal. Russo, School-Based Decision Making in Kentucky: Dawn of a New Era or Nothing New Under the Sun?, 83 Ky. L.J. 123 (1994-95).

156.007. Local Superintendents Advisory Council.

(1) There is hereby established the Local Superintendents Advisory Council, which shall consist of eleven (11) local school district superintendents appointed by the Legislative Research Commission. Seven (7) members shall represent each of the Supreme Court districts as established by KRS 21A.010 and four (4) members shall represent the state at large. The members shall be appointed for a four (4) year term, except the initial appointments shall be as follows: four (4) members shall serve four (4) year terms; three (3) members shall serve two (2) year terms; and four (4) members shall serve one (1) year terms. A vacancy in the membership shall be filled by the commission for the unexpired term.

(2) The council shall advise the chief state school officer and the Kentucky Board of Education concerning the development of administrative regulations and education policy. The chief state school officer shall submit all proposed administrative regulations and educational policies for review by the council prior to seeking approval of the Kentucky Board of Education.

(Enact. Acts 1994, ch. 354, § 1, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996.)

156.010. Commissioner's authority to organize Department of Education — Composition — Functions.

(1) The commissioner of education shall be the chief executive of the Department of Education. The commissioner shall be responsible for administering, structuring, and organizing the department and its services including, but not limited to, the following:

(a) Technical assistance with curriculum design, school administration and finance, computer and technology services, media services, com-

munity education, secondary vocational education, education for exceptional children, and professional development;

(b) Compensatory education;

(c) Research and planning, which shall include, but not be limited to, a statewide research and development effort to identify or develop the best educational practices to be used in the public schools of the Commonwealth. Appropriations for this purpose may be used within the department or for contracting with other individuals, agencies, universities, laboratories, or organizations;

(d) Kentucky School for the Blind and the Kentucky School for the Deaf;

(e) Performance and outcome assessments;

(f) Monitoring the management of school districts, including administration and finance, implementation of state laws and regulations, and student performance; and

(g) Implementing state laws and the policies promulgated thereunder by the Kentucky Board of Education and the Education Professional Standards Board.

(2) The commissioner of education may delegate to his assistants any authority to act for him in the supervision, inspection, and administration of the schools to the extent he has supervisory and administrative control.

(3) All employees of the Department of Education shall be reimbursed for necessary traveling expenses incurred in the performance of their official duties, and no part of the reimbursement shall be included in or accounted as a part of their salaries.

(4) The State Department of Education, in the operation and management of its schools and the programs at these schools, shall meet all required federal and state standards relating to facilities and personnel qualifications; however, no license or license fee shall be required for any school or program operated by the State Department of Education.

(5) The Department of Education shall be the sole state agency for the purpose of developing and approving state plans required by state or federal laws and regulations as prerequisites to receiving federal funds for elementary and secondary education.

(4618-20, 4618-80: amend. Acts 1952, ch. 41, § 1; 1962, ch. 13, § 1; 1976, ch. 327, § 1; 1978, ch. 155, § 84, effective June 17, 1978; 1982, ch. 381, § 1, effective July 15, 1982; 1984, ch. 128, § 1, effective July 13, 1984; 1984, ch. 315, § 1, effective July 13, 1984; 1986, ch. 398, § 1, effective July 15, 1986; 1988, ch. 361, § 1, effective July 15, 1988; 1988, ch. 435, § 1, effective July 1, 1988; 1990, ch. 470, § 45, effective July 1, 1990; 1990, ch. 476, Pt. II, § 43, effective July 13, 1990; 1990, ch. 518, § 1, effective July 13, 1990; 1994, ch. 256, § 1, effective July 1, 1994; 1996, ch. 362, § 6, effective July 15, 1996.)

Cross-References. Chapter 1 complaint procedures, 704 KAR 3:365.

Chapter 1, ESSIA migrant education requirements, 704 KAR 3:292.

Competitive food and beverage sales and service requirements, 702 KAR 6:090.

Local responsibilities, 702 KAR 6:010.

Personnel; policies and procedures, 702 KAR 6:040.

Principal's responsibilities, 702 KAR 6:030.

Reports and funds, 702 KAR 6:075.

Opinions of Attorney General. To the extent that KRS 156.016, which gives the power of reorganization of the Department of Education to the Commissioner of Education, is considered to conflict with KRS 12.028, which indicates that only the Governor or another elected state executive officer may file executive orders for reorganization, clearly, this section and KRS 156.016 supersede KRS 12.028 in that this section and KRS 156.016 were enacted into law more recently than KRS 12.028 and more specifically address the reorganization of the Department of Education. OAG 91-66.

Cited: Eva N. v. Brock, 741 F. Supp. 626 (E.D. Ky. 1990); Horner v. Kentucky High Sch. Athletic Ass'n, 43 F.3d 265, 1994 Fed. App. 417 (6th Cir. 1994).

156.015. Schools to meet federal and state standards. [Repealed.]

Compiler's Notes. This section (4384-6: 1968, ch. 172, § 2) were repealed by Acts 1978, ch. 155, § 165, effective June 17, 1978.

156.016. Abolition of employment positions — Reorganization.

(1) Effective at the close of business on June 30, 1991, all employment positions in the Department of Education shall be abolished and the employment of all employees in the positions shall be terminated. Employees whose employment has been terminated under the provisions of this section shall have the same reemployment rights granted career employees by KRS Chapter 18A, except these employees shall not have priority status on the register for reemployment in the Department of Education. This shall not be construed as prohibiting the Department of Education from rehiring an employee whose employment has been terminated.

(2) After a comprehensive study of the Department of Education and the goals and duties of the commissioner of education and the department as established under the Kentucky Education Reform Act of 1990, 1990 Ky. Acts Ch. 476, the commissioner shall reorganize the department, effective July 1, 1991. The reorganization of the department shall incorporate a strong orientation toward providing technical assistance to school districts. After the comprehensive study, which shall include consultations with current department employees, the commissioner shall establish all positions in the department and set the qualifications for the positions, effective no earlier than July 1, 1991. The commissioner may rehire any department employees whose employment is terminated at the close of business on June 30, 1991, under this section.

(3) This section is in response to a specific court decision demanding specific actions of the General Assembly. The actions authorized by this section are designed for a single time use only in response to the education situation. The actions authorized

by this section shall not extend to any other situation or circumstance.

(Enact. Acts 1990, ch. 476, Pt. II, § 42, effective July 13, 1990.)

Opinions of Attorney General. Although the Commissioner of Education is an appointed chief executive officer of the Department of Education, as commissioner he has the executive authority, unilaterally, to reorganize the department, one time, under the mandate of subsection (3) of this section. OAG 91-66.

A statutorily, not a constitutionally, created property right exists for state merit employees who hold status in their positions. That right entails protection from dismissal, demotion, suspension or penalization except for cause, but does not entail protection from legislative abolishment of their positions and termination. OAG 91-66.

It is not unconstitutional for the Legislature to require reorganization of the Department of Education, in the course of developing an efficient system of common schools in compliance with Const., § 183. OAG 91-66.

Merit employees of the Department of Education may not appeal legislative terminations by Commissioner of Education under this section since in this section the General Assembly abolished all employment positions in the Department of Education and terminated the employment of all employees in those positions, effective at the close of business on June 30, 1991; the personnel board has no jurisdiction over these actions of the General Assembly; the Personnel Board is authorized neither to recreate the positions abolished by the General Assembly nor to reinstate employees whose employment has been terminated by the General Assembly. OAG 91-66.

To the extent that this section, which gives the power of reorganization of the Department of Education to the Commissioner of Education, is considered to conflict with KRS 12.028, which indicates that only the Governor or another elected state executive officer may file executive orders for reorganization, clearly, KRS 156.010 and this section supersede KRS 12.028 in that KRS 156.010 and this section were enacted into law more recently than KRS 12.028 and more specifically address the reorganization of the Department of Education. OAG 91-66.

While state merit employees hold a property right in their employment with the state to the extent that they may not be dismissed, demoted, suspended or otherwise penalized except for cause, there is no statutorily created property right that prevents legislative terminations from a particular agency because there is no statutory provision that provides that legislative terminations cannot take place absent cause. OAG 91-66.

While this section does not provide for seniority for purposes of termination or rehiring in the Department of Education, seniority applies in all other agencies under the provisions of KRS 18A.135(2) in that all employees of the Department of Education are to be treated as career employees when placed on reemployment lists. OAG 91-66.

Whether or not an individual who is rehired in the Department of Education will be rehired as a merit or nonmerit employee will depend upon whether the Commissioner of Education hires that individual for a merit or a nonmerit position. OAG 91-87.

Employees of the Department of Education who are terminated have no priority status for reemployment in the Department of Education; nevertheless, those employees have the rights of career employees which gives them priority on reemployment registers in other agencies. OAG 91-87.

In view of the fact that any employee rehired by the Department of Education would be a new employee, that employee, so long as he is hired into a classified position, would be required to serve a probationary period following the completion of which the individual would have status in the position that he occupies. OAG 91-87.

NOTES TO DECISIONS

ANALYSIS

1. Appeal of termination.
2. —Time.

1. Appeal of Termination.

Because their jobs were abolished under this section, a part of the Kentucky Education Reform Act, employees of the Kentucky Department of Education, dismissed from their jobs, rehired, and subsequently terminated, were not "reinstated" or "reemployed" and were therefore under "initial probation" and not "promotional probation" when they were discharged and did not have the right to an appeal before the Personnel Board. Hart v. Personnel Bd., 905 S.W.2d 507 (Ky. Ct. App. 1995).

2. —Time.

Employees of Kentucky Department of Education, dismissed from their jobs and rehired pursuant to the Kentucky Education Reform Act and subsequently terminated during their "initial probation" period, did timely appeal their terminations to the Personnel Board for the 30-day limit to file an appeal ran from the time of their discharge on not upon their placement on "initial probation." Hart v. Personnel Bd., 905 S.W.2d 507 (Ky. Ct. App. 1995).

156.017. Regional service centers.

Effective January 1, 1992, the commissioner of education shall establish regional service centers in the Commonwealth that primarily focus on the professional development of employees of school districts. The regional service centers shall be staffed by employees of the Department of Education employed by the commissioner in accordance with KRS 156.016. The regional service centers may include, but are not limited to, specially trained technical assistance teams and may facilitate the work of school district cooperatives or consortia. A school district cooperative or consortia formed under the Interlocal Cooperation Act, KRS 65.210 to 65.300, may contract with the Department of Education to serve the role and function of the regional service center for the area in which the cooperative is based. The department may contract directly with a school district cooperative or consortia for services or assistance to accomplish goals and duties of the commissioner of education and the department as established under the Kentucky Education Reform Act of 1990, 1990 Ky. Acts Ch. 476.

(Enact. Acts 1990, ch. 476, Pt. II, § 44, effective July 13, 1990.)

156.018. Role of department with respect to program created by KRS 158.798.

The Department of Education in Kentucky shall promote, support, and assist in the program created in KRS 158.798 by:

(1) Identifying middle and high school students who have a high interest, aptitude, or achievement in math, science, and technology related courses, events, and activities;

(2) Cooperating with the Kentucky Science and Technology Council, Inc., in providing opportunities for

middle school students to be recognized and encouraged in pursuit of math and science course work, related activities outside of the classroom, and careers in related fields;

(3) Participating with others in the administration of summer institutes, business and industry internships, career opportunities, and other related experiences directed toward middle and high school students; and

(4) Encouraging representatives from business and industry to participate in the mentorship, internship, scholarship, and career awareness components of the program.

(Enact. Acts 1992, ch. 408, § 2, effective July 14, 1992.)

156.020. Appointment of assistant superintendent. [Repealed.]

Compiler's Notes. This section (amend. Acts 1956 (1st Ex. Sess.), ch. 7, Art. II, § 1) was repealed by Acts 1978, ch. 155, § 165, effective June 17, 1978.

156.022. Division of surplus property. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1960, ch. 68, Art. III, §§ 1 to 3; 1966, ch. 255, § 147; 1978, ch. 155, § 82, effective June 17, 1978; 1984, ch. 252, § 1, effective April 6, 1984) was repealed by Acts 1990, ch. 386, § 3, and by Acts 1990, ch. 476, Part VI, § 616, both effective July 13, 1990.

156.024. Department's budget requests to be submitted to state board.

Prior to submission of the formal budgetary requests of the Department of Education, established in KRS 156.010, to the Governor and executive branch, complete copies of the budget areas in the board's jurisdiction shall be forwarded to the Kentucky Board of Education to enable it to fully investigate and review said requests and make recommendations to the Governor.

(Enact. Acts 1978, ch. 155, § 103, effective June 17, 1978; 1986, ch. 331, § 26, effective July 15, 1986; 1988, ch. 361, § 2, effective July 15, 1988; 1990, ch. 470, § 46, effective July 1, 1990; 1990, ch. 476, Pt. IV, § 126, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

Legislative Research Commission Note. (7/13/90) This section was amended by two 1990 Acts which are in conflict. Pursuant to KRS 446.250, the Act which was last enacted by the General Assembly prevails.

156.026. Credits allowed transferred district employee.

(1) For purposes of this section, full-time service in a local school for not less than one hundred forty (140) days during the school year entitles an employee who transfers to the Department of Education to a full year of experience credit on the Personnel Cabinet pay schedule and a full year for the purpose of accumulation of annual leave and sick leave in the Department of Education.

(2) An employee of a local school district who transfers to become an employee of the Department of Education after June 30, 1983, shall be allowed to transfer accrued sick leave up to the maximum allowed for transfers for teachers between school districts as provided by KRS 161.155(3). The employee shall be allowed credit for each year of experience in the local school system for the purposes of determining salary in accordance with the current Personnel Cabinet pay schedule, and the rate of accumulation of annual and sick leave in the Department of Education.

(3) For purposes of determining eligibility for additional leave or other benefits based on longevity of service, an employee transferring from a school district to the Department of Education after June 30, 1983, shall be given credit for each year of service in the school district, as determined under subsection (1) of this section.

(Enact. Acts 1982, ch. 234, § 1, effective July 15, 1982; 1988 ch. 36, § 1, effective July 15, 1988; 1990, ch. 476, Pt. V, § 363, effective July 13, 1990; 1990, ch. 508, § 1, effective July 13, 1990; 1998, ch. 154, § 79, effective July 15, 1998.)

Legislative Research Commission Note. (7/13/90) The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

156.027. Preferential procurement status for publishers who supply materials in alternative formats for students with disabilities — Electronic versions of text that are compatible with Braille translation and speech synthesis software — Digital files.

(1) The following definitions shall apply to this section:

(a) "Alternative format" means any medium or format for the presentation of instructional materials that is needed by a student with an individualized education program or Section 504 Plan for a reading accommodation other than standard print, including but not limited to Braille, large print, audio recordings, digital text, and digital talking books;

(b) "Braille," "individualized education program," and "blind students" have the same meaning as defined under KRS 158.281;

(c) "Comparable version" denotes that all elements of the print version are present in the electronic version, including graphics with ALT tags though not necessarily in the same order or format;

(d) "Legacy materials" means images and graphics requiring release and permission from another source other than the publisher; and

(e) "Section 504 Plan" means a written statement developed for a student with a disability that includes the provision of regular or special education and related aids and services designed to meet individual educational needs in

accordance with the federal regulations issued under 34 C.F.R. sec. 104.33.

(2) The purpose of this section shall be to assure, to the extent feasible, that all students with disabilities in the public schools kindergarten through grade twelve (12) who require reading accommodations in accordance with an individualized education program or Section 504 Plan, including but not limited to students who are blind, visually impaired, or who have a specific learning disability as defined in KRS 157.200 or other disability affecting reading, shall have access to textbooks and instructional materials as defined by administrative regulations of the Kentucky Board of Education in alternative formats that are appropriate to their disability and educational needs.

(3) Notwithstanding any other statute to the contrary, the Department of Education shall give preferential procurement status to textbook and instructional materials from publishers who make their materials available in alternative formats for use by students with disabilities, or who can verify that an accessible format textbook or instructional material is currently available from or is in the process of being created by the American Printing House for the Blind, Recording for the Blind and Dyslexic, or another authorized entity, as defined under 17 U.S.C. sec. 121 and who commonly provide alternative format materials for use by students in Kentucky schools. The Department of Education may assign additional procurement preferences designed to ensure that students with disabilities have access to appropriate alternative formats to meet their needs.

(4) Effective July 1, 2003, the Department of Education shall require to the extent feasible any publisher of a textbook or program adopted for use in the public schools in kindergarten through grade twelve (12) to furnish computer files or electronic versions of the printed textbooks and instructional materials in formats comparable to the printed version that are compatible with commonly used Braille translation and speech synthesis software and include corrections and revisions as may be necessary to assure clarity in presentation and use. Navigation within and between files should be reasonably efficient so that the disabled learner is able to fully utilize the material in a manner that yields the same result as the print version affords a nondisabled learner. File format shall be limited to those formats that allow for a comparable version that is readable with text and screen readers such as HTML, XML, or other formats that meet the criteria stated in this subsection. For extreme cases where ALT tags are not feasible, a tag may read, "This item is too complicated to render with current technology." Legacy materials shall be exempt from the criteria for this preference. These files shall be provided to the Division of Exceptional Children Services and shall be provided at the same time and in composition and form comparable with the printed version and include corrections and revisions as may be necessary to assure clarity in presentation and use. The Department of Education may define further requirements regarding additional characteristics of digital files submitted in compliance with this section as needed to provide appropriate alternative formats to meet the needs of students with disabilities.

(5) The Department of Education shall require publishers to make digital files, together with two (2) copies of the print version, available at no charge upon request to the American Printing House for the Blind for production of accessible Braille and other materials and to Recording for the Blind and Dyslexic or another authorized entity, as defined under 17 U.S.C. sec. 121, for production of accessible audio media, digital text, and digital talking books, which produce accessible format materials based on selection and scheduling needs.

(6) Nothing in this section shall in any way lessen the obligation of the public schools to provide for the instruction of blind students in the use of Braille in accordance with KRS 158.282 nor lessen the provision of Braille textbooks for blind students under KRS 156.476.

(Enact. Acts 2002, ch. 299, § 1, effective July 15, 2002.)

Kentucky Board of Education

156.029. Kentucky Board of Education — Membership — Functions.

(1) There is hereby established a Kentucky Board of Education, which shall consist of eleven (11) members appointed by the Governor and confirmed by the Senate and the House of Representatives of the General Assembly, with the president of the Council on Postsecondary Education serving as an ex officio nonvoting member. Seven (7) members shall represent each of the Supreme Court districts as established by KRS 21A.010, and four (4) members shall represent the state at large. Each of the appointed members shall serve for a four (4) year term, except the initial appointments shall be as follows: the seven (7) members representing Supreme Court districts shall serve a term which shall expire on April 14, 1994; and the four (4) at-large members shall serve a term which shall expire on April 14, 1992. Subsequent appointments shall be submitted to the Senate and to the House of Representatives for confirmation in accordance with KRS 11.160. Each appointment by the Governor shall be agreed upon by both chambers in order for the person to be confirmed. Each confirmed appointee shall take office on April 15.

(2) Appointments shall be made without reference to occupation, political affiliation, or similar consideration. No member at the time of his appointment or during the term of his service shall be engaged as a professional educator. Pursuant to KRS 63.080, a member shall not be removed except for cause.

(3) A vacancy in the membership of the board shall be filled by the Governor for the unexpired term with the consent of the Senate and the House of Representatives. In the event that the General Assembly is not in session at the time of the appointment, the consent of the Senate and the House of Represen-

tatives shall be obtained during the time the General Assembly next convenes.

(4) At the first regular meeting of the board in each fiscal year, a chairperson shall be elected from its voting membership.

(5) The members shall be reimbursed for actual and necessary expenses incurred in the performance of their duties.

(6) The commissioner of education shall serve as the executive secretary to the board.

(7) The primary function of the board shall be to develop and adopt policies and administrative regulations, with the advice of the Local Superintendents Advisory Council, by which the Department of Education shall be governed in planning, coordinating, administering, supervising, operating, and evaluating the educational programs, services, and activities within the Department of Education which are within the jurisdiction of the board.

(Enact. Acts 1990, ch. 476, Pt. II, § 35, effective July 13, 1990; 1992, ch. 415, § 2, effective July 14, 1992; 1994, ch. 354, § 2, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996; 1997 (1st Ex. Sess.), ch. 1, § 57, effective May 30, 1997.)

Cross-References. Appeal procedures for school and community nutrition programs, 702 KAR 6:100.

Area center or public high school, standards for vocational department, 705 KAR 3:141.

Cooperative program standards, 705 KAR 4:041.

FFA Leadership Training Center, 705 KAR 4:081.

General program standards for secondary career and technical education programs, 705 KAR 4:231.

Kentucky Special Education Mentor Program, 707 KAR 1:270.

Repeal of 705 KAR 4:051, 705 KAR 4:052.

Work experience program standards, 705 KAR 4:051.

Cited: Horner v. Kentucky High Sch. Athletic Ass'n, 43 F.3d 265, 1994 Fed. App. 417 (6th Cir. 1994).

156.030. State Board for Elementary and Secondary Education — Members — Compensation — Function. [Repealed.]

Compiler's Notes. This section (4377-2, 4377-4, 4384-5, 4527-63: amend. Acts 1962, ch. 244, Art. III, § 1; 1968, ch. 152, § 116; 1968, ch. 172, § 1; 1978, ch. 155, § 85, effective June 17, 1978; 1978, ch. 384, § 567, effective June 17, 1978) was repealed by Acts 1982, ch. 381, § 12, effective July 15, 1982.

156.031. Existing State Board for Elementary and Secondary Education to remain active until successor board appointed.

(1) Effective until the Governor appoints and the Senate and the House of Representatives of the General Assembly confirm the State Board for Elementary and Secondary Education as established in KRS 156.029, there is within the Department of Education a State Board for Elementary and Secondary Education which shall consist of thirteen (13) members. Seven (7) members shall be appointed, one (1) from each Supreme Court district, as established by KRS 21A.010, and six (6) members from the state at large, by the Governor to serve for terms of four (4) years.

(2) The terms of the appointees shall expire on June 30 in the appropriate year, and the terms of each new member appointed thereafter shall begin on July 1.

(3) Vacancies in the membership of the board shall be filled by the Governor for unexpired terms. Appointments shall be made without reference to occupation, political affiliation, or similar consideration. No member at the time of his appointment or during the term of his service shall be engaged as a professional educator.

(4) At the first regular meeting of the board in each fiscal year, a chairperson shall be elected from its voting membership.

(5) The Superintendent of Public Instruction or his designee shall be the executive officer of the board.

(6) The primary function of the board shall be to develop and adopt policies and administrative regulations by which the Department of Education shall be governed in planning, coordinating, administering, supervising, operating, and evaluating the educational programs, services, and activities within the Department of Education which are within the jurisdiction of the board. Existing administrative regulations relating to statutes that are repealed and reenacted in the Kentucky Education Reform Act of 1990, 1990 Ky. Acts ch. 476, and that have not been objected to in the administrative review process as provided for in KRS Chapter 13A shall remain in effect until amended or repealed. Regulations promulgated under newly created or amended statutes in the Kentucky Education Reform Act of 1990, 1990 Ky. Acts ch. 476, shall be promulgated, reviewed, or amended, if necessary, and resubmitted to the Legislative Research Commission, prior to December 30, 1990, except for regulations that are to be promulgated at another date in accordance with other provisions of the Kentucky Education Reform Act of 1990, 1990 Ky. Acts ch. 476.

(Enact. Acts 1982, ch. 381, § 2, effective July 15, 1982; 1988, ch. 361, § 3, effective July 15, 1988; 1990, ch. 476, Pt. II, § 34, effective July 13, 1990.)

Legislative Research Commission Note. (7/15/96). Under 1996 Ky. Acts ch. 362, sec. 6, references to the "State Board for Elementary and Secondary Education" in this statute have been left unchanged although the name of that board has been changed by that Act to the "Kentucky Board of Education."

As enacted, subsection (1) of this section states that the State Board of Education consists of fourteen members. However, it provides for the appointment of only thirteen members. The Reviser of Statutes, pursuant to KRS 7.136, has made a technical correction in subsection (1) by inserting thirteen in lieu of fourteen.

Pursuant to Executive Order 80-624, the terms of those members appointed on July 30, 1980 shall expire on June 30, as follows: three in 1981; three in 1982; four in 1983; and three in 1984.

Cross-References. Annual in-service training of district board members, 702 KAR 1:115.

Application to exceed budget, 702 KAR 3:050.

Approval of operation of alternative education programs for purposes of driver's license revocation, 704 KAR 7:100.

Audit exceptions and corrections, 702 KAR 3:150.
Bidding procedures, 702 KAR 3:135.
Blind and deaf pupils, reimbursement for, 702 KAR 5:120.
Buses; specifications and purchases, 702 KAR 5:060.
Chapter 1 complaint procedures, 704 KAR 3:365.
Commonwealth Diploma Program, 704 KAR 3:340.
Competitive food and beverage sales and service requirements, 702 KAR 6:090.
Distribution of funds for local operation of area vocational education centers and local vocational departments, 705 KAR 2:120.
District director, 702 KAR 6:020.
Educational television equipment purchases, 702 KAR 3:170.
Emergency school loan fund; repayments, 702 KAR 4:100.
Entrance of five (5) year olds into primary school program for compulsory attendance purposes, 704 KAR 5:060.
Facility programming and construction criteria, 702 KAR 4:170.
Guidelines for use of capital outlay funds, 702 KAR 3:010.
Handicapped, reimbursement for, 702 KAR 5:100.
Local responsibilities, 702 KAR 6:010.
Lunch and breakfast requirements, 702 KAR 6:050.
Merger of independent and county school districts, 702 KAR 1:100.
Personnel; food service employee qualifications, 702 KAR 6:045.
Personnel; policies and procedures, 702 KAR 6:040.
Physical education, 704 KAR 4:010.
Principal's responsibilities, 702 KAR 6:030.
Program cost calculation, 702 KAR 5:020.
Property disposal, 702 KAR 4:090.
Pupils' responsibilities, 702 KAR 5:090.
Recognition of credits when transferring without transcript, 704 KAR 3:307.
Recreational facilities; school and community, 702 KAR 4:005.
Repeal of 705 KAR 2:120, 705 KAR 2:121.
Reports and funds, 702 KAR 6:075.
Ride to the Center for the Arts Program Fund, 704 KAR 7:080.
State plan for the administration of Chapter 2, of the Augustus F. Hawkins — Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, 704 KAR 3:335.
Student discipline guidelines, 704 KAR 7:050.
Supervision and discipline of pupils, 702 KAR 5:050.
Teachers' salary scheduling, 702 KAR 3:070.
Time minimum for meals, 702 KAR 6:060.
Treasurer's bond, penal sum, 702 KAR 3:080.
Vocational pupils, reimbursement for, 702 KAR 5:110.

Opinions of Attorney General. This section and KRS 164.010 (now repealed) contain clearly irreconcilable, repugnant provisions, since this section directs the state Board of Education to elect one of its own members to serve as an ex officio member of the council on higher education and KRS 164.010 (now repealed), as amended, has not only deleted the reference to the state Board member on the council but also provides that the council is to be composed of the state superintendent of public instruction and 17 lay members appointed by the Governor, thus leaving no seat on the council to be occupied by a state Board of Education member. As Acts 1982, ch. 379, amending KRS 164.010 (now repealed), became operative on April 9, 1982, and Acts 1982, ch. 381, creating this section, did not become effective until July 15, 1982, the language in KRS 164.010 (now repealed) prevails, so that no member of the state Board of Education will be entitled to sit on the council of higher education. OAG 82-357.

Under this section the executive director of the council on higher education continues as an ex officio, nonvoting member of the state Board as the section clearly provides that the state Board is to consist of 14 members and, without the executive director of the council, there would only be 13 members. The General Assembly intended that the fourteenth member was to be identified by referring to Executive Order 80-624. OAG 82-357.

156.032. State board for vocational-technical, adult education and vocational rehabilitation services — Membership — Function. [Repealed.]

Legislative Research Commission Note. (7/13/90) This section was amended by one Act [Acts 1990, ch. 476, § 48] and repealed by another Act of the 1990 General Assembly. Pursuant to KRS 446.260, the Act [Acts 1990, ch. 470, § 72] repealing the section prevails.

Compiler's Notes. This section (Enact. Acts 1988, ch. 361, § 4, effective July 15, 1988) was repealed by Acts 1990, ch. 470, § 72, effective July 1, 1990.

156.033. Duties and powers of State Board for Adult, Vocational Education and Vocational Rehabilitation. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1990, ch. 476, Pt. II, § 49, effective July 13, 1990) was repealed by Acts 1992, ch. 417, § 12, effective July 14, 1992.

156.035. Legal status of board — Administration of fund.

(1) The Kentucky Board of Education is recognized to be a public body corporate and politic, and an agency and instrumentality of the Commonwealth in the performance of essential governmental functions.

(2) For the benefit of programs under its control and supervision, the board is authorized to implement the provisions of any Act of Congress appropriating and apportioning funds to the state, to receive funds appropriated by the Kentucky General Assembly, to provide for the proper apportionment and disbursement of such funds in accordance with state or federal laws, and to accept and provide for the administration of any gifts, donations, or devises.

(3) (a) The board is authorized to expend funds necessary for errors and omissions insurance premiums for insurance to cover the defense of, and any damages and costs awarded in, any civil action brought against individual board members on account of an act made in the scope and course of their performance of legal duties as board members.

(b) The authorization of the expenditure of public funds for insurance is deemed critical to continuing to attract qualified individuals to become members of state boards, and is deemed to authorize the expenditure of public funds for a public purpose.

(c) Nothing in this subsection shall be construed as a waiver of the sovereign immunity of the

Commonwealth with respect to claims against the Kentucky Board of Education, the Department of Education, or any of their respective officers, agents, or employees.

(Enact. Acts 1962, ch. 13, § 2; 1978, ch. 155, § 86, effective June 17, 1978; 1986, ch. 264, § 1, effective April 3, 1986; 1986, ch. 331, § 27, effective July 15, 1986; 1988, ch. 361, § 5, effective July 15, 1988; 1990, ch. 470, § 47, effective July 1, 1990; 1990, ch. 476, Pt. IV, § 127, effective July 13, 1990; 1996, ch. 362, § 2, effective July 1, 1996.)

Legislative Research Commission Note. (7/13/90) This section was amended by two 1990 Acts. Where those Acts are not in conflict, they have been compiled together. Where a conflict exists, the Act which was last enacted by the General Assembly prevails pursuant to KRS 446.250.

Cross-References. Chapter 1 complaint procedures, 704 KAR 3:365.

Chapter 1, ESSIA migrant education requirements, 704 KAR 3:292.

Competitive food and beverage sales and service requirements, 702 KAR 6:090.

Distribution of funds for local operation of area vocational education centers and local vocational departments, 705 KAR 2:120.

District director, 702 KAR 6:020.

Guidelines for dropout prevention programs, 704 KAR 7:070.

Homeless Children Education Program, 704 KAR 7:090.

Local responsibilities, 702 KAR 6:010.

Lunch and breakfast requirements, 702 KAR 6:050.

Personnel; policies and procedures, 702 KAR 6:040.

Principal's responsibilities, 702 KAR 6:030.

Repeal of 705 KAR 2:120, 705 KAR 2:121.

Reports and funds, 702 KAR 6:075.

Secondary funding for state-operated vocational schools, 702 KAR 1:130.

SEEK funding formula, 702 KAR 3:270.

State plan for the administration of Chapter 2, of the Augustus F. Hawkins — Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, 704 KAR 3:335.

Time minimum for meals, 702 KAR 6:060.

Withholding funds, 702 KAR 3:045.

Opinions of Attorney General. When this section, KRS 156.070 and 156.114 (repealed) are viewed cumulatively, there is strong support for the power of the State Board of Education to withhold state funds from any school district failing to file reports required by statute or regulation of the state board. OAG 79-464.

Cited: Horner v. Kentucky High Sch. Athletic Ass'n, 43 F.3d 265, 1994 Fed. App. 417 (6th Cir. 1994).

156.040. Qualification of board members.

The members of the Kentucky Board of Education shall have the same qualifications as school board members, except that members shall be at least thirty (30) years of age and shall have at least an associate degree or its equivalent. Appointments shall be made without reference to occupation, political affiliation, or similar considerations. No member at the time of his appointment or during the term of his service shall be engaged as a professional educator.

(4377-5: amend. Acts 1962, ch. 244, Art. III, § 3; 1978, ch. 155, § 87, effective June 17, 1978; 1986, ch. 331, § 28, effective July 15, 1986; 1988, ch. 361, § 6, effective July 15, 1988; 1990, ch. 470, § 48, effective July 1, 1990; 1990, ch. 476, Pt. II, § 38, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 257, § 1, effective July 15, 1998.)

Legislative Research Commission Note. (7/13/90) This section was amended by two 1990 Acts. Where those Acts are not in conflict, they have been compiled together. Where a conflict exists, the Act which was last enacted by the General Assembly prevails pursuant to KRS 446.250.

Cross-References. Qualifications of school board members, KRS 160.180.

Collateral References. 78 C.J.S., Schools and School Districts, § 83.

156.050. Rules — Secretary. [Repealed.]

Compiler's Notes. This section (4377-7) was repealed by Acts 1978, ch. 155, § 165, effective June 17, 1978.

156.060. Quorum — Meetings — Location of office — Compensation.

For meetings of the Kentucky Board of Education, a majority of the voting members shall constitute a quorum for the transaction of business. The board shall meet not less than every three (3) months and at other times it may be called as provided in this section. Special meetings of the board may be called by the chairperson, and upon written request of two (2) members, the chairperson shall call a special meeting of the board to be held not later than twenty (20) days following receipt of the written request. The chairperson shall give notice through the secretary by registered or certified mail, return receipt requested, to each member of the board at least ten (10) days prior to the time of any meeting unless all members of the board waive notice in writing. The offices of the board shall be at the seat of government in the Department of Education and shall be provided by the state. Members of the board may receive a per diem of one hundred dollars ($100) for each regular or special meeting attended and actual expenses for attending meetings, and may be reimbursed for other actual and necessary expenditures incurred in the performance of their duties authorized by the board. The per diem and expenses shall be paid out of the appropriation for the board.

(4377-8: amend Acts 1942, ch. 201, §§ 1, 2; 1962, ch. 244, Art. III, § 2; 1974, ch. 315, § 15; 1978, ch. 155, § 88, effective June 17, 1978; 1980, ch. 114, § 20, effective July 15, 1980; 1982, ch. 381, § 3, effective July 15, 1982; 1988, ch. 361, § 7, effective July 15, 1988; 1990, ch. 470, § 49, effective July 1, 1990; 1990, ch. 476, Pt. IV, § 128, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

Opinions of Attorney General. The literal language of this section provides a per diem and actual expenses for members of the State Board for Elementary and Secondary Education for attending regular or special meetings of the State Board for Elementary and Secondary Education and in other situations where matters relating to duties as a board member are performed, the board member is entitled to

"actual and necessary expenditures" but not a per diem. OAG 79-466.

156.070. General powers and duties of state board.

(1) The Kentucky Board of Education shall have the management and control of the common schools and all programs operated in these schools, including interscholastic athletics, the Kentucky School for the Deaf, the Kentucky School for the Blind, and community education programs and services.

(2) The Kentucky Board of Education may designate an organization or agency to manage interscholastic athletics in the common schools, provided that the rules, regulations, and bylaws of any organization or agency so designated shall be approved by the board, and provided further that any administrative hearing conducted by the designated managing organization or agency shall be conducted in accordance with KRS Chapter 13B.

(a) The state board or its designated agency shall assure through promulgation of administrative regulations that if a secondary school sponsors or intends to sponsor an athletic activity or sport that is similar to a sport for which National Collegiate Athletic Association members offer an athletic scholarship, the school shall sponsor the athletic activity or sport for which a scholarship is offered. The administrative regulations shall specify which athletic activities are similar to sports for which National Collegiate Athletic Association members offer scholarships.

(b) Beginning with the 2003-2004 school year, the state board shall require any agency or organization designated by the state board to manage interscholastic athletics to adopt bylaws that establish as members of the agency's or organization's board of control one (1) representative of nonpublic member schools who is elected by the nonpublic school members of the agency or organization from regions one (1) through eight (8) and one (1) representative of nonpublic member schools who is elected by the nonpublic member schools of the agency or organization from regions nine (9) through sixteen (16). The nonpublic school representatives on the board of control shall not be from classification A1 or D1 schools. Following initial election of these nonpublic school representatives to the agency's or organization's board of control, terms of the nonpublic school representatives shall be staggered so that only one (1) nonpublic school member is elected in each even-numbered year.

(c) The state board or any agency designated by the state board to manage interscholastic athletics shall not promulgate rules, administrative regulations, or bylaws that prohibit pupils in grades seven (7) to eight (8) from participating in any high school sports except for high school varsity soccer and football, or from participating on more than one (1) school-sponsored team at the same time in the same sport. The Kentucky Board of Education, or an agency designated by the board to manage interscholastic athletics, may promulgate administrative regulations restricting, limiting, or prohibiting participation in high school varsity soccer and football for students who have not successfully completed the eighth grade.

(d) Every local board of education shall require an annual medical examination performed and signed by a physician, physician assistant, advanced registered nurse practitioner, or chiropractor, if performed within the professional's scope of practice, for each student seeking eligibility to participate in any high school athletic activity or sport. The Kentucky Board of Education or any organization or agency designated by the state board to manage interscholastic athletics shall not promulgate administrative regulations or adopt any policies or bylaws that are contrary to the provisions of this paragraph.

(e) Any student who turns nineteen (19) years of age prior to August 1 shall not be eligible for high school athletics in Kentucky. Any student who turns nineteen (19) years of age on or after August 1 shall remain eligible for that school year only.

(f) If the state board or any agency designated by the state board to manage interscholastic athletics promulgates administrative regulations that permit a school district to employ or assign nonteaching personnel to serve in a coaching position, those administrative regulations shall apply to all sports and sports activities, including basketball and football. The administrative regulations shall give preference to the hiring or assignment of certified personnel over nonteaching personnel in coaching positions.

(3) (a) The Kentucky Board of Education is hereby authorized to lease from the State Property and Buildings Commission, or others, whether public or private, any lands, buildings, structures, installations, and facilities suitable for use in establishing and furthering television and related facilities as an aid or supplement to classroom instruction, throughout the Commonwealth, and for incidental use in any other proper public functions. The lease may be for any initial term commencing with the date of the lease and ending with the next ensuing June 30, which is the close of the then-current fiscal biennium of the Commonwealth, with exclusive options in favor of the board to renew the same for successive ensuing bienniums, July 1 in each even year to June 30 in the next ensuing even year; and the rentals may be fixed at the sums in each biennium, if renewed, sufficient to enable the State Property and Buildings Commission to pay therefrom the maturing principal of and interest on, and provide reserves for, any revenue bonds which the State Property and Buildings Commission may determine to be necessary and sufficient,

in agreement with the board, to provide the cost of acquiring the television and related facilities, with appurtenances, and costs as may be incident to the issuance of the bonds.

(b) Each option of the Kentucky Board of Education to renew the lease for a succeeding biennial term may be exercised at any time after the adjournment of the session of the General Assembly at which appropriations shall have been made for the operation of the state government for such succeeding biennial term, by notifying the State Property and Buildings Commission in writing, signed by the chief state school officer, and delivered to the secretary of the Finance and Administration Cabinet as a member of the commission. The option shall be deemed automatically exercised, and the lease automatically renewed for the succeeding biennium, effective on the first day thereof, unless a written notice of the board's election not to renew shall have been delivered in the office of the secretary of the Finance and Administration Cabinet before the close of business on the last working day in April immediately preceding the beginning of the succeeding biennium.

(c) The Kentucky Board of Education shall not itself operate leased television facilities, or undertake the preparation of the educational presentations or films to be transmitted thereby, but may enter into one (1) or more contracts to provide therefor, with any public agency and instrumentality of the Commonwealth having, or able to provide, a staff with proper technical qualifications, upon which agency and instrumentality the board, through the chief state school officer and the Department of Education, is represented in such manner as to coordinate matters of curriculum with the curricula prescribed for the public schools of the Commonwealth. Any contract for the operation of the leased television or related facilities may permit limited and special uses of the television or related facilities for other programs in the public interest, subject to the reasonable terms and conditions as the board and the operating agency and instrumentality may agree upon; but any contract shall affirmatively forbid the use of the television or related facilities, at any time or in any manner, in the dissemination of political propaganda or in furtherance of the interest of any political party or candidate for public office, or for commercial advertising. No lease between the board and the State Property and Buildings Commission shall bind the board to pay rentals for more than one (1) fiscal biennium at a time, subject to the aforesaid renewal options. The board may receive and may apply to rental payments under any lease and to the cost of providing for the operation of the television or related facilities not only appropriations which may be made to it from state funds, from time to time, but also contributions, gifts, matching funds, devises, and bequests from any source, whether federal or state, and whether public or private, so long as the same are not conditioned upon any improper use of the television or related facilities in a manner inconsistent with the provisions of this subsection.

(4) The state board may, on the recommendation and with the advice of the chief state school officer, prescribe, print, publish, and distribute at public expense such administrative regulations, courses of study, curriculums, bulletins, programs, outlines, reports, and placards as each deems necessary for the efficient management, control, and operation of the schools and programs under its jurisdiction. All administrative regulations published or distributed by the board shall be enclosed in a booklet or binder on which the words "informational copy" shall be clearly stamped or printed.

(5) Upon the recommendation of the chief state school officer or his designee, the state board shall establish policy or act on all matters relating to programs, services, publications, capital construction and facility renovation, equipment, litigation, contracts, budgets, and all other matters which are the administrative responsibility of the Department of Education.

(4377-1, 4377-12, 4527-63, 4618.80: amend. Acts 1952, ch. 41, § 2; 1958, ch. 47, § 2; 1962, ch. 13, § 3; 1964, ch. 5; 1970, ch. 204, § 7; 1976, ch. 327, § 2; 1978, ch. 60, § 1, effective June 17, 1978; 1978, ch. 155, §§ 41, 82, 89, effective June 17, 1978; 1982, ch. 381, § 4, effective July 15, 1982; 1988, ch. 361, § 8, effective July 15, 1988; 1990, ch. 182, § 1, effective March 30, 1990; 1990, ch. 470, § 50, effective July 1, 1990; 1990, ch. 476, Pt. II, § 47, effective July 13, 1990; 1992, ch. 405, § 1, effective April 10, 1992; 1994, ch. 230, § 1, effective July 15, 1994; 1996, ch. 318, § 45, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 108, § 1, effective July 15, 1998; 2001, ch. 147, § 1, effective June 21, 2001; 2002, ch. 277, § 2, effective July 15, 2002; 2002, ch. 301, § 1, effective July 15, 2002.)

Legislative Research Commission Note. (7/13/90) This section was amended by three 1990 Acts. Where those Acts are not in conflict, they have been compiled together. Where a conflict exists, the Act which was last enacted by the General Assembly prevails pursuant to KRS 446.250.

(7/15/2002). This section was amended by 2002 Ky. Acts chs. 277 and 301, which do not appear to be in conflict and have been codified together.

Cross-References. Academic expectations, 703 KAR 4:060.

Administration Code for Kentucky's Educational Assessment Program, 703 KAR 5:080.

Annual in-service training of district board members, 702 KAR 1:115.

Annual professional development plan, 704 KAR 3:035.

Appeal procedures for school and community nutrition programs, 702 KAR 6:100.

Application for approval of alternative school-based decision making model, 701 KAR 5:080.

Application to exceed budget, 702 KAR 3:050.

Approval for school district lease agreements, 702 KAR 3:300.

Approval for teaching business education, grades 5—8, 704 KAR 20:570.
Approval of operation of alternative education programs for purposes of driver's license revocation, 704 KAR 7:100.
Area center or public high school, standards for vocational department, 705 KAR 3:141.
Art at elementary level on high school certification, 704 KAR 20:105.
Audit exceptions and corrections, 702 KAR 3:150.
Bidding procedures, 702 KAR 3:135.
Blind and deaf pupils, reimbursement for, 702 KAR 5:120.
Bond issue approval, 702 KAR 3:020.
Building sites; inspection, approval, 702 KAR 4:050.
Buses; specifications and purchases, 702 KAR 5:060.
Capital construction process, 702 KAR 4:160.
Certificate endorsements for certain subjects, 704 KAR 20:057.
Chapter 1 complaint procedures, 704 KAR 3:365.
Chapter 1, ESSIA migrant education requirements, 704 KAR 3:292.
Child find, evaluation, and reevaluation, 707 KAR 1:300.
Children with disabilities enrolled in private schools, 707 KAR 1:370.
Commonwealth Diploma Program, 704 KAR 3:340.
Comprehensive system of personnel development, 707 KAR 1:330.
Confidentiality of information, 707 KAR 1:360.
Cooperative program standards, 705 KAR 4:041.
Criteria for Commonwealth Institute for Teachers, 701 KAR 5:070.
Data form, professional staff, 702 KAR 3:100.
Definitions, 707 KAR 1:280.
Designation of agent to manage high school interscholastic athletics, 702 KAR 7:065.
Determination of eligibility, 707 KAR 1:310.
Distribution of funds for local operation of area vocational education centers and local vocational departments, 705 KAR 2:120.
District board's responsibilities, 702 KAR 5:040.
District director, 702 KAR 6:020.
Driver education, 704 KAR 20:115.
Educational television equipment purchases, 702 KAR 3:170.
Effective Instructional Leadership Act, 704 KAR 3:325.
Elementary level on high school certification, 704 KAR 20:095.
Elementary, middle and secondary schools standards, 704 KAR 10:022.
Elementary teacher's endorsement for middle grades, 704 KAR 20:076.
Emergency school loan fund; repayments, 702 KAR 4:100.
Employment of retired teachers in critical shortage areas, 702 KAR 1:150.
Endorsement for individual intellectual assessment, 704 KAR 20:330.
Endorsement for teachers of computer courses, 704 KAR 20:340.
Entrance of five (5) year olds into primary school program for compulsory attendance purposes, 704 KAR 5:060.
Equalization of funding for locally-operated area vocational centers and vocational departments, 705 KAR 2:140.
Evaluation guidelines, 704 KAR 3:345.
Examination prerequisites for principal certification, 704 KAR 20:460.
Experimental programs of teacher preparation, 704 KAR 20:003.
Experimental program teachers, 704 KAR 20:125.
Extended school services, 704 KAR 3:390.
Facility programming and construction criteria, 702 KAR 4:170.
FFA Leadership Training Center, 705 KAR 4:081.
Foreign teachers serving under the teacher exchange program, 704 KAR 20:212.
Free appropriate public education, 707 KAR 1:290.
General program standards for secondary career and technical education programs, 705 KAR 4:231.
Group health and life insurance, 702 KAR 1:035.
Guidance counselors, 704 KAR 20:130.
Guidelines for alternative models for school-based decision making, 701 KAR 5:100.
Guidelines for dropout prevention programs, 704 KAR 7:070.
Handicapped, reimbursement for, 702 KAR 5:100.
Health education at the elementary school level, 704 KAR 20:520.
Hearing impaired; endorsement for teaching, 704 KAR 20:229.
Hearing impaired; teacher's provisional certificate, 704 KAR 20:230.
High school teacher's endorsement for middle grades, 704 KAR 20:078.
Home/hospital instruction, 704 KAR 7:120.
Homeless Children Education Program, 704 KAR 7:090.
Implementation guidelines — Kentucky School Facilities Planning Manual, 702 KAR 1:001.
Individual education program, 707 KAR 1:320.
Industrial education teachers, 704 KAR 20:222.
Insurance requirements, 702 KAR 3:030.
Interim accountability model, 703 KAR 5:060.
Interim methods for verifying successful completion of the primary program, 703 KAR 4:040.
Internal accounting, 702 KAR 3:130.
Kindergarten teachers, 704 KAR 20:135.
Kentucky Distinguished Educator Program criteria, 703 KAR 4:030.
Kentucky Educational Excellence Scholarship (KEES), 13 KAR 2:090.
Kentucky Special Education Mentor Program, 707 KAR 1:270.
Learning and behavior disorders; teacher's provisional certificate, 704 KAR 20:235.
Liability insurance for buses, 702 KAR 5:070.
Local responsibilities, 702 KAR 6:010.
Lunch and breakfast requirements, 702 KAR 6:050.
Management improvement program, 703 KAR 3:205.
Maximum class sizes, 702 KAR 3:190.
Merger of independent and county school districts, 702 KAR 1:100.
Minimum requirements for high school graduation, 704 KAR 3:305.
Minority teacher recruitment, 704 KAR 7:130.
Missing Kentucky School Children Program, 704 KAR 7:060.
Monitoring and recovery of funds, 707 KAR 1:380.
Music at elementary level on high school certification, 704 KAR 20:160.
Music, general, at elementary level, 704 KAR 20:161.
Music, provisional certificate, 704 KAR 20:159.
Out-of-state preparation, 704 KAR 20:035.
Personnel; policies and procedures, 702 KAR 6:040.
Physical education, 704 KAR 4:010.
Physical education at elementary level on high school certification, 704 KAR 20:175.
Placement decisions, 707 KAR 1:350.
Preschool associate teachers, 704 KAR 3:420.
Preschool education program for four (4) year old children, 704 KAR 3:410.
Preschool grant allocations, 702 KAR 3:250.
Prevention of sexually explicit materials transmitted to schools via computer, 701 KAR 5:120.
Primary school program guidelines, 704 KAR 3:440.
Principal assessment centers, 704 KAR 3:401.

Principal's responsibilities, 702 KAR 6:030.
Procedural safeguards and state complaint procedures, 707 KAR 1:340.
Procedure for payment of employees, 702 KAR 3:060.
Procedures for record request, 701 KAR 5:035.
Procedures for the inclusion of special populations in the state-required assessment and accountability programs, 703 KAR 5:070.
Proficiency evaluation, 704 KAR 20:030.
Program cost calculation, 702 KAR 5:020.
Programs for the gifted and talented, 704 KAR 3:285.
Provisional middle grades certificate, 704 KAR 20:080.
Pupil attendance, 702 KAR 7:125.
Pupils' responsibilities, 702 KAR 5:090.
Ranking of vocational trade instructors, 704 KAR 20:025.
Rank I classification, 704 KAR 20:015.
Reading specialists, 704 KAR 20:180.
Recognition of credits when transferring without transcript, 704 KAR 3:307.
Recreational facilities; school and community, 702 KAR 4:005.
Recruitment plan for position of school media librarian, 704 KAR 20:490.
Removal hearing procedures, 701 KAR 5:055.
Repeal of 705 KAR 2:120, 705 KAR 2:121.
Repeal of 705 KAR 4:051, 705 KAR 4:052.
Reports and funds, 702 KAR 6:075.
Required program of studies, 704 KAR 3:303.
Responsibilities of division, 702 KAR 5:010.
Restructuring revenue bond issues, 702 KAR 3:260.
Ride to the Center for the Arts Program Fund, 704 KAR 7:080.
School council allocation formula: KETS District Administrative System Chart of Accounts, 702 KAR 3:246.
School district accountability, 703 KAR 5:130.
School district Medicaid providers, 702 KAR 3:285.
School district tax rate formulas, 702 KAR 3:275.
School health services, 704 KAR 4:020.
School media librarians, endorsement, 704 KAR 20:146.
School media librarians, provisional certificate, 704 KAR 20:145.
School nurse, 704 KAR 20:132.
School psychologist, 704 KAR 20:128.
School to careers, 705 KAR 4:240.
Secondary funding for state-operated vocational schools, 702 KAR 1:130.
Secondary school level on elementary certification, 704 KAR 20:075.
SEEK funding formula, 702 KAR 3:270.
Social workers' provisional certification, 704 KAR 20:195.
Social workers' standard certification, 704 KAR 20:194.
State plan for the administration of Chapter 2, of the Augustus F. Hawkins — Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, 704 KAR 3:335.
Student discipline guidelines, 704 KAR 7:050.
Student records; hearing procedures, 702 KAR 1:140.
Superintendents' responsibilities, 702 KAR 5:030.
Supervision and discipline of pupils, 702 KAR 5:050.
Teacher disciplinary hearings, 701 KAR 5:090.
Teachers' salary scheduling, 702 KAR 3:070.
Teaching English as a second language, 704 KAR 20:275.
Test designation for Teacher Loan/Scholarship Program, 704 KAR 15:100.
The formula for determining school performance classifications and school rewards, 703 KAR 5:020.
Time minimum for meals, 702 KAR 6:060.
Transfer of annexed property; hearing, 702 KAR 1:080.
Uniform school financial accounting system, 702 KAR 3:120.
Use of local monies to reduce unmet technology need, 701 KAR 5:110.
Vehicles designed to carry nine (9) passengers or less, standards for, 702 KAR 5:130.
Visually impaired; teaching endorsement, 704 KAR 20:255.
Vocational education administrators, 704 KAR 20:215.
Vocational pupils, reimbursement for, 702 KAR 5:110.
Withholding funds, 702 KAR 3:045.
Work experience program standards, 705 KAR 4:051.
Writing portfolio procedures, 703 KAR 5:010.

Opinions of Attorney General. The Kentucky High School Athletic Association may purchase property from an entity in which the Governor is a general partner, without violating KRS 45A.340. OAG 90-27.

If the board determines that it is not in the best interest of the general health and welfare of pupils of a particular weight and height to participate in high-contact sports, the board may, without violating this section, limit participation in such sports activities by students who fail to meet the weight and height requirements. OAG 90-87.

Nothing in this section prohibits the state board, the Kentucky High School Athletic Association, or local school boards from making rules that limit a student's participation in sports activities based on student's health, safety and academic standing. OAG 90-87.

This section, KRS 156.160, and the accompanying regulation, 704 KAR 7:055 set the standards to be followed by employees of the common schools with regard to the imposition of corporal punishment. OAG 92-20.

Effective July 14, 1992, under subsection (2) of this section the State Board for Elementary and Secondary Education and the Kentucky High School Athletic Association may, by rule, administrative regulation, or bylaw, restrict or prohibit 7th and 8th grade students from participating in high school varsity wrestling, soccer, and football. Regulation of participation of 7th or 8th grade students in high school varsity wrestling, soccer, and football is not mandatory, but within the discretion of the state board and the athletic association. OAG 92-98.

Cited: Horner ex rel. Horner v. Kentucky High Sch. Athletic Ass'n, 206 F.3d 685, 2000 Fed. App. 96 (6th Cir. 2000).

NOTES TO DECISIONS

Analysis

1. Board subject to title ix.
2. Athletics.

1. Board Subject to Title IX.

The Kentucky State Board for Elementary and Secondary Education, as a "recipient" of federal financial assistance, and the Kentucky High School Athletic Association, as an "agent" indirectly receiving federal funds, would both be subject to Title IX of the Education Amendments of 1972, as amended by the Civil Rights Restoration Act of 1987, 20 U.S.C. §§ 1681-1688. Horner v. Kentucky High Sch. Athletic Ass'n, 43 F.3d 265, 1994 Fed. App. 417 (6th Cir. 1994).

2. Athletics.

In creating the Kentucky Board of Education, the General Assembly recognized that its functions included the management of interscolastic athletics, and it authorized the Kentucky Board of Education to designate an agent for the purpose of performing that function, the Kentucky High School Athletic Association; interscholastic athletics have been recognized as an integral part of secondary education, and thus, have been considered a governmental function. Yanero v. Davis, 65 S.W.3d 510 (Ky. 2001).

156.071. Delegation of taking evidence and writing recommendation of disposition to hearing officer or panel — Compensatory time for staff conducting school facility public hearings.

The Kentucky Board of Education may, any statute to the contrary notwithstanding, delegate the taking of evidence, and the rendition of a written recommendation of disposition to the full board, to a panel of the board, to a single member of the board acting as a hearing officer, or to a hearing officer appointed by the board relative to any hearing, appeal, or decision, judicial or quasi-judicial in nature, which the board is empowered or directed, by this or any other chapter, to conduct, hear, or make; provided, the full board, as provided by statute, makes the final decision or determination, based upon the evidence submitted. For the purpose of serving as a hearing officer for the board, the board and the Department of Education shall not enter into a personal service contract; employ additional staff; or provide additional compensation to existing staff, except for compensatory time for staff who conduct school facility public hearings outside of their regular working hours.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 364, effective July 13, 1990; 1992, ch. 147, § 1, effective July 14, 1992; 1996, ch. 362, § 6, effective July 15, 1996.)

156.072. Waiver of reporting requirement.

(1) At the request of a local board of education or a school council, a local school district superintendent shall submit a request to the Kentucky Board of Education for a waiver from a reporting requirement established by a Kentucky Revised Statute that requires the paperwork to be submitted to the Kentucky Board of Education or the Department of Education.

(2) Upon a finding of good cause for the waiver, the Kentucky Board of Education may grant the waiver.

(3) The Kentucky Board of Education shall not waive statutory paperwork or reporting requirements necessary under federal law or relating to health, safety, or civil rights.

(Enact. Acts 2000, ch. 277, § 1, effective July 14, 2000.)

156.074. Purchase contract for supplies, equipment — Specifications — Terms.

The Kentucky Board of Education, upon requisition to the Finance and Administration Cabinet, may secure price contract agreements for the purchase of supplies and equipment by district boards of education. The board by regulation shall specify the particular types of supplies and equipment for which contracts shall be secured and may revise such lists from time to time. The board, in consultation with the Finance and Administration Cabinet, shall fix standards of quality and quantity and shall develop standard specifications for supplies and equipment. The Finance and Administration Cabinet shall enter into price contract agreements under the law relating to state purchasing. Such contracts shall establish sources of supply, maximum prices to be paid, and shall set forth the length of time for which such contracts shall be valid, not to exceed one (1) year.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 365, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

Cross-References. Educational television equipment purchases, 702 KAR 3:170.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 85-88.

156.076. Price contracts information to be furnished district boards — Purchase conditions.

The chief state school officer shall furnish full information on established price contracts to each district board of education. Any board of education may purchase supplies and equipment from the vendor to whom the contract has been awarded, under the terms of the contract. Any board of education may advertise for its own bids on supplies and equipment which meet the specifications of the contracts awarded by the Division of Material and Procurement Services. Any board of education, after advertising for bids, may award contracts if the chief state school officer certifies that the bid offers supplies and equipment which meet the standards and specifications fixed by the Kentucky Board of Education and that the bid price is lower than that established by the price contract agreement. If supplies and equipment that meet the specifications of the contracts awarded by the Division of Material and Procurement Services or a federal, local, or cooperative agency are available for purchase elsewhere, a board of education may purchase those supplies and equipment without advertising for bids. However, prior to making the purchases, the board of education shall obtain certification from:

(1) The Department of Education for technology components defined in the master plan for education technology for which standards have been established by the Kentucky Board of Education. The department shall certify that the items to be purchased meet or exceed, at a lower cost, the specifications of the components of the original equipment of manufacturers currently holding Kentucky education technology system price contracts; and

(2) The district's finance officer for supplies and equipment other than that described in subsection (1) of this section. He shall certify that the items to be purchased meet the standards and specifications fixed by state price contract, federal (GSA) price contract, the local school district's bid, or the bid of another school district whose bid specifications allow other districts to utilize their bids, and that the sales price is lower than that established by the price contract agreement or available through the bidding process and the price does not exceed two thousand five hundred dollars ($2,500).

(Enact. Acts 1962, ch. 244, Art. II, § 7; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 129, effective July 13, 1990; 1996, ch. 89, § 4, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 5, § 9, effective July 14, 2000.)

Cross-References. Bidding procedures, 702 KAR 3:135.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 85-88, 393, 399, 402, 403.

156.080. School census — Forms and rules for. [Repealed.]

Compiler's Notes. This section (4434-30: amend. Acts 1978, ch. 155, § 82, effective June 17, 1978) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990. For present law see KRS 159.250.

156.090. Certificates of school employees — Board to publish regulations concerning. [Repealed.]

Compiler's Notes. This section (4502-12: amend. Acts 1978, ch. 155, § 82, effective June 17, 1978) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

156.095. Professional development programs — Professional development coordinator — Long term improvement plans — Electronic consumer bulletin board — Training to address needs of students at risk — Teacher academics.

(1) The Kentucky Department of Education shall establish, direct, and maintain a statewide program of professional development to improve instruction in the public schools.

(2) Each local school district superintendent shall appoint a certified school employee to fulfill the role and responsibilities of a professional development coordinator who shall disseminate professional development information to schools and personnel. Upon request by a school council or any employees of the district, the coordinator shall provide technical assistance to the council or the personnel that may include assisting with needs assessments, analyzing school data, planning and evaluation assistance, organizing districtwide programs requested by school councils or groups of teachers, or other coordination activities.

(a) The manner of appointment, qualifications, and other duties of the professional development coordinator shall be established by Kentucky Board of Education through promulgation of administrative regulations.

(b) The local district professional development coordinator shall participate in the Kentucky Department of Education annual training program for local school district professional development coordinators. The training program may include, but not be limited to, the demonstration of various approaches to needs assessment and planning; strategies for implementing long-term, school-based professional development; strategies for strengthening teachers' roles in the planning, development, and evaluation of professional development; and demonstrations of model professional development programs. The training shall include information about teacher learning opportunities relating to the core content standards. The Kentucky Department of Education shall regularly collect and distribute this information.

(3) The Kentucky Department of Education shall provide or facilitate optional, professional development programs for certified personnel throughout the Commonwealth that are based on the statewide needs of teachers, administrators, and other education personnel. Programs may include classified staff and parents when appropriate. Programs offered or facilitated by the department shall be at locations and times convenient to local school personnel and shall be made accessible through the use of technology when appropriate. They shall include programs that: address the goals for Kentucky schools as stated in KRS 158.6451, including reducing the achievement gaps as determined by an equity analysis of the disaggregated student performance data from the Commonwealth Accountability Testing System; engage educators in effective learning processes and foster collegiality and collaboration; and provide support for staff to incorporate newly acquired skills into their work through practicing the skills, gathering information about the results, and reflecting on their efforts. Professional development programs may include, but not be limited to, focus on the following areas:

(a) Strategies to reduce the achievement gaps among various groups of students;

(b) Curriculum content and methods of instruction for each content area;

(c) School-based decision making;

(d) Performance-based student assessment;

(e) Nongraded primary programs;

(f) Research-based instructional practices;

(g) Instructional uses of technology;

(h) Curriculum design to serve the needs of students with diverse learning styles and skills and of students of diverse cultures;

(i) Instruction of phonics;

(j) Educational leadership; and

(k) Strategies to incorporate character education throughout the curriculum.

(4) The department shall utilize its regional service centers, in addition to collaboration with postsecondary education institutions, education cooperative and consortia, and professional education organizations, to provide local district personnel with access to high quality programming. The department shall assist school personnel in assessing the impact of professional development on their instructional practices and student learning.

(5) The department shall assist districts and school councils with the development of long-term school and district improvement plans that include multiple strategies for professional development based on the assessment of needs at the school level.

(a) Professional development strategies may include, but are not limited to, participation in subject matter academies, teacher networks, training institutes, workshops, seminars, and study groups; collegial planning; action re-

search; mentoring programs; appropriate university courses; and other forms of professional development.

(b) In planning the use of the four (4) days for professional development under KRS 158.070, school councils and districts shall give priority to programs that increase teachers' understanding of curriculum content and methods of instruction appropriate for each content area based on individual school plans. The district may use up to one (1) day to provide districtwide training and training that is mandated by state or federal law. Only those employees identified in the mandate or affected by the mandate shall be required to attend the training.

(c) State funds allocated for professional development shall be used to support professional development initiatives that are consistent with local school improvement and professional development plans and teachers' individual growth plans. The funds may be used throughout the year for all staff, including classified and certified staff and parents on school councils or committees. A portion of the funds allocated to each school council under KRS 160.345 may be used to prepare or enhance the teachers' knowledge and teaching practices related to the content and subject matter that are required for their specific classroom assignments.

(6) The Department of Education shall establish an electronic consumer bulletin board that posts information regarding professional development providers and programs as a service to school district central office personnel, school councils, teachers, and administrators. Participation on the electronic consumer bulletin board shall be voluntary for professional development providers or vendors, but shall include all programs sponsored by the department. Participants shall provide the following information: program title; name of provider or vendor; qualifications of the presenters or instructors; objectives of the program; program length; services provided, including follow-up support; costs for participation and costs of materials; names of previous users of the program, addresses, and telephone numbers; and arrangements required. Posting information on the bulletin board by the department shall not be viewed as an endorsement of the quality of any specific provider or program.

(7) The Department of Education shall provide training to address the characteristics and instructional needs of students at risk of school failure and most likely to drop out of school. The training shall be developed to meet the specific needs of all certified and classified personnel depending on their relationship with these students. The training for instructional personnel shall be designed to provide and enhance skills of personnel to:

(a) Identify at-risk students early in elementary schools as well as at-risk and potential dropouts in the middle and high schools;

(b) Plan specific instructional strategies to teach at-risk students;

(c) Improve the academic achievement of students at risk of school failure by providing individualized and extra instructional support to increase expectations for targeted students;

(d) Involve parents as partners in ways to help their children and to improve their children's academic progress; and

(e) Significantly reduce the dropout rate of all students.

(8) By July 1, 2001, the department shall establish teacher academies to the extent funding is available in cooperation with postsecondary education institutions for elementary, middle school, and high school faculty in core disciplines, utilizing facilities and faculty from universities and colleges, local school districts, and other appropriate agencies throughout the state. Priority for participation shall be given to those teachers who are teaching core discipline courses for which they do not have a major or minor or the equivalent. Participation of teachers shall be voluntary.

(Enact. Acts 1950, ch. 127, § 1; 1956 (1st Ex. Sess.), ch. 7, Art. II, § 2; 1978, ch. 155, § 82, effective June 17, 1978; 1985 (1st Ex. Sess.), ch. 10, § 1, effective October 18, 1985; 1990, ch. 476, Pt. I, § 12, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 514, § 4, effective July 15, 1998; 1998, ch. 609, § 1, effective July 15, 1998; 2000, ch. 162, § 4, effective July 14, 2000; 2000, ch. 452, § 3, effective July 14, 2000; 2000, ch. 527, § 10, effective July 14, 2000; 2002, ch. 302, § 2, effective July 15, 2002.)

Legislative Research Commission Note. (7/14/2000). This section was amended by 2000 Ky. Acts chs. 162, 452, and 527. Where these Acts are not in conflict, they have been codified together. As to subsection (7) of this section, a conflict exists, in part, between Acts chs. 452 and 527. Under KRS 446.250, Acts ch. 527, which was last enacted by the General Assembly, prevails in this conflict.

Cross-References. Annual professional development plan, 704 KAR 3:035.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 85-88.

156.0951. District consortia for professional development — Withdrawal by school district. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1990, ch. 476, Pt. I, § 13, effective July 13, 1990; 1994, ch. 247, § 2, effective July 15, 1994) was repealed by Acts 1998, ch. 609, § 5, effective July 15, 1998.

Cross-References. Annual professional development plan, 704 KAR 3:035.

156.097. Teacher institutes — Regulation.

(1) The Kentucky Board of Education shall develop regulations to establish a program of educational institutes for teachers. The purpose of such institutes shall be the general improvement of instruction within the Commonwealth.

(2) Teacher institutes shall be held during the summer months at various college campuses selected

by the Kentucky Board of Education. Each institute shall be of one (1) week duration.

(3) The Kentucky Board of Education shall develop specific criteria relating to the selection of eligible teachers for institute participation, with an emphasis on selecting teachers with a demonstrated record of effective teaching.

(4) Any teacher selected and agreeing to participate in a particular teacher institute session shall be reimbursed for expenses incurred in attendance, and shall be awarded a stipend in an amount to be determined by the Kentucky Board of Education.

(5) The program shall encourage business and industry within the Commonwealth to become institute sponsors for teachers within the respective communities of such business and industry.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 366, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

Compiler's Notes. This section (Enact. Acts 1985 (1st Ex. Sess.), ch. 10, § 3, effective October 18, 1985) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 366, effective July 13, 1990.

Cross-References. Criteria for Commonwealth Institute for Teachers, 701 KAR 5:070.

156.100. Board may accept federal aid or gift, donation or devise. [Repealed.]

Compiler's Notes. This section (4363-10: amend. Acts 1942, ch. 26, §§ 1, 2) was repealed by Acts 1978, ch. 155, § 165, effective June 17, 1978.

156.101. Purpose of section — Definition of "instructional leader" — Instructional leader improvement program.

(1) The purpose of this section is to encourage and require the maintenance and development of effective instructional leadership in the public schools of the Commonwealth and to recognize that principals, with the assistance of assistant principals, supervisors of instruction, guidance counselors, and directors of special education, have the primary responsibility for instructional leadership in the schools to which they are assigned.

(2) For the purpose of this section, "instructional leader" shall be defined as an employee of the public schools of the Commonwealth employed as a principal, assistant principal, supervisor of instruction, guidance counselor, director of special education, or other administrative position deemed by the Education Professional Standards Board to require an administrative certificate.

(3) In order to carry out the purpose of this section, the Kentucky Board of Education shall establish a statewide program to improve and maintain the quality and effectiveness of instructional leadership in the public schools of the Commonwealth.

(4) The instructional leader improvement program shall contain the following provisions:

(a) Each instructional leader employed by the public schools of the Commonwealth shall participate in a continuing intensive training program designed especially for instructional leaders;

(b) Every two (2) years each instructional leader shall complete an intensive training program approved by the Kentucky Board of Education to include no fewer than forty-two (42) participant hours of instruction;

(c) The Kentucky Board of Education shall prescribe specific criteria for the training program. The Kentucky Department of Education may contract for specific training with qualified agencies or institutions or approve programs offered by training providers, including local district training programs, except that the department shall ensure the requirements of paragraph (d) of this subsection are met;

(d) Completion of the required forty-two (42) participant hours shall be reported to the department and to the Education Professional Standards Board by the local school district. If an instructional leader fails to complete the required hours of training, the instructional leader shall be placed on probation for one (1) year and, if the training is not completed during the probationary period, the instructional leader's certificate shall be revoked by the Education Professional Standards Board.

(5) The Kentucky Department of Education shall ensure that training options in human resource management and conflict resolution techniques are available to education leaders throughout the state.

(6) This section shall be known as the "Effective Instructional Leadership Act."

(Enact. Acts 1984, ch. 365, §§ 1, 2, effective July 13, 1984; 1985 (1st Ex. Sess.), ch. 10, § 2, effective October 18, 1985; 1986, ch. 442, § 2, effective July 15, 1986; 1990, ch. 476, Pt. IV, § 130, effective July 13, 1990; 1992, ch. 148, § 1, effective July 14, 1992; 1996, ch. 9, § 1, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 206, § 1, effective July 15, 1998; 2000, ch. 527, § 11, effective July 14, 2000.)

Cross-References. Annual professional development plan, 704 KAR 3:035.

Effective Instructional Leadership Act, 704 KAR 3:325.

Evaluation guidelines, 704 KAR 3:345.

Kentucky Bench & Bar. Whalen, The Kentucky Education Reform Act of 1990 and Local Boards of Education, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 11.

Opinions of Attorney General. Notwithstanding the apparent legislative intent of KRS 161.020 to make the revocation of any instructional leader's certificate contingent upon laws then in force, this section clearly controls revocation of an instructional leader's certificate; therefore, a certificate of an instructional leader may be revoked for failure to obtain the hours of intensive training required by this section. All instructional leaders, including those who received a certificate prior to the effective date of this section, are required to comply with this section. OAG 88-37.

The legislative purpose of the instructional leadership program, set forth in subsection (1) of this section, was to develop a program which would result in improvement in the quality of performance of principals, assistant principals, supervisors of instruction, guidance counselors, or directors of special

education. Practically, this prescribed program of improvement could not be effective if it did not supersede the general certificate renewal statute, subsection (3) of KRS 161.020. OAG 88-37.

The requirement of subsection (3) of KRS 161.020, that certificates be considered pursuant to the application of the laws which were in effect at the time of the granting of the certificate, is not in harmony with the instructional leadership program. Therefore, subsection (3) of KRS 161.020 is controlling except when an instructional leader fails to comply with the instructional leader improvement program. At such time, the state board may exercise its power of revocation granted by subsection (4) of this section. OAG 88-37.

The retrospective application of a law is not to be given unless the intent is clearly expressed or necessarily implied; it is necessarily implied that this section must be applied to those persons who received their certificates prior to 1984 to benefit the schools and is, therefore, retroactive. OAG 88-37.

NOTES TO DECISIONS

ANALYSIS

1. Evaluation appeals panel.
2. —Procedure.

1. Evaluation Appeals Panel.

2. —Procedure.

A nontenured teacher whose contract is recommended by the principal not to be renewed is entitled, pursuant to subsection 10 of this section, to challenge the findings of fact in his evaluation before the appeals panel who shall hold a hearing on both the substance and the procedure of the evaluation of which the teacher is entitled to receive proper notice with sufficient time to gather evidence to support his position, and also has the right to present expert testimony and engage counsel to assist him in the presentation of his case. Thompson v. Board of Educ., 838 S.W.2d 390 (Ky. 1992).

156.105. Principals Assessment Center — Assessment of principals required. [Repealed.]

Legislative Research Commission Note. (7/15/96). Under KRS 446.260, the repeal of this section in 1996 Ky. Acts ch. 12 prevails over its amendment in 1996 Ky. Acts ch. 343.

Compiler's Notes. This section (Enact. 1990, ch. 476, Pt. II, § 45, effective July 13, 1990; 1994, ch. 14, § 3, effective February 17, 1994) was repealed by Acts 1996, ch. 12, § 1, effective July 15, 1996.

Cross-References. Principal assessment centers, 704 KAR 3:401.

156.106. Critical shortage areas — Appointment of retired teachers and administrators — Administrative regulations.

(1) For purposes of this section and KRS 161.605, "critical shortage area" means a lack of certified teachers in particular subject areas, in grade levels, or in geographic locations at the elementary and secondary level, as determined annually by the commissioner of education. The commissioner may use any source considered reliable including, but not limited to, data provided by the Education Professional Standards Board and local education agencies to identify the critical shortage areas.

(2) The Kentucky Board of Education shall promulgate administrative regulations to establish procedures to be used to appoint retired teachers and administrators to positions in critical shortage areas under this section and KRS 161.605. The administrative regulations shall assure that:

(a) A retired teacher or administrator shall not be hired until the superintendent assures that he or she has made every reasonable effort to recruit an active teacher or administrator for the position on an annual basis; and

(b) A retired teacher or administrator shall be paid, at a minimum, a salary at Rank II with ten (10) years of experience based on a single salary schedule adopted by the district.

The commissioner of education shall report members reemployed under this section to the Kentucky Teachers' Retirement System.

(3) The Kentucky Board of Education shall promulgate administrative regulations to establish procedures to be used to appoint retired teachers and administrators to positions in critical shortage areas under this section and KRS 161.605. The administrative regulations shall assure that a retired teacher or administrator shall not be hired until the superintendent assures the commissioner of education that the superintendent has made every reasonable effort to recruit an active teacher or administrator for the position on an annual basis. The commissioner of education shall report members reemployed under this section to the Kentucky Teachers' Retirement System.

(4) If a local school district needs a person to fill a critical shortage position after reaching its quota established under KRS 161.605, the commissioner of education with the approval of the executive director of the Kentucky Teachers' Retirement System may allow the district to exceed its quota if the statewide quota has not been met.

(Enact. Acts 2000, ch. 477, § 1, effective July 14, 2000; 2000, ch. 498, § 3, effective July 14, 2000.)

Legislative Research Commission Note. (7/14/2000). Subsections (1) and (4) of this statute were enacted identically in 2000 Ky. Acts ch. 477, sec. 1, subsecs. (1) and (3), and ch. 498, sec. 3, subsecs. (1) and (3). Subsections (2) and (3) were enacted by the same two Acts but with nonidentical, but very similar, text, subsection (2) coming from Acts ch. 477, sec. 1, subsec. (2), and subsection (3) coming from Acts ch. 498, sec. 3, subsec. (2). Because the two Acts differ in the texts of their second subsections in newly created statutes, both versions have been codified. Cf. KRS 446.250. Acts ch. 477 (House Bill 519) was signed by the President of the Senate on April 11, 2000, at 10:28 a.m.; Acts ch. 498 (House Bill 739) was signed by the President of the Senate on April 11, 2000, at 1:15 p.m. The tables for the 2000 Kentucky Acts show Acts ch. 498 as being codified at KRS 156.497, but, because of the near identity of the sections, it was subsequently decided to merge them into a single KRS section for codification.

Cross-References. Employment of retired teachers in critical shortage areas, 702 KAR 1:150.

156.110. Removal of school board members and public school officials. [Repealed.]

Compiler's Notes. This section (4377-13, 4384-13) was repealed by Acts 1962, ch. 244, Art. I, § 4.

156.111. Superintendents Training Program and Assessment Center — Assessment of superintendents required — Examination.

(1) Prior to July 1, 1992, the Department of Education shall establish a Superintendents Training Program and Assessment Center. The assessment center shall be modeled after the American Association of School Administrators assessment process or a similar validated process. The department may provide assessment centers regionally and shall provide for assessor training. The center shall include, but not be limited to, training for superintendents in the following subjects:
(a) Core concepts of management;
(b) School-based decision making;
(c) Kentucky school law;
(d) Kentucky school finance; and
(e) School curriculum and assessment.

(2) At the conclusion of the training, each participant shall complete a written comprehensive examination based on the content of the training.

(3) In addition to any applicable certification and experience requirements, to be qualified and eligible for continued employment as a school superintendent, effective July 1, 1994, the school superintendent shall have successfully completed the assessment center process. A person hired for the first time as superintendent in Kentucky after June 30, 1994, shall successfully complete the assessment center process within one (1) year of assuming his duties as superintendent.

(4) The Kentucky Board of Education shall adopt administrative regulations to govern the training content, number of hours, written examination, and criteria for successful completion of the training and assessment center process. The board shall also establish the continuing professional development requirements for school superintendents, to be effective July 1, 1994.

(Enact. Acts 1990, ch. 476, Pt. II, § 46, effective July 13, 1990; 1994, ch. 14, § 1, effective February 17, 1994; 1996, ch. 362, § 6, effective July 15, 1996.)

Cross-References. Superintendent training program and assessment process, 704 KAR 3:406.

156.112. State Board for Occupational Education — Members — Compensation — Functions — Officers. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1978, ch. 155, § 95, effective June 17, 1978; 1980, ch. 114, § 21, effective July 15, 1980) was repealed by Acts 1982, ch. 381, § 12, effective July 15, 1982.

DEPARTMENTS OF EDUCATION

156.114. Department for elementary and secondary education created — Deputy superintendent — Organization. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1978, ch. 155, § 96, effective June 17, 1978; 1980, ch. 295, § 40, effective July 15, 1980) was repealed by Acts 1982, ch. 381, § 12, effective July 15, 1982.

156.116. Department for occupational education created — Deputy superintendent — Duties — Organization. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1978, ch. 155, § 97, effective June 17, 1978) was repealed by Acts 1982, ch. 381, § 12, effective July 15, 1982.

156.118. Organization of the department of education created. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1978, ch. 155, § 96, effective June 17, 1978; 1980, ch. 295, § 41, effective July 15, 1980) was repealed by Acts 1982, ch. 381, § 12, effective July 15, 1982.

SUPERINTENDENT OF PUBLIC INSTRUCTION

156.120. Superintendent of Public Instruction — Location of office — Traveling expenses — Salary.

The duties of the Superintendent of Public Instruction shall be to act as a citizen advocate for elementary and secondary education and to perform other duties as may be assigned to him by the secretary of the Education, Arts, and Humanities Cabinet. The office of Superintendent of Public Instruction shall not require any administrative support for the office including space or staff. He shall receive a salary of three thousand dollars ($3,000) per annum and shall be reimbursed for all actual and necessary expenses and disbursements incurred or made by him in the performance of his duties as assigned by the secretary of the Education, Arts, and Humanities Cabinet, but the amount spent shall not exceed the amount appropriated in the biennial budget. (4384-4, 4384-9: amend. Acts 1946, ch. 26, § 5; 1990, ch. 476, Pt. II, § 40, effective July 13, 1990; 1992, ch. 27, § 14, effective March 2, 1992; 1994, ch. 209, § 11, effective July 15, 1994.)

Cross-References. Bond of Superintendent, amount and conditions, KRS 62.160, 62.180.
Commissioned, Superintendent to be, KRS 61.020.
Election, term and qualifications of Superintendent, Const., §§ 91, 95.
Oath, Const., § 228.
Salary of Superintendent, KRS 64.480.
Succeeding term, not eligible for, Const., § 93.
To be paid by salary only, Const., § 96.
Collateral References. 78 C.J.S., Schools and School Districts, §§ 89, 90.

156.130. Superintendent is executive officer of State Board of Education — General duties. [Repealed.]

Legislative Research Commission Note. This section was also amended by Acts 1978, ch. 17, § 1, approved March 3, 1978. The later repeal by Acts 1978, ch. 155, § 165, approved March 29, 1978, however, prevails.

Compiler's Notes. This section (4384-5, 4384-7, 4384-15, 4384-32: amend. Acts 1952, ch. 41, § 3; 1978, ch. 17, § 1) was repealed by Acts 1978, ch. 155, § 165, effective June 17, 1978.

REMOVAL OR SUSPENSION OF SCHOOL OFFICERS

156.132. Removal or suspension of public school officers — Procedure, grounds, conditions.

As used in this section, except subsection (1), "public school officer" means a person who previously served as a superintendent of schools or board member during which time charges were brought against him under this section.

(1) The chief state school officer shall recommend, by written charges to the proper school authorities having immediate jurisdiction, the removal of any superintendent of schools, principal, teacher, member of a school council, or other public school officer as to whom he has reason to believe is guilty of immorality, misconduct in office, incompetency, willful neglect of duty, or nonfeasance. In the case of a member of a school council, the written charges shall be provided to the local board of education.

(2) The chief state school officer shall recommend by written charges the suspension by the Kentucky Board of Education of any district board member, superintendent of schools, or other public school officer whom he has reason to believe is guilty of immorality, misconduct in office, incompetency, willful neglect of duty, or nonfeasance. If the charges brought under this subsection represent an immediate threat to the public health, safety, or welfare, the Kentucky Board of Education shall summarily suspend the person against whom the charges are made. The action by the Kentucky Board of Education may be taken upon a recommendation of the chief state school officer, or the action may be taken by a majority vote of the Kentucky Board of Education without recommendation from the chief state school officer.

(3) The Kentucky Board of Education may suspend a district superintendent of schools or other public school officer under subsection (2) of this section or remove him pursuant to subsection (5) of this section only if, after thirty (30) days of receipt of the written charges specified in subsection (1) of this section, the proper school authorities having immediate jurisdiction, either the superintendent or the district board of education, have refused to act, have acted in bad faith, arbitrarily, or capriciously, or if a recommendation to the district board would have been futile.

(4) Any officer suspended by the Kentucky Board of Education under subsection (2) of this section shall be furnished with an emergency order specifying in detail the reasons for suspension and notifying the officer of his right to appeal the action and have an emergency hearing pursuant to KRS 13B.125.

(5) As an alternative to first seeking suspension, the chief state school officer may recommend by written charges the removal by the Kentucky Board of Education of any district board member, superintendent of schools, or other public school officer whom he has reason to believe is guilty of immorality, misconduct in office, incompetency, willful neglect of duty, or nonfeasance. The officer against whom the written charges are issued by the chief state school officer shall be furnished with the written charges and notice of procedural rights conferred under KRS Chapter 13B. Within twenty (20) days after receipt of the charges, the officer may notify the Kentucky Board of Education of his intention to appear and answer the charges. Upon appeal, an administrative hearing shall be conducted in accordance with KRS Chapter 13B. If the officer fails to notify the board of his intention to appear and answer the charges, the Kentucky Board of Education may remove the officer by a majority vote, and the dismissal shall be final.

(6) The hearing shall be public or private at the discretion of the accused former or current superintendent and shall be public when testimony is taken for board members.

(7) The Kentucky Board of Education may meet in closed session to consider the evidence and may by a majority vote remove the officer. If the board votes to remove the officer, the board shall prepare final order specifying which charge or charges it found to be the basis for removal. If within ninety (90) days from the date of suspension if applicable, the state board has not removed the officer, or has dismissed the charges, the suspended officer shall be reinstated and shall be paid his full salary for the period of suspension.

(8) The officer shall have a right to appeal on the record to the Circuit Court located in the county of the school district in accordance with KRS Chapter 13B. If the decision of the court is against removal, the officer shall be paid his full salary from the date of suspension. The payment shall be made from funds appropriated to the State Department of Education.

(9) If a superintendent of schools is removed from office or resigns while charges are pending pursuant to this section after July 15, 1994, any continuing contract pursuant to KRS 161.720 to 161.810 shall be terminated. If the removal is reversed upon appeal, the continuing contract shall be restored and he shall be paid his full salary for the period of suspension.

(Enact. Acts 1962, ch. 244, Art. I, § 1; 1978, ch. 155, § 82, effective June 17, 1978; 1982, ch. 30, § 1, effective July 15, 1982; 1990, ch. 476, Pt. II, § 50, effective July 13, 1990; 1992, ch. 376, § 1, effective July 14, 1992; 1994, ch. 103, § 1, effective July 15, 1994; 1994, ch. 472, § 1, effective July 15, 1994; 1996, ch. 318, § 46, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 598, § 15, effective April 14, 1998.)

Cross-References. Removal hearing procedures, 701 KAR 5:055.

Kentucky Law Journal. Russo, School-Based Decision Making in Kentucky: Dawn of a New Era or Nothing New Under the Sun?, 83 Ky. L.J. 123 (1994-95).

Opinions of Attorney General. The State Board of Education has enacted regulations for bidding on the purchase of school equipment and any bidding not conforming to these

regulations can be reported to the Superintendent of Public Instruction who is empowered to make written charges against any superintendent or board member who is guilty of misconduct or unlawful acts. OAG 73-740.

Although KRS 156.132 through 156.146 (KRS 156.140, 156.144 and 156.146, now repealed) gives the State Board of Education the right to suspend and remove county board members for misconduct in office or for wilful neglect of duty, the right to recall a school board member does not exist in this state. OAG 75-118.

Before the state board may send back to a local board of education the written charges, a majority of the state board must be of the opinion that a local superintendent is guilty of "immorality, misconduct in office, incompetency or wilful neglect of duty," after which the district board may commence consideration to remove its superintendent under KRS 160.350; refuse to act; or act in bad faith, arbitrarily or capriciously; but if the local board does anything other than take action to remove the local superintendent, after 30 days from receipt of the charges by the local board, the state board would regain "jurisdiction" and could then go forward to suspend the local superintendent. OAG 79-394.

If the information presented to the state board or state Superintendent is such as to serve an adequate basis to formulate an opinion of guilt without investigation, there is no reason why one would need be held. OAG 79-394.

In the case of the state board, "their opinion [that a school officer] is guilty," within subsection (1) of this section must be formulated by at least four of the seven voting members of the board. OAG 79-394.

Subsection (2) of this section is limited to consideration of a local board member or a local superintendent, but is not in any way applicable to a teacher or a principal as is the situation in subsection (1) of this section. OAG 79-394.

The provisions of this section make very clear that the actions of the state board are not dependent upon those of the state Superintendent. OAG 79-394.

The purpose of the summary hearing, provided for in subsection (2) of this section, is for the state board to consider the evidence and take a vote to see if a majority of the state board share the opinion that the local superintendent is guilty of "gross immorality, misconduct in office, incompetency or wilful neglect of duty." OAG 79-394.

"The proper school authorities," within subsection (1) of this section, is the local district board of education. OAG 79-394.

The regulations called for by subsection (2) of this section would be for the benefit of the state board members, not the local superintendent. OAG 79-394.

There exists no state board regulations relating to the summary hearing process called for in subsection (2) of this section. OAG 79-394.

When subsection (1) of this section refers to reporting a public school officer "who in [the superintendent's] opinion is guilty," a conclusive opinion of guilt is not required, but only a satisfaction in the superintendent's mind that the charges may be substantiated by evidence justifying and warranting consideration of removal and action by the local board of education. OAG 79-394.

Where the State Board of Education receives information alleging wrongdoing by a local school officer, it could ask the state Superintendent to investigate, and, if he declined, the state board could investigate on its own. OAG 79-394.

KRS 158.115 was the authorizing statute for a contract requiring a fiscal court to reimburse a school district on a straight per capita basis for nonpublic school students who rode public school buses and, absent full reimbursement by the fiscal court to the school board, the expenditure of public school moneys for transporting nonpublic school children would create a constitutional violation under Const., § 180 as well as other provisions. Therefore, failure by the school board to enforce the contract with the fiscal court would be tantamount to willful neglect of duty and could lead to removal from office. OAG 82-405.

Cited: Daugherty v. Hunt, 694 S.W.2d 719 (Ky. Ct. App. 1985).

NOTES TO DECISIONS

Analysis

1. Grounds.
2. Authority to remove.
3. Time restrictions.
4. —Failure to comply.

1. Grounds.

Bad faith, misconduct or neglect of duty to justify removal of county board members by state board is not shown where county board takes no affirmative action contrary to state board surveys but only submits counter proposals. Kentucky State Bd. of Educ. v. Isenberg, 421 S.W.2d 81 (Ky. 1967).

Unquestionably the state board has the right to suspend and remove county board members for misconduct in office or for wilful neglect of duty and "misconduct in office" means to conduct amiss; bad behavior. Kentucky State Bd. of Educ. v. Isenberg, 421 S.W.2d 81 (Ky. 1967).

Where members of county board disagree with and refuse to follow state board recommendations for consolidation and construction of school buildings the members of the county board cannot be suspended from office for neglect of duty or misconduct. Kentucky State Bd. of Educ. v. Isenberg, 421 S.W.2d 81 (Ky. 1967).

2. Authority to remove.

The State Board of Elementary and Secondary Education, under the Kentucky Education Reform Act, has the authority to remove members from a county board of education for misconduct in office; there is no language in either this section or KRS 160.180 which suggests, let alone mandates, that the Attorney General has the exclusive power to remove district board members for violations of KRS 160.180. State Bd. for Elementary & Secondary Educ. v. Ball, 847 S.W.2d 743 (Ky. 1993).

3. Time Restrictions.

4. —Failure to Comply.

Although the Kentucky State Board for Elementary and Secondary Education, which found county board of education member guilty of attempting to influence the hiring or appointment of district employees, failed to comply with the time restrictions contained in this section, because the board member was not suspended and continued to serve until his removal after the hearing, member failed to articulate any prejudice suffered and decision was affirmed. Craig v. Kentucky State Bd. for Elementary & Secondary Educ., 902 S.W.2d 264 (Ky. Ct. App. 1995).

Decisions Under Prior Law

Analysis

1. Recommendation of Superintendent of Public Instruction.
2. —Recommendation of Superintendent of Public Instruction.
3. —Grounds.

1. Removal.

2. —Recommendation of Superintendent of Public Instruction.

Mandamus would not lie to compel state board to conduct hearing of charges filed against county superintendent and members of county board of education where superintendent

had not recommended removal. Combs v. State Bd. of Educ., 249 Ky. 320, 60 S.W.2d 957 (1933).

Where board and county superintendent entered into a compromise agreement to settle differences between two factions the facts revealed a situation such as justified Superintendent of Public Instruction in making investigation to determine whether to recommend removal of board members or county superintendent. Board of Educ. v. Rose, 285 Ky. 217, 147 S.W.2d 83, 132 A.L.R. 969 (1940).

A recommendation by the Superintendent of Public Instruction was a prerequisite to many kinds of action by the State Board of Education. Hogan v. Kentucky State Bd. of Educ., 329 S.W.2d 563 (Ky. 1959).

The Superintendent of Public Instruction had a fair discretion as to whether to make a recommendation for removal of the county board of education and that discretion could not have been controlled by mandamus. Hogan v. Kentucky State Bd. of Educ., 329 S.W.2d 563 (Ky. 1959).

Affidavit and supporting data submitted to the lower court by the superintendent showed a fair exercise of discretion in refusing to recommend action on the charges against individual board members and the opposing affidavit on behalf of the petitioners did not overcome this showing in mandamus proceedings. Hogan v. Kentucky State Bd. of Educ., 329 S.W.2d 563 (Ky. 1959).

3. —Grounds.

Evidence that lame duck members of school board, by agreement with other members and one newly-elected member, employed close relatives of newly-elected member, shortly before expiration of their terms, was insufficient to justify removal of newly-elected member as usurper. Richardson v. Commonwealth ex rel. Meridith, 275 Ky. 486, 122 S.W.2d 156 (1938).

Arbitrary action of school board members in rejecting nominations of teachers by superintendent would be grounds for removal, and would perhaps subject them to liability for loss to school fund by payments to teachers wrongfully employed. Cottongim v. Stewart, 277 Ky. 706, 127 S.W.2d 149 (1939).

It does not follow from the fact that a board as a body had acted arbitrarily and in excess of its power, that any particular member or members of the board had individually been guilty of immorality, misconduct of office, incompetency or wilful neglect of duty. Hogan v. Kentucky State Bd. of Educ., 329 S.W.2d 563 (Ky. 1959).

Collateral References. 68 Am. Jur. 2d, Schools, §§ 42, 43.

78 C.J.S., Schools and School Districts, §§ 82, 244, 246, 252-259, 271, 272, 277, 288-314.

Refusal of teacher to perform services other than those which pertain to instruction. 38 A.L.R. 1414.

Negligence or incompetency. 49 A.L.R. 482.

Physical education or coaching athletic sports, refusal of one engaged to teach, to engage in, as ground for dismissal. 119 A.L.R. 819.

156.134. Notice of suspension — Answer — Hearing — Appeal. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1962, ch. 244, Art. I, § 2; 1978, ch. 155, § 82, effective June 17, 1978) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

156.136. Vacancies caused by suspension — Appointment — Term — Payment.

The Kentucky Board of Education, upon suspension of any officer or district board of education member under KRS 156.132, shall name a person to fill the vacancy caused by such suspension. Persons appointed by the Kentucky Board of Education to fill vacancies under KRS 156.132 and this section shall hold office only during the time an officer is suspended, not to exceed ninety (90) days from the date of suspension. At the expiration of such period, vacancies shall be filled in the manner provided by law for the office. Persons appointed by the Kentucky Board of Education to fill vacancies caused by suspension shall be paid from funds of the district board of education. Any person employed to fill the position of a superintendent who has been removed by the Kentucky Board of Education under KRS 156.132 shall be employed by the district board of education for periods not to exceed one (1) year if the superintendent has appealed to the courts and if the courts have not taken final action.

(Enact. Acts 1962, ch. 244, Art. I, § 3; 1978, ch. 155, § 82, effective June 17, 1978; 1980, ch. 188, § 117, effective July 15, 1980; 1990, ch. 476, Pt. II, § 51, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

Collateral References. 78 C.J.S., Schools and School Districts, §§ 82, 83, 204-208, 221, 255, 257, 258, 222-225, 228-235, 238-239.

156.138. Duty of Attorney General.

The Attorney General, upon the written recommendation of either the Governor, the Auditor of Public Accounts, the chief state school officer, or the Kentucky Board of Education, shall institute the necessary actions to recover school funds, from any source, which he believes have been erroneously or improperly allowed or paid to any person.

(Enact. Acts 1962, ch. 244, Art. I, § 5; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 131, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

Opinions of Attorney General. Under KRS 160.160, a board of education has the authority to bring an action in its own name for the recovery of funds improperly paid and the fact that the Attorney General also has this authority does not delimit the authority of the board of education but provides another means of bringing such an action when a local board for some reason has violated this provision and nothing in this section indicates that an action by the Attorney General shall be the exclusive recourse. OAG 73-867.

NOTES TO DECISIONS

1. Antitrust Matters.

KRS 156.142 is not a limiting statute on the general powers of the Attorney General, and when he is empowered by statute to commence all action in all cases or hearings in all courts, in or out of the state, as set out in KRS 15.020, he is within his authority to commence a civil antitrust action in federal court. Commonwealth ex rel. Cowan v. Southern Belle Dairy Co., 801 S.W.2d 60 (Ky. 1990).

Research References. Caldwell's Kentucky Form Book, Prac. & Proc. Forms, 4th Ed., Schools, General Note.

156.140. Superintendent to control and appoint division heads and employees. [Repealed.]

Compiler's Notes. This section (4384-7, 4434-31) was repealed by Acts 1956 (1st Ex. Sess.), ch. 7, Art. II, § 3.

156.142. Jurisdiction.

In all actions brought under the provisions of KRS 156.132 to 156.138, jurisdiction shall be vested in the Circuit Court of the county in which the school district is located.

(Enact. Acts 1962, ch. 244, Art. I, § 6; 1978, ch. 384, § 44, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 132, effective July 13, 1990.)

NOTES TO DECISIONS

1. Antitrust Matters.

This section is not a limiting statute on the general powers of the Attorney General, and when he is empowered by statute to commence all action in all cases or hearings in all courts, in or out of the state, as set out in KRS 15.020, he is within his authority to commence a civil antitrust action in federal court. Commonwealth ex rel. Cowan v. Southern Belle Dairy Co., 801 S.W.2d 60 (Ky. 1990).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 280-286, 288-298.

156.144. Special judge, selection. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1962, ch. 244, Art. I, § 7) was repealed by Acts 1976 (Ex. Sess.), ch. 14, § 491, effective January 2, 1978.

156.146. Failure to select special judge, procedure. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1962, ch. 244, Art. I, § 8; 1976, ch. 62, § 89) was repealed by Acts 1976 (Ex. Sess.), ch. 14, § 491, effective January 2, 1978.

COMMISSIONER OF EDUCATION

156.147. Education Management Selection Commission — Selection of first commissioner of education.

(1) There is hereby created an Education Management Selection Commission. The commission shall consist of six (6) members to be appointed as follows: Three (3) by the Governor, one (1) by the President Pro Tempore of the Senate, one (1) by the Speaker of the House of Representatives, and one (1) jointly by the President Pro Tempore and the Speaker. The commission is temporary in nature and shall terminate after the State Board for Elementary and Secondary Education has signed a contract of employment with the first commissioner of education. The members shall serve without compensation, but shall be reimbursed for their reasonable and necessary actual expenses.

(2) The commission shall conduct a national search to identify the best qualified individual for the State Board for Elementary and Secondary Education to appoint as the first commissioner of education to carry out the duties of the chief state school officer. The individual shall be agreed upon by a unanimous vote of all of the members of the commission.

(3) The commission shall meet as soon as practicable after it is constituted. The members shall elect a chairperson, who shall be responsible for convening future meetings. The Governor's office and the Legislative Research Commission shall provide staff support to the commission.

(Enact. Acts 1990, ch. 476, Pt. II, § 36, effective July 13, 1990.)

Legislative Research Commission Note. (7/15/96). Notwithstanding 1996 Ky. Acts ch. 362, sec. 6, the reference to the State Board for Elementary and Secondary Education in subsections (1) and (2) of this statute has been left unchanged because that reference is historical in nature.

156.1475. Date of appointment of first commissioner of education.

The first commissioner of education selected in accordance with KRS 156.147 shall be appointed no later than December 31, 1990.

(Enact. Acts 1990, ch. 476, Pt. II, § 39, effective July 13, 1990.)

156.148. Commissioner of education — Selection — Duties.

(1) Effective January 1, 1991, the commissioner of education shall be the chief state school officer. He shall possess the professional qualifications determined by the Kentucky Board of Education as appropriate for the office.

(2) The commissioner shall be appointed by the Kentucky Board of Education, serve at the pleasure of the board, and receive compensation as set by the board, the provisions of KRS 64.640 notwithstanding.

(3) The commissioner of education shall be the executive and administrative officer of the Kentucky Board of Education in its administration of all educational matters and functions placed under its management and control. He shall carry out all duties assigned to him by law; shall execute under the direction of the state board the educational policies, orders, directives, and administrative functions of the board; and shall direct the work of all persons employed in the Department of Education.

(4) The commissioner of education shall be reimbursed for all actual and necessary traveling expenses incurred by him in the performance of his duties.

(Enact. Acts 1990, ch. 476, Pt. II, § 41, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

Northern Kentucky Law Review. Edmondson and Rylee, Termination of the Tenured Teacher in Kentucky: Does K.R.S. 161.790 Provide Adequate Due Process?, 23 N. Ky. L. Rev. 263 (1996)

156.150. Bonds of division heads and assistants. [Repealed.]

Compiler's Notes. This section (4384-8) was repealed by Acts 1946, ch. 27, § 10.

156.152. Price contract agreements for purchase of school buses.

The chief state school officer, as executive officer of the Kentucky Board of Education, upon application and

requisition to the Finance and Administration Cabinet, is hereby authorized and directed to secure price contract agreements for the purchase of school buses by all district boards of education. The Finance and Administration Cabinet shall enter into price contract agreements under established purchasing procedure in keeping with the law relating to state purchasing. The price contract agreement shall establish sources of supply, maximum prices to be paid, and shall set forth the length of time for which contracts shall be valid.

(Enact. Acts 1956 (1st Ex. Sess.), ch. 7, Art. XVI, § 20; 1966, ch. 255, § 149; 1974, ch. 74, Art. II, § 9(1); 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 133, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

Cross-References. Buses; specifications and purchases, 702 KAR 5:060.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 85-88; 78A C.J.S., Schools and School Districts, §§ 744-750.

156.153. School bus standards — "School bus" defined — Mirrors.

(1) All school buses for which bids are made or bid contracts awarded shall meet the standards and specifications of the Kentucky Board of Education. The term "school bus," as used in this section, shall mean any motor vehicle which meets the standards and specifications for school buses as provided by law or by the standards or specifications of the Kentucky Board of Education authorized by law and used solely in transporting school children and school employees to and from school under the supervision and control and at the direction of school authorities, and shall further include school bus accessory equipment and supplies and replacement equipment considered to be reasonably adaptable for purchase from price contract agreements.

(2) All school buses manufactured prior to 1983 shall be equipped with exterior fender mounted front view and side view mirrors so as to meet the 1984 standards and specifications of the State Board for Elementary and Secondary Education.

(3) Except in cases of emergencies or for the transportation of students with disabilities, only school buses as defined in subsections (1) and (2) of this section shall be used for transporting students to and from school along regular bus routes. Districts may use district-owned vehicles that were designed and built by the manufacturer for passenger transportation when transporting nine (9) or fewer passengers, including the driver, for approved school activities. Vehicles used under this subsection shall be clearly marked as transporting students and shall be safety inspected no less than once every thirty (30) days.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 367, effective July 13, 1990; 1996, ch. 216, § 1, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996.)

Legislative Research Commission Note. (7/15/96). Notwithstanding 1996 Ky. Acts ch. 362, sec. 6, the reference to State Board for Elementary and Secondary Education in subsection (2) of this statute has been left unchanged because that reference is historical in nature.

Compiler's Notes. This section (Enact. Acts 1956 (1st Ex. Sess.), ch. 7, Art. XVI, § 21; 1978, ch. 155, § 82, effective June 17, 1978; 1984, ch. 236, § 1, effective July 13, 1984) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 367, effective July 13, 1990.

Cross-References. Buses; specifications and purchases, 702 KAR 5:060.

Vehicles designed to carry nine (9) passengers or less, standards for, 702 KAR 5:130.

Collateral References. 78A C.J.S., Schools and School Districts, §§ 744-750.

156.154. Information respecting established price contract agreements — Purchase conditions of district boards.

The chief state school officer shall make available to all district boards of education full information respecting established price contract agreements, and any or all districts may procure buses from sources and at prices, terms, and conditions incorporated in the price contract agreements. Any district board of education may take its own bids on school buses which meet the specifications of the Kentucky Board of Education for school buses for which price contracts have been established, provided the chief state school officer approves the bids and purchase contract as meeting specifications of the Kentucky Board of Education. However, no district board of education shall purchase school buses under the terms of this section unless the chief state school officer shall certify that the purchase price is lower than prices set forth in established price contract agreements for similar equipment.

(Enact. Acts 1956 (1st Ex. Sess.), ch. 7, Art. XVI, § 22; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 134, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

Cross-References. Buses; specifications and purchases, 702 KAR 5:060.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 85-88; 78A C.J.S., Schools and School Districts, §§ 744-756, 758-765.

156.160. Promulgation of administrative regulations by Kentucky Board of Education.

(1) With the advice of the Local Superintendents Advisory Council, the Kentucky Board of Education shall promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. These regulations shall comply with the expected outcomes for students and schools set forth in KRS 158.6451. Administrative regulations shall be promulgated for the following:

(a) Courses of study for the different grades and kinds of common schools identifying the common curriculum content directly tied to the goals, outcomes, and assessment strategies developed under KRS 158.645, 158.6451, and 158.6453 and distributed to local school dis-

tricts and schools. They shall include the following: the courses of study for students shall include American sign language which shall be accepted as meeting the foreign language requirements in common schools notwithstanding other provisions of law;

(b) The acquisition and use of educational equipment for the schools as recommended by the Council for Education Technology;

(c) The minimum requirements for high school graduation in light of the expected outcomes for students and schools set forth in KRS 158.6451. Student scores from any assessment administered under KRS 158.6453 that are determined by the National Technical Advisory Panel to be valid and reliable at the individual level shall be included on the student transcript. The National Technical Advisory Panel shall submit its determination to the commissioner of education and the Legislative Research Commission;

(d) Taking and keeping a school census, and the forms, blanks, and software to be used in taking and keeping the census and in compiling the required reports. The board shall create a statewide student identification numbering system based on students' Social Security numbers. The system shall provide a student identification number similar to, but distinct from, the Social Security number, for each student who does not have a Social Security number or whose parents or guardians choose not to disclose the Social Security number for the student;

(e) Sanitary and protective construction of public school buildings, toilets, physical equipment of school grounds, school buildings, and classrooms. With respect to physical standards of sanitary and protective construction for school buildings, the Kentucky Board of Education shall adopt the Uniform State Building Code;

(f) Medical inspection, physical and health education and recreation, and other regulations necessary or advisable for the protection of the physical welfare and safety of the public school children. The administrative regulations shall set requirements for student health standards to be met by all students in grades four (4), eight (8), and twelve (12) pursuant to the outcomes described in KRS 158.6451. The administrative regulations shall permit a student who received a physical examination no more than six (6) months prior to his initial admission to Head Start to substitute that physical examination for the physical examination required by the Kentucky Board of Education of all students upon initial admission to the public schools, if the physical examination given in the Head Start program meets all the requirements of the physical examinations prescribed by the Kentucky Board of Education;

(g) A vision examination by an optometrist or ophthalmologist that shall be required by the Kentucky Board of Education. The administrative regulations shall require evidence that a vision examination that meets the criteria prescribed by the Kentucky Board of Education has been performed. This evidence shall be submitted to the school no later than January 1 of the first year that a three (3), four (4), five (5), or six (6) year-old child is enrolled in a public school, public preschool, or Head Start program;

(h) The transportation of children to and from school;

(i) The fixing of holidays on which schools may be closed and special days to be observed, and the pay of teachers during absence because of sickness or quarantine or when the schools are closed because of quarantine;

(j) The preparation of budgets and salary schedules for the several school districts under the management and control of the Kentucky Board of Education;

(k) A uniform series of forms and blanks, educational and financial, including forms of contracts, for use in the several school districts; and

(l) The disposal of real and personal property owned by local boards of education.

(2) (a) At the request of a local board of education or a school council, a local school district superintendent shall request that the Kentucky Board of Education waive any administrative regulation promulgated by that board. Beginning in the 1996-97 school year, a request for waiver of any administrative regulation shall be submitted to the Kentucky Board of Education in writing with appropriate justification for the waiver. The Kentucky Board of Education may approve the request when the school district or school has demonstrated circumstances that may include but are not limited to the following:

1. An alternative approach will achieve the same result required by the administrative regulation;
2. Implementation of the administrative regulation will cause a hardship on the school district or school or jeopardize the continuation or development of programs; or
3. There is a finding of good cause for the waiver.

(b) The following shall not be subject to waiver:

1. Administrative regulations relating to health and safety;
2. Administrative regulations relating to civil rights;
3. Administrative regulations required by federal law; and
4. Administrative regulations promulgated in accordance with KRS 158.6451, 158.6453, 158.6455, 158.685, and this section, relating to measurement of performance outcomes and determination of successful districts or schools, except upon issues relating to the grade configuration of schools.

(c) Any waiver granted under this subsection shall be subject to revocation upon a determination by the Kentucky Board of Education that the school district or school holding the waiver has subsequently failed to meet the intent of the waiver.

(3) Any private, parochial, or church school may voluntarily comply with curriculum, certification, and textbook standards established by the Kentucky Board of Education and be certified upon application to the board by such schools.

(4384-17, 4384-21, 4384-22, 4384-24 to 4384-30: amend. Acts 1974, ch. 348, § 2; 1978, ch. 117, § 16, effective August 31, 1979; 1978, ch. 155, § 90, effective June 17, 1978; 1984, ch. 297, § 1, effective July 13, 1984; 1990, ch. 453, § 2, effective July 13, 1990; 1990, ch. 476, Pt. I, § 31, effective July 13, 1990; 1992, ch. 195, § 10, effective April 3, 1992; 1992, ch. 362, § 1, effective July 14, 1992; 1992, ch. 444, § 1, effective July 14, 1992; 1994, ch. 98, § 8, effective July 15, 1994; 1994, ch. 354, § 3, effective July 15, 1994; 1994, ch. 404, § 1, effective July 15, 1994; 1996, ch. 7, § 1, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 204, § 1, effective July 15, 1998; 1998, ch. 434, § 2, effective April 14, 1998; 1998, ch. 598, § 9, effective April 14, 1998; 2000, ch. 308, § 8, effective July 14, 2000; 2002, ch. 148, § 1, effective July 15, 2002.)

Legislative Research Commission Note. (7/15/98). This section was amended by 1998 Ky. Acts chs. 204, 434, and 598. Where these Acts are not in conflict, they have been codified together. Where a conflict exists between chs. 434 and 598, Acts ch. 598, which was last enacted by the General Assembly, prevails under KRS 446.250.

Cross-References. Administrative regulations, adoption and effective dates, KRS 13A.330.

Foundation program fund, requirements to be met by district to share in, KRS 157.350.

Free textbooks for children in correctional institutions, duties as to, KRS 157.190.

School buses, regulations concerning, KRS 189.540.

School district audits, KRS 156.265.

Transportation of school children, KRS 158.110, 158.115.

Appeal procedures for school and community nutrition programs, 702 KAR 6:100.

Application for approval of alternative school-based decision making model, 701 KAR 5:080.

Approval for school district lease agreements, 702 KAR 3:300.

Art at elementary level on high school certification, 704 KAR 20:105.

Bidding procedures, 702 KAR 3:135.

Building sites; inspection, approval, 702 KAR 4:050.

Bus drivers' qualifications; responsibilities, 702 KAR 5:080.

Buses; specifications and purchases, 702 KAR 5:060.

Capital construction process, 702 KAR 4:160.

Child find, evaluation, and reevaluation, 707 KAR 1:300.

Children with disabilities enrolled in private schools, 707 KAR 1:370.

Commonwealth Diploma Program, 704 KAR 3:340.

Competitive food and beverage sales and service requirements, 702 KAR 6:090.

Comprehensive system of personnel development, 707 KAR 1:330.

Confidentiality of information, 707 KAR 1:360.

Definitions, 707 KAR 1:280.

Determination of eligibility, 707 KAR 1:310.

District board's responsibilities, 702 KAR 5:040.

District director, 702 KAR 6:020.

Document filing dates, 702 KAR 3:110.

Driver education, 704 KAR 20:115.

Educational television equipment purchases, 702 KAR 3:170.

Elementary, middle and secondary schools standards, 704 KAR 10:022.

Facility programming and construction criteria, 702 KAR 4:170.

Foreign teachers serving under the teacher exchange program, 704 KAR 20:212.

Free appropriate public education, 707 KAR 1:290.

Guidelines for admission to the state-supported postsecondary education institutions in Kentucky, 13 KAR 2:020.

Handicapped, reimbursement for, 702 KAR 5:100.

Home/hospital instruction, 704 KAR 7:120.

Individual education program, 707 KAR 1:320.

Internal accounting, 702 KAR 3:130.

Liability insurance for buses, 702 KAR 5:070.

Lunch and breakfast requirements, 702 KAR 6:050.

Management improvement program, 703 KAR 3:205.

Merger of independent and county school districts, 702 KAR 1:100.

Minimum requirements for high school graduation, 704 KAR 3:305.

Monitoring and recovery of funds, 707 KAR 1:380.

Music at elementary level on high school certification, 704 KAR 20:160.

Music, general, at elementary level, 704 KAR 20:161.

Personnel; food service employee qualifications, 702 KAR 6:045.

Physical education, 704 KAR 4:010.

Physical education at elementary level on high school certification, 704 KAR 20:175.

Placement decisions, 707 KAR 1:350.

Preschool associate teachers, 704 KAR 3:420.

Preschool education program for four (4) year old children, 704 KAR 3:410.

Preschool grant allocations, 702 KAR 3:250.

Prevention of sexually explicit materials transmitted to schools via computer, 701 KAR 5:120.

Primary school program guidelines, 704 KAR 3:440.

Procedural safeguards and state complaint procedures, 707 KAR 1:340.

Property disposal, 702 KAR 4:090.

Pupil attendance, 702 KAR 7:125.

Pupils' responsibilities, 702 KAR 5:090.

Ranking of certified school personnel, 704 KAR 3:470.

Recognition of credits when transferring without transcript, 704 KAR 3:307.

Required program of studies, 704 KAR 3:303.

Responsibilities of division, 702 KAR 5:010.

Restructuring revenue bond issues, 702 KAR 3:260.

School district Medicaid providers, 702 KAR 3:285.

School district tax rate formulas, 702 KAR 3:275.

School health services, 704 KAR 4:020.

School to careers, 705 KAR 4:240.

Secondary school level on elementary certification, 704 KAR 20:075.

SEEK funding formula, 702 KAR 3:270.

Social workers' provisional certification, 704 KAR 20:195.

Social workers' standard certification, 704 KAR 20:194.

Substitute teachers' salary scheduling, 702 KAR 3:075.

Superintendents' responsibilities, 702 KAR 5:030.

Supervision and discipline of pupils, 702 KAR 5:050.

Time minimum for meals, 702 KAR 6:060.

Transfer of annexed property; hearing, 702 KAR 1:080.

Transportation of preschool children, 702 KAR 5:150.

Uniform school financial accounting system, 702 KAR 3:120.

Use of local monies to reduce unmet technology need, 701 KAR 5:110.

Vehicles designed to carry nine (9) passengers or less, standards for, 702 KAR 5:130.

Kentucky Bench & Bar. Kirby, School-Based Decision Making, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 15.

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

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

Opinions of Attorney General. The provision of this section requiring the Superintendent of Public Instruction to prepare rules and regulations to accredit commercial schools is mandatory. OAG 60-886.

The term "commercial schools" as used in this section, includes only business schools principally engaged in the instruction of typing, shorthand, bookkeeping and related subjects. OAG 60-886.

Under regulations enacted pursuant to subsection (9) (now subdivision (1)(g)) of this section, a county board of education may designate election day as a holiday and dismiss schools on that day. OAG 60-995.

A county board of education is not bound to allow private teachers to teach music in the public school building. OAG 73-653.

The requirement of the State Department of Education that a child participate in a health and physical education course does not impose a significant constitutional burden upon the freedom to exercise religious beliefs and, therefore, the state's interest in establishing a sound curriculum format for graduation must prevail over patchwork exceptions to course requirements. OAG 76-225; OAG 78-312.

Once approval to sell school property as surplus is given by the Superintendent of Public Instruction, there is no legal requirement that a board of education must dispose of the property by public auction or advertisement of sealed bids and the board may establish a price for the land and sell to any purchaser willing and able to meet that price if the figure represents at least the appraised fair market value of the property. OAG 76-291.

Although the State Board of Education is required to receive recommendation and advice from the Superintendent of Public Instruction as a condition precedent to the adoption of regulations, the board may exercise reasonable discretion in modifying the recommendation or advice. OAG 77-82.

A county school board may enter into a quitclaim deed relative to its future interest in a certain parcel of real property. OAG 77-541.

A local school board may, but is not required to, pay from school funds costs of contracting with local physicians for the performing of physical examinations required by school law or regulation. OAG 78-365.

The health, general welfare and safety of the school children in a school district constitutes a sufficient educational purpose to authorize the expenditure of school tax dollars to pay doctors for physical examinations for students and school employees. OAG 78-365.

Teachers and administrators and other school officials are responsible for the public education and are charged with the responsibility of implementing the rules and regulations of the Commonwealth for the control and management of the common schools and local board rules and regulations for schools in a school district. OAG 79-168.

A school system plan providing for three types of diplomas depending on whether a student chooses the regular, 18-credit program; the enrichment, 21-credit program; or the comprehensive, 22-credit program is in full compliance with the "minimum requirements for graduation" established by the state board pursuant to subsection (2) of this section. OAG 79-253.

Subsection (2) of this section is not a diploma statute. OAG 79-253.

A local board of education, pursuant to its broad authority under KRS 160.290, may require additional credit requirements over those minimally established by regulation of the State Board of Education, pursuant to subsection (2) of this section. OAG 80-118.

A medical examination required by a regulation promulgated pursuant to subsection (5) of this section in order to determine a high school student's eligibility for interscholastic athletics, cannot be performed by a chiropractor, since another regulation requires a medical physician's examination and a chiropractor is not a "physician" under the terms of subdivision (10) of KRS 311.550. OAG 81-335.

Kentucky Revised Statutes 156.070, this section, and the accompanying regulation, 704 KAR 7:055 set the standards to be followed by employees of the common schools with regard to the imposition of corporal punishment. OAG 92-20.

The existence of principles of justification in KRS 503.110 under which use of physical force will not be considered a crime does not change the fact that the State Board for Elementary and Secondary Education retains authority and supervision for management and control of common schools; that authority includes prescribing regulations for management of the schools. OAG 92-20.

The Kentucky Board of Education has preempted the issue of granting high school credit for 8th grade algebra courses and thus removed the decision from the local district. OAG 93-31.

If a school district or school which exceeds its threshold applies for a waiver from certain regulations, then under this section the Kentucky Board of Education has discretion to grant or deny the waiver request; however, the Board must first determine if the regulation is subject to waiver or if the regulation may not be waived under any circumstance since it relates to health and safety, civil rights, required by federal law, etc., next the the Board must decide if a school or school district which exceeds its threshold should be granted a waiver from a particular regulation. OAG 95-25.

Exceeding its threshold is the only statutory requirement that a school or school district must meet in order to petition the State Board for a waiver under subsection (2) of this section. OAG 95-25.

Cited: Hunter v. Board of Educ., 265 Ky. 162, 96 S.W.2d 265 (1936); Madison County Bd. of Educ. v. Skinner, 299 Ky. 707, 187 S.W.2d 268 (1945); Phelps v. Witt, 304 Ky. 473, 201 S.W.2d 4 (1947); Goins v. Jones, 258 S.W.2d 723 (Ky. 1953); Hogan v. Kentucky State Bd. of Educ., 329 S.W.2d 563 (Ky. 1959).

NOTES TO DECISIONS

Analysis

1. Rule requiring minimum number of pupils.
2. Teacher's contract.
3. Budget.
4. Rights of conscience.
5. Teacher certification.
6. Standardized achievement testing.
7. Additional graduation requirements.
8. Regulation of school bus operation.

1. Rule Requiring Minimum Number of Pupils.

A rule of the State Superintendent of Public Instruction, approved by the State Board of Education, to the effect that a minimum of 60 students is required for maintenance of a high school, is a valid administrative regulation carrying out the legislature's intent in its enactment of the school code, and is not an invalid exercise of a legislative function. Dicken v.

Kentucky State Bd. of Educ., 304 Ky. 343, 199 S.W.2d 977 (1947).

Where high school has never had an attendance of 60 or more pupils as required by a rule of the State Superintendent of Public Education approved by the State Board of Education and passed in accordance with statutory authority until after order of discontinuance was made and where sudden increase in attendance was for purpose of obtaining a rescission of the order discontinuing the school, a mandatory injunction requiring revocation of the order discontinuing the high school cannot be granted. Pulliam v. Williams, 304 Ky. 351, 200 S.W.2d 731 (1947).

2. Teacher's Contract.

Teacher's employment contract must be in writing; an oral contract is unenforceable. Leslie County Bd. of Educ. v. Melton, 277 Ky. 772, 127 S.W.2d 846 (1939).

3. Budget.

In order to determine tax levy for school purposes for the ensuing school year the Board of Education should include in its sources statement in the budget a reasonable anticipated amount of collections of taxes delinquent in previous years, based on past years' experience but the board may deduct the amount of anticipated delinquencies in the collection of taxes under current levy. City of Middlesboro v. Board of Educ., 302 Ky. 683, 195 S.W.2d 288 (1946).

4. Rights of Conscience.

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

5. Teacher Certification.

It cannot be said as an absolute that a teacher in a nonpublic school who is not certified under KRS 161.030(2) will be unable to instruct children to become intelligent citizens; certainly, the receipt of "a bachelor's degree from a standard college or university" is an indicator of the level of achievement, but it is not a sine qua non the absence of which establishes that private and parochial school teachers are unable to teach their students to intelligently exercise the elective franchise. Kentucky State Bd. for Elementary & Secondary Educ. v. Rudasill, 589 S.W.2d 877 (Ky. 1979), cert. denied, 446 U.S. 938, 100 S. Ct. 2158, 64 L. Ed. 2d 792 (1980).

6. Standardized Achievement Testing.

If the Legislature wishes to monitor the work of private and parochial schools in accomplishing the constitutional purpose of compulsory education, it may do so by an appropriate standardized achievement testing program, and if the results show that one or more private or parochial schools have failed to reasonably accomplish the constitutional purpose, the Commonwealth may then withdraw approval and seek to close them for they no longer fulfill the purpose of "schools." Kentucky State Bd. for Elementary & Secondary Educ. v. Rudasill, 589 S.W.2d 877 (Ky. 1979), cert. denied, 446 U.S. 938, 100 S. Ct. 2158, 64 L. Ed. 2d 792 (1980).

7. Additional Graduation Requirements.

Regulations promulgated under the authority of this section authorize local school boards to establish additional graduation requirements above the minimum requirements established by the Kentucky Board of Education; such requirements may include a requirement that students take the Kentucky Instructional Results Information System (KIRIS) examination, established by the Board under KRS 158.645 et seq. Triplett v. Livingston County Bd. of Educ., 967 S.W.2d 25 (Ky. Ct. App. 1997), cert. denied, 525 U.S. 1104, 119 S. Ct. 870, 142 L. Ed. 2d 771 (1999).

8. Regulation of School Bus Operation.

Where language of this section and KRS 189.540 was clear and unambiguous and authorized the Department of Transportation to regulate the operation of school buses, which necessarily included those persons operating the buses, there was no room for construction of the statutes and they must be accepted as they were written. Cornette v. Commonwealth, 899 S.W.2d 502 (Ky. Ct. App. 1995).

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

Research References. Caldwell's Kentucky Form Book, Prac. & Proc. Forms, 4th Ed., Schools, General Note.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 85-88.

156.165. Superintendent to inform local boards of availability of federal funds for exceptional children. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1966, ch. 954, § 17) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

156.170. Superintendent may take special school census. [Repealed.]

Compiler's Notes. This section (4384-22) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990. For present law see KRS 159.250.

156.180. Superintendent may attend educational conferences. [Repealed.]

Compiler's Notes. This section (4384-10: amend. Acts 1976, ch. 327, § 3) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

156.190. Call and conduct of school conferences.

The chief state school officer may call and conduct conferences of boards of education, superintendents, supervisors, principals, teachers, attendance officers, and other regular public school employees, on matters relating to the condition, need, and improvement of the schools. Personal traveling expenses incurred by those attending conferences called by the chief state school officer shall be a legitimate public expense and may be paid by boards of education.

(4384-16: amend. Acts 1990, ch. 476, Pt. IV, § 135, effective July 13, 1990.)

Cross-References. Reports of local boards to Board of Education, KRS 160.340.

School district audits, KRS 156.265.

Opinions of Attorney General. When attending a meeting or conference called by the Superintendent of Public Instruction pursuant to the provisions of this section, a member of a local board of education may be reimbursed

pursuant to KRS 160.280 for expenses incurred outside his district. OAG 61-1052.

It is within the legal prerogative of the local board to fairly establish the nature of professional activities for which it will be willing to incur expenses. OAG 83-228.

While there is a legal basis for the expenditure of school moneys for professional activities, a school board is not mandated to approve the incurring of these expenses and costs for reimbursement from school funds. OAG 83-228.

Within reason, school boards are permitted to bear the direct and indirect expenses incurred by teachers and administrators who attend, after prior approval by the board, professional activities and functions; however, school boards are not wholly unfettered in exercising their discretion in approving attendance at sundry professional activities since Const., §§ 180 and 184 require that school funds may be used only for school purposes, the test being whether the expenditure is for an educational purpose rather than whether an activity might be beneficial to education. OAG 83-228.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 85-88.

156.200. Examination and supervision of reports and accounts of boards of education and educational institutions.

The chief state school officer shall receive and examine all reports required by law or by the Kentucky Board of Education and, in person or through his assistants, shall examine and advise on the expenditures, business methods and accounts of all boards of education and all institutions placed under the management and control of the Department of Education as established in KRS 156.010. He shall see that all financial and educational accounts are accurately and neatly kept and that all reports are made according to the forms adopted by the Kentucky Board of Education.

(4384-14, 4384-30: amend. Acts 1978, ch. 155, § 91, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 136, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

Cross-References. Bond issue approval, 702 KAR 3:020.

Competitive food and beverage sales and service requirements, 702 KAR 6:090.

Internal accounting, 702 KAR 3:130.

Reports and funds, 702 KAR 6:075.

Uniform school financial accounting system, 702 KAR 3:120.

Opinions of Attorney General. Regulations for bidding promulgated under the authority of this section and KRS 156.070 by county Board of Education has the force of law. OAG 73-247.

NOTES TO DECISIONS

Analysis

1. Audits.
2. Presentment of accounts on appeal.

1. Audits.

This section does not require audits by the Superintendent of Public Instruction although the power to audit all of the records of the board necessarily rests in him and in his supervisory capacity he may require reports, advise on expenditures and provide a standard of record keeping and reporting which the several boards must follow. Lewis v. Morgan, 252 S.W.2d 691 (Ky. 1952).

2. Presentment of Accounts on Appeal.

In order for Court of Appeals to ascertain whether floating indebtedness is of type which may be funded by issuance of bonds by Board of Education, a school budget prepared by the board and financial and educational accounts of Superintendent of Public Instruction showing complete account of financial expenditures during the previous fiscal year by board must be presented to the Court of Appeals. Ebert v. Board of Educ., 277 Ky. 633, 126 S.W.2d 1111 (1939).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 85-88.

156.210. Powers of chief state school officer.

(1) The chief state school officer shall have access to the papers, books and records of all teachers, trustees, superintendents, or other public school officials.

(2) He may administer oaths and may examine witnesses under oath in any part of the state in any matter pertaining to the public schools, and may cause the testimony to be reduced to writing. He may issue process to compel attendance of witnesses before him and compel witnesses to testify in any investigation he is authorized to make.

(3) When he or his assistants find any mismanagement, misconduct, violation of law, or wrongful or improper use of any district or state school fund, or neglect in the performance of duty on the part of any official, he shall report the same, and any other violation of the school laws discovered by him, to the Kentucky Board of Education, which shall, through the chief state school officer or one (1) of his assistants, call in the county attorney or the Commonwealth's attorney in the county or district where the violation occurs, and the attorney so called in shall assist in the indictment, prosecution, and conviction of the accused. If prosecution is not warrantable, the Kentucky Board of Education may rectify and regulate all such matters.

(4384-12, 4384-15: amend. Acts 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 137, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

Cross-References. Heads of administrative departments may administer oaths and examine witnesses, KRS 12.120.

Bond issue approval, 702 KAR 3:020.

NOTES TO DECISIONS

1. Construction.

This section and KRS 156.070 and 160.190 must be construed together and mean that the state board should have control over the common schools, with the power of removal of such board members who might be found guilty of specified charges. Gearhart v. Kentucky State Bd. of Educ., 355 S.W.2d 667 (Ky. 1962).

Research References. Caldwell's Kentucky Form Book, Prac. & Proc. Forms, 4th Ed., Schools, General Note.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 85-88

156.220. Superintendent to render advice on any controversy or dispute involving proper administration of public schools. [Repealed.]

Compiler's Notes. This section (4384-12: amend. Acts 1982, ch. 10, § 1, effective July 15, 1982) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

156.230. Chief state school officer to prepare publications.

(1) The chief state school officer shall annually prepare or cause to be prepared, and submit for approval and publication by the Kentucky Board of Education, a list of all public and private high schools or other secondary schools in the state, showing the classification of each.

(2) He shall, from time to time, prepare or cause to be prepared, and submit for approval and publication by the Kentucky Board of Education, such bulletins, programs, outlines of courses, placards, and courses of study as he deems useful in the promotion of the interests of the public schools.

(3) He shall also prepare for publication the administrative regulations, minimum standards for schools, and educational policies or programs adopted by the board for the operation, regulation, and government of the schools under its supervision.

(4384-19, 4384-31: amend. Acts 1952, ch. 41, § 4; 1978, ch. 155, § 92, effective June 17, 1978; 1988, ch. 361, § 9, effective July 15, 1988; 1990, ch. 470, § 51, effective July 1, 1990; 1990, ch. 476, Pt. IV, § 138, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

Legislative Research Commission Note. (7/13/90) This section was amended by two 1990 Acts. Where those Acts are not in conflict, they have been compiled together. Where a conflict exists, the Act which was last enacted by the General Assembly prevails, pursuant to KRS 446.250.

Cross-References. Administrative regulations adoption and effective dates, KRS 13A.330.

Opinions of Attorney General. The statement of the State Superintendent of Education in an official publication that a pupil boycott gained nothing and lost money for the school system was a statement of policy and the publication of such statement was not an improper use of taxpayers' money. OAG 69-529.

Cited: Hogan v. Kentucky State Bd. of Educ., 329 S.W.2d 563 (Ky. 1959).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 85-88.

156.240. Chief state school officer to publish school laws.

The chief state school officer shall prepare for publication biennially, the complete school laws of the state, including abstracts of decisions of the Court of Justice, and opinions and interpretations of the Attorney General and the chief state school officer. He shall explain the true intent and meaning of the school laws and the published administrative regulations of the Kentucky Board of Education, and in doing so he shall freely consult the Attorney General.

(4384-11, 4384-18: amend. Acts 1976, ch. 62, § 90; 1978, ch. 155, § 93, effective June 17, 1978; 1988, ch. 361, § 10, effective July 15, 1988; 1990, ch. 470, § 52, effective July 1, 1990; 1990, ch. 476, Pt. IV, § 139, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

Legislative Research Commission Note. (7/13/90) This section was amended by two 1990 Acts. Where those Acts are not in conflict, they have been compiled together. Where a conflict exists, the Act which was last enacted by the General Assembly prevails pursuant to KRS 446.250.

Cross-References. Type for revised statutes may be used in printing pamphlets of laws, KRS 7.120.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 85-88.

156.250. Biennial report on education.

The chief state school officer shall biennially prepare the report of the Department of Education as established in KRS 156.010 to be submitted to the Governor and the General Assembly. The report shall set out the number attending the public schools, the amount of state funds apportioned and the source from which derived, the amount raised by county school and independent school district taxes or from other sources of revenue for school purposes, the amount expended for salaries of teachers, for the erection of school buildings, and for incidental and other expenses in the operation of the public schools under his supervision, together with any other facts, statistics, and information as may be deemed of interest, including recommendations for the improvement of the schools.

(4384-20: amend. Acts 1978, ch. 155, § 94, effective June 17, 1978; 1990, ch. 470, § 53, effective July 1, 1990; 1990, ch. 476, Pt. IV, § 140, effective July 13, 1990.)

Legislative Research Commission Note. (7/13/90) This section was amended by two 1990 Acts. Where those Acts are not in conflict, they have been complied together. Where a conflict exists, the Act which was last enacted by the General Assembly prevails, pursuant to KRS 446.250.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 85-88.

156.253. Agreements for training workers for new and expanding industries — Reimbursement of industry for specified services. [Repealed, reenacted, and amended.]

Compiler's Notes. This section (Enact. Acts 1980, ch. 31, § 1, effective March 12, 1980; 1984, ch. 111, § 90, effective July 13, 1984; 1988, ch. 361, § 11, effective July 15, 1988) was repealed, reenacted, and amended as KRS 151B.120 by Acts 1990, ch. 470, § 22, effective July 1, 1990 and also amended by Acts 1990, ch. 476, Part V, § 141 and Acts 1990, ch. 496, § 48, however, pursuant to KRS 446.260 the repeal, reenactment and amendment by Acts 1990, ch. 470, § 22 prevails. See KRS 151B.120

School District Audits

156.255. Definitions for KRS 156.255 to 156.295.

As used in KRS 156.255 to 156.295:

(1) "Accountant" means a certified public accountant or a public accountant registered with the State Board of Accountancy.

(2) "Board" means the board of education of a school district.

(3) "Committee" means the State Committee for School District Audits.

(4) "State board" means the Kentucky Board of Education.

(Enact. Acts 1962, ch. 244, Art. II, § 1; 1978, ch. 155, § 82, effective June 17, 1978; Acts 1990, ch. 476, Pt. IV, § 142, effective July 13, 1990; 1994, ch. 296, § 2, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996.)

Legislative Research Commission Note. (9/2/94). By letter of September 2, 1994, the Secretary of the Finance and Administration Cabinet, acting under KRS 48.500, advised the Reviser of Statutes of his determination "that no funds appropriated by the Executive Branch Appropriations Act for the 1995-96 biennium can be identified as having been appropriated for the purpose of implementing Sections 1 to 7 of House Bill No. 616, Chapter [296], Acts of the 1994 Regular Session of the General Assembly." Accordingly, the amendment to this statute contained in 1994 Ky. Acts ch. 296 is void under sec. 3(8) of that Act and has not been codified into the statute.

156.260. State Textbook Commission — Organization. [Repealed.]

Compiler's Notes. This section (4421a-36) was repealed by Acts 1952, ch. 184, § 17.

156.265. State Committee for School District Audits.

(1) There shall be a State Committee for School District Audits comprised of the Governor, or a person designated by him, the Attorney General, the Auditor of Public Accounts, a person designated by the Legislative Research Commission to represent the Office of Education Accountability, and the commissioner of education. The Auditor of Public Accounts shall be the chair of the committee.

(2) The committee shall have the accounts of each board audited not less than once every fiscal year. The committee also may, at any time, cause to be made a comprehensive and complete audit of any board. Upon the written request of the state board, the commissioner of education, the Attorney General, the Auditor of Public Accounts, the Governor, or the Office of Education Accountability, the committee may cause the accounts of a board to be audited. Each audit shall cover such period of time, and shall include such auditing procedures and standards, as the committee may designate.

(3) Audits authorized under this section are in addition to any audits contemplated under KRS 11.090 or 156.200 or KRS Chapter 43.

(4) The actual expense of any audit authorized under this section shall be borne equally by the district board of education and by the committee from funds allocated to it.

(5) The committee shall meet at least quarterly. Additional or special meetings may be called by the chair.

(Enact. Acts 1962, ch. 244, Art. II, § 2; 1974, ch. 257, § 4; 1976, ch. 210, § 4; 1978, ch. 155, § 41, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 143, effective July 13, 1990; 1994, ch. 296, § 3, effective July 15, 1994; 2000, ch. 491, § 2, effective July 14, 2000.)

Legislative Research Commission Note. (9/2/94). By letter of September 2, 1994, the Secretary of the Finance and Administration Cabinet, acting under KRS 48.500, advised the Reviser of Statutes of his determination "that no funds appropriated by the Executive Branch Appropriations Act for the 1995-96 biennium can be identified as having been appropriated for the purpose of implementing Sections 1 to 7 of House Bill No. 616, Chapter [296], Acts of the 1994 Regular Session of the General Assembly." Accordingly, the amendment to this statute contained in 1994 Ky. Acts ch. 296 is void under sec. 3(8) of that Act and has not been codified into the statute.

Cross-References. Audit exceptions and corrections, 702 KAR 3:150.

Opinions of Attorney General. Since the State Committee for School District Audits possesses its supervisory authority under this section to audit school boards, and since a school board under the express holding in Bell County Bd. of Educ. v. Lee, 239 Ky. 317, 39 S.W.2d 492 (1931), has authority to audit the sheriffs' school tax accounts, the state committee also has that authority. OAG 72-76.

This section gives the Committee for School District Audits the authority to include in its procedures an audit of the sheriffs' records concerning the disposition of collected school taxes. OAG 72-76.

It is entirely within the discretion of the committee whether a requested audit shall be made and who shall make it. OAG 73-451.

The Auditor of Public Accounts has no authority to undertake an audit of any school district unless directed to do so by the State Committee for School District Audits. OAG 73-451.

The State Committee for School District Audits could authorize an audit made by the Auditor of Public Accounts in lieu of an audit by an accountant in private practice. OAG 73-451.

This section and KRS 7.330 should be interpreted to allow both the state committee and the commission to authorize local school district audits consistent with their statutory authority and that such interpretation is both logical, reasonable and consistent with the apparent intent of the Legislature as evidenced by the words of the statute. OAG 89-29.

This section does not appear to be couched in terms of exclusivity; that is, it does not prohibit the statutory authority of another agency to conduct school district audits. OAG 89-29.

156.270. Conditions to be complied with before textbooks adopted or purchased. [Repealed.]

Compiler's Notes. This section (4421a-37) was repealed by Acts 1952, ch. 184, § 17.

156.275. Accountant — Selection — Reports.

(1) The committee shall select, to make the audit authorized under KRS 156.265, accountants who are qualified under KRS Chapter 325 and the administrative regulations promulgated by the Kentucky State Board of Accountancy.

(2) Immediately upon completion of each audit, the accountant shall prepare a report of his findings and recommendations in such form and in such detail as the committee may prescribe. The report shall be to the committee and in such number of copies as specified by the committee. The committee shall furnish one (1) copy to the Kentucky Board of Education, one (1) copy to the district board of education to which the report pertains, one (1) copy to the chief state school officer and one

(1) copy to the Auditor of Public Accounts. The district board of education shall keep a copy of the report on file in the office of the superintendent of schools of the district and the report shall be open to inspection by any interested person, subject to reasonable rules as to time and place of inspection.

(Enact. Acts 1962, ch. 244, Art. II, § 3; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 144, effective July 13, 1990; 1994, ch. 123, § 1, effective July 15, 1994; 1994, ch. 296, § 4, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996.)

Legislative Research Commission Note. (9/2/94). By letter of September 2, 1994, the Secretary of the Finance and Administration Cabinet, acting under KRS 48.500, advised the Reviser of Statutes of his determination "that no funds appropriated by the Executive Branch Appropriations Act for the 1995-96 biennium can be identified as having been appropriated for the purpose of implementing Sections 1 to 7 of House Bill No. 616, Chapter [296], Acts of the 1994 Regular Session of the General Assembly." Accordingly, the amendment to this statute contained in 1994 Ky. Acts ch. 296 is void under sec. 3(8) of that Act and has not been codified into this statute.

Opinions of Attorney General. Subsection (1) of this section prohibits the State Committee for School District Audits from selecting a certified public accountant (CPA) firm to perform a school board audit if the CPA has a spouse or dependent employed by the school district. Additionally, KRS 156.480 prohibits a CPA with a spouse employed by the school district from entering into a contract with the school system. OAG 93-16.

Collateral References. 78 C.J.S., Schools and School Districts, § 177.

156.280. Conditions of bond of person offering textbooks. [Repealed.]

Compiler's Notes. This section (4421a-37) was repealed by Acts 1952, ch. 184, § 17.

156.285. Access to records — Witnesses — Subpoena.

(1) The accountant shall have access to and may examine all books, accounts, reports, vouchers, correspondence files, records, money, and property of any board. Every officer or employee of any such board having such records or property in his possession or under his control shall permit access to and examination of them upon the request of the accountant.

(2) The committee may require information on oath from any person touching any matters relative to any account that the accountant is required to audit. The committee may administer the oath, or have it done by any officer authorized to administer an oath.

(3) The committee may issue process and compel the attendance of witnesses before it, and administer oaths and compel witnesses to testify in any of the investigations the accountant is authorized to make.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 368, effective July 13, 1990; 1994, ch. 296, § 5, effective July 15, 1994.)

Legislative Research Commission Note. (9/2/94). By letter of September 2, 1994, the Secretary of the Finance and Administration Cabinet, acting under KRS 48.500, advised the Reviser of Statutes of his determination "that no funds appropriated by the Executive Branch Appropriations Act for the 1995-96 biennium can be identified as having been appropriated for the purpose of implementing Sections 1 to 7 of House Bill No. 616, Chapter [296], Acts of the 1994 Regular Session of the General Assembly." Accordingly, the amendment to this statute contained in 1994 Ky. Acts ch. 296 is void under sec. 3(8) of that Act and has not been codified into the statute.

Compiler's Notes. This section (Enact. Acts 1962, ch. 244, Art. II, § 4) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 368, effective July 13, 1990.

156.290. Form of statement and bond — Duration — Supplemental statement and bond. [Repealed.]

Compiler's Notes. This section (4421a-37) was repealed by Acts 1952, ch. 184, § 17.

156.295. Offenses — Penalties.

(1) Any officer or employee of a board or any other person who prevents, attempts to prevent, or obstructs an examination by the accountant made under KRS 156.265 and 156.275 is guilty of a high misdemeanor and shall, upon indictment and conviction in the Circuit Court of competent jurisdiction, be fined five hundred dollars ($500).

(2) Any person who fails or refuses to permit the examination provided for in KRS 156.285 or who interferes with such examination shall be fined not less than one hundred dollars ($100) or imprisoned in the county jail for not less than one (1) month nor more than twelve (12) months, or both. Each refusal shall constitute a separate offense.

(3) Any person who has custody of any books, accounts, reports, vouchers, correspondence, files, records, money, and property that the accountant is authorized to examine under KRS 156.265 and 156.285 who fails or refuses when called upon by the committee for that purpose to permit the accountant to inspect any of such materials shall, upon conviction in the Circuit Court of competent jurisdiction, be fined not more than five hundred dollars ($500) and be subject to removal as provided by law.

(4) Any person who refuses to be sworn when required by the committee to be sworn for the purpose mentioned in subsection (2) of KRS 156.285 shall be fined not more than five hundred dollars ($500).

(5) Any witness called by the committee under subsection (3) of KRS 156.285 who fails, without legal excuse, to attend or testify shall be fined not more than five hundred dollars ($500).

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 369, effective July 13, 1990; 1994, ch. 296, § 6, effective July 15, 1994.)

Legislative Research Commission Note. (9/2/94). By letter of September 2, 1994, the Secretary of the Finance and Administration Cabinet, acting under KRS 48.500, advised the Reviser of Statutes of his determination "that no funds

appropriated by the Executive Branch Appropriations Act for the 1995-96 biennium can be identified as having been appropriated for the purpose of implementing Sections 1 to 7 of House Bill No. 616, Chapter [296], Acts of the 1994 Regular Session of the General Assembly." Accordingly, the amendment to this statute contained in 1994 Ky. Acts ch. 296 is void under sec. 3(8) of that Act and has not been codified into the statute.

Compiler's Notes. This section (Enact. Acts 1962, Ch. 244, Art. II, § 5) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 369, effective July 13, 1990.

156.300. Violation of bond. [Repealed.]

Compiler's Notes. This section (4421a-42) was repealed by Acts 1952, ch. 184, § 17.

156.310. Adoption of lists of books from which city independent districts are to select basal texts — Period of use of adopted books — Number that may be changed at any adoption period — When adoption period begins. [Repealed.]

Compiler's Notes. This section (4421a-38: amend. 1944, ch. 166, § 1; 1948, ch. 87, § 2) was repealed by Acts 1952, ch. 184, § 17.

156.320. Adoption of basal texts for county districts and certain independent districts — Adoption period. [Repealed.]

Compiler's Notes. This section (4421a-39: amend. 1944, ch. 166, § 2; 1948. ch. 87, § 3) was repealed by Acts 1952, ch. 184, § 17.

156.330. Only approved books to be used as of basal texts — When changes effective. [Repealed.]

Compiler's Notes. This section (4421a-40: amend. 1944, ch. 166, § 3; 1948, ch. 87, § 43) was repealed by Acts 1952, ch. 184, § 17.

156.340. Distribution of books — Agents. [Repealed.]

Compiler's Notes. This section (4421a-41) was repealed by Acts 1952, ch. 184, § 17.

156.350. Pupil removing from district — Purchase of books from. [Repealed.]

Compiler's Notes. This section (4421a-43) was repealed by Acts 1952, ch. 184, § 17.

156.360. School official or employe not to act as book agent. [Repealed.]

Compiler's Notes. This section (4421a-45) was repealed by Acts 1952, ch. 184, § 17.

156.370. Reward for adoption of books forbidden. [Repealed.]

Compiler's Notes. This section (4421a-44) was repealed by Acts 1952, ch. 184, § 17.

156.380. Disposition of sample books. [Repealed.]

Compiler's Notes. This section (4421a-45) was repealed by Acts 1952, ch. 184, § 17.

Textbook Commission

156.395. Definition of "instructional materials" for KRS 156.400 to 156.476.

For purposes of KRS 156.400 to 156.476, unless the context requires otherwise, "instructional materials" means tools used to assist in student learning, as defined in administrative regulations promulgated by the Kentucky Board of Education.

(Enact. Acts 1992, ch. 266, § 1, effective July 14, 1992; 1996, ch. 362, § 6, effective July 15, 1996.)

Kentucky Law Journal. Russo, School-Based Decision Making in Kentucky: Dawn of a New Era or Nothing New Under the Sun?, 83 Ky. L.J. 123 (1994-95).

156.400. School subjects' adoption groups — Textbook contracts and purchases.

(1) The chief state school officer shall arrange the elementary, middle, and high school subjects included in the state courses of study as prescribed by the Kentucky Board of Education into six (6) adoption groups.

(2) Contracts for each of the six (6) adoption groups shall be for a period of six (6) years and shall be executed on a staggered basis, with one (1) group being up for adoption each year. The six (6) adoption groups shall be arranged by similarity of content to the extent possible, while being arranged as nearly equal in number and purchase cost as possible. Subjects with rapidly changing or highly technical content may be considered more frequently than once during a six (6) year cycle.

(3) The chief state school officer may delay the purchase of books due to insufficient funds, but any purchases of books shall be in accordance with this chapter.

(Enact. Acts 1952, ch. 184, § 1; 1974, ch. 71, § 1, effective March 13, 1974; 1978, ch. 155, § 82, effective June 17, 1978; 1982, ch. 154, § 1, effective July 15, 1982; 1984, ch. 161, § 1, effective July 13, 1984; 1988, ch. 138, § 1, effective July 15, 1988; 1990, ch. 476, Pt. IV, § 145, effective July 13, 1990; 1992, ch. 266, § 7, effective July 14, 1992; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 419, § 1, effective July 14, 2000.)

Cross-References. Instructional material and textbook adoption process, 704 KAR 3:455.

Opinions of Attorney General. Where a school district purchases textbooks and materials under the provisions of

KRS 156.400 to 156.476, the statutory bidding procedure required by KRS 424.260 is not applicable. OAG 75-27.

Cited: Commonwealth ex rel. Armstrong v. Collins, 709 S.W.2d 437 (Ky. 1986).

Collateral References. 68 Am. Jur. 2d, Schools, §§ 298, 299, 302-307.

78 C.J.S., Schools and School Districts, §§ 85-88; 78A C.J.S., Schools and School Districts, §§ 786-788.

156.405. State Textbook Commission — Textbook reviewers.

(1) The purpose of the State Textbook Commission is to provide a recommended list of current and high quality textbooks and instructional materials to local school districts that complement the educational program in Kentucky schools; to provide a consumer guide to schools to aid with the selection of materials; and to provide for public participation in the evaluation process.

(2) The State Textbook Commission shall consist of the chief state school officer and ten (10) appointive members. The ten (10) members shall be appointed by the Kentucky Board of Education upon the recommendation of the chief state school officer for terms of four (4) years with two (2) appointments each year, except that every fourth year there shall be four (4) appointments. No member shall be eligible to serve more than two (2) full terms consecutively. All vacancies that occur on the State Textbook Commission shall be filled in like manner for the remainder of the unexpired terms. The Department of Education and the State Textbook Commission shall receive assistance in the textbook evaluation process from professionals and lay citizens who will be referred to in this chapter as the "textbook reviewers."

(3) The State Textbook Commission shall:

(a) Select and direct the activities of the textbook reviewers who develop selection criteria and review textbooks and programs;

(b) Develop selection criteria and evaluation forms with the help of the textbook reviewers and Kentucky Department of Education staff to be used in the state level review process;

(c) Approve the evaluative criteria and forms used by the commission and textbook reviewers;

(d) Review the textbook reviewers' evaluations, and textbooks or programs as it deems necessary, in order to select from them a recommended list of high quality materials;

(e) Provide notice of and the opportunity for public inspection of textbooks and programs offered for adoption and use in the public schools;

(f) Conduct a public hearing for the purpose of receiving public comment concerning textbooks and programs under consideration;

(g) Select, recommend, and publish a list of high quality textbooks and programs; and

(h) Publish a consumer guide and distribute it to Kentucky public schools.

(4) The textbook reviewers shall be comprised of twelve (12) individuals for the area or areas being considered for adoption. The textbook reviewers shall be approved by the State Textbook Commission based on the recommendation of the chief state school officer.

(5) The textbook reviewers shall:

(a) Develop and submit to the commission subject specific evaluative criteria to be used in reviewing textbooks and programs;

(b) Review textbooks and programs to determine those of high quality, using evaluative criteria and forms approved by the commission;

(c) Submit to the commission reviews and evaluative forms regarding reviewed textbooks and programs;

(d) Attend meetings and training sessions as requested by the commission and the Department of Education; and

(e) Ensure that textbooks are free from factual error.

(6) (a) 1. Eight (8) of the appointive members of the State Textbook Commission shall have had not less than five (5) years teaching or supervising experience in the public schools of Kentucky and shall have had at the time of their appointment at least four (4) years of college training in a recognized institution of higher education.

2. Five (5) members of the commission shall be classroom teachers actively employed in the public schools of Kentucky as teachers in subject field or fields for which the commission will select books.

3. Two (2) members shall be principals, supervisors, or superintendents of public schools or public school systems.

4. One (1) member shall be a member of the faculty of a public institution of higher education engaged in teacher preparation.

5. Two (2) members shall be lay citizens, one (1) of whom shall have a child enrolled in a public school at the time of appointment.

(b) In recommending the members of the State Textbook Commission the chief state school officer shall give due regard to representation from rural and urban areas and from the elementary, middle, and high school levels when the educational levels are included in the subject field or fields for which adoptions are to be made.

(7) Textbook reviewers shall have the following qualifications: Six (6) of the textbook reviewers shall be instructional supervisors and classroom teachers in various and appropriate grade levels primary through grade twelve (12), with experience and training in the subject areas to be reviewed. One (1) reviewer shall have expertise and training in learning theory as applied to the classroom situation. One (1) reviewer shall be a current or former university faculty member with expertise in the content area of the textbooks to be reviewed. One (1) reviewer shall have experience and training in readability and formatting of textbooks. Three (3) reviewers shall be parents, two (2) of whom shall have a child currently enrolled in public schools in Kentucky.

(8) Members of the State Textbook Commission shall receive fifty ($50) dollars per day and reimbursement for their actual expenses while attending commission meetings. Textbook reviewers shall receive remuneration based on the amount of textbooks and programs to be reviewed and criteria to be developed as determined by the chief state school officer. Textbook reviewers shall be paid one hundred dollars ($100) per day, not to exceed one thousand dollars ($1,000) annually. Textbook reviewers shall also receive reimbursement for actual expenses while attending reviewer or commission meetings.

(9) The meetings of the State Textbook Commission shall be open to the public and shall be held at least once every quarter and notice of such meeting shall be given in accordance with KRS 424.110 to 424.210.

(10) Not later than May 1 each year the chief state school officer shall call the State Textbook Commission into session. The members of the State Textbook Commission shall elect one (1) of its voting members as chairman and shall adopt administrative regulations for the procedure of the commission. The chief state school officer shall be the secretary of the commission.

(Enact. Acts 1952, ch. 184, § 2; 1974, ch. 71, § 2, effective March 13, 1974; 1976, ch. 74, § 6, effective March 29, 1976; 1978, ch. 155, § 82, effective June 17, 1978; 1982, ch. 154, § 2, effective July 15, 1982; 1988, ch. 138, § 2, effective July 15, 1988; 1990, ch. 476, Pt. IV, § 146, effective July 13, 1990; 1992, ch. 266, § 8, effective July 14, 1992; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 419, § 2, effective July 14, 2000.)

Cross-References. State Textbook Commission as division in Department of Education, KRS 156.010.

Opinions of Attorney General. The State Textbook Commission may, pursuant to its legal authority, approve the adoption of a multivolume paperback edition or a single volume paperback edition of a textbook in lieu of the hardback edition. OAG 71-169.

156.407. Selection of textbook reviewers — Review and evaluation process.

(1) The chief state school officer shall, not later than February 1 of each year in which an adoption is to be made, solicit applications for filling twelve (12) positions for textbook reviewers.

(2) Solicitation shall be statewide for all appointments and include specifications which ensure candidates have professional expertise in the subject areas to be reviewed if appropriate for the appointment.

(3) The State Textbook Commission, at its first yearly meeting, shall select textbook reviewers based on a list of qualified applicants prepared by the chief state school officer and giving consideration to the recommendations as specified in KRS 156.405.

(4) The Department of Education's curriculum and instruction specialists shall serve as staff to the commission and reviewers. The staff shall:

(a) Orient and train the commission and reviewers regarding departmental policy and review procedures;

(b) Make available existing standards and criteria for textbook evaluation; and

(c) Provide supplies and sample textbooks for the review process.

(5) The textbook reviewers shall develop subject specific criteria for textbook review and evaluation in the following textbook areas:

(a) Subject content, including its relationship to the academic expectations;

(b) Audience;

(c) Format;

(d) Readability;

(e) Accuracy; and

(f) Ancillary materials.

(6) On or before July 15, the State Textbook Commission shall develop general criteria, review and approve subject specific criteria, and provide the standard criteria and evaluation forms to be used by the commission and textbook reviewers.

(7) Based upon approval of the standard criteria and evaluation forms, the textbook reviewers shall review textbooks and programs. The committee shall submit evaluation forms for each textbook or program reviewed in each of the five (5) areas, set forth in subsection (5) of this section, with comments related to strengths and weaknesses in each area.

(8) The State Textbook Commission shall review the work of the textbook reviewers and based on this review and any of its own reviews of textbooks or programs, establish a state multiple list of recommended textbooks and programs. The list of recommended textbooks and programs shall be free of factual error. Copies of all evaluation forms submitted by the textbook reviewers shall be made available to commission members and maintained on file within the Department of Education for the cycle length of the books. For those materials placed on the state multiple list of recommended textbooks and programs, the Department of Education shall publish a consumer guide that includes summary results of the evaluations and any factual error identified in the textbooks, and shall distribute it to all public schools in the state.

(Enact. Acts 1988, ch. 138, § 5, effective July 15, 1988; 1990, ch. 476, Pt. IV, § 147, effective July 13, 1990; 1992, ch. 266, § 9, effective July 14, 1992; 2000, ch. 419, § 3, effective July 14, 2000.)

156.410. Evaluation of textbooks and programs.

(1) The chief state school officer shall prepare minimum manufacturing standards, delineate content specifications, in accordance with the curriculum requirements of the program of studies for Kentucky schools: grades K-12, and formulate other criteria for use in the evaluation of textbooks and programs in Kentucky. Criteria shall require that all materials be suitable for use with a diverse population and be free of social, ethnic, racial, religious, age, gender, and geographic bias.

(2) It shall be the duty of the chief state school officer to prepare all necessary forms for use in the evaluation of textbooks and programs, such as

advertising for textbook bids; forms for bids, bonds, and contracts; and other forms.

(3) The Kentucky Board of Education, upon the recommendation of the chief state school officer, shall have authority to prescribe:
   (a) Administrative regulations pertaining to all textbook samples for use on the state and local levels; and
   (b) Shall have authority to promulgate administrative regulations relating to the agents and representatives of textbooks and programs, as to the methods and procedures for use in adoptions on the state and local levels.

(4) The chief state school officer, on or before May 1 prior to any adoption year, shall properly advertise the subjects for which textbook adoptions will be made and notify the different publishers of the textbooks. The publishers, on or before July 15, of any adoption year, shall file with the chief state school officer textbook samples, filing fees, textbook bids and bonds, and other specified information relative to the books that they desire to offer for adoption.

(5) The chief state school officer shall:
   (a) Review the bid information submitted by the publishers;
   (b) Verify that the bid complies with the specifications; and
   (c) Prepare a list of textbooks and programs, for consideration by the State Textbook Commission indicating those in compliance with the standards and specifications and those not in compliance, detailing areas of noncompliance.

(Enact. Acts 1952, ch. 184, § 3; 1974, ch. 71, § 3, effective March 13, 1974; 1978, ch. 155, § 82, effective June 17, 1978; 1988, ch. 138, § 3, effective July 15, 1988; 1990, ch. 476, Pt. IV, § 148, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 419, § 4, effective July 14, 2000.)

Cross-References. Instructional material and textbook adoption process, 704 KAR 3:455.

Opinions of Attorney General. In determining the meaning of the words "shall file" as used in subsection (4), the word "shall" when used in statutes is mandatory and "mailing" cannot be considered "filing" so that in order for material to be considered filed, it must be received in the office of the Superintendent of Public Instruction not later than midnight, August 20. OAG 73-640.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 85-88; 78A C.J.S., Schools and School Districts, §§ 786-788.

156.415. Conditions to be complied with before textbooks and programs adopted or purchased.

Before textbooks and programs offered for adoption and use in public schools of Kentucky may be lawfully recommended and listed by the State Textbook Commission or purchased by any board of education, the person, firm, or corporation offering the materials for adoption and use shall file with the chief state school officer:

(1) Copies of all textbooks and programs that the person, firm, or corporation desires to offer for adoption and use, with a sworn statement of the list price and the lowest wholesale price at which each of the titles is sold in any adopting unit;

(2) A statement that all the titles offered for sale, adoption, and use, do comply with the standards and specifications for textbooks designated by the chief state school officer as regards paper, binding, printing, illustrations, subject matter, and other items included in the standards and specifications;

(3) Copies of any revision or special editions of the textbooks and programs filed, with a statement describing in detail each point of difference from the regular edition filed, and the list price and the lowest wholesale price at which the revision or special edition is sold anywhere in the United States;

(4) A fee of five dollars ($5) for each book filed except when a series of books is filed, in which case the fee shall be five dollars ($5) for the first book and one dollar ($1) for each additional book in the series. The fee provided by this subsection shall be paid at each and every adoption period;

(5) A bond running to the Commonwealth of Kentucky, executed by a surety company authorized to do business in this state, in a sum not less than two thousand dollars ($2,000) nor more than ten thousand dollars ($10,000), to be determined by the chief state school officer; and

(6) An affidavit certifying any textbook the publisher or manufacturer offers in the state to be free of factual error at the time the publisher or manufacturer executes a contract.

(Enact. Acts 1952, ch. 184, § 4; 1974, ch. 71, § 4, effective March 13, 1974; 1990, ch. 476, Pt. IV, § 149, effective July 13, 1990; 2000, ch. 419, § 5, effective July 14, 2000.)

Collateral References. 78A C.J.S., Schools and School Districts, §§ 786-788.

156.420. Bond conditions for person, firm, or corporation offering textbooks.

The bond required by the person, firm, or corporation offering the books for adoption shall be so conditioned that:

(1) The person, firm, or corporation will furnish any of the books listed in the statement filed for the period of adoption from the date of the bond to any school district in Kentucky, or to any dealer appointed by the district, at the lowest wholesale price contained in the statement, f.o.b. the publisher's nearest shipping point;

(2) The person, firm, or corporation shall not bid and enter into a contract for an adoption period with the Commonwealth of Kentucky for books at a higher wholesale price than is being bid for the same adoption period elsewhere in the United States.

(3) The person, firm, or corporation will automatically reduce such prices in Kentucky whenever reductions are made anywhere in the United States, so that no book shall at any time be sold in Kentucky at a higher wholesale price than is received for that book elsewhere in the United States;

(4) If the person, firm, or corporation prepared an abridged or special edition of any book that has been listed and sells it elsewhere at a lower wholesale price than the wholesale price set out in the filed statement, the person will file a copy of the special edition with the price of the special edition in a supplemental statement with the chief state school officer;
(5) All books sold in Kentucky will be identical with the specimen books filed with the chief state school officer as regards size, paper, binding, print, illustrations, subject matter, and other particulars which may affect the value of the books;
(6) The person, firm, or corporation shall not enter into any agreement, understanding, or combination to control the price of textbooks or to restrict competition in their sale in Kentucky.

(Enact. Acts 1952, ch. 184, § 5; 1974, ch. 71, § 5, effective March 13, 1974; 1990, ch. 476, Pt. IV, § 150, effective July 13, 1990.)

156.425. Form of statement and bond — Supplemental statement and bond.

The form of the sworn statement and bond required shall be prescribed by the chief state school officer. The bond shall be in force for the adoption period. The person, firm, or corporation may at any time while the bond is in force file a supplemental statement covering additional books or special editions of books previously filed. The supplemental statement shall expire at the date of expiration of the original statement and bond. Prior to the expiration of any statement and bond the person may file a new statement and bond for a further period of adoption, and if he fails to file a new statement and bond his right to offer textbooks for adoption and use in the public schools of Kentucky shall expire on the date of expiration of the former bond.

(Enact. Acts 1952, ch. 184, § 6; 1974, ch. 71, § 6, effective March 13, 1974; 1990, ch. 476, Pt. IV, § 151, effective July 13, 1990.)

156.430. Violation of bond — Suit on bond.

The superintendent of schools of each school district shall notify the chief state school officer of any violation of any of the conditions in any bond which has been filed. If the chief state school officer finds that a violation has occurred, he shall instruct the Attorney General to bring suit on the bond. Any sum recovered in such suit shall be paid into the State Treasury.

(Enact. Acts 1952, ch. 184, § 7; 1990, ch. 476, Pt. IV, § 152, effective July 13, 1990.)

Collateral References. Bond of textbook publisher, recovery of entire penalty for breach of. 103 A.L.R. 418.

156.433. Instructional materials eligible for purchase with state textbook funds — Review procedure — List of approved materials.

(1) The Kentucky Board of Education, upon recommendation of the chief state school officer, shall promulgate an administrative regulation identifying instructional materials eligible for purchase with state textbook funds. The regulation shall identify instructional materials which are subject to review before being recommended for use, establish a procedure for the review, and a process for adding an instructional material to the recommended list. The Department of Education may pay instructional materials reviewers an amount not to exceed one thousand dollars ($1,000) annually per reviewer for their services using funds from the appropriation for state textbooks.
(2) The Department of Education shall establish a list of recommended instructional materials for the use of school personnel.

(Enact. Acts 1992, ch. 266, § 2, effective July 14, 1992; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 419, § 6, effective July 14, 2000.)

Cross-References. Instructional material and textbook adoption process, 704 KAR 3:455.

156.435. Adoption of lists — Rejections — Execution of contracts — Publication of lists.

(1) The State Textbook Commission shall, not later than September 20 of any year in which an adoption is to be made, select, recommend, and publish a list of books or programs in each subject and grade, taking into account the needs of the various types of students.
(2) The State Textbook Commission shall have the authority to reject any book which:
   (a) Contains subversive material or information that is offered for listing or adoption. If the commission finds on the multiple list any book which contains subversive material or information, provided the publisher of the book has been given written notice by the secretary of the commission not less than thirty (30) days prior to the meeting, the textbook commission shall have authority to remove the book from the state multiple list;
   (b) Is in noncompliance with standards and specifications set forth in KRS 156.410; or
   (c) Is not of high quality in terms of the content provided, the audience addressed, the format used, the readability of material or the ancillary materials provided the teacher and students.
(3) The State Textbook Commission shall have the authority to solicit additions for the state list when the list does not contain books or materials for subjects added to the state courses of study.
(4) The chief state school officer shall make and execute contracts for the recommended textbooks and programs with the publishers on or before May 1 following the establishment of the state multiple list of recommended titles selected by the commission. Except as described in KRS 156.400, all contracts shall run for six (6) years.
(5) The chief state school officer shall prepare a multiple list of recommended textbooks or programs and publish the list along with a consumer guide and distribute the documents to the superintendents of each county and independent school dis-

trict in Kentucky on or before November 15 of each adoption year.

(Enact. Acts 1952, ch. 184, § 8; 1974, ch. 71, § 7, effective March 13, 1974; 1982, ch. 9, § 1, effective July 15, 1982; 1982, ch. 154, § 3, effective July 15, 1982; 1988, ch. 138, § 4, effective July 15, 1988; 1990, ch. 476, Pt. IV, § 153, effective July 13, 1990; 1992, ch. 266, § 5, effective July 14, 1992; 2000, ch. 419, § 7, effective July 14, 2000.)

Opinions of Attorney General. The term "book," as used in this section, is not limited to a mere physical object and is no legal obstacle to the adoption of a multivolume paperback edition of a textbook. OAG 71-169.

The term "books or programs," as used in this section, restricts the list to be compiled by the State Textbook Commission to print materials. OAG 76-207.

Cited: Commonwealth ex rel. Armstrong v. Collins, 709 S.W.2d 437 (Ky. 1986).

Collateral References. 78A C.J.S., Schools and School Districts, §§ 786-787.

156.437. Administrative regulations for listing, adoption, and purchase of subject programs.

The Kentucky Board of Education, upon the recommendation of the chief state school officer, shall have the authority to prescribe administrative regulations for the recommended listing by the State Textbook Commission, adoption by local adoption units, and the purchase of subject programs for the pupils in the public schools.

(Enact. Acts 1964, ch. 193, § 1; 1974, ch. 71, § 8, effective March 13, 1974; 1978, ch. 155, § 82, effective June 17, 1978; 1982, ch. 9, § 2, effective July 15, 1982; 1990, ch. 476, Pt. IV, § 154, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 419, § 8, effective July 14, 2000.)

Cross-References. Instructional material and textbook adoption process, 704 KAR 3:455.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 85-88.

156.439. District allocation for textbook and instructional materials — Use — School plans — Carryover.

(1) The Kentucky Board of Education shall promulgate by administrative regulations the method for calculating and distributing a district's textbook and instructional materials allocation. The district's allocation shall be used by schools to purchase:
   (a) Textbooks and programs from the state recommended list;
   (b) Textbooks and programs not on the state's recommended list, if notification is submitted to the Department of Education that the material meets the selection criteria of the State Textbook Commission in KRS 156.405(3)(b), the subject specific criteria of the textbook reviewers pursuant to KRS 156.407(5), and compliance with the required publisher specifications;
   (c) Instructional materials, with an approved plan pursuant to subsection (2) of this section; or
   (d) Any combination of the above.

(2) The district shall identify all purchases made with the textbook and instructional materials allocation and shall keep on file a plan developed by each school, in accordance with administrative regulations promulgated by the Kentucky Board of Education, for providing the necessary textbooks and instructional materials for all grades, and subject areas, including the replacement of books and materials during the six (6) year adoption period. A school may carry forward to the next school year any part of its textbook and instructional materials allocation which has been distributed to the district. If a local board does not approve a school council's plan, the council may appeal to the commissioner and an administrative hearing shall be conducted in accordance with KRS Chapter 13B.

(Enact. Acts 1992, ch. 266, § 3, effective July 14, 1992; 1996, ch. 318, § 48, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 419, § 9, effective July 14, 2000.)

Cross-References. Instructional material and textbook adoption process, 704 KAR 3:455.

Kentucky Law Journal. Russo, School-Based Decision Making in Kentucky: Dawn of a New Era or Nothing New Under the Sun?, 83 Ky. L.J. 123 (1994-95).

156.440. Sample copies of materials selected and placed on state multiple list of recommended textbooks.

Publishers, upon the request of the superintendents of the county and independent school districts, shall furnish to the local boards of education the requested sample copies of their materials that were selected and placed on the state multiple list of recommended textbooks by the State Textbook Commission.

(Enact. Acts 1952, ch. 184, § 9; 1974, ch. 71, § 9, effective March 13, 1974; 1982, ch. 154, § 4, effective July 15, 1982; 1984, ch. 410, § 9, effective July 13, 1984; 1990, ch. 476, Pt. IV, § 155, effective July 13, 1990; 1992, ch. 266, § 4, effective July 14, 1992; 2000, ch. 419, § 10, effective July 14, 2000.)

Cited: Commonwealth ex rel. Armstrong v. Collins, 709 S.W.2d 437 (Ky. 1986).

Collateral References. 78A C.J.S., Schools and School Districts, §§ 786-788.

156.445. Only recommended textbook or program to be used as basal title — Exceptions — When changes to be effective — Approval of materials for private and parochial schools.

(1) No textbook or program shall be used in any public school in Kentucky as a basal title unless it has been recommended and listed on the state multiple list by the State Textbook Commission or unless a school and district has met the notification requirements under subsection (2) of this section. Any changes of textbooks made by the State Textbook

Commission shall not become effective until grades and classes of the respective county and independent school districts have completed work for which the adopted book then in use was originally intended. Nothing in this section shall apply to the supplementary books that are needed from time to time.

(2) A school council, or if none exists, the principal, may notify, through the superintendent, the State Textbook Commission that it plans to adopt a basal textbook or program that is not on the recommended list by submitting evidence that the title it has chosen meets the selection criteria of the State Textbook Commission in KRS 156.405(3)(b) and the subject specific criteria of the textbook reviewers pursuant to KRS 156.407(5) and complies with the required publisher specifications.

(3) In approving text materials for private and parochial schools for the purpose of KRS 156.160(3) the text materials shall be approved if they are comprehensive and appropriate to the grade level in question notwithstanding the fact that they may contain elements of religious philosophy.

(Enact. Acts 1952, ch. 184, § 10; 1978, ch. 136, § 5, effective July 1, 1979; 1978, ch. 155, § 160, effective June 17, 1978; 1984, ch. 297, § 2, effective July 13, 1984; 1990, ch. 476, Pt. I, § 32, effective July 13, 1990; 1992, ch. 266, § 6, effective July 14, 1992; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 419, § 11, effective July 14, 2000.)

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

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

DECISIONS UNDER PRIOR LAW

1. Previous Edition.

A board of education upon adopting a new edition of a text may provide that pupils owning used copies of a previous edition could use same. Schlake v. Board of Educ., 240 Ky. 426, 42 S.W.2d 526 (1931).

Collateral References. 78A C.J.S., Schools and School Districts, § 787.

156.447. Optional purchase of supplemental textbooks, materials and equipment. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1964, ch. 193, § 2; 1970, ch. 229, § 1; 1972, ch. 369, § 1; 1976, ch. 74, § 2, effective March 29, 1976; 1978, ch. 155, § 82, effective June 17, 1978; 1984, ch. 364, § 1, effective July 13, 1984; 1990, ch. 476, Pt. IV, § 156, effective July 13, 1990) was repealed by Acts 1992, ch. 266, § 11, effective July 14, 1992.

156.450. Distribution of books — Agents. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1952, ch. 184, § 11; 1982, ch. 9, § 3, effective July 15, 1982; 1990, ch. 476, Pt. IV, § 157, effective July 13, 1990) was repealed by Acts 2000, ch. 419, § 20, effective July 14, 2000.

156.455. Purchase of books from pupil moving from district. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1952, ch. 184, § 13; 1982, ch. 9, § 4, effective July 15, 1982; 1990, ch. 476, Pt. IV, § 158, effective July 13, 1990) was repealed by Acts 2000, ch. 419, § 20, effective July 14, 2000.

156.460. School official or employee not to act as book agent.

No superintendent, teacher, or other official or employee of any institution supported wholly or in part by public funds shall act, directly or indirectly, as agent for any person whose school textbooks are filed with the chief state school officer.

(Enact. Acts 1952, ch. 184, § 13; 1990, ch. 476, Pt. IV, § 159, effective July 13, 1990.)

Cross-References. State support of education, KRS ch. 157.

156.465. Reward for adoption of books forbidden.

No person shall secure or attempt to secure the adoption of any school textbook in any school district in this state, by rewarding or promising to reward, directly or indirectly, any person in any public school district in the state. No person shall offer or give any emolument to any person in any school district in this state for any vote or promise to vote, or the use of his influence, for any school textbook to be used in this state.

(Enact. Acts 1952, ch. 184, § 14; 1990, ch. 476, Pt. IV, § 160, effective July 13, 1990.)

Cross-References. Unlawful compensation of public servant, KRS 521.040.

156.470. Copy of recommended titles to remain in specified office for period of adoption.

A copy of all recommended titles listed by the State Textbook Commission shall remain in an office specified by the chief state school officer as an official sample for the period of the adoption.

(Enact. Acts 1952, ch. 184, § 15; 1974, ch. 71, § 10, effective March 13, 1974; 1978, ch. 155, § 82, effective June 17, 1978; 1982, ch. 9, § 5, effective July 15, 1982; 1990, ch. 476, Pt. IV, § 161, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 419, § 12, effective July 14, 2000.)

156.472. Textbooks for model and practice schools.

All administrative regulations of the Kentucky Board of Education and the statutory laws, which are applicable to textbook adoptions, purchases, and distribution by the county and independent school districts, shall apply to textbook adoptions, purchases, and distributions for the state college and university model and practice schools.

(Enact. Acts 1960, ch. 99, § 1; 1974, ch. 71, § 11, effective March 13, 1974; 1978, ch. 155, § 82, effective

June 17, 1978; 1990, ch. 476, Pt. IV, § 162, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

Collateral References. 78A C.J.S., Schools and School Districts, §§ 786-788.

156.474. Multiple textbook adoptions.

(1) The Kentucky Board of Education, upon the recommendation of the chief state school officer, shall have the authority to prescribe the conditions whereby a school district may make multiple textbook adoptions for the different school subjects by grades.

(2) The Kentucky Board of Education, upon the recommendation of the chief state school officer, shall have the authority to prescribe the administrative regulations to govern the purchase of the multiple-adopted textbooks for the school district. The chief state school officer, subject to the approval of the Kentucky Board of Education, may purchase the textbooks from the publishers whose books have been adopted by the school district for grades kindergarten through twelve (12) and distribute them without cost to the pupils attending the public schools in the school district.

(Enact. Acts 1960, ch. 99, § 2; 1974, ch. 71, § 12, effective March 13, 1974; 1976, ch. 74, § 3, effective March 29, 1976; 1978, ch. 155, § 82, effective June 17, 1978; 1982, ch. 9, § 6, effective July 15, 1982; 1990, ch. 476, Pt. IV, § 163, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

Cross-References. Instructional material and textbook adoption process, 704 KAR 3:455.

Collateral References. 78A C.J.S., Schools and School Districts, §§ 786-788.

156.475. Title.

KRS 156.405, 156.474, 157.100, and 157.110 may be cited as "The Rattliff-Ward Textbook Act of 1976."

(Enact. Acts 1976, ch. 74, § 1; 1990, ch. 476, Pt. IV, § 164, effective July 13, 1990.)

156.476. Textbooks for children with impaired vision — Requirement that publisher of adopted textbook furnish American Printing House for the Blind with text in electronic format.

(1) The Kentucky Board of Education, upon the recommendation of the chief state school officer, shall select suitable textbooks and programs in an appropriate format, which include braille textbooks, and other materials available in clear type of eighteen (18) to twenty-four (24) points in the different subject areas for children with impaired vision who are attending the public schools of the Commonwealth of Kentucky in grades kindergarten through twelve (12). These books and materials shall not be subject to the official bids, filing fees, sampling, and the stipulated list prices, lowest wholesale prices, and the standards and specifications required for the books and materials approved and listed by the State Textbook Commission for regular use by the pupils attending the public schools of the State of Kentucky. The Kentucky Board of Education, upon the recommendation of the chief state school officer, may promulgate an administrative regulation determining the pupils eligible for the books and materials, the number of books and types of materials to be purchased, and the general administration of the program. The chief state school officer, subject to the approval of the Kentucky Board of Education, may purchase these books and materials and distribute them without cost to the pupils with impaired vision attending the public schools of the state. All books and programs purchased under this section for the pupils with impaired vision are the property of the state.

(2) The Department of Education shall require any publisher of a textbook or program adopted for use in the public schools of the Commonwealth to furnish the American Printing House for the Blind with computer diskettes or tapes of those print materials either in the American Standard Code for Information Interchange, (ASCII), or in any other format, either electronic or print, which can be readily translated into braille or large print.

(Enact. Acts 1960, ch. 99, § 3; 1974, ch. 71, § 13, effective March 13, 1974; 1978, ch. 155, § 82, effective June 17, 1978; 1982, ch. 9, § 7, effective July 15, 1982; 1986, ch. 463, § 1, effective July 15, 1986; 1990, ch. 476, Pt. IV, § 165, effective July 13, 1990; 1992, ch. 382, § 4, effective July 14, 1992; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 419, § 13, effective July 14, 2000.)

Cross-References. Instructional material and textbook adoption process, 704 KAR 3:455.

Miscellaneous

156.480. Employees of department or school districts with decision-making authority prohibited from supplying goods or services for which school funds are expended — Penalties.

(1) No commissioner, associate commissioner, deputy commissioner, director, manager, purchasing agent, or other employee of the Department of Education with decision-making authority over the financial position of a school, school district, or school system shall have any pecuniary interest in the school, school district, or school system, either directly or indirectly, in an amount exceeding twenty-five dollars ($25) per year, either at the time of or after his appointment to office, in supplying any goods, services, property, merchandise, or services, except personal services that are in addition to those required by contract for employment, of any nature whatsoever for which school funds are expended. If any person specified in this subsection receives, directly or indirectly, any gift, reward, or promise of reward for his influence in recommending or procuring the use of any goods, services, property, or merchandise of any kind

whatsoever for which school funds are expended, he shall upon conviction be fined not less than fifty dollars ($50) nor more than five hundred dollars ($500), and his office or appointment shall without further action be vacant.

(2) No employee of any county or independent school district with decision-making authority over the financial position of the school district shall have any pecuniary interest, either directly or indirectly, in an amount exceeding twenty-five dollars ($25) per year, either at the time of or after his appointment to office, in supplying any goods, services, property, merchandise, or services, except personal services that are in addition to those required by contract for employment, of any nature whatsoever for which school funds are expended. If any person specified in this subsection receives, directly or indirectly, any gift, reward, or promise of reward for his influence in recommending or procuring the use of any goods, services, property, or merchandise of any kind whatsoever for which school funds are expended, he shall upon conviction be fined not less than fifty dollars ($50) nor more than five hundred dollars ($500), and his office or appointment shall without further action be vacant.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 370, effective July 13, 1990; 1994, ch. 123, § 2, effective July 15, 1994.)

Compiler's Notes. This section (Enact. Acts 1956, (1st Ex. Sess.) Ch. 7, Art. II, § 7; 1966, ch. 89, § 7) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 370, effective July 13, 1990.

Cross-References. Reports and funds, 702 KAR 6:075.

Opinions of Attorney General. Although generally a school board member may not be removed for acts committed in a prior term of office, he may be removed for such acts in a case involving gross fraud in the management of his office, or in a case of a continuing duty to act imposed upon him by virtue of the public trust implicit in his office. OAG 61-145.

The treasurer of a local board of education, who received a salary of $10.00 per month and who had a pecuniary interest in an agency that sold insurance to the board of education, would be disqualified as treasurer if the pecuniary interest in the sale, direct or indirect, was in excess of $25.00. OAG 61-211.

Absent a showing that a superintendent did not attend to the regular duties of the office, there is no statutory authority or other legal basis for the view that any or all of a superintendent's salary could be recovered. OAG 69-515.

Any consideration as to the potential prosecution based upon actual evidence which would indicate a violation of KRS 156.480 should in the normal course of events be made by the county attorney or the Commonwealth's attorney in the district where the violation occurred, following receipt of formal notification and presentation of competent evidence. OAG 69-515.

A superintendent is a teacher within the application of the statute and may receive extra pay from the board for extra personal services in addition to his regular full-time duties as superintendent. OAG 69-515.

Where a school superintendent does rent property or supply general services to the school district by which he is employed, and where the amount involved exceeds $25.00, this section is violated. OAG 69-515.

Where the board of education rented office space in a building in which the superintendent had a financial interest and the lease was one in which the superintendent realized a direct or indirect financial interest, a violation occurred. OAG 69-515.

A teacher who is also an insurance agent may not properly submit a bid on school property insurance to the district which employs him as a schoolteacher. OAG 70-527.

The purpose of this section is to prevent a supplier from receiving an undue advantage over other suppliers to a school system either by being employed by the school system directly or by having a close connection with one so employed. OAG 71-474.

Where a husband sold instructional aids and his wife was employed as a teacher, he would be prohibited from selling supplies to the system by which she was employed. OAG 71-474.

Under KRS 161.770, a leave of absence from the school system can only be granted for illness, maternity or other disability, and educational or professional purposes and as operating a garbage service is not one of these statutory reasons, the school board should not have granted a leave of absence but should have required the teacher to resign or continue working and, if the teacher is on a bona fide leave of absence, he would be violating this section by selling the services of his garbage service to the school system. OAG 73-651.

Since the school board does not have the authority to oust an officer or employee on the grounds of conflict of interest, it may accept a low competitive bid from a retail sporting goods supplier although the wholesaler or the retailer is an employee of the school board even though the board knows that the wholesaler will be in violation of this statute. OAG 73-671.

Regardless of whether the treasurer receives an honorarium or salary, he is an employee of the school board, and as such, he is subject to this section and thus would be prohibited from selling insurance to the board. OAG 75-461.

A county school board is not legally precluded from accepting the low bid of and contracting with an employee of the school district; however, if the school district employee enters into a contract with the school board to furnish five freezers for five schools in the county since such bid does not come within the statutory exception of personal services which are in addition to those required by contract for employment, he has violated the provisions of this section but whether he has forfeited his office by such violation is a matter for the courts to determine. OAG 77-228.

A violation under this section is to be prosecuted within one (1) year after it is committed. OAG 79-155.

The wrong committed by a violation of this section is an "offense" which is a "violation" since only a fine and not incarceration may be imposed. OAG 79-155.

The Model Procurement Code would not prohibit an assistant school principal from submitting a competitive bid to the school board for services as a professional auctioneer. OAG 80-605.

Where the wife of an assistant superintendent of county schools owned one half (½) of a flower shop which occasionally entered into contracts with various schools in the system, such contracts would violate this section. OAG 81-311 (OAG 78-315 withdrawn).

KRS 156.275(1) prohibits the State Committee for School District Audits from selecting a certified public accountant (CPA) firm to perform a school board audit if the CPA has a spouse or dependent employed by the school district. Additionally, this section prohibits a CPA with a spouse employed by the school district from entering into a contract with the school system. OAG 93-16.

An "employee with decision-making authority over the financial position of the school district" includes, first of all, certain school officials with broad authority over the financial position of the school district including the superintendent, the assistant superintendents, principals and school council members. Other school employees with power to make finan-

cial and budgetary decisions with regard to the allocation of funds and the purchase of goods, services, property, or merchandise, also have "decision-making authority." The authority to recommend expenditure items also represents such authority. OAG 94-61.

In order to conclude whether an employee is covered under subsection (2) of this section it may be necessary to review the employee's job description and determine the extent of influence extended over purchases by the school system. OAG 94-61.

NOTES TO DECISIONS

ANALYSIS

1. Determination of forfeiture.
2. Vacancy and penalty.

1. Determination of Forfeiture.

If misconduct of school superintendent is proven it automatically works a forfeiture of the incumbent's right to the office and the provision is self-executing but the fact of the existence of the grounds of forfeiture must be determined by a judicial tribunal and not by county board of education. Arnett v. DeWeese, 304 S.W.2d 784 (Ky. 1957).

An individual who had been nominated by county board of education as superintendent of schools upon board's declaration that incumbent had forfeited his office by entering into a contract to rent certain property to the board, employing his wife as finance officer of the board, contracting with the board to serve as secretary, being a partner in a firm operating a school bus line under contract with the board and receiving travel expenses from the board could bring declaratory judgment action for determination of whether forfeiture had taken place and whether he was entitled to the office. Arnett v. DeWeese, 304 S.W.2d 784 (Ky. 1957).

2. Vacancy and Penalty.

This section is a positive and imperative declaration that if any school official or employee shall commit any of the acts enumerated in this section, his office "shall without further action be vacant, and he shall, upon conviction, be deemed guilty of a misdemeanor and fined not less than fifty dollars nor more than five hundred dollars." Arnett v. DeWeese, 304 S.W.2d 784 (Ky. 1957).

Collateral References. 67 C.J.S., Officers, § 133.

156.483. Restrictions on employing violent offenders or persons convicted of sex crimes — Criminal record check on job applicants.

(1) The State Department of Education shall not employ, in a position which involves supervisory or disciplinary power over a minor, any person who is a violent offender or has been convicted of a sex crime defined in KRS 17.165 as a felony. The Department of Education may employ, at its discretion, persons convicted of sex crimes classified as a misdemeanor. The Department of Education shall request all conviction information for any applicant for employment from the Justice Cabinet prior to employing the applicant.

(2) Each application form, provided by the Department of Education to the applicant, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT."

(3) Any request for records under subsection (1) of this section shall be on a form approved by the Justice Cabinet, and the cabinet may charge a fee to be paid by the applicant in an amount no greater than the actual cost of processing the request.

(4) The provisions of this section shall apply after July 15, 1988, to all applicants for initial employment in a position which involves supervisory or disciplinary power over a minor.

(Enact. Acts 1988, ch. 345, § 2, effective July 15, 1988; 1990, ch. 476, Pt. IV, § 166, effective July 13, 1990.)

156.485. GED certificate recognized — Fee for issuance — Funding for essay requirement — Employment of staff to score essays. [Repealed, reenacted, and amended.]

Compiler's Notes. This section (Enact. Acts 1972, ch. 192, § 1; 1986, ch. 311, § 1, effective July 15, 1986; 1988, ch. 361, § 12, effective July 15, 1988) was repealed, reenacted, and amended as KRS 151B.125 by Acts 1990, ch. 470, § 23, effective July 1, 1990. It was also amended by Acts 1990, ch. 476, Part IV, § 167. See KRS 151B.125.

156.486. GED foundation for adult education. [Repealed, reenacted, and amended.]

Compiler's Notes. This section (Enact. Acts 1986, ch. 209, § 1, effective July 15, 1986) was repealed, reenacted, and amended as KRS 151B.130 by Acts 1990, ch. 470, § 24, effective July 1, 1990. It was also repealed and reenacted by Acts 1990, ch. 476, Part V, § 371. Pursuant to § 653(1) of Acts 1990, ch. 476, Part VIII, ch. 470 prevails over ch. 476.

156.487. [Number not yet utilized.]

(Enact. Acts 2000, ch. 498, § 3, effective July 1, 2000.)

Legislative Research Commission Note. (7/14/2000). The tables to the 2000 Kentucky Acts show 2000 Ky. Acts ch. 498, sec. 3, as being codified at this KRS number. However, because 2000 Ky. Acts ch. 477, sec. 1, was nearly identical to the section from Acts ch. 498, it was subsequently decided during codification to merge both Acts together at KRS 156.106, so that KRS 156.487 was not used.

Cross-References. Employment of retired teachers in critical shortage areas, 702 KAR 1:150E.

156.490. Governor's conference on education. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1956, ch. 64, §§ 1 to 4) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

156.495. Program to identify and locate missing children enrolled in Kentucky schools.

(1) The Department of Education shall provide, by administrative regulation, for a program to identify and locate missing Kentucky school children who are enrolled in Kentucky public and private schools in kindergarten through grade twelve (12). Pursuant to such program, the department shall:

(a) Prepare forms to be forwarded, upon request, to the parents or guardians of missing Ken-

tucky school children enrolled in kindergarten through grade twelve (12). The forms shall be designed to include such information as the department deems necessary for the identification of the missing child, including the child's physical description and last known location;

(b) Compile from the information on such forms a list of missing Kentucky school children, to be distributed monthly to all public and private schools admitting children to kindergarten through grade twelve (12). The list shall include the names of all such missing children, together with such other information as the department deems necessary; and

(c) Notify the appropriate local, state, or federal law enforcement authority as soon as any additional information is obtained or contact is made with respect to a missing Kentucky school child.

(2) Every public and private school in this state shall notify the Department of Education at its earliest known contact with any child whose name appears on the department's list of missing Kentucky children.

(3) The department shall encourage each public and private school to engage in a program whereby the parents of children who are absent from school are notified in person or by telephone to verify if they know that the child is not attending school.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 372, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1984, Ch. 382, § 14 effective July 13, 1984) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 372, effective July 13, 1990.

Cross-References. Missing Kentucky School Children Program, 704 KAR 7:060.

156.497. Interagency Task Force on Family Resource Centers and Youth Services Centers — Formulation of five-year plan — Implementation.

(1) There is created an Interagency Task Force on Family Resource Centers and Youth Services Centers which shall consist of twenty-one (21) members appointed by the Governor. The twenty-one (21) members appointed shall include one (1) representative from each of the following agencies or groups, except the Department of Education which shall include three (3) representatives and parents which shall have three (3) representatives:

(a) Department of Education;

(b) Department for Employment Services of the Cabinet for Workforce Development;

(c) Department for Health Services of the Cabinet for Human Resources;

(d) Department for Mental Health and Mental Retardation Services of the Cabinet for Human Resources;

(e) Department for Social Services of the Cabinet for Human Resources;

(f) Department for Social Insurance of the Cabinet for Human Resources;

(g) Justice Cabinet;

(h) Governor's Office;

(i) Office of the Secretary, Cabinet for Workforce Development;

(j) Parents;

(k) Teachers;

(l) Local school administrators;

(m) Local school boards;

(n) Local community mental health-mental retardation programs;

(o) Local health departments;

(p) Local community action agencies; and

(q) A family resource and youth services coordinator.

(2) The task force shall be appointed and begin to meet immediately upon July 13, 1990, to formulate a five (5) year implementation plan establishing family resource and youth services centers designed to meet the needs of children and their families. By July 1, 1995, the implementation plan shall be revised to include two (2) additional years, 1996 and 1997. The centers shall provide services which will enhance students' abilities to succeed in school. If resources are limited, students and families who are the most economically disadvantaged shall receive priority status for receiving services. The secretary of the Cabinet for Human Resources shall call the first meeting, at which time the task force by majority vote shall elect a task force chair to serve a one (1) year term. A new chair shall be elected annually thereafter, and the chair may succeed himself. The Cabinet for Human Resources shall provide adequate staff to assist in the development and implementation of the task force's plan.

(3) The plan developed by the task force shall include an effort to implement a network of family resource centers across the Commonwealth. The centers shall be located in or near each elementary school in the Commonwealth in which twenty percent (20%) or more of the student body are eligible for free or reduced price school meals. The plan developed for the centers by the task force shall promote identification and coordination of existing resources and shall include, but not be limited to, the following components for each site:

(a) Full-time preschool child care for children two (2) and three (3) years of age;

(b) After school child care for children ages four (4) through twelve (12), with the child care being full-time during the summer and on other days when school is not in session;

(c) Families in training, which shall consist of an integrated approach to home visits, group meetings, and monitoring child development for new and expectant parents;

(d) Parent and child education (PACE) as described in KRS 158.360 or similar program;

(e) Support and training for child day care providers; and

(f) Health services or referral to health services, or both.

(4) The plan developed by the task force shall include a schedule to implement a network of youth ser-

vices centers across the Commonwealth. The centers shall be located in or near each school, except elementary schools, serving youth over twelve (12) years of age and in which twenty percent (20%) or more of the student body are eligible for free or reduced price school meals. The plan developed for the centers by the task force shall promote identification and coordination of existing resources and include, but not be limited to, the following components for each site:

(a) Referrals to health and social services;
(b) Employment counseling, training, and placement;
(c) Summer and part-time job development;
(d) Drug and alcohol abuse counseling; and
(e) Family crisis and mental health counseling.

(5) The task force shall complete its implementation plan for the program prior to January 1, 1991, and local school districts shall develop initial plans for their family resource centers and youth services centers by June 30, 1991. By June 30, 1992, family resource centers and youth services centers shall be established in or adjacent to at least one-fourth (¼) of the eligible schools, with expansion by one-fourth (¼) by June 30 of each year thereafter or until the centers have been established in or adjacent to all eligible schools.

(6) A grant program is established to provide financial assistance to eligible school districts establishing family resource centers and youth services centers. The Cabinet for Human Resources shall award the grants pursuant to KRS 156.4977. A school district shall not operate a family resource center or a youth services center which provides abortion counseling or makes referrals to a health care facility for purposes of seeking an abortion.

(7) Funding provided to the Cabinet for Families and Children for the grant program and agency administrative costs shall include an increase that is equal to or greater than the general fund growth factor provided in agency budget instructions.

(8) The task force shall continue to monitor the family resource centers and the youth services centers, review grant applications, and otherwise monitor the implementation of the plan until December 31, 1997, at which time the task force shall cease to exist. During its existence, the task force shall report at least annually to the secretary of the Cabinet for Human Resources, the State Board for Elementary and Secondary Education, the Governor, and the Legislative Research Commission.

(9) Members of the task force may be reimbursed for actual expenses for attending meetings and for other actual and necessary expenses incurred in the performance of their duties authorized by the task force. The expenses shall be paid out of the appropriation for the task force.

(Enact. Acts 1990, ch. 476, Pt. I, § 18, effective July 13, 1990; 1992, ch. 291, § 3, effective April 15, 1992; 1994, ch. 194, § 1, effective July 15, 1994; 1996, ch. 271, § 9, effective July 15, 1996; 2000, ch. 271, § 1, effective March 31, 2000.)

Legislative Research Commission Note. (7/15/96, revised 3/31/2000). Notwithstanding 1996 Ky. Acts ch. 362, sec. 6, the reference to the State Board for Elementary and Secondary Education in subsection (8) [formerly (7), prior to 2000 amendment] of this statute has been left unchanged because that reference is historical in nature.

Kentucky Bench & Bar. Keating, You Get What You Pay For: Financing Public Schools in Kentucky, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 6.

156.4975. Definitions for KRS 156.497, 156.4975, and 156.4977.

As used in KRS 156.497, 156.4975, and 156.4977:

(1) "Core component" means one (1) of the activities or services for children and their families provided by a family resource or youth services center required by KRS 156.497(3) and (4).

(2) "Optional component" means one (1) of the activities or services provided for children or their families as part of the implementation of a family resource or youth services center in addition to those required by KRS 156.497(3) and (4) and designed to satisfy unique community needs.

(3) "Secretary" means the secretary of the Cabinet for Families and Children.

(4) "Task Force" means the Interagency Task Force on Family Resource and Youth Services Centers.

(Enact. Acts 1992, ch. 291, § 1, effective April 15, 1992.)

156.4977. Grants to local school districts for family resource and youth services centers.

(1) Beginning with fiscal year 1992, grants shall be awarded to eligible local school districts to implement or continue family resource and youth services centers as defined in KRS 156.497.

(2) Grant proposal instructions shall be developed by the Cabinet for Families and Children. The instructions shall be contained in a grant application package and distributed to each local public school district in which there are qualifying schools.

(3) A proposal review team comprised of at least three (3) members shall review proposals and score each application in accordance with training provided and scoring procedures established by the Cabinet for Families and Children. Proposal reviewers shall be selected by the secretary of the Cabinet for Families and Children. The reviewers shall submit the scored proposals to the secretary of the Cabinet for Families and Children. Written notification of the secretary's final decision on proposals shall be provided by the secretary to each applicant school district.

(4) The application from each qualifying school or school consortium shall contain the following:

(a) A statement of need;
(b) Proposed goals and outcomes;
(c) A description of the actual services and activities to be provided at the center and how they shall be provided;
(d) A description of how the children and families with the most urgent needs will be served first;
(e) Written agreements with other service providers;
(f) A description of the development, composition, and role of the local advisory council;

(g) The strategies to disseminate information;
(h) A training plan;
(i) A description of procedures to be followed to obtain parental permission for services and for sharing confidential information with other service providers. Procedures shall be developed pursuant to federal law and the Kentucky Revised Statutes including, but not limited to, KRS 210.410, 214.185, 222.441, 645.030, and Chapters 620 and 635 and shall require that no family resource center or youth services center offer contraceptives to minor students prior to receiving the express consent of the student's parent or legal guardian;
(j) A plan to minimize stigma;
(k) A work plan for each of the core components and optional components;
(l) Job descriptions for staff;
(m) A description of the center location and school accessibility;
(n) A description of the hours of operation of the center;
(o) A financial strategy and budget;
(p) A program evaluation plan; and
(q) Letters of endorsement and commitment to the center from community agencies and organizations.

(5) Grant proposal instruction and scoring procedures shall be made available to all qualifying schools.

(Enact. Acts 1992, ch. 291, § 2, effective April 15, 1992; 1994, ch. 194, § 2, effective July 15, 1994; 1994, ch. 334, § 18, effective July 15, 1994; 1998, ch. 174, § 1, effective March 27, 1998.)

Legislative Research Commission Note. (7/15/98). References in this statute to the former Cabinet for Human Resources have been changed to the Cabinet for Families and Children under 1998 Ky. Acts ch. 426, sec. 629, and KRS 7.136(2).

156.498. Alternate approval procedure for federal food program eligibility for certain organizations.

As the administering agency for the Child and Adult Care Food Program funded by the United States Department of Agriculture, the Kentucky Department of Education shall establish an alternate approval procedure, as required by the applicable federal rules and regulations, to review information submitted by organizations operating centers or programs for children for which licensing or approval is not available in this state, in order to establish eligibility for the federal food program. The department shall establish the alternate approval procedure no later than August 1, 1996. As a condition of the alternate approval procedures, the department shall require submission of health, sanitation, and fire and safety permits for all centers or programs seeking alternate approval.

(Enact. Acts 1996, ch. 81, § 2, effective July 15, 1996.)

156.499. Termination of boards, commissions, councils and committees. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1985 (1st Ex. Sess.), ch. 10, § 40, effective October 18, 1985; 1988, ch. 179, § 1, effective July 15, 1988) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

156.500. Appointments to reflect reasonable minority representation.

The General Assembly directs that appointments made by the appointing authority to every board, commission, council or other type of advisory or decision-making body created or reenacted by the Education Reform Act of 1990 reflect reasonable minority representation of the membership and that active minority participation at every level of implementation be continually encouraged.

(Enact. Acts 1990, ch. 476, Pt. III, § 116, effective July 13, 1990.)

Opinions of Attorney General. School council committees are advisory bodies created by Kentucky Education Reform Act, therefore, school council committees must be formed consistent with this section, which requires reasonable minority representation on the committees. OAG 94-8.

156.501. Student health services — Responsibilities of Department of Education and Department for Public Health — Filling of position — Funding.

(1) The Department of Education shall provide leadership and assistance to local school districts relating to student health services. The department, working in cooperation with the Department for Public Health, shall provide, contract for services, or identify resources to improve student health services, including but not limited to the following:
(a) Standardized protocols and guidelines for health procedures to be performed by health professionals and school personnel. The protocols and guidelines shall include but not be limited to the following:
1. The delegation of nursing functions consistent with administrative regulations promulgated by the Kentucky Board of Nursing;
2. Training of designated nonmedical school personnel; and
3. Appropriate documentation and recordkeeping including, but not limited to, notification to school administrators and parents or guardians of the provision of health services by a school employee, including certification of medical necessity for health services signed by a health care professional, and informed consent for the provision of health services by a parent or guardian.

A copy of the protocols and guidelines shall be made available to each school in the Commonwealth and shall be maintained by each school in the school's library;
(b) Consultation, technical assistance, and development of quality improvement measures for the state and local boards of education, individual public schools, and local health departments;
(c) Facilitation of statewide and local data collection and reporting of school health services; and

(d) Information and resources that relate to the provision of school health services.

(2) The Department of Education shall establish a position to assist in carrying out the responsibilities required under subsection (1) of this section. The position may be established with existing personnel resources, or by contract, with an individual who:

(a) Holds, at a minimum, a bachelor's degree in nursing with a master's degree in nursing or a related field from an accredited postsecondary institution; and

(b) Is a registered nurse licensed under the provisions of KRS Chapter 314.

(3) The Department of Education shall provide fifty percent (50%) of the costs for the position required by subsection (2) of this section and the Department for Public Health shall provide the remaining fifty percent (50%) for the position. The Department of Education may enter into a contractual arrangement, such as a Memorandum of Agreement, with the Department for Public Health to share the costs.

(Enact. Acts 2002, ch. 294, § 1, effective July 15, 2002.)

156.502. Health services in school setting — Designated provider — Liability protection.

(1) As used in this section:

(a) "Health services" means the provision of direct health care, including the administration of medication; the operation, maintenance, or health care through the use of medical equipment; or the administration of clinical procedures. "Health services" does not include first aid or emergency procedures; and

(b) "School employee" means an employee of the public schools of this Commonwealth.

(2) Health services shall be provided, within the health care professional's current scope of practice, in a school setting by:

(a) A physician who is licensed under the provisions of KRS Chapter 311;

(b) An advanced registered nurse practitioner, registered nurse, or licensed practical nurse who is licensed under the provisions of KRS Chapter 314; or

(c) A school employee who is delegated responsibility to perform the health service by a physician, advanced registered nurse practitioner, or registered nurse; and

1. Has been trained by the delegating physician or delegating nurse for the specific health service, if that health service is one that could be delegated by the physician or nurse within his or her scope of practice; and

2. Has been approved in writing by the delegating physician or delegating nurse. The approval shall state that the school employee consents to perform the health service when the employee does not have the administration of health services in his or her contract or job description as a job responsibility, possesses sufficient training and skills, and has demonstrated competency to safely and effectively perform the health service. The school employee shall acknowledge receipt of training by signing the approval form. A copy of the approval form shall be maintained in the student's record and the personnel file of the school employee. A delegation to a school employee under this paragraph shall be valid only for the current school year.

(3) If no school employee has been trained and delegated responsibility to perform a health service, the school district shall make any necessary arrangement for the provision of the health service to the student in order to prevent a loss of a health service from affecting the student's attendance or program participation. The school district shall continue with this arrangement until appropriate school personnel are delegated the responsibility for health care in subsection (2) of this section.

(4) A school employee who has been properly delegated responsibility for performing a medical procedure under this section shall act as an agent of the school and be granted liability protection under the Federal Paul P. Coverdell Teacher Liability Protection Act of 2001, Pub. L. No. 107-110, unless the claimant establishes by clear and convincing evidence that harm was proximately caused by an act or omission of the school employee that constitutes negligence, willful or criminal misconduct, or a conscious, flagrant indifference to the rights and safety of the individual harmed.

(5) Nothing in this section shall be construed to deny a student his or her right to attend public school and to receive public school services, or to deny, prohibit, or limit the administration of emergency first aid or emergency procedures.

(Enact. Acts 2002, ch. 294, § 2, effective July 15, 2002.)

156.503. Committee to study basketball tournaments — Membership — Meetings and recommendations.

(1) The agency designated by the Kentucky Board of Education to manage interscholastic athletics shall appoint a committee by September 1, 2002, to study the current format and scheduling of the state girls and boys high school basketball tournaments and consider the pros and cons of the scheduling, taking into consideration the physical and mental demands on the players, the impact on the school instructional calendar, the availability of facilities, and other related factors as determined by the committee.

(2) The committee shall consist of the following representatives, one (1) of whom shall be male, and one (1) of whom shall be female, except in paragraphs (f) and (i):

(a) Two (2) coaches, who may be active or former coaches;

(b) Two (2) current superintendents of school districts that have high school athletic programs;

(c) Two (2) current high school principals;

(d) Two (2) former players, who participated in at least one (1) state tournament;
(e) Two (2) athletic directors, active or former;
(f) Two (2) former members of the board of control of the high school athletic association designated by the state board to govern interscholastic athletics;
(g) Two (2) active referees;
(h) Two (2) citizen members; and
(i) Two (2) members of the General Assembly, one (1) appointed by the Senate President and one (1) appointed by the Speaker of the House.

(3) Representation appointed to the committee pursuant to subsection (2)(f) and (i) of this section may be based on gender equity if female candidates are available.

(4) The committee shall meet as needed during the 2002-2003 school year and make recommendations to the board of control of the athletics association prior to the scheduling of the high school tournaments for the 2003-2004 school year. The report shall also be presented to the Interim Joint Committee on Education.

(Enact. Acts 2002, ch. 212, § 1, effective July 15, 2002.)

PROFESSIONAL PRACTICES COMMISSION

156.510. Professional Practices Commission — Nomination and appointment. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1962, ch. 123, § 1) was repealed by Acts 1978, ch. 18, § 1, effective June 17, 1978.

156.520. Membership. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1962, ch. 123, § 2) was repealed by Acts 1978, ch. 18, § 1, effective June 17, 1978.

156.530. Responsibilities. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1962, ch. 123, § 3) was repealed by Acts 1978, ch. 18, § 1, effective June 17, 1978.

156.540. Powers — Recommendations. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1962, ch. 123, § 4) was repealed by Acts 1978, ch. 18, § 1, effective June 17, 1978.

156.550. Financing. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1962, ch. 123, § 5) was repealed by Acts 1978, ch. 18, § 1, effective June 17, 1978.

PROFESSIONAL DEVELOPMENT FOR SCHOOL PERSONNEL

156.551. Definitions for KRS 156.551 to 156.555. As used in KRS 156.551 to 156.555, unless the context requires otherwise:

(1) "Center" means the Center for Middle School Academic Achievement;

(2) "Fund" means the Teachers' Professional Growth Fund;

(3) "Middle school" means grades five (5) through eight (8), regardless of school or district configuration; and

(4) "Reliable, replicable research" means objective, valid, scientific studies that:
(a) Include rigorously defined samples of subjects that are sufficiently large and representative to support the general conclusions drawn;
(b) Rely on measurements that meet established standards of reliability and validity;
(c) Test competing theories, where multiple theories exist; and
(d) Are subjected to peer review before results are published.

(Enact. Acts 2000, ch. 527, § 1, effective July 14, 2000.)

156.553. Teachers' professional growth fund — Purposes — Courses — Duties of Department of Education — Professional development programs — Administrative regulations — Advancement by local boards of funds to teachers for professional development education — Reimbursement.

(1) The teachers' professional growth fund is hereby created to provide teachers with high quality professional development in content knowledge in mathematics, science, language arts, social studies, arts and humanities, practical living, vocational studies, and foreign languages as well as teaching methodologies to impart the content to students. During the years 2000 to 2004, priority for funding shall be given to middle school teachers, and, based upon available funds, and in subsequent years, funding shall be made available to teachers in all grade levels in the subject areas listed in this subsection. Based on available funds, student achievement data, and teacher data, the Kentucky Board of Education shall annually determine the priority for content emphasis based on the greatest needs.

(2) The fund may provide moneys to teachers for:
(a) Tuition reimbursement for successful completion of college or university level courses, including on-line courses and seminars, approved for this purpose by the Education Professional Standards Board;
(b) Stipends for participation in and successful completion of:
1. College or university courses, including on-line courses and seminars, approved for this purpose by the Education Professional Standards Board;
2. Teacher institutes developed for core content instructors by the Department of Education in compliance with KRS 156.095; and
3. Other professional development programs approved by the Kentucky Department of Education;

(c) Reimbursement for the purchase of materials required for professional development programs; and
(d) Reimbursement for other approved professional development activities throughout the school year, including reimbursement for:
1. Travel to and from professional development workshops; and
2. Travel to and from other schools for the observation of, and consultation with, peer mentors.

(3) The Education Professional Standards Board shall determine the college and university courses, including on-line courses and seminars, for which teachers may receive reimbursement from the fund.

(4) The Department of Education shall:
(a) Administer the fund. In order to process reimbursements to teachers promptly, the reimbursements shall not be subject to KRS 45A.690 to 45A.725;
(b) Determine the professional development programs for which teachers may receive reimbursement from the fund;
(c) Determine the level of stipend or reimbursement, subject to the availability of appropriated funds, for particular courses and programs, under subsection (2) of this section; and
(d) Provide an accounting of fund expenditures to the Center for Middle School Academic Achievement, upon request of the center, for use in preparing the center's annual report.

(5) The professional development programs approved by the Department of Education for which teachers may receive support from the fund shall:
(a) Focus on improving the content knowledge of teachers;
(b) Provide instruction on teaching methods to effectively impart content knowledge to all students;
(c) Include intensive training institutes and workshops during the summer;
(d) Provide programs for the ongoing support of teacher participants throughout the year, which may include:
1. A peer coaching or mentoring, and assessment program; and
2. Planned activities, including:
a. Follow-up workshops; and
b. Support networks of teachers of the core disciplines using technologies, including but not limited to telephone, video, and on-line computer networks; and
(e) Provide teacher participants with professional development credit toward renewal of certification under the provisions of KRS 161.095, relating to continuing education for teachers.

(6) The Kentucky Board of Education shall specify through promulgation of administrative regulations:
(a) The application and approval process for receipt of funds;
(b) The requirements and process for the disbursal of funds; and
(c) The number of each kind of approved course for which applicants may receive funds.

(7) Notwithstanding any other provisions to the contrary, a local school board may advance the funds necessary for its teachers to participate in a college course or professional development seminar or activity approved by the Kentucky Department of Education and the Education Professional Standards Board under provisions of this section and receive reimbursement from the department at the conclusion of the activity or course by the teacher. If funds are advanced for the benefit of a teacher under this subsection, but the teacher does not fulfill his or her obligation, the teacher shall reimburse the school district for the funds expended by the district on the teacher's behalf.

(8) Notwithstanding the provisions of KRS 45.229, unexpended funds in the teachers' professional growth fund in the 2000-2001 fiscal year or in any subsequent fiscal year shall not lapse but shall carry forward to the next fiscal year and shall be used for the purposes established in subsections (1) and (2) of this section.

(Enact. Acts 2000, ch. 527, § 2, effective July 14, 2000; 2001, ch. 135, § 1, effective June 21, 2001; 2002, ch. 135, § 4, effective April 2, 2002.)

156.555. Center for Middle School Academic Achievement — Duties — Location at college or university.

(1) The Center for Middle School Academic Achievement is created to improve the content knowledge and instructional practice of middle school teachers through the coordination of professional development programs for middle school teachers, the provision of technical assistance to schools and teachers, and the collection and dissemination of information and research regarding effective models of teaching the core disciplines to middle school students.

(2) The center shall:
(a) Foster collaboration between the center, the Department of Education, the Education Professional Standards Board, postsecondary institutions of education, postsecondary departments or colleges of arts and sciences, and other entities to develop content-based teacher preparation programs and ongoing professional development programs for middle school teachers, aligned with the Department of Education's core content for assessment;
(b) Assist school districts in assessing and addressing their needs and deficiencies in middle school curriculum and instruction;
(c) Assist middle school teachers in establishing and maintaining networks of communication to share information regarding middle school instructional practice, curriculum development, and other areas of common interest, building upon existing networks;
(d) Develop and maintain a clearinghouse for information about:

1. Educational models addressing content knowledge and skills of middle school students, based on reliable, replicable research;
2. Core content achievement levels of Kentucky students in relation to students in other states and other countries; and
3. The relationship between student achievement levels and curriculum content, curriculum structure and alignment with content, teacher training, and teaching methods;

(e) Develop and implement a research structure, in collaboration with the Department of Education, to evaluate the effectiveness of different middle school instructional models; and

(f) Submit an annual report to the Governor and the Legislative Research Commission by September 1 of each year. The report shall include information outlining the center's activities, information provided by the Kentucky Department of Education regarding the use of money from the Teachers' Professional Growth Fund, and other information regarding efforts to improve the quality of middle school instruction in Kentucky.

(3) With the advice of the commissioner of education and the Education Professional Standards Board, the Council on Postsecondary Education shall develop a process to solicit, review, and approve a proposal for locating the Center for Middle School Academic Achievement at a public or private college or university. The council shall choose a college or university that has demonstrated the coordination of course delivery between the faculties of the college of education and arts and sciences departments within the college or university. The council shall approve the location for the center no later than November 15, 2000.

(Enact. Acts 2000, ch. 527, § 3, effective July 14, 2000.)

156.557. Standards for improving performance of certified school personnel — Criteria for evaluation — Content of programs — Administrative regulations — Waiver for alternative plan — Appeals — Exemptions — Review of evaluation systems — Assistance to improve evaluation systems.

(1) The Kentucky Board of Education shall establish statewide standards for evaluation and support for improving the performance of all certified school personnel.

(2) The performance criteria on which teachers and administrators shall be evaluated shall include, but not be limited to:

(a) Performance of professional responsibilities related to his or her assignment, including attendance and punctuality and evaluating results;

(b) Demonstration of effective planning of curricula, classroom instruction, and classroom management, based on research-based instructional practices, or school management skills based on validated managerial practices;

(c) Demonstration of knowledge and understanding of subject matter content or administrative functions and effective leadership techniques;

(d) Promotion and incorporation of instructional strategies or management techniques that are fair and respect diversity and individual differences;

(e) Demonstration of effective interpersonal, communication, and collaboration skills among peers, students, parents, and others;

(f) Performance of duties consistent with the goals for Kentucky students and mission of the school, the local community, laws, and administrative regulations;

(g) Demonstration of the effective use of resources, including technology;

(h) Demonstration of professional growth;

(i) Adherence to the professional code of ethics; and

(j) Attainment of the teacher standards or the administrator standards as established by the Education Professional Standards Board that are not referenced in paragraphs (a) to (i) of this subsection.

(3) The certified employee evaluation programs shall contain the following provisions:

(a) Each certified school employee, including the superintendent, shall be evaluated by a system developed by the local school district and approved by the Kentucky Department of Education.

(b) The local evaluation system shall include formative evaluation and summative evaluation.

1. "Formative evaluation" means a continuous cycle of collecting evaluation information and interacting and providing feedback with suggestions regarding the certified employee's professional growth and performance.
2. "Summative evaluation" means the summary of, and conclusions from, the evaluation data, including formative evaluation data, that:
   a. Occur at the end of an evaluation cycle; and
   b. Include a conference between the evaluator and the evaluated certified employee, and a written evaluation report.

(c) The Kentucky Board of Education shall adopt administrative regulations incorporating written guidelines for a local school district to follow in developing, implementing, and revising the evaluation system and shall require the following:

1. All evaluations of certified employees below the level of the district superintendent shall be in writing on evaluation forms and under evaluation procedures developed by a committee composed of an equal number of teachers and administrators;
2. The immediate supervisor of the certified school employee shall be designated as the

primary evaluator. At the request of a teacher, observations by other teachers trained in the teacher's content area or curriculum content specialists may be incorporated into the formative process for evaluating teachers;

3. All monitoring or observation of performance of a certified school employee shall be conducted openly and with full knowledge of the employee;
4. Evaluators shall be trained, tested, and approved in accordance with administrative regulations adopted by the Kentucky Board of Education in the proper techniques for effectively evaluating certified school employees and in the use of the school district evaluation system;
5. The evaluation system shall include a plan whereby the person evaluated is given assistance for professional growth as a teacher or administrator. The system shall also specify the processes to be used when corrective actions are necessary in relation to the performance of one's assignment; and
6. The training requirement for evaluators contained in subparagraph 4. of this paragraph shall not apply to district board of education members.

(4) A local district may request from the Kentucky Department of Education a waiver from the guidelines and administrative regulations promulgated by the Kentucky Board of Education as required in subsection (3)(c) of this section in order to implement an alternative evaluation plan for employees on continuing contracts. The department shall grant a waiver if the alternative plan provides for a three (3) phase certified employee evaluation plan that includes:

(a) Phase One: Evaluation for Professional Growth.
1. Evaluation is based on a wide array of relevant sources and directed toward general and specific recommendations for improvement; and
2. Evaluation does not include documentation that might adversely affect employment status.

(b) Phase Two: Transition.
1. Evaluation is for the purpose of intensive scrutiny of job performance;
2. Evaluation includes documentation that may lead to adverse employment decisions;
3. Assistance and support for improvement shall be provided by the school district; and
4. Placement of an individual in the transition phase shall not be subject to appeal, but the employee shall be notified of the decision in writing.

(c) Phase Three: Evaluation for Deficiency.
1. Notwithstanding KRS 161.760, written notice of potential termination, reduction of direct classroom responsibility, or other adverse actions and conditions for job retention are given the employee;
2. A clear time frame for proposed actions is provided the employee; and
3. The summative evaluation is subject to appeal.

An alternative plan for the evaluation of certified personnel shall be proposed to the Kentucky Department of Education if the local district evaluation committee is in support of the plan. Training necessary to implement the alternative plan shall be provided to the principals, supervisory personnel, and the employees to be evaluated. The local district shall provide support to implement the plan. The department shall provide technical assistance to districts wishing to develop alternative evaluation plans.

(5) The Kentucky Board of Education shall establish an appeals procedure for certified school employees who believe that the local school district failed to properly implement the approved evaluation system. The appeals procedure shall not involve requests from individual certified school employees for review of the judgmental conclusions of their personnel evaluations.

(6) The local board of education shall establish an evaluation appeals panel for certified personnel that shall consist of two (2) members elected by the certified employees of the district and one (1) member appointed by the board of education who is a certified employee of the board. Certified employees who think they were not fairly evaluated may submit an appeal to the panel for a timely review of their evaluation. In districts that have adopted an alternative evaluation plan under subsection (4) of this section, the appeal shall only apply to the summative evaluation of Phase Three.

(7) Local school districts with an enrollment of sixty-five thousand (65,000) or more students shall have an evaluation system but shall be exempt from procedures or processes described in this section as long as the plan meets the standards established by the Kentucky Board of Education for local school district evaluation systems. The local plan shall include an appeals process for employees who believe they were not fairly evaluated.

(8) Between July 15, 2000, and June 30, 2001, each school district shall review its local evaluation system to assure that the system is working effectively and to make changes to improve its system.

(9) Beginning with the 2001-2002 school year, and in subsequent years, the Kentucky Department of Education shall annually provide for on-site visits by trained personnel to a minimum of fifteen (15) school districts to review and ensure appropriate implementation of the evaluation system by the local school district. The department shall provide technical assistance to local districts to eliminate deficiencies and to improve the effectiveness of their evaluation systems. The department may implement the requirement in this subsection in conjunction with other requirements, including,

but not limited to, the scholastic audit process required by KRS 158.6455.

(Enact. Acts 2000, ch. 527, § 4, effective July 14, 2000.)

NOTES TO DECISIONS

1. In General.

Certified school teacher who received formal teaching evaluations was not entitled to formal evaluations for extra service coaching assignments before a school district could remove him from his basketball coaching position. Board of Educ. v. Code, 57 S.W.3d 820 (Ky. 2001).

TEACHER EDUCATION SCHOLARSHIP FUND

156.610. Teacher education scholarship fund — Board, membership, term, expenses. [Repealed.]

Compiler's Notes. This section (Acts 1962, ch. 244, Art. VI, § 1; 1978, ch. 155, § 82, effective June 17, 1978) was repealed by Acts 1982, ch. 412, § 2, effective July 15, 1982.

156.611. Legislative intent — Student loans for mathematics and science. [Repealed, reenacted, and amended.]

Compiler's Notes. This section (Enact. Acts 1982, ch. 412, § 1, effective July 15, 1982; 1985 (1st Ex. Sess.), ch. 10, § 39, effective October 18, 1985) was repealed, reenacted, and amended as KRS 164.768 by Acts 1988, ch. 34, § 1, effective July 15, 1988 and was susequently repealed by Acts 1994, ch. 163, § 3, effective July 15, 1994.

156.613. Legislative intent — Student loans for teacher education. [Repealed, reenacted, and amended.]

Compiler's Notes. This section (Enact. Acts 1985 (1st Ex. Sess.), ch. 10, § 4, effective October 18, 1985) was repealed, reenacted, and amended as KRS 164.770 by Acts 1988, ch. 34, § 2, effective July 15, 1988.

156.620. Applications for scholarships — Standards — Examination. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1962, ch. 244, Art. VI, § 2; 1978, ch. 155, § 82, effective June 17, 1978) was repealed by Acts 1982, ch. 412, § 21, effective July 15, 1982.

156.630. Conditions for awarding scholarships — Requirements — Priority. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1962, ch. 244, Art. VI, § 3; 1974, ch. 308, § 33; 1978, ch. 155, § 82, effective June 17, 1978)was repealed by Acts 1982, ch. 412, § 21, effective July 15, 1982.

156.640. Conditions of eligibility. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1962, ch. 244, Art. VI, § 4; 1978, ch. 155, § 82, effective June 17, 1978) was repealed by Acts 1982, ch. 412, § 21, effective July 15, 1982.

156.650. When effective. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1962, ch. 244, Art. VI, § 5) was repealed by Acts 1982, ch. 412, § 21, effective July 15, 1982.

EDUCATION TECHNOLOGY

156.660. Definitions.

As used in KRS 156.660 to 156.670 and KRS 168.015, unless the context indicates otherwise:

(1) "Council" means the Council for Education Technology.

(2) "Technology" includes, but is not limited to, computers, telecommunications, cable television, interactive video, film, low-power television, satellite communications, and microwave communications.

(Enact. Acts 1990, ch. 476, Pt. I, § 19, effective July 13, 1990.)

Kentucky Bench & Bar. Keating, You Get What You Pay For: Financing Public Schools in Kentucky, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 6.

156.665. Council for Education Technology — Department of Long-Range Plan — Other responsibilities. [Repealed.]

Legislative Research Commission Note. (7/14/92) This section was amended by the 1992 Regular Session of the General Assembly and also repealed. Pursuant to KRS 446.260, the repeal prevails.

Compiler's Notes. This section (Enact. Acts 1990, ch. 476, Pt. I, § 21, effective July 13, 1990) was repealed by Acts 1992, ch. 195, § 15, effective April 3, 1992.

156.666. Council for Education Technology — Membership — Duties.

(1) There is established the Council for Education Technology which shall be an advisory group attached to the Kentucky Board of Education. The council shall develop a master plan for education technology.

(2) The council shall consist of the chief information officer, the secretary of the Education, Arts, and Humanities Cabinet, and the president of the Council on Postsecondary Education who shall serve as ex officio voting members and eight (8) voting members appointed by the Governor within thirty (30) days after April 3, 1992. The members shall be as follows:

(a) One (1) member of the Kentucky Board of Education;

(b) One (1) member of the House of Representatives;

(c) One (1) member of the Senate; and

(d) Five (5) citizens of the Commonwealth.

A majority of the membership present at any meeting shall constitute a quorum for the official conduct of business.

(3) Members shall be appointed for four (4) year terms and may be reappointed. The initial members of the board shall be appointed as follows: two (2)

members shall be appointed for terms of two (2) years; two (2) members shall be appointed for terms of three (3) years; and four (4) members shall be appointed for terms of four (4) years. Members shall receive no compensation but may be reimbursed for actual and necessary expenses in accordance with state laws and regulations.

(4) Terms of members serving pursuant to KRS 156.665 shall terminate on April 3, 1992.

(5) Immediately upon receiving notice of the appointment of all members, the chief state school officer shall call an organizational meeting. At this meeting the chief state school officer shall preside as temporary chairman, and the council shall elect from among the members a chairman and any other officers it deems necessary, and define the duties of the officers.

(6) Meetings shall be held at least two (2) times per year at a time and place designated by the chairman. The Department of Education shall provide staff support for the council.

(7) The duties and responsibilities of the council shall include, but not be limited to, the following:

(a) Developing a long-range master plan for the efficient and equitable use of technology at all levels from primary school through higher education, including vocational and adult education. The plan shall focus on the technology requirements of classroom instruction, literacy laboratories, student record management, financial and administrative management, distance learning, and communications as they relate to the Commonwealth's outcome goals for students as described in KRS 158.6451;

(b) Creating, overseeing, and monitoring a well-planned and efficient statewide network of technology services designed to meet the educational and informational needs of the schools;

(c) Working with private enterprise to encourage the development of technology products specifically designed to answer Kentucky's educational needs;

(d) Encouraging an environment receptive to technological progress in education throughout the Commonwealth;

(e) Recommending a policy governing the granting of rights-of-way for the laying of fiber optic cable in a manner to insure that all of Kentucky's citizens are served equitably, that the fiber optic system is available for educational technology purposes, and that the private and public sectors are partners in the venture; and

(f) Receiving, holding, investing, and administering all funds received by the council for the purpose of carrying out its duties and responsibilities, as set out in this section. These funds shall be spent with the aim of achieving equality of education throughout the Commonwealth.

(Enact. Acts 1992, ch. 195, § 8, effective April 3, 1992; 1994, ch. 209, § 12, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996; 1997 (1st Ex. Sess.), ch. 1, § 58, effective May 30, 1997; 2000, ch. 506, § 19, effective July 14, 2000; 2000, ch. 536, § 19, effective July 14, 2000.)

Legislative Research Commission Note. (7/14/2000). This section was amended by 2000 Ky. Acts chs. 506 and 536, which are identical and have been codified together.

156.670. Development of master plan for education technology.

(1) The Council for Education Technology shall develop the master plan for education technology and submit the plan to the Kentucky Board of Education and the Legislative Research Commission for approval. Implementation of each stage of the master plan shall begin immediately upon approval of the board and the Legislative Research Commission. The plan shall outline the Commonwealth's five (5) year activities related to purchasing, developing, and using technology to:

(a) Improve learning and teaching and the ability to meet individual students' needs to increase student achievement;

(b) Improve curriculum delivery to help meet the needs for educational equity across the state;

(c) Improve delivery of professional development;

(d) Improve the efficiency and productivity of administrators; and

(e) Encourage development by the private sector and acquisition by districts of technologies and applications appropriate for education.

(2) The five (5) year plan shall cover all aspects of education technology, including but not limited to, its use in educational instruction and administration, video and computer systems, software and hardware, multiple delivery systems for satellite, microwave, cable, instructional television fixed service, fiber optic, and computer connections products, the preparation of school buildings for technological readiness, and the development of staff necessary to implement the plan.

(3) The five (5) year plan shall include specific recommendations to the Kentucky Board of Education for the adoption of administrative regulations to establish and implement a uniform and integrated system of standards and guidelines for financial accounting and reporting which shall be used by all school districts.

(4) The integrated technology-based communications system shall provide comprehensive, current, accurate, and accessible information relating to management, finance, operations, instruction, and pupil programs which are under the jurisdiction of the Department of Education.

(5) To facilitate communication among teachers, parents, students, and prospective employers of students, and to provide access to many vital technological services, the five (5) year plan shall include the installation of a telephone in each classroom.

(6) In designing and implementing the five (5) year plan, the council shall consider seeking the active participation of private organizations whose knowledge and assistance will be useful.

(7) The council shall update as necessary the plan developed under subsection (2) of this section and report to the Legislative Research Commission at the completion of each implementation phase of the master plan.
(8) The council shall submit its recommendations to the Kentucky Board of Education, which shall accept the recommendations, or return them to the council along with suggestions for changes to make the recommendations consistent with the policies of the Kentucky Board of Education.

(Enact. Acts 1990, ch. 476, Pt. I, § 22, effective July 13, 1990; 1992, ch. 195, § 9, effective April 3, 1992; 1996, ch. 362, § 6, effective July 15, 1996.)

Cross-References. Use of local monies to reduce unmet technology need, 701 KAR 5:110.

156.671. Strategic plan for distance learning.
The chief state school officer shall convene the Commissioner of the Department for Information Systems, one (1) representative of Kentucky Educational Television, one (1) representative of the Council on Postsecondary Education, and one (1) representative of the Department of Education to create a strategic plan for distance learning in the Commonwealth and submit it to the Legislative Research Commission by July 1, 1993. The plan shall set forth the Commonwealth's vision for developing a long-term and statewide distance learning strategy. It shall include, but not be limited to, definitions of the types of distance learning delivery systems, an evaluation process for determining and certifying the educational and cost effectiveness of each type of delivery system, comparisons of the various types of delivery systems, and recommendations for implementation.

(Enact. Acts 1992, ch. 195, § 14, effective April 3, 1992; 1997 (1st Ex. Sess.), ch. 1, § 59, effective May 30, 1997.)

156.675. Prevention of transmission of sexually explicit materials to schools — Administrative regulations — Local school district policy on student Internet access.
(1) The Kentucky Board of Education shall promulgate administrative regulations to prevent sexually explicit material from being transmitted via any video or computer system, software or hardware product, or Internet service managed or provided to local schools or school districts.
(2) Each local school district and school shall utilize the latest available filtering technology to ensure that sexually explicit material is not made available to students.
(3) The Kentucky Department of Education shall make available to school districts and schools upon request and without cost, state-of-the-art software products that enable local districts and schools to prevent access to sexually explicit material. The department shall also notify all school districts and schools of the availability of the software. Any product provided or obtained by a district or school shall meet the requirements of subsection (2) of this section.
(4) Each local school district shall establish a policy regarding student Internet access that shall include, but not be limited to, parental consent for student Internet use, teacher supervision of student computer use, and auditing procedures to determine whether education technology is being used for the purpose of accessing sexually explicit or other objectionable material.

(Enact. Acts 1998, ch. 330, § 1, effective July 15, 1998.)

156.690. Teachers' computer purchase program.
The Kentucky Board of Education shall initiate a program to assist and encourage each certified teacher to purchase a computer for his own personal use. The program shall include, but not be limited to, the following:
(1) The Kentucky Board of Education shall obtain by competitive bidding or negotiation the lowest possible purchase prices for various personal computers on behalf of all interested teachers.
(2) The Kentucky Board of Education shall arrange a suitable training program in the use of these computers with the vendor awarded the contract.

(Enact. Acts 1990, ch. 476, Pt. I, § 23, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

Compact for Education

156.710. Interstate Compact for Education.
The compact for education is hereby entered into law with all jurisdictions legally joining therein, in the form substantially as follows:

Article I. Purpose and Policy

A. It is the purpose of this compact to:
1. Establish and maintain close cooperation and understanding among executive, legislative, professional educational and lay leadership on a nationwide basis at the state and local levels.
2. Provide a forum for the discussion, development, crystallization and recommendation of public policy alternatives in the field of education.
3. Provide a clearing house of information on matters relating to educational problems and how they are being met in different places throughout the nation, so that the executive and legislative branches of state government and of local communities may have ready access to the experience and record of the entire country, and so that both lay and professional groups in the field of education may have additional avenues for the sharing of experience and the interchange of ideas in the formation of public policy in education.
4. Facilitate the improvement of state and local educational systems so that all of them will be able to meet adequate and desirable goals in a society which requires continuous qualitative

and quantitative advance in educational opportunities, methods and facilities.

B. It is the policy of this compact to encourage and promote local and state initiative in the development, maintenance, improvement and administration of educational systems and institutions in a manner which will accord with the needs and advantages of diversity among localities and states.

C. The party states recognize that each of them has an interest in the quality and quantity of education furnished in each of the other states, as well as in the excellence of its own educational systems and institutions, because of the highly mobile character of individuals within the nation, and because the products and services contributing to the health, welfare and economic advancement of each state are supplied in significant part by persons educated in other states.

Article II. State Defined

As used in this compact, "state" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

Article III. The Commission

A. The Education Commission of the States, hereinafter called "the commission," is hereby established. The commission shall consist of seven members representing each party state. One of such members shall be the Governor; two shall be members of the state legislature selected by its respective houses and serving in such manner as the legislature may determine; and four shall be appointed by and serve at the pleasure of the Governor, unless the laws of the state otherwise provide. If the laws of a state prevent legislators from serving on the commission, six members shall be appointed and serve at the pleasure of the Governor, unless the laws of the state otherwise provide. In addition to any other principles or requirements which a state may establish for the appointment and service of its members of the commission, the guiding principle for the composition of the membership on the commission from each party state shall be that the members representing such state shall, by virtue of their training, experience, knowledge or affiliations be in a position collectively to reflect broadly the interests of the state government, higher education, the state education system, local education, lay and professional, public and non-public educational leadership. Of those appointees, one shall be the head of a state agency or institution, designated by the Governor, having responsibility for one or more programs of public education. In addition to the members of the commission representing the party states, there may be not to exceed ten (10) non-voting commissioners selected by the steering committee for terms of one (1) year. Such commissioners shall represent leading national organizations of professional educators or persons concerned with educational administration.

B. The members of the commission shall be entitled to one vote each on the commission. No action of the commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the commission are cast in favor thereof. Action of the commission shall be only at a meeting at which a majority of the commissioners are present. The commission shall meet at least once a year. In its bylaws, and subject to such directions and limitations as may be contained therein, the commission may delegate the exercise of any of its powers to the steering committee or the executive director, except for the power to approve budgets or requests for appropriations, the power to make policy recommendations pursuant to Article IV and adoption of the annual report pursuant to Article III J.

C. The commission shall have a seal.

D. The commission shall elect annually, from among its members, a chairman, who shall be a governor, a vice chairman and a treasurer. The commission shall provide for the appointment of an executive director. Such executive director shall serve at the pleasure of the commission, and together with the treasurer and such other personnel as the commission may deem appropriate shall be bonded in such amount as the commission shall determine. The executive director shall be secretary.

E. Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director subject to the approval of the steering committee shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the commission, and shall fix the duties and compensation of such personnel. The commission in its bylaws shall provide for the personnel policies and programs of the commission.

F. The commission may borrow, accept or contract for the services of personnel from any party jurisdiction, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party jurisdictions or their subdivisions.

G. The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, foundation, or corporation, and may receive, utilize and dispose of the same. Any donation or grant accepted by the commission pursuant to this paragraph or services borrowed pursuant to paragraph F of this article shall be reported in the annual report of the commission. Such report shall include the nature, amount and conditions, if any, of the donation, grant, or services borrowed, and the identity of the donor or lender.

H. The commission may establish and maintain such facilities as may be necessary for the transacting of

its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

I. The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

J. The commission annually shall make to the Governor and legislature of each party state a report covering the activities of the commission for the preceding year. The commission may make such additional reports as it may deem desirable.

Article IV. Powers

In addition to authority conferred on the commission by other provisions of the compact, the commission shall have authority to:

1. Collect, correlate, analyze and interpret information and data concerning educational needs and resources.
2. Encourage and foster research in all aspects of education, but with special reference to the desirable scope of instruction, organization, administration, and instructional methods and standards employed or suitable for employment in public educational systems.
3. Develop proposals for adequate financing of education as a whole and at each of its many levels.
4. Conduct or participate in research of the types referred to in this article in any instance where the commission finds that such research is necessary for the advancement of the purposes and policies of this compact, utilizing fully the resources of national associations, regional compact organizations for higher education, and other agencies and institutions, both public and private.
5. Formulate suggested policies and plans for the improvement of public education as a whole, or for any segment thereof, and make recommendations with respect thereto, available to the appropriate governmental units, agencies and public officials.
6. Do such other things as may be necessary or incidental to the administration of any of its authority or functions pursuant to this compact.

Article V. Cooperation with Federal Government

A. If the laws of the United States specifically so provide, or if administrative provision is made therefor within the federal government, the United States may be represented on the commission by not to exceed ten (10) representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, and may be drawn from any one or more branches of the federal government, but no such representative shall have a vote on the commission.

B. The commission may provide information and make recommendations to any executive or legislative agency or officer of the federal government concerning the common educational policies of the states, and may advise with any such agencies or officers concerning any matter of mutual interest.

Article VI. Committees

A. To assist in the expeditious conduct of its business when the full commission is not meeting, the commission shall elect a steering committee of thirty-two (32) members which, subject to the provisions of this compact and consistent with the policies of the commission, shall be constituted and function as provided in the bylaws of the commission. One-fourth (¼) of the voting membership of the steering committee shall consist of Governors, one-fourth (¼) shall consist of legislators, and the remainder shall consist of other members of the commission. A federal representative on the commission may serve with the steering committee, but without vote. The voting members of the steering committee shall serve for terms of two (2) years, except that members elected to the first steering committee of the commission shall be elected as follows: sixteen (16) for one (1) year and sixteen (16) for two (2) years. The chairman, vice chairman, and treasurer of the commission shall be members of the steering committee and, anything in this paragraph to the contrary notwithstanding, shall serve during their continuance in these offices. Vacancies in the steering committee shall not affect its authority to act, but the commission at its next regular ensuing meeting following the occurrence of any vacancy shall fill it for the unexpired term. No person shall serve more than two (2) terms as a member of the steering committee; provided that service for a partial term of one (1) year or less shall not be counted toward the two (2) term limitation.

B. The commission may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. Any advisory or technical committee may, on request of the states concerned, be established to consider any matter of special concern to two (2) or more of the party states.

C. The commission may establish such additional committees as its bylaws may provide.

Article VII. Finance

A. The commission shall advise the Governor or designated officer or officers of each party state of its budget and estimated expenditures for such period as may be required by the laws of that party state. Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states.

B. The total amount of appropriation requests under any budget shall be apportioned among the party

states. In making such apportionment, the commission shall devise and employ a formula which takes equitable account of the populations and per capita income levels of the party states.

C. The commission shall not pledge the credit of any party states. The commission may meet any of its obligations in whole or in part with funds available to it pursuant to Article III G of this compact, provided that the commission takes specific action setting aside such funds prior to incurring an obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it pursuant to Article III G thereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

D. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established by its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant, and the report of the audit shall be included in and become part of the annual reports of the commission.

E. The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

F. Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

Article VIII. Eligible Parties — Entry into and Withdrawal

A. This compact shall have as eligible parties all states, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. In respect of any such jurisdiction not having a Governor, the term "Governor," as used in this compact, shall mean the closest equivalent official of such jurisdiction.

B. Any state or other eligible jurisdiction may enter into this compact and it shall become binding thereon when it has adopted the same: Provided that in order to enter into initial effect, adoption by at least ten (10) eligible party jurisdictions shall be required.

C. Adoption of the compact may be either by enactment thereof or by adherence thereto by the Governor; provided that in the absence of enactment, adherence by the Governor shall be sufficient to make his state a party only until December 31, 1967. During any period when a state is participating in this compact through gubernatorial action, the Governor shall appoint those persons who, in addition to himself, shall serve as the members of the commission from his state, and shall provide to the commission an equitable share of the financial support of the commission from any source available to him.

D. Except for a withdrawal effective on December 31, 1967 in accordance with paragraph C of this article, any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one (1) year after the Governor of the withdrawing state has given notice in writing of the withdrawal to the Governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

Article IX. Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States, or the application thereof to any government, agency, person or circumstances is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 373, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1968, Ch. 151, § 1) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 373, effective July 13, 1990.

156.715. Kentucky members of interstate commission.

The Kentucky representation on the commission provided by Article III of the compact consists of seven (7) members, one (1) of whom shall be the Governor; two (2) of whom shall be members of the General Assembly, a representative and a senator, selected by the Legislative Research Commission in accordance with KRS 8.080; and four (4) of whom shall be appointed by and serve at the pleasure of the Governor.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 374, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1968, Ch. 125, § 2) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 374, effective July 13, 1990.

156.720. Bylaws, where filed.

Pursuant to Article III(I.) of the compact, the commission established by the compact shall file a copy of its bylaws and any amendment thereto with the Legislative Research Commission.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 375, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1968, Ch. 125, § 3) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 375, effective July 13, 1990.

INTERAGENCY COMMISSION ON EDUCATIONAL AND JOB TRAINING COORDINATION

156.740. Interagency Commission on Educational and Job Training Coordination — Membership.

(1) The Interagency Commission on Educational and Job Training Coordination is hereby created. Its membership shall be composed of the following individuals, serving in an ex officio capacity:
   (a) The chairman of the Council on Postsecondary Education;
   (b) The president of the Council on Postsecondary Education;
   (c) The chairman of the Kentucky Board of Education;
   (d) The commissioner of the Department of Education;
   (e) The chairman of the State Board for Adult and Technical Education;
   (f) The secretary of the Cabinet for Workforce Development;
   (g) The chairman of the Board for the Kentucky Higher Education Assistance Authority; and
   (h) The president of the Kentucky Community and Technical College System.

(2) Members shall serve by virtue of their office. The chairman of the commission shall be chosen annually by a simple majority vote of the members. A quorum for conducting business shall be one-half (½) of the members plus one (1). The chair shall rotate annually, so that no person or agency holds the chairmanship in successive years.

(Enact. Acts 1992, ch. 322, § 1, effective July 14, 1992; 1996, ch. 362, § 6, effective July 15, 1996; 1997 (1st Ex. Sess.), ch. 1, § 60, effective May 30, 1997.)

156.745. Purposes — Responsibilities.

(1) The commission members may decide among themselves those voluntary actions which enhance state efforts to properly educate, train, and reeducate Kentucky's present and future workforce, to the end that all adult Kentuckians who are willing and able to work are employed within the Commonwealth in good jobs of their choosing.

(2) Specific responsibilities of the commission shall include implementation of:
   (a) Programs to provide maximum flexibility for students in transferring from one (1) school or college to another, including changes which minimize or eliminate loss of credit;
   (b) Aggressive efforts to expand the Work/Study Scholarship Program available through the Kentucky Higher Education Assistance Authority;
   (c) Continuing exploration of cooperation between businesses and state agencies, and businesses and university or vocational school job training programs; and
   (d) Scheduling of meetings of the commission, to be held at least three (3) annually, to accomplish these purposes.

(Enact. Acts 1992, ch. 322, § 2, effective July 14, 1992.)

156.749. Administrative expenses — Meetings.

(1) Administrative expenses of the commission will be borne by the respective participating agencies, as a part of each agency's normal budget for basic operations. In each year, the agency represented by the chairman shall provide any necessary staff support required, including provision of a secretary, whose duties shall include the taking of minutes and distribution thereof. The agency represented by the chairman shall make arrangements for meeting facilities.

(2) All meetings will be held in Frankfort, Kentucky, upon the call of the chairman or a majority vote of the membership. In the initial year, the secretary of the Cabinet for Workforce Development shall serve as chairperson.

(Enact. Acts 1992, ch. 322, § 3, effective July 14, 1992.)

KENTUCKY COMMUNITY SERVICE COMMISSION

156.760. Kentucky on Community Volunteerism and Service. [Repealed, reenacted and amended.]

Compiler's Notes. This section (Enact. Acts 1996, ch. 310, § 1, effective July 15, 1996; 1997 (1st Ex. Sess.), ch. 1, § 61, effective May 30, 1997; 1998, ch. 89, § 1, effective July 15, 1998) was repealed, reenacted and amended as KRS 194B.570 by Acts 2000, ch. 203, § 1, effective July 14, 2000.

156.762. Initial membership — Term limits. [Repealed and reenacted.]

Compiler's Notes. This section (Enact. Acts 1996, ch. 310, § 2, effective July 15, 1996) was repealed and reenacted as KRS 194B.572 by Acts 2000, ch. 203, § 2, effective July 14, 2000.

156.764. Purpose of commission. [Repealed and reenacted.]

Compiler's Notes. This section (Enact. Acts 1996, ch. 310, § 3, effective July 15, 1996) was repealed and reenacted as KRS 194B.575 by Acts 2000, ch. 203, § 3, effective July 14, 2000.

156.766. Duties of commission — Authority for administrative regulations. [Repealed and reenacted.]

Compiler's Notes. This section (Enact. Acts 1996, ch. 310, § 4, effective July 15, 1996) was repealed and reenacted as KRS 194B.578 by Acts 2000, ch. 203, § 4, effective July 14, 2000.

PENALTIES

156.990. Penalties.

(1) Any witness who fails, without legal excuse, to attend or to testify, when required by the chief state school officer under these provisions, shall be fined not more than twenty-five dollars ($25) for each offense.

(2) Any person who violates any of the provisions of KRS 156.400 to 156.470 shall be fined not more than five hundred dollars ($500) or imprisoned not more than three (3) months, or both.
(3) A violation of subsection (1) of KRS 156.483 shall cause the Department of Education to be fined not less than five hundred dollars ($500) or more than one thousand dollars ($1,000).

(Enact. Acts 1952, ch. 184, § 16; 1988, ch. 345, § 6, effective July 15, 1988; 1990, ch. 476, Pt. IV, § 168, effective July 13, 1990.)

CHAPTER 157

STATE SUPPORT OF EDUCATION

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157.3175. Preschool education program — Grant allocation — Program components — Exemption.
157.318. Network of regional training centers for preschool and early childhood education established.
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157.330. Fund to support education excellence in Kentucky.
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157.855. [Repealed.]
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157.990. Penalties.

GENERAL PROVISIONS

157.010. Elements of the school fund.

The school fund shall consist of the fund dedicated by the Constitution and laws of this Commonwealth for the purpose of sustaining a system of common schools therein. The annual resources of the fund shall consist of:

(1) The interest on the bond of the Commonwealth for one million three hundred twenty-seven thousand dollars ($1,327,000) at the rate of six percent (6%) per annum payable on the first day of January and July of each year.

(2) The interest on the proceeds of fifty-two thousand dollars ($52,000) formerly invested in Liberty Loan Bonds under authority of Chapter 6 of the Acts of 1920, now invested by the Kentucky Board of Education.

(3) The dividends from whatever remains of the original investment of seventy-three thousand five hundred dollars ($73,500) in the capital stock of the Bank of Kentucky.

(4) The interest on the bond of the Commonwealth for three hundred eighty-one thousand nine hundred eighty-six dollars and eight cents ($381,986.08) due the several counties and remaining a perpetual obligation against the Commonwealth for the

benefit of the respective counties, at the rate of six percent (6%) per annum payable annually on the first day of July to the counties entitled to it and in the proportion to which they are entitled, to be used exclusively in aid of common schools.

(5) The interest at six percent (6%) per annum, payable on the first day of January and July each year, on six hundred six thousand six hundred forty-one dollars and three cents ($606,641.03) received from the United States under an act approved March 2, 1891, for which the Commonwealth has executed bond pursuant to Chapter 6 of the Acts of 1892.

(6) Such sums as are appropriated by the General Assembly in aid of the common schools.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 376, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

Compiler's Notes. This section (4370-1, 4370-2: amend. Acts 1978, Ch. 155, § 82, effective June 17, 1978) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 376, effective July 13, 1990.

Cross-References. Compulsory attendance, KRS ch. 159.

Conduct of schools; pre-school child care centers, KRS ch. 158.

Department of Education, KRS ch. 156.

Fund set apart for common schools, Const., §§ 184, 188.

General Assembly to provide for schools, Const., § 183.

Investment and distribution of school fund, Const., §§ 185, 186.

Race or color not to affect distribution of school fund, Const., § 187.

Sectarian schools, appropriation for forbidden, Const., § 189.

School districts, KRS ch. 160.

School employees; teachers retirement and tenure, KRS ch. 161.

School property and buildings, KRS ch. 162.

Vocational education and rehabilitation, KRS ch. 163.

Opinions of Attorney General. Inasmuch as common school funds may only be paid to common school districts, a county school board may not expend public common school funds to transport students attending a nonpublic model school. OAG 76-261.

The present school laws, in light of the Kentucky Constitution, do not authorize or permit any state funded extended employment days to be used for vacation or holidays. OAG 82-356.

A local school district may contract to allow funds held for the local district by the Kentucky Department of Education to be transferred as directed, assuming all statutory and constitutional requirements relative to the use of those funds, if any, have been met. OAG 87-22.

Cited: Wooley v. Spalding, 293 S.W.2d 563 (Ky. 1956).

NOTES TO DECISIONS

Analysis

1. Common fund.
2. School funds.
3. —Use.
4. —Payment.

1. Common Fund.

Common school fund is distinct from district school funds in that common school fund is distributed by the state to the various school districts on a per capita basis. Commonwealth ex rel. Commonwealth ex rel. Meredith v. Reeves, 289 Ky. 73, 157 S.W.2d 751 (1941).

This section defines "state school funds" and is not an exclusive reference for definition of "school funds." Commonwealth ex rel. Breckinridge v. Collins, 379 S.W.2d 436 (Ky. 1964).

2. School Funds.

3. —Use.

Funds appropriated by the Legislature out of general funds in aid of common schools become a part of the common school fund, and are subject to Kentucky Const., § 186 (distribution and use of school funds). Board of Educ. v. Talbott, 261 Ky. 66, 86 S.W.2d 1059 (1935).

4. —Payment.

Common school fund can be paid only to school districts and not to another department of state government or to a private institution. Hodgkin v. Board for Louisville & Jefferson County Children's Home, 242 S.W.2d 1008 (Ky. 1951).

In order for there to be a common school there must be a common school district. Hodgkin v. Board for Louisville & Jefferson County Children's Home, 242 S.W.2d 1008 (Ky. 1951).

Decisions Under Prior Law

1. Use of Fund.

School fund must be used exclusively in aid of common schools, and an act appropriating a part of the school fund to purchase "Collins' History of Kentucky" is unconstitutional. Collins v. Henderson, 74 Ky. (11 Bush) 74 (1875).

School fund is to be used solely for educational purposes. Crabbe v. Board of Trustees, 132 Ky. 478, 116 S.W. 706 (1909).

Collateral References. 63A Am. Jur. 2d, Public Funds, §§ 4, 56-58.

78 C.J.S., Schools and School Districts, § 10.

157.014. Commission on Public Education. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1960, ch. 141, § 1, effective March 25, 1960) was repealed by Acts 1966, ch. 24, Art. IV (5).

157.016. Executive director and staff. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1960, ch. 141, § 2, effective March 25, 1960) was repealed by Acts 1966, ch. 24, Art. IV (5).

157.018. Operations until July 1, 1964. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1962, ch. 186, § 1) was repealed by Acts 1966, ch. 24, Art. IV (5).

157.020. Purposes for which school fund may be used. [Repealed.]

Compiler's Notes. This section (4370-2, 4370-3) was repealed by Acts 1954, ch. 214, § 16.

157.022. Legislative Research Commission to furnish services. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1962, ch. 186, § 3) was repealed by Acts 1966, ch. 24, Art. IV (5).

157.024. Legislator to be member. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1962, ch. 186, § 4) was repealed by Acts 1966, ch. 24, Art. IV (5).

157.030. Net revenue to be distributed — Incidental expenses not to be deducted.

The net revenue of the common school fund accruing during each school year shall constitute the sum to be distributed. No fee, discount, check, or other incidental expense shall be paid out of the distributable share of the revenue apportioned to any school district.
(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 377, effective July 13, 1990.)

Compiler's Notes. This section (4370-3) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 377, effective July 13, 1990.

Collateral References. 78 C.J.S., Schools and School Districts, § 13.

157.040. Distribution of fund on per capita basis. [Repealed.]

Compiler's Notes. This section (4370-4, 4434-29) was repealed by Acts 1954, ch. 214, § 16, effective July 1, 1954.

157.050. Method for distribution. [Repealed.]

Compiler's Notes. This section (4370-6: amend. Acts 1942, ch. 123, §§ 1, 2) was repealed by Acts 1954, ch. 214, § 16, effective July 1, 1954.

157.051. Definitions for KRS 157.052 to 157.055. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1942, ch. 17, § 1; 1946, ch. 131, § 1; 1949 (Ex. Sess.), ch. 6, § 1; 1950, ch. 122, § 1) was repealed by Acts 1954, ch. 214, § 16, effective July 1, 1954.

157.052. School equalization fund administration and distribution, control of. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1942, ch. 17, § 2; 1946, ch. 131, § 2; 1949 (Ex. Sess.), ch. 6, § 2) was repealed by Acts 1954, ch. 214, § 16, effective July 1, 1954.

157.053. Method of determining eligibility of districts to share in equalization fund — Determination of allotments — Minimum allotments — Application of unallotted balance. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1942, ch. 17, § 3; 1944, ch. 113; 1946, ch. 131, § 3; 1948, ch. 16; 1949 (Ex. Sess.), ch. 6, § 3; 1950, ch. 122, § 2) was repealed by Acts 1954, ch. 214, § 16, effective July 1, 1954.

157.054. Allotment and distribution of equalization fund. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1942, ch. 17, § 4; 1949 (Ex. Sess.), ch. 6, § 4) was repealed by Acts 1954, ch. 214, § 16, effective July 1, 1954.

157.055. Rules governing administration and expenditure of equalization money by local boards — Liability of local boards. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1942, ch. 17, § 5; 1949 (Ex. Sess.), ch. 6, § 5) was repealed by Acts 1954, ch. 214, § 16, effective July 1, 1954.

157.060. Reports of funds received and spent by school districts.

The officials of each educational institution and each school district supported in whole or in part from taxation shall make a report to the Kentucky Board of Education or the State Board for Adult, Vocational Education and Vocational Rehabilitation at the close of each scholastic year, showing in detail all funds received from the state and from all other sources during the year, and a detailed statement of all expenditures for the year.
(4370-5: amend. Acts 1978, ch. 155, § 82, effective June 17, 1978; 1988, ch. 361, § 13, effective July 15, 1988; 1990, ch. 476, Pt. IV, § 169, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

Cross-References. Document filing dates, 702 KAR 3:110.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 11, 13.

157.061. Annual audits of school districts.

The integrated technology-based communications system, established by KRS 156.670, shall be used by the Department of Education to conduct internal fiscal, management, and compliance audits of each school district in the Commonwealth on an annual basis. A copy of the audit shall be submitted to the Legislative Research Commission, the Governor, and the Kentucky Board of Education.
(Enact. Acts 1990, ch. 476, Pt. III, § 102, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

157.065. School breakfast program — Annual report by schools not offering — Annual report by commissioner on status of program.

(1) Any school that does not offer a school breakfast program shall submit an annual report no later than September 15 to the Kentucky Board of Education indicating the reasons for not offering the program. The report shall include the number of children enrolled at the school and the number of children who are eligible for free or reduced priced meals under the federal program.

(2) The state board shall inform the school of the value of the school breakfast program, its favorable effects on student attendance and performance,

and the availability of funds to implement the program.

(3) The commissioner of education shall submit an annual report no later than December 1 to the Interim Joint Committee on Education and the Interim Joint Committee on Health and Welfare regarding the status of the school breakfast program including, but not limited to, information describing the schools that do not offer the program, the reasons given by the schools for not offering the program, the number of children enrolled in each school, the number of children in each school who are eligible for free or reduced priced meals under the federal program, and the action taken by the state board to encourage schools to implement the program.

(Enact. Acts 1994, ch. 364, § 1, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996.)

157.067. Kentucky successful schools trust fund.

(1) To carry out the purpose of rewarding successful schools as provided in KRS Chapter 158, the Kentucky successful schools trust fund is hereby established in the Finance and Administration Cabinet. Funds appropriated by the General Assembly in each biennial budget for payments of rewards to successful schools shall be credited to the fund and invested until needed for payments to successful schools. All interest earned on moneys in the funds shall be retained in the fund for reinvestment.

(2) Upon certification of eligibility by the Kentucky Board of Education, the Finance and Administration Cabinet shall issue a warrant and the State Treasurer shall issue a check to the eligible school. All moneys credited to the fund, including interest, shall be used only for payments to eligible schools and shall not lapse, but shall be carried forward in the next biennial budget.

(Enact. Acts 1990, ch. 476, Pt. III, § 103, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

157.069. Distribution of general funds for locally operated secondary area technology centers and vocational departments.

(1) As used in this section:

(a) "Secondary area technology center" or "secondary area center" means a school facility dedicated to the primary purpose of offering five (5) or more technical preparation programs that lead to skill development focused on specific occupational areas. An area center may be called a "magnet technology center" or "career center" or may be assigned another working title by the parent agency. An area center may be either state or locally operated; and

(b) "Vocational department" means a portion of a school facility that has five (5) or more technical preparation programs that lead to skill development focused on specific occupational areas.

(2) The Kentucky Department of Education shall distribute all general funds designated for locally operated secondary area centers and vocational departments, which have been receiving state supplemental funds prior to June 21, 2001, by a weighted formula, specified in an administrative regulation promulgated by the Kentucky Board of Education. The formula shall take into account the differences in cost of operating specific programs. The commissioners of the Kentucky Department of Education and the Department for Technical Education shall formally agree upon programs to be assigned to categories based on the descriptions found in paragraphs (a) to (c) of this subsection. Programs in Categories III and II shall be eligible for funding.

(a) Category III—High-cost technical programs: Programs in which students develop highly technical skills in specific occupational areas and that require high-cost equipment, materials, and facilities. This category may include selected industrial technology Level III programs as defined by the Department for Technical Education and programs in other occupational areas as deemed appropriate by both departments;

(b) Category II—Technical skill programs: Programs in which students develop technical skills focused in occupational areas and that require technical equipment but high-cost equipment, facilities, or materials are not necessary to operate the programs. This category may include selected industrial technology Level III programs as defined by the Department for Technical Education and programs in other occupational areas as deemed appropriate by both departments; and

(c) Category I—Orientation and career exploration programs: Programs that provide orientation and exploration of broad-based industries by giving students knowledge and experience regarding careers within these industries and develop some exploratory or hands-on skills used in the industry.

Notwithstanding paragraphs (a) and (b) of subsection (1) of this section, the Department of Education shall approve the combining of eligible secondary vocational programs into a single vocational department for purposes of funding for a school district that has been receiving state supplemental funds and has distributed its vocational programs, previously located in area centers, among magnet career academies.

(3) For calculation purposes and after categorizing the programs as described in subsection (2) of this section, a weight shall be applied as a percentage of the base guarantee per pupil in average daily attendance as defined by KRS 157.320 under the Support Education Excellence in Kentucky Program, which shall be applied to full-time equivalent students in Categories II and III. Category I programs shall receive no weight. The full-time equivalent students shall be calculated on the basis of the total program enrollment divided by the length of the class period divided by six (6).

(Enact. Acts 2001, ch. 123, § 5, effective June 21, 2001.)

157.070. War orphans — Aid to. [Repealed.]

Compiler's Notes. This section (4376b-11) was repealed by Acts 1954, ch. 214, § 16, effective July 1, 1954.

157.075. Differentiated compensation plans — Professional compensation fund — Department of Education recommendations on teacher compensation.

(1) For purposes of this section, "compensation" means the combination of base salary, salary supplements, and other benefits provided a teacher.

(2) (a) A school district may develop differentiated compensation programs that provide additional compensation above the single salary schedule described in KRS 157.420 and defined in KRS 157.320. Differentiated compensation plans shall have one (1) or more of the following purposes:

1. To recruit and retain teachers in critical shortage areas;
2. To help reduce the number of emergency certified teachers employed in the district;
3. To provide incentives to recruit and retain highly skilled teachers to serve in difficult assignments and hard-to-fill positions;
4. To provide career advancement opportunities for classroom teachers who voluntarily wish to participate; or
5. To reward teachers for increasing their skills, knowledge, and instructional leadership within the district or school.

(b) The Kentucky Board of Education shall promulgate administrative regulations defining the factors that may be included in a differentiated compensation plan and procedures that shall be used in the development and approval of differentiated compensation plans.

(3) (a) There is hereby established a professional compensation fund in the State Treasury. Beginning in the 2002-2004 biennium and thereafter, the fund shall be used to provide grants to school districts to pilot differentiated compensation programs for teachers. During the 2002-2004 biennium, the fund shall provide grants to at least five (5) school districts for a two (2) year period. The number of grants may increase or decrease based on the funds available and as deemed feasible by the Kentucky Department of Education.

(b) The district grants shall be used for one (1) or more of the purposes described in subsection (2)(a) of this section.

(c) The professional compensation fund may receive state appropriations, gifts, and grants from public and private sources, and federal funds. Any unalloted or unencumbered balances in the fund shall be invested as provided in KRS 42.500(9). Income earned from the investments shall be credited to the fund. Any fund balance at the close of a fiscal year shall not lapse but shall be carried forward to the next fiscal year and continuously appropriated for the purposes specified in this section.

(d) The fund shall be administered by the Kentucky Department of Education and shall be distributed on the basis of criteria promulgated in an administrative regulation by the Kentucky Board of Education. The administrative regulation shall specify the maximum size of grants, the application and selection process, the obligations of the local board of education, the evaluation and data requirements, and other details as deemed necessary by the board.

(4) Upon request, the Kentucky Department of Education shall provide assistance to any district that wishes to develop a differentiated compensation program.

(5) During the 2002-2004 biennium, the Kentucky Department of Education shall gather information and summarize the characteristics and impact of the various differentiated compensation programs. By October 1, 2004, the department shall provide recommendations to the Interim Joint Committee on Education as to the feasibility of establishing a statewide teacher advancement program or other ideas for modifying teacher compensation.

(Enact. Acts 2002, ch. 135, § 2, effective April 2, 2002.)

157.080. Method of paying aid — Determination of eligibility. [Repealed.]

Compiler's Notes. This section (4376b-12) was repealed by Acts 1954, ch. 214, § 16, effective July 1, 1954.

157.090. Maximum allowed each child — Vocational aid if surplus exists. [Repealed.]

Compiler's Notes. This section (4376b-13) was repealed by Acts 1954, ch. 214, § 16, effective July 1, 1954.

TEXTBOOKS

157.100. Funds for textbooks, programs, and instructional regulation for free distribution.

The Commonwealth of Kentucky shall provide funds for textbooks, programs, and other instructional materials that shall be distributed under an administrative regulation promulgated by the Kentucky Board of Education without cost to pupils attending grades kindergarten through twelve (12) of the public schools of the state, in the manner and upon the conditions set out in KRS 157.110 and 157.180.

(4421c-1, 4421c-4: amend. Acts 1974, ch. 71, § 14; 1976, ch. 74, § 4, effective March 29, 1976; 1978, ch. 155, § 82, effective June 17, 1978; 1982, ch. 9, § 8, effective July 15, 1982; 1990, ch. 476, Pt. IV, § 170, effective July 13, 1990; 1992, ch. 266, § 10, effective July 14, 1992; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 419, § 14, effective July 14, 2000.)

Cross-References. Indigent children, board of education of school district may furnish free textbooks to, KRS 160.330.

State Textbook Commission, adoption of books by, KRS 156.405 to 156.445.

Instructional material and textbook adoption process, 704 KAR 3:455.

Kentucky Law Journal. Russo, School-Based Decision Making in Kentucky: Dawn of a New Era or Nothing New Under the Sun?, 83 Ky. L.J. 123 (1994-95).

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

Opinions of Attorney General. The Kentucky Department of Education cannot furnish textbooks free for grades 1 through 8 to students attending private schools. OAG 72-73.

A public school cannot use the withholding of grades, diplomas or records as a leverage to force a student to meet his obligations concerning property. OAG 82-386.

NOTES TO DECISIONS

ANALYSIS

1. Constitutionality.
2. Free textbooks.
3. —Payment.

1. Constitutionality.

Law providing for purchase and distribution of free textbooks by the state does not violate Const., § 49. State Bd. of Educ. v. Kenney, 230 Ky. 287, 18 S.W.2d 1114 (1929).

2. Free Textbooks.

3. —Payment.

Free textbooks are to be paid for out of the general fund of the state. State Bd. of Educ. v. Kenney, 230 Ky. 287, 18 S.W.2d 1114 (1929).

The purchase of free textbooks is not an "ordinary expense" of the government. State Bd. of Educ. v. Kenney, 230 Ky. 287, 18 S.W.2d 1114 (1929).

Collateral References. 68 Am. Jur. 2d, Schools, § 305.

78 C.J.S., Schools and School Districts, §§ 85-88; 78A C.J.S., Schools and School Districts, § 787.

157.110. Determination of grades and subjects to be provided with textbooks — Rental of textbooks — Free textbooks for certain students.

(1) In the purchase and distribution of textbooks for grades nine (9) through twelve (12), if sufficient funds are not available to furnish textbooks for all four (4) grades, the chief state school officer, subject to the approval of the Kentucky Board of Education, shall determine for what grades and subjects textbooks shall be provided.

(2) Local school districts, which do not provide a free textbook program for all students in grades nine (9) through twelve (12), shall establish, pursuant to Kentucky Board of Education administrative regulations, a process whereby pupils in grades nine (9) through twelve (12) may rent textbooks for a reasonable fee. Rental fees collected by the district shall be used for the maintenance of textbooks, the purchase of new textbooks, and the provision of free textbooks to pupils in grades nine (9) through twelve (12) who are unable to rent or purchase textbooks.

(3) No pupil shall be denied the use of textbooks due to an inability to rent or purchase them. Local school districts shall establish, pursuant to Kentucky Board of Education administrative regulations, a process by which to provide free textbooks to pupils unable to rent or purchase them, including a process by which those students shall be informed of the availability of, and guidelines and procedures for, obtaining free textbooks.

(4) The Kentucky Board of Education shall adopt administrative regulations to insure the availability of free textbooks to those pupils in grades nine (9) through twelve (12) who are unable to rent or purchase textbooks and shall use the guidelines of the free and reduced price lunch programs to determine inability to rent or purchase textbooks. The regulations shall also provide for exceptional circumstances, under which pupils who do not meet free and reduced price lunch guidelines may be provided free textbooks.

(4421d-1: amend. Acts 1974, ch. 71, § 15; 1976, ch. 74, § 5, effective March 29, 1976; 1978, ch. 155, § 82, effective June 17, 1978; 1982, ch. 154, § 5, effective July 15, 1982; 1986, ch. 462, § 1, effective July 15, 1986; 1990, ch. 476, Pt. IV, § 171, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

Cross-References. Instructional material and textbook adoption process, 704 KAR 3:455.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 85-88; 78A C.J.S., Schools and School Districts, § 788.

157.120. Requisitions for books — Shipments — Invoices. [Repealed.]

Compiler's Notes. This section (4421c-4, 4421c-5: amend. Acts 1974, ch. 71, § 16, effective March 13, 1974; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 172, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996) was repealed by Acts 2000, ch. 419, § 20, effective July 14, 2000.

157.130. Regulations governing textbooks. [Repealed.]

Compiler's Notes. This section (4421c-7, 4421c-11, 4421d-1: amend. Acts 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 173, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996) was repealed by Acts 2000, ch. 419, § 20, effective July 14, 2000.

Cross-References. Instructional material and textbook adoption process, 704 KAR 3:455.

157.140. Responsibility for books not returned — Enforcement.

Each pupil, or his parent or guardian, shall be responsible to the teacher for all books not returned by the pupil, and a pupil not returning all books delivered to him shall not be entitled to the benefits of KRS 157.100 to 157.180 until the books are paid for by the pupil, or his parent or guardian, or accounted for in keeping with the regulations of the Kentucky Board of Education.

(4421c-11: amend. Acts 1966, ch. 184, § 1; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 174, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

Cross-References. Instructional material and textbook adoption process, 704 KAR 3:455.

Opinions of Attorney General. A public school cannot use the withholding of grades, diplomas or records as a leverage to force a student to meet his obligations concerning property. OAG 82-386.

The effect of this section is to prohibit the issuing of additional textbooks to a student who has not returned or paid for books previously issued. OAG 82-386.

157.145. Rebinding of textbooks.

The chief state school officer shall each year cause textbooks that have not been made obsolete by new adoptions and that are in need of, and have valid content justifying rebinding, to be rebound by entering into a contract with a bindery who will perform services for districts within the Commonwealth of Kentucky at a state contract price.

(Enact. Acts 1956, ch. 178, §§ 1 to 3; 1974, ch. 71, § 17, effective March 13, 1974; 1982, ch. 154, § 6, effective July 15, 1982; 1990, ch. 476, Pt. IV, § 175, effective July 13, 1990; 2000, ch. 419, § 15, effective July 14, 2000.)

157.150. Textbooks property of state.

All textbooks purchased under the provisions of KRS 157.100 shall be the property of the state. Each superintendent shall be custodian of the books in the district. The superintendent shall issue the books to the various schools in the district according to an administrative regulation promulgated by the Kentucky Board of Education.

(4421c-6: amend. Acts 1974, ch. 71, § 18, effective March 13, 1974; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 176, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 419, § 16, effective July 14, 2000.)

Cross-References. Instructional material and textbook adoption process, 704 KAR 3:455.

Collateral References. 68 Am. Jur. 2d, Schools, §§ 303, 304.

157.160. Sale of obsolete textbooks.

The chief state school officer, subject to the approval of the Kentucky Board of Education, shall promulgate an administrative regulation for the disposal of textbooks and programs that will no longer be used for instruction. Each superintendent may make obsolete books and materials available to the residents of his district. He may publicize in the newspaper the availability of the books and materials and the procedure for obtaining them in accordance with this section. Any funds accruing from the sale of the books and materials shall be paid into the local district's account.

(4421c-8: amend. Acts 1978, ch. 155, § 82, effective June 17, 1978; 1982, ch. 154, § 7, effective July 15, 1982; 1990, ch. 476, Pt. IV, § 177, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 419, § 17, effective July 14, 2000.)

Cross-References. Instructional material and textbook adoption process, 704 KAR 3:455.

157.170. Administrative regulations for sale of books and materials for private use.

The chief state school officer, subject to the approval of the Kentucky Board of Education, shall promulgate an administrative regulation governing the sale of books and materials by superintendents to pupils, parents, or guardians of pupils attending the public schools of the state who desire to hold books and materials as their own property. Superintendents shall not sell books and materials to private or sectarian schools. Books and materials sold under this section shall be sold at the retail contract price. Funds accruing from the sales shall be paid into the local district's account.

(4421c-9: amend. Acts 1974, ch. 71, § 19, effective March 13, 1974; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 178, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 419, § 18, effective July 14, 2000.)

157.180. School furniture or supplies not to be sold by teachers or employees distributing books.

No teacher or school employee engaged in the distribution of textbooks under the provisions of KRS 157.100 to 157.170 shall sell, distribute, or in any way deal in any kind of school furniture or supplies for use in any public schools.

(4421c-7: amend. Acts 1990, ch. 476, Pt. IV, § 179, effective July 13, 1990.)

Collateral References. 67 C.J.S., Officers, § 133.

157.190. Funds for textbooks, programs, and instructional materials for children in specified facilities.

The Kentucky Department of Education shall cooperate with the Kentucky Educational Collaborative for State Agency Children to distribute funds for textbooks, programs, and instructional materials for use by children placed in facilities and programs operated or contracted by the Department of Juvenile Justice or the Cabinet for Families and Children's residential, day treatment, clinical, and group home programs.

(Enact. Acts 1942, ch. 24, §§ 1 to 4; 1978, ch. 155, § 82, effective June 17, 1978; 1982, ch. 9, § 9, effective July 15, 1982; 1990, ch. 476, Pt. IV, § 180, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 419, § 19, effective July 14, 2000.)

Collateral References. 78A C.J.S., Schools and School Districts, § 787.

157.195. Legislative findings on students' right to quality education.

The General Assembly declares that all students of the Commonwealth have a right to an appropriate and quality education in the public schools and the right to achieve the capacities under KRS 158.645. The General Assembly challenges all school personnel to take the necessary action to help each individual student complete elementary and secondary school with the capacities to transition successfully to adult life.

(Enact. Acts 1998, ch. 514, § 1, effective July 15, 1998.)

157.196. Individual education plan for exceptional children — Administrative regulations.

(1) The General Assembly declares that parents play a critical role in the education of their students. Parents have a major responsibility to assist in the education of their students and deserve respect and meaningful involvement in the decision-making process related to the students' education.

(2) Each exceptional student as defined in KRS 157.200 shall have an individual education plan that shall serve as the centerpiece of the student's educational career and the communication vehicle between the parents and school personnel. The plan shall enable the parents and school personnel to decide the student's educational needs, the services needed to achieve those needs, and the anticipated results. The plan shall be used as a document to monitor the student's progress. School personnel shall provide the parents with reports of the progress toward the student's annual goals at least as often as report cards go to nondisabled students.

(3) The Kentucky Board of Education shall promulgate administrative regulations establishing procedures for the development and monitoring of individual education plans that are in compliance with the Federal Individuals with Disabilities Education Act, as amended. These administrative regulations shall be written in clear, easily understood language that is free of education jargon.

(Enact. Acts 1998, ch. 514, § 2, effective July 15, 1998.)

Cross-References. Programs for the gifted and talented, 704 KAR 3:285.

157.197. Kentucky Special Education Mentor Program — Criteria.

(1) The Kentucky Board of Education shall promulgate administrative regulations to establish the criteria for the Kentucky Special Education Mentor Program that shall be implemented by July 1, 1999. The designation of "Kentucky Special Education Mentor" shall be given to the state's most outstanding and highly skilled persons who are certified to teach or administer special education and who are willing to accept assignments in districts whose special education programs are found to be noncompliant with state or federal requirements. The assignments shall require the mentor to:

(a) Work in a district or school on a full-time or part-time basis for a designated period of time to assist the staff with creating and implementing its special education improvement plan as required in KRS 157.224. The mentor shall have the authority to review and amend decisions previously made by the district or school staff. If a highly skilled educator under KRS 158.782 is assigned to the same site as the mentor, they shall share responsibilities under policy of the Department of Education;

(b) Help to increase the effectiveness of the staff, parents, the civic and business community, and government and private agencies in improving the school's performance with exceptional students and other students at risk of school failure;

(c) Evaluate and make recommendations on the retention, dismissal, or transfer of certified staff in a noncompliant district or school;

(d) Recommend up to ten (10) additional work days annually to be paid for by the Department of Education for personnel in affected schools who work with exceptional students for planning, working with parents and guardians, curriculum development, or other activities that will help the district or school meet the goals of its improvement plan; and

(e) Complete an intensive training program, provided by the Department of Education and approved by the Kentucky Board of Education, prior to being assigned to assist a district's or school's staff with creating and implementing its district or school improvement plan. The training program shall include but not be limited to instruction in the methods of personnel evaluation, district or school organization, curriculum, and assessment. The training shall be made available to local district personnel on a cost recovery basis.

(2) The Kentucky Special Education Mentor Program criteria shall include:

(a) A selection process that shall allow for self nomination, provide for a broad spectrum of instructional positions, and generate statewide representation. Nominations of qualified special educators who have retired since July 1, 1994, shall be considered. Special education professionals and representatives of various advocacy and constituent groups shall be included in the development of the selection process and the review of applicants;

(b) Each recipient shall receive a monetary award of two hundred fifty dollars ($250) when selected and shall also be paid in accordance with his or her current salary for other program requirements requiring additional days of employment under subsection (1) of this section. The Department of Education shall be responsible for all expenses incurred as a result of the Kentucky Special Education Mentor Program, except those expenses associated with the funding of the position of the person who replaces the Kentucky Special Education Mentor when that person is assigned to a noncompliant school or district;

(c) The Kentucky Special Education Mentor assigned to a noncompliant district or school shall receive a salary supplement of thirty-five percent (35%) of their base annual salary for each year of service in that capacity. Retired mentors shall be paid for their rank and experience on the district's salary schedule plus the salary supplement. The state board shall determine if reimbursement for vehicle mileage shall be allowed. If the assigned school achieves the threshold level in the next bien-

nial review, the mentor shall receive his or her portion of the reward due to the entire staff calculated on his or her base salary regardless of decisions made by the school staff under KRS 158.6455;

(d) The Kentucky Special Education Mentor shall be granted professional leave under KRS 161.770 for up to two (2) years if determined by the state board to be necessary. Kentucky Special Education Mentors shall not lose any employee benefits as a result of their special assignments to a school or district; and

(e) A Kentucky Special Education Mentor shall not be assigned to a school or to a district assignment in the district in which the educator is employed.

(Enact. Acts 1998, ch. 514, § 3, effective July 15, 1998.)

Legislative Research Commission Note. (7/15/98). Although 1998 Ky. Acts ch. 514, sec. 3, contained a citation to "Section 5 of [the] Act" (codified at KRS 157.200), it is clear from context that Section 6 (codified at KRS 157.224) was intended. This latter reference has been used for codification under KRS 7.136(1)(h).

Cross-References. Kentucky Special Education Mentor Program, 707 KAR 1:270.

Special Educational Programs

157.200. Definitions for KRS 157.200 to 157.290.

(1) "Exceptional children and youth" means persons under twenty-one (21) years of age who differ in one (1) or more respects from same-age peers in physical, mental, learning, emotional, or social characteristics and abilities to such a degree that they need special educational programs or services for them to benefit from the regular or usual facilities or educational programs of the public schools in the districts in which they reside. The Department of Education, through administrative regulations promulgated by the Kentucky Board of Education, shall interpret the statutory definitions of exceptionality. An exceptionality is any trait so defined in this section or by administrative regulations promulgated by the Kentucky Board of Education. Requirements of average daily attendance for exceptional classes shall be regulated by statute, or in the absence of direction by administrative regulations promulgated by the Kentucky Board of Education. Categories of exceptionalities included within, but not limited by, this definition are as follows:

(a) "Orthopedic impairment" means a severe physical impairment of bone or muscle which adversely affects educational performance to the extent that specially designed instruction is required for the pupil to benefit from education. The term includes physical impairments caused by congenital anomaly, disease, and from other causes;

(b) "Other health impaired" means limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, due to a chronic or acute health problem which adversely affects educational performance to the extent that specially designed instruction is required for the pupil to benefit from education. Chronic health problems may include, but are not be limited to, a heart condition, tuberculosis, sickle cell anemia, hemophilia, epilepsy, rheumatic fever, nephritis, asthma, lead poisoning, leukemia, diabetes, attention deficit disorder, attention deficit hyperactive disorder, or acquired immune deficiency syndrome;

(c) "Speech or language impairment" means a communication disorder such as stuttering, impaired articulation, impaired language, impaired voice, delayed acquisition of language, or absence of language that adversely affects educational performance to the extent that specially designed instruction is required for the pupil to benefit from education;

(d) "Hearing impairment" means a physiological hearing loss:

1. Ranging from mild to profound, which is either permanent or fluctuating, and of such a degree that the pupil is impaired in the processing of linguistic information via the auditory channel either with or without amplification; or
2. That adversely affects educational performance so that specially designed instruction is required for the child or youth to benefit from education.

The term shall include both deaf and hard of hearing children;

(e) "Mental disability" means a deficit or delay in intellectual and adaptive behavior functioning, which adversely affects educational performance to the extent that specially designed instruction is required for the pupil to benefit from education, and which is typically manifested during the developmental period;

(f) "Specific learning disability" means a disorder in one (1) or more of the psychological processes primarily involved in understanding or using spoken or written language which selectively and significantly interferes with the acquisition, integration, or application of listening, speaking, reading, writing, reasoning, or mathematical abilities. The disorder is lifelong, intrinsic to the individual, and adversely affects educational performance to the extent that specially designed instruction is required in order for the pupil to benefit from education. The term does not include a learning problem which is the direct result of:

1. A hearing impairment;
2. Visual, physical, mental, or emotional-behavioral disabilities; or
3. Environmental, cultural, or economic differences;

(g) "Emotional-behavioral disability" means a condition characterized by behavioral excess or deficit which significantly interferes with a pupil's interpersonal relationships or learning process to the extent that it adversely affects

educational performance so that specially designed instruction is required in order for the pupil to benefit from education;

(h) "Multiple disability" means a combination of two (2) or more disabilities resulting in significant learning, developmental, or behavioral and emotional problems, which adversely affects educational performance and, therefore, requires specially designed instruction in order for the pupil to benefit from education. A pupil is not considered to have a multiple disability if the adverse effect on educational performance is solely the result of deaf-blindness or the result of speech or language disability and one (1) other disabling condition;

(i) "Deaf-blind" means auditory and visual impairments, the combination of which creates such severe communication and other developmental and learning needs that the pupil cannot be appropriately educated in special education programs designed solely for pupils with hearing impairments, visual impairments, or severe disabilities, unless supplementary assistance is provided to address educational needs resulting from the two (2) disabilities;

(j) "Visually disabled" means a visual impairment, which, even with correction, adversely affects educational performance to the extent that specially designed instruction is required for the pupil to benefit from education. The term includes both partially seeing and blind pupils;

(k) "Developmental delay" means a significant discrepancy between a child's current level of performance in basic skills such as cognition, language or communication, self-help, social-emotional, or fine or gross motor, and the expected level of performance for that age. The term shall be used only with children ages three (3) through eight (8);

(l) "Traumatic brain injury" means an acquired impairment to the neurological system resulting from an insult to the brain which adversely affects educational performance and causes temporary or permanent and partial or complete loss of:

1. Cognitive functioning;
2. Physical ability; or
3. Communication or social-behavioral interaction.

The term does not include a brain injury that is congenital or degenerative, or a brain injury induced by birth trauma;

(m) "Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three (3), that adversely affects educational performance. Characteristics of autism include:

1. Engagement in repetitive activity and stereotyped movement;
2. Resistance to environmental change or change in daily routine; and
3. Unusual responses to sensory experience.

The term does not include children with characteristics of an emotional-behavioral disability; and

(n) "Gifted and talented student" means a pupil identified as possessing demonstrated or potential ability to perform at an exceptionally high level in general intellectual aptitude, specific academic aptitude, creative or divergent thinking, psychosocial or leadership skills, or in the visual or performing arts.

(2) "Special education" means specially designed instruction to meet the unique needs of an exceptional child or youth.

(3) "Special educational facilities" means physical facilities designed or adapted to meet the needs of exceptional children and youth, and approved according to regulations promulgated by the Kentucky Board of Education.

(4) "Related services" means transportation and the developmental, corrective, and other supportive services required to assist an exceptional child or youth to benefit from special education, and may include, but are not limited to, speech-language pathology and audiology services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities; counseling services, including rehabilitation counseling; orientation and mobility services; medical services for diagnostic or evaluation purposes; school health services; social work services in schools; and parent counseling and training.

(5) "Transition services" means a coordinated set of activities for a pupil designed within an outcome-oriented process, that promotes movement from school to postschool activities. The term includes:

(a) Postsecondary education;
(b) Vocational training; and
(c) Integrated employment, including supported employment, continuing and adult education, adult services, independent living, or community participation.

The coordinated set of activities shall be based on the individual pupil's needs, taking into account the pupil's preferences and interests, and shall include instruction, community experience, the development of employment, and other postschool adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation.

(Enact. Acts 1948, ch. 4, § 1; 1956, ch. 162, § 1; 1962, ch. 169, § 1; 1970, ch. 46, § 1; 1972, ch. 16, § 1; 1974, ch. 53, § 1; 1976, ch. 345, § 2; 1978, ch. 155, § 82, effective June 17, 1978; 1980, ch. 183, § 7, effective July 15, 1980; 1980, ch. 286, § 1, effective July 15, 1980; 1990, ch. 476, Pt. IV, § 282, effective July 13, 1990; 1992, ch. 377, § 1, effective July 14, 1992; 1994, ch. 280, § 1, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 514, § 5, effective July 15, 1998; 2001, ch. 95, § 2, effective June 21, 2001.)

Cross-References. Certification requirements for teachers of exceptional children, 704 KAR 20:740.

Child find, evaluation, and reevaluation, 707 KAR 1:300.
Children with disabilities enrolled in private schools, 707 KAR 1:370.
Comprehensive system of personnel development, 707 KAR 1:330.
Confidentiality of information, 707 KAR 1:360.
Definitions, 707 KAR 1:280.
Determination of eligibility, 707 KAR 1:310.
Free appropriate public education, 707 KAR 1:290.
Individual education program, 707 KAR 1:320.
Monitoring and recovery of funds, 707 KAR 1:380.
Placement decisions, 707 KAR 1:350.
Procedural safeguards and state complaint procedures, 707 KAR 1:340.
Programs for the gifted and talented, 704 KAR 3:285.

Kentucky Bench & Bar. Richardson, Alphabet Soup: Finding Your Way Through Special Education in the 90's, Vol. 59, No. 4, Fall 1995, Ky. Bench & Bar 13.

Opinions of Attorney General. Foundation program funds authorized by the Legislature for the education of handicapped children may be paid for children who are under six (6) years of age. OAG 72-294.

The 1972 amendment to this section raises no question as to the constitutionality of this statute. OAG 72-343.

A board of education may contract with a private institution for services for a child who is classified as an exceptional or handicapped child pursuant to KRS 157.240 (now repealed). OAG 72-561.

A board of education may enter a contract with a parochial school to educate children handicapped with dyslexia. OAG 72-733.

Where the first district finds a child to be unable to attend school based on KRS 159.030, there is nothing to require the second school district to require the evaluation described under KRS 159.030(3) prior to enrollment; nevertheless, the child may qualify for evaluation for special education services under KRS 157.200 through 157.290. OAG 91-171.

Cited: Tilton ex rel. Richards v. Jefferson County Bd. of Educ., 705 F.2d 800 (6th Cir. 1983).

157.210. Division of special education for handicapped children — Duties and functions — Director — Assistants. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1948, ch. 4, § 2) was repealed by Acts 1956 (1st Ex. Sess.), ch. 7, Art. II, § 8.

157.220. Functions of Department of Education in special education programs.

(1) The Department of Education is hereby designated as the agency for cooperation with the state and federal government agencies, the nonpublic school programs and local schools of Kentucky in carrying out the provisions of KRS 157.200 to 157.280. The Kentucky Board of Education shall make necessary rules and regulations in keeping with the provisions of KRS 157.200 to 157.280 for their proper administration, including but not limited to establishment of classes, eligibility and admission of pupils, the curriculum, class size limitations, housing, special equipment, and instructional supplies.

(2) The Department of Education is authorized to receive contributions and donations that may be made to carry out the provisions and requirements of KRS 157.200 to 157.280.

(3) Local supervision of special educational facilities for exceptional children shall be approved by the Department of Education according to rules and regulations approved by the Kentucky Board of Education.

(Enact. Acts 1948, ch. 4, § 3; 1962, ch. 169, § 2; 1978, ch. 155, § 82, effective June 17, 1978; 1980, ch. 286, § 2, effective July 15, 1980; 1984, ch. 128, § 2, effective July 13, 1984; 1990, ch. 476, Pt. IV, § 181, effective July 13, 1990; 1994, ch. 376, § 5, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996.)

Cross-References. Blind and deaf pupils, reimbursement for, 702 KAR 5:120.
Child find, evaluation, and reevaluation, 707 KAR 1:300.
Children with disabilities enrolled in private schools, 707 KAR 1:370.
Comprehensive system of personnel development, 707 KAR 1:330.
Confidentiality of information, 707 KAR 1:360.
Definitions, 707 KAR 1:280.
Determination of eligibility, 707 KAR 1:310.
Free appropriate public education, 707 KAR 1:290.
Home/hospital instruction, 704 KAR 7:120.
Individual education program, 707 KAR 1:320.
Monitoring and recovery of funds, 707 KAR 1:380.
Placement decisions, 707 KAR 1:350.
Procedural safeguards and state complaint procedures, 707 KAR 1:340.
Programs for the gifted and talented, 704 KAR 3:285.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 85-88.

157.221. Office of education for exceptional children — Functions — Duties of State Board for Elementary and Secondary Education. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1972, ch. 15, § 1; 1976, ch. 345, § 3; 1978, ch. 155, § 99, effective June 17, 1978; 1980, ch. 286, § 3, effective July 15, 1984, ch. 128, § 3, effective July 13, 1984) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

157.222. Advisory task forces for special education. [Repealed.]

Compiler's Notes. This section (Acts 1970, ch. 47, § 1) was repealed by Acts 1974, ch. 74, Art. VI, § 108.

157.224. Statewide plan for exceptional education programs — Annual applications and reports — Improvement plan — Special education trust fund.

(1) The Commonwealth of Kentucky is committed to providing a comprehensive educational program for its exceptional children and youth. The Department of Education coordinates, directs, and monitors that program. State direction and implementation of a statewide special education program is manifested in the biennial appropriation of funds to assure a quality educational opportunity for exceptional children and youth in existing, locally operated, classrooms.

(2) All county and independent boards of education shall operate special education programs pursuant to an annual application which has been approved by the Kentucky Department of Education pursuant to standards set out in administrative regulations promulgated by the Kentucky Board of Education. If any county or independent board of education fails to operate and implement special education programs in accordance with the standards, the application of the county or independent board of education for funding pursuant to KRS 157.360 may be considered insufficient and the add-on funds generated under that statute may be withheld by the Kentucky Board of Education until the program is in compliance with all substantive requirements designed to ensure that students with disabilities receive an appropriate education under the Federal Individuals with Disabilities Education Act, as amended. The add-on funds shall not be withheld until the district has had the benefit of intense assistance from the Department of Education, a Kentucky Special Education Mentor under the provisions of KRS 157.197 or other assistance approved by the department for at least two (2) years. The superintendent of each local school district shall certify its enrollment of exceptional children and youth to the Department of Education. The department shall audit student enrollment and monitor local district compliance in accordance with Kentucky Board of Education administrative regulations.

(3) The Kentucky Board of Education administrative regulations shall set forth the data local school districts shall submit in their annual applications and reports. The data shall be reported in the same format as data submitted to the Department of Education for all other students and shall include, but not be limited to:

(a) The number of students who are suspended, expelled, and quit school annually;

(b) The success of students placed in various classroom settings including, but not limited to, regular classrooms, resource rooms, self-contained classrooms, and vocational programs as measured by the state assessment program; and

(c) Information about students' successful transition to adult life.

(4) Local school districts and schools found to be noncompliant with state board administrative regulations shall develop an improvement plan that shall be submitted to the Department of Education for approval. Local school districts shall use specialized resources in the development of the plan which may include universities, regional resource centers, professional organizations, and constituent advocacy groups.

(5) There is hereby created a special education trust fund to receive the funds withheld under subsection (2) of this section and interest accrued from the funds invested. The funds and interest shall not lapse, but shall be returned to the district when it is in compliance with all substantive requirements designed to ensure that students with disabilities receive an appropriate education under the Federal Individuals with Disabilities Education Act, as amended.

(6) All administrative hearings conducted under authority of this section shall be conducted in accordance with KRS Chapter 13B. The provisions of KRS Chapter 13B notwithstanding, the decision of the hearing officer in hearings under this section shall be the final order and shall be rendered within the time limit specified in 34 C.F.R. 300.512(a).

(Enact. Acts 1970, ch. 47, § 4; 1976, ch. 345, § 4; 1978, ch. 155, § 82, effective June 17, 1978; 1980, ch. 286, § 4, effective July 15, 1980; 1984, ch. 128, § 4, effective July 13, 1984; 1990, ch. 476, Pt. IV, § 182, effective July 13, 1990; 1992, ch. 377, § 2, effective July 14, 1992; 1996, ch. 318, § 47, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 514, § 6, effective July 15, 1998.)

Cross-References. Child find, evaluation, and reevaluation, 707 KAR 1:300.

Children with disabilities enrolled in private schools, 707 KAR 1:370.

Comprehensive system of personnel development, 707 KAR 1:330.

Confidentiality of information, 707 KAR 1:360.

Definitions, 707 KAR 1:280.

Determination of eligibility, 707 KAR 1:310.

Free appropriate public education, 707 KAR 1:290.

Individual education program, 707 KAR 1:320.

Kentucky Special Education Mentor Program, 707 KAR 1:270.

Monitoring and recovery of funds, 707 KAR 1:380.

Placement decisions, 707 KAR 1:350.

Procedural safeguards and state complaint procedures, 707 KAR 1:340.

Programs for the gifted and talented, 704 KAR 3:285.

Opinions of Attorney General. Where the parents of an exceptional school age child were opposed to the child's attendance in a county T.M.R. unit, the dispute over the child's placement was a proper subject for a due process hearing authorized by State Board of Education regulations. OAG 76-507.

Although, for the year 1987-1988, the General Assembly funded 4360 classroom units for special education students, which was approximately 683 units less than the number requested or anticipated by the local school district, this level of funding by the General Assembly did not violate this section or KRS 157.310. OAG 88-17.

157.226. Preschool program for disabled children.

(1) Effective with the 1991-92 school year, any child who has been identified as disabled in accordance with the Individuals with Disabilities Education Act, Public Law 101-476, or as exceptional by KRS 157.200(1)(a) to (m) and corresponding administrative regulations, and who is three (3) or four (4) years of age, or who may become five (5) years of age after October 1 of the current year, shall be eligible for a free and appropriate preschool education and related services.

(2) The General Assembly shall provide funds to be used for preschool education programs and related services for children with disabilities. Appropriations shall be separate from all other state funds

appropriated to the Department of Education and shall be administered in accordance with applicable state statutes and administrative regulations and the Individuals with Disabilities Education Act, Public Law 101-476.

(3) Eligible local school districts shall receive funds based on the number of appropriately identified preschool children with disabilities being served on December 1 of the prior year. Program funding shall be adjusted proportionately when enrollment data in any district for the first two (2) months of the current school year is more than five percent (5%) above or below the number of children being served in the previous year. A supplemental enrollment count shall be taken after December 1 to allow partial funding for children with disabilities who become three (3) years of age after December 1 and consequently begin to receive services after that date. Local school districts may develop cooperative arrangements with other school districts or organizations in accordance with KRS 157.280.

(4) The Kentucky Board of Education shall adopt administrative regulations related to the administration and supervision of programs, eligibility criteria, personnel requirements, and the allocation and use of funds.

(Enact. Acts 1990, ch. 476, Pt. I, § 17, effective July 13, 1990; 1992, ch. 377, § 3, effective July 14, 1992; 1996, ch. 362, § 6, effective July 15, 1996.)

Compiler's Notes. The Individuals with Disabilities Education Act is compiled throughout 20 U.S.C.; 25 U.S.C. §§ 2503, 2504; 42 U.S.C. 1396b, 1396n, 5117e, 6022, 6024, 9835, 9886.

Cross-References. Child find, evaluation, and reevaluation, 707 KAR 1:300.

Children with disabilities enrolled in private schools, 707 KAR 1:370.

Comprehensive system of personnel development, 707 KAR 1:330.

Confidentiality of information, 707 KAR 1:360.

Definitions, 707 KAR 1:280.

Determination of eligibility, 707 KAR 1:310.

Free appropriate public education, 707 KAR 1:290.

Individual education program, 707 KAR 1:320.

Monitoring and recovery of funds, 707 KAR 1:380.

Placement decisions, 707 KAR 1:350.

Preschool grant allocations, 702 KAR 3:250.

Procedural safeguards and state complaint procedures, 707 KAR 1:340.

Transportation of preschool children, 702 KAR 5:150.

157.230. Special educational programs of school districts.

School boards of any school district subject to the provisions of KRS 157.200 to 157.280, shall establish and maintain special educational programs for exceptional children who are residents of their school district, or contract for programs as may be authorized by KRS 157.280.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 378, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1948, ch. 4, § 4; 1956, ch. 162, § 2; 1962, ch. 169, § 3; 1978, ch. 155, § 82, effective June 17, 1978; 1980, ch. 286, § 5, effective July 15, 1980; 1982, ch. 119, § 1, effective July 15, 1982) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 378, effective July 13, 1990.

Cross-References. Child find, evaluation, and reevaluation, 707 KAR 1:300.

Children with disabilities enrolled in private schools, 707 KAR 1:370.

Comprehensive system of personnel development, 707 KAR 1:330.

Confidentiality of information, 707 KAR 1:360.

Definitions, 707 KAR 1:280.

Determination of eligibility, 707 KAR 1:310.

Free appropriate public education, 707 KAR 1:290.

Individual education program, 707 KAR 1:320.

Monitoring and recovery of funds, 707 KAR 1:380.

Placement decisions, 707 KAR 1:350.

Procedural safeguards and state complaint procedures, 707 KAR 1:340.

Programs for the gifted and talented, 704 KAR 3:285.

Opinions of Attorney General. If a factual determination were to be made that a proposed United Cerebral Palsy school would furnish an approved program for the instruction of exceptional children and that such a program was needed by the local school board, the board could execute a lease of property for such a school for the nominal sum of $1.00 per year. OAG 70-805.

Exceptional children who are residents of a private nonsectarian institution may be instructed in the institution, either in a leased or donated room, by a public school teacher. OAG 74-681.

Pursuant to KRS 157.270, a local board of education is required to provide home training for exceptional children, but an institutional home, standing in loco parentis for exceptional children, cannot under this section legally require a school district to establish and maintain special education classes for its inmates. OAG 74-681.

A school district is not required to pay any part of a private placement of a handicapped child so long as the public school district is and remains committed to providing a free appropriate education for that handicapped child within the public schools; thus, if the parents of a handicapped child unilaterally place their child in an out-of-state residential school without first pursuing their statutory and regulatory remedies in their local school district, the school district would not be required to pick up any of the cost of the private education selected by the parents. OAG 83-184.

157.240. Determination of status of child as physically or mentally handicapped. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1948, ch. 4, § 5; 1962, ch. 169, § 4) was repealed by Acts 1980, ch. 286, § 14, effective July 15, 1980.

157.250. Certification requirement for teachers — Exception.

No person shall be employed to teach or serve as special education coordinator, director, supervisor, or other special education administrator in any special education program authorized by KRS 157.200 to 157.290 unless he holds certification as required by the Education Professional Standards Board. However, any teacher or administrator serving on July 14, 1992, in the affected position who has had satisfactory evaluations of his performance in that position during his time of service shall be excluded from the requirement of this section.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 379, effective July 13, 1990; 1992, ch. 377, § 4, effective July 14, 1992.)

Compiler's Notes. This section (Enact. Acts 1948, ch. 4, § 6; 1962, ch. 169, § 5; 1978, ch. 155, § 82, effective June 17, 1978) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 379, effective July 13, 1990.

Cross-References. Child find, evaluation, and reevaluation, 707 KAR 1:300.

Children with disabilities enrolled in private schools, 707 KAR 1:370.

Comprehensive system of personnel development, 707 KAR 1:330.

Confidentiality of information, 707 KAR 1:360.

Definitions, 707 KAR 1:280.

Determination of eligibility, 707 KAR 1:310.

Director of special education, 704 KAR 20:198.

Free appropriate public education, 707 KAR 1:290.

Individual education program, 707 KAR 1:320.

Monitoring and recovery of funds, 707 KAR 1:380.

Placement decisions, 707 KAR 1:350.

Procedural safeguards and state complaint procedures, 707 KAR 1:340.

Collateral References. 78 C.J.S., Schools and School Districts, § 191.

157.260. Annual reports of disabled children by school districts.

Each school district shall ascertain annually all children within the district who are disabled and shall report to the Department of Education on forms provided by the Department of Education and according to administrative regulations promulgated by the Kentucky Board of Education.

(Enact. Acts 1948, ch. 4, § 7; 1962, ch. 169, § 6; 1990, ch. 476, Pt. IV, § 183, effective July 13, 1990; 1992, ch. 377, § 5, effective July 14, 1992; 1996, ch. 362, § 6, effective July 15, 1996.)

Cross-References. Child find, evaluation, and reevaluation, 707 KAR 1:300.

Children with disabilities enrolled in private schools, 707 KAR 1:370.

Comprehensive system of personnel development, 707 KAR 1:330.

Confidentiality of information, 707 KAR 1:360.

Definitions, 707 KAR 1:280.

Determination of eligibility, 707 KAR 1:310.

Free appropriate public education, 707 KAR 1:290.

Individual education program, 707 KAR 1:320.

Monitoring and recovery of funds, 707 KAR 1:380.

Placement decisions, 707 KAR 1:350.

Procedural safeguards and state complaint procedures, 707 KAR 1:340.

157.270. Instruction in child's home or hospital.

If in any district there are exceptional children not able even with the help of transportation to be assembled in a school, instruction shall be provided in the child's home or in hospitals or sanitoria. Exceptional children so instructed may be counted under the provisions of KRS 157.360, counting, however, a minimum of two (2) visits a week with a minimum of one (1) hour of instruction per visit, by a teacher provided by the board of education as equivalent to the attendance of one (1) child five (5) days in school.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 380, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1948, ch. 4, § 8, 1962, ch. 169, § 7; 1974, ch. 293, § 1; 1984, ch. 111, § 178, effective July 13, 1984) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 380, effective July 13, 1990.

Cross-References. Child find, evaluation, and reevaluation, 707 KAR 1:300.

Children with disabilities enrolled in private schools, 707 KAR 1:370.

Comprehensive system of personnel development, 707 KAR 1:330.

Confidentiality of information, 707 KAR 1:360.

Definitions, 707 KAR 1:280.

Determination of eligibility, 707 KAR 1:310.

Free appropriate public education, 707 KAR 1:290.

Individual education program, 707 KAR 1:320.

Monitoring and recovery of funds, 707 KAR 1:380.

Placement decisions, 707 KAR 1:350.

Procedural safeguards and state complaint procedures, 707 KAR 1:340.

Opinions of Attorney General. Inasmuch as local school tax revenues are involved in the kind of training provided for by KRS 157.270 and 159.030, the statutes are open to constitutional challenge since this type of training could possibly be considered not part of the common schools but a welfare program. OAG 74-681.

Pursuant to this section, a local board of education is required to provide home training for exceptional children but an institutional home for exceptional children cannot under KRS 157.230 legally require a school district to establish and maintain special educational classes for its inmates. OAG 74-681.

157.280. Special education program furnished by district other than that of child's residence, or privately — Sharing costs — Transportation — Transportation to and from state schools for the deaf and blind.

(1) If the number of children of school age in one (1) classification of exceptionality in a district is not sufficient to justify a special education program for that exceptionality in that district, or if a school district does not provide a special education program for that exceptionality, the board shall provide a program by contract with another county or independent district or private organization that maintains a special education program approved by the Kentucky Board of Education for that exceptionality. When a district or private organization undertakes, under operation of a tuition contract or of law, to provide in its classes for these pupils residing in another district, the district of residence of these pupils shall share the total cost of the special education program in proportion to the number of pupils or in accordance with contract agreement between the two (2) districts or district and private organization.

(2) If a local school district's admissions and release committee determines that a child requires placement in a special education program operated by another county or independent district or private organization, the resident local school district shall assume responsibility for the payment of the costs incurred in educating the child. The school board of

the school district in which any child resides shall pay for his transportation to and from the program in the other school district or to the private organization. However, if the school board of the other district or the private organization providing the program also provides transportation, the cost of transportation shall be included in the total cost.

(3) If a local school district's admission and release committee determines that the local school district has an appropriate educational program for a child and a parent chooses to place the child in a program or facility in another county or independent district or private organization, the parent shall assume responsibility for payment of the costs incurred in educating the child.

(4) If a child of school age is admitted for resident instruction at the Kentucky School for the Deaf or the Kentucky School for the Blind, under regulation of the Kentucky Board of Education and under provisions of KRS 167.015 to 167.170, the district in which the child resides shall provide transportation to and from the school on a regularly scheduled basis, at weekly intervals while the child is enrolled, either by individual district or in cooperation with other school districts on a regional basis, as approved by the Kentucky Board of Education upon recommendation of the chief state school officer. Students who live more than two hundred (200) miles from either school shall not be required to go home more than twice each month. The Kentucky Board of Education shall promulgate administrative regulations to set forth the transportation schedule and the weekend activities for students who remain at school.

(5) If a child of school age is admitted as a day school pupil for instruction at the Kentucky School for the Deaf or the Kentucky School for the Blind, under regulation of the Kentucky Board of Education and under provisions of KRS 167.015 to 167.150, the district in which the child resides may provide transportation to and from the school on a daily basis, either by individual district or in cooperation with other school districts on a regional basis, as approved by the Kentucky Board of Education upon recommendation of the chief state school officer. School districts providing this transportation shall be reimbursed from the transportation fund of the foundation program at the same rate per trip as that which is calculated under subsection (4) of this section.

(Enact. Acts 1948, ch. 4, § 9; 1962, ch. 169, § 9; 1974, ch. 79, § 1; 1976, ch. 271, § 1; 1978, ch. 155, § 82, effective June 17, 1978; 1980, ch. 286, § 7, effective July 15, 1980; 1982, ch. 119, § 2, effective July 15, 1982; 1982, ch. 358, § 1, effective July 15, 1982; 1986, ch. 225, § 1, effective July 15, 1986; 1990, ch. 108, § 1, effective July 13, 1990; 1990, ch. 476, Pt. IV, § 184, effective July 13, 1990; 1992, ch. 257, § 1, effective July 14, 1992; 1994, ch. 376, § 4, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996.)

Cross-References. Blind and deaf pupils, reimbursement for, 702 KAR 5:120.

Child find, evaluation, and reevaluation, 707 KAR 1:300.

Children with disabilities enrolled in private schools, 707 KAR 1:370.

Comprehensive system of personnel development, 707 KAR 1:330.

Confidentiality of information, 707 KAR 1:360.

Definitions, 707 KAR 1:280.

Determination of eligibility, 707 KAR 1:310.

Free appropriate public education, 707 KAR 1:290.

Individual education program, 707 KAR 1:320.

Monitoring and recovery of funds, 707 KAR 1:380.

Placement decisions, 707 KAR 1:350.

Procedural safeguards and state complaint procedures, 707 KAR 1:340.

Opinions of Attorney General. While general tax dollars provided by the state may be used to pay a portion of the costs incurred in operating special education classes for exceptional children, a local board of education is precluded from spending school funds for such purpose even though such an operation is a most laudable and commendable one. OAG 72-86.

The $300 per year limitation on transportation costs is applicable only in a case where one (1) school district contracts with another school district to provide instruction for an exceptional child. OAG 72-693.

Since nothing in the statutes requires that the parents of a deaf child must consent to the child attending the Kentucky School for the Deaf or lose the benefits provided by other statutes, a local school district is required to pay the educational tuition of one (1) of its students who attends special classes in another system although the child in question is a deaf child whose parents will not consent to his attendance at the Kentucky School for the Deaf. OAG 74-531.

Where a board of education contracts for special education services with a private school it would not be entitled to ADA or bonus unit foundation program funds for the pupils involved. OAG 74-742.

A public school district may receive ADA or bonus unit foundation funds for special education program pupils who for a part of the day receive contracted services at a regional state university. OAG 74-742.

A public school may not pay the tuition of a deaf student who attends a Catholic school at the parents' election after rejection of the public school's arrangement for the child to be admitted to the Kentucky School for the Deaf. OAG 74-660; 74-914.

It was not the legislative intent of this section that districts without sufficient educational facilities pay the expense of exceptional children at boarding schools or schools not accessible by daily commuting, and thus the school district is not authorized under this section to send a child who needs special education to a school in another state more than 100 miles away. OAG 74-914.

This section contains no minimum or maximum amounts which may be spent and therefore authorizes the spending of whatever is necessary for education and transportation. OAG 74-914.

A licensed day care center is a private organization within the meaning of this section but whether it qualifies as a contractor to provide special education programs must be decided by the State Board of Education under its regulations and guidelines. OAG 75-56.

It was not the legislative intent of this section to require local school districts to pay the transportation costs of exceptional children at boarding or other schools not accessible by daily commuting, and, therefore, this section does not authorize the reimbursement, from funds provided by the state from the minimum foundation program, of local school funds expended for school bus transportation of deaf students from a school for the deaf to their homes for weekend visits with their parents. OAG 75-609.

A local school system must continue to provide an appropriate educational program for an exceptional child even beyond

the age of compulsory attendance, and if a school does not have such program for a child past the compulsory attendance age in any one classification of exceptionality, the school must contract with another county or independent school district or private organization that maintains a special education program approved by the State Department of Education for that exceptionality. OAG 77-116.

A local public school may not interpret this section as authorization to provide special education programs for only compulsory school age children, for special education children are entitled to a twelve-grade school service or until a child reaches 21 years of age. OAG 77-116.

The language of this section requires a local school district only to provide transportation to and from either the Kentucky School for the Blind or the Kentucky School for the Deaf on a regularly scheduled basis, at intervals of no less than one each month; however, a school may, in the reasonable discretion of the local board of education, pay daily commuting costs out of local school money when a child is attending either school as a day student and the distance is reasonable between the home school district and the appropriate state residential school. OAG 77-137.

A school district is not required to pay any part of a private placement of a handicapped child so long as the public school district is and remains committed to providing a free appropriate education for that handicapped child within the public schools; thus, if the parents of a handicapped child unilaterally place their child in an out-of-state residential school without first pursuing their statutory and regulatory remedies in their local school district, the school district would not be required to pick up any of the cost of the private education selected by the parents. OAG 83-184.

157.285. Related services provided by local boards of education.

Local boards of education may contract to provide "related services" to exceptional children when the appropriate services are not available through a public or private agency.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 381, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1972, ch. 16, § 2; 1980, ch. 286, § 7, effective July 15, 1980) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 381, effective July 13, 1990.

Cross-References. Child find, evaluation, and reevaluation, 707 KAR 1:300.

Children with disabilities enrolled in private schools, 707 KAR 1:370.

Comprehensive system of personnel development, 707 KAR 1:330.

Confidentiality of information, 707 KAR 1:360.

Definitions, 707 KAR 1:280.

Determination of eligibility, 707 KAR 1:310.

Free appropriate public education, 707 KAR 1:290.

Individual education program, 707 KAR 1:320.

Monitoring and recovery of funds, 707 KAR 1:380.

Placement decisions, 707 KAR 1:350.

Procedural safeguards and state complaint procedures, 707 KAR 1:340.

Opinions of Attorney General. There is nothing in this section which raises a question as to its constitutionality. OAG 72-343.

Under this section the tuition rate must be set by bargaining and negotiation between the school district and the agency. OAG 72-343.

157.290. Tentative preapproval of plans for special education programs.

The local superintendent of schools shall present to the chief state school officer an application for tentative preapproval of a plan for special education programs for exceptional children.

(Enact. Acts 1948, ch. 4, § 10; 1962, ch. 169, § 9; 1990, ch. 476, Pt. IV, § 185, effective July 13, 1990.)

Cross-References. Child find, evaluation, and reevaluation, 707 KAR 1:300.

Children with disabilities enrolled in private schools, 707 KAR 1:370.

Comprehensive system of personnel development, 707 KAR 1:330.

Confidentiality of information, 707 KAR 1:360.

Definitions, 707 KAR 1:280.

Determination of eligibility, 707 KAR 1:310.

Free appropriate public education, 707 KAR 1:290.

Individual education program, 707 KAR 1:320.

Monitoring and recovery of funds, 707 KAR 1:380.

Placement decisions, 707 KAR 1:350.

Procedural safeguards and state complaint procedures, 707 KAR 1:340.

157.295. Additional supervisors for special educational programs. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1962, ch. 169, § 10(1); 1970, ch. 92, § 29) was repealed by Acts 1980, ch. 286, § 14, effective July 15, 1980.

157.300. Payment by state of excess per capita cost of educating handicapped children — Budgets — Reports — Applications. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1948, ch. 4, § 11) was repealed by Acts 1962, ch. 169, § 11.

157.305. Qualification of private schools for education of exceptional children — Conditions. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1960, ch. 107; 1970, ch. 197, § 1; 1978, ch. 155, § 82, effective June 17, 1978) was repealed by Acts 1980, ch. 286, § 14, effective July 15, 1980.

Fund to Support Education Excellence in Kentucky

157.310. Declaration of legislative intent.

It is the intention of the General Assembly to assure substantially equal public school educational opportunities for those in attendance in the public schools of the Commonwealth, but not to limit nor to prevent any school district from providing educational services and facilities beyond those assured by the state supported program. The program shall provide for an efficient system of public schools throughout the Commonwealth, as prescribed by Section 183 of the Constitution of Kentucky, and for the manner of distribution of the public school fund among the districts and its use for

public school purposes, as prescribed by Section 186 of the Constitution.
(Enact. Acts 1976, ch. 93, § 19, effective July 1, 1976; 1990, ch. 476, Pt. III, § 93, effective July 13, 1990.)

Legislative Research Commission Note. Former KRS 157.310 (Enact. Acts 1954, ch. 214, § 1) was repealed by Acts 1974, ch. 363, § 18, effective June 30, 1976.

Kentucky Law Journal. Russo, School-Based Decision Making in Kentucky: Dawn of a New Era or Nothing New Under the Sun?, 83 Ky. L.J. 123 (1994-95).

Cross-References. Data form, professional staff, 702 KAR 3:100.

Opinions of Attorney General. A student teacher may not legally take charge of a classroom in the absence of the regular teacher, for if such was done the local school district would forfeit its right to receive average daily attendance allotments, for in computing this apportionment there shall be included only the attendance of pupils engaged in educational activities under the immediate control and supervision of a school employee who possesses a valid certificate. OAG 63-269.

Local school boards have a legal right to spend foundation program funds or revenue raised by local taxation for adults over 21 years of age. OAG 65-410.

It is proper to afford ADA credit to a public school district for the public school portion of dual enrollment situations involving public and nonpublic schools. OAG 68-150.

A public school district may receive ADA or bonus unit foundation funds for special education program pupils who for a part of the day receive contracted services at a regional state university. OAG 74-742.

Where a board of education contracts for special education services with a private school it would not be entitled to ADA or bonus unit foundation funds for the pupils involved. OAG 74-742.

The State Board of Education is not authorized by statute to withhold funds from a local school board because the schools in its district are not of a certain rating. OAG 75-552.

School bus transportation may be provided from local school funds for trips of deaf students from a school for the deaf to their homes for weekend visits with their families, but there is no provision in the minimum foundation law permitting reimbursement from the minimum foundation program. OAG 75-609.

The present school laws, in light of the Kentucky Constitution, do not authorize or permit any state funded extended employment days to be used for vacation or holidays. OAG 82-356.

Although, for the year 1987-1988, the General Assembly funded 4360 classroom units for special education students, which was approximately 683 units less than the number requested or anticipated by the local school district, this level of funding by the General Assembly did not violate KRS 157.224 or this section. OAG 88-17.

NOTES TO DECISIONS

1. Construction.

The minimum foundations law (KRS 157.310 to 157.440) does not affect the policy of KRS 161.760 that a teacher in continuing service status, once promoted in salary, cannot be demoted in salary without such cause as would justify termination of his contract, and elimination of duties or responsibilities cannot be used as a device for demotion in salary. Board of Educ. v. Lawrence, 375 S.W.2d 830 (Ky. 1964) (decision prior to 1964 amendment of KRS 161.760).

The procedure for preparation and approval of the school budget and the levying of school taxes is complicated by the fact the statutes relating to the foundation program (KRS 157.310 to 157.370) are not adequately correlated with the school district financing program dealt with in KRS 160.460 and 160.470. Holmes v. Walden, 394 S.W.2d 458 (Ky. 1965).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 2, 3-17, 58.

157.312. Declaration of legislative intent to authorize public kindergarten. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1976, ch. 93, § 20, effective July 1, 1976) was repealed by Acts 1988, ch. 33, § 3, effective July 15, 1988.

157.315. Regulations for operation of public kindergarten. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1976, ch. 93, § 21, effective July 1, 1976; 1978, ch. 136, § 1, effective July 1, 1979; 1978, ch. 155, § 82, effective June 17, 1978; 1984, ch. 367, § 1, effective July 13, 1984) was repealed by Acts 1988, ch. 33, § 3, effective July 15, 1988.

157.317. Development of statewide Early Childhood Education Program — Kentucky Early Childhood Advisory Council. [Repealed.]

Legislative Research Commission Note. (7/14/2000). Under KRS 446.260, the repeal of this section in 2000 Ky. Acts ch. 308 prevails over its amendment in 2000 Ky. Acts chs. 14 and 204.

Compiler's Notes. This section (Enact. Acts 1984, ch. 397, § 5, effective July 13, 1984; 1988, ch. 33, § 1, effective July 15, 1988; 1990, ch. 476, Pt. I, § 15, effective July 13, 1990; 1990, ch. 518, § 2, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 426, § 112, effective July 15, 1998) was repealed by Acts 2000, ch. 308, § 28, effective July 14, 2000. For present law, see KRS 200.700 et seq.

157.3175. Preschool education program — Grant allocation — Program components — Exemption.

(1) Beginning with the 1990-91 school year, it shall be the responsibility of each local school district to assure that a developmentally appropriate half-day preschool education program is provided for each child who is four (4) years of age by October 1 of each year and at risk of educational failure. Any school district which can show a lack of facilities to comply with this section may apply for an exemption to delay implementation until 1991-92. All other four (4) year old children shall be served to the extent placements are available. The Kentucky Board of Education, upon the recommendation of the chief state school officer, shall adopt administrative regulations establishing the guidelines for the program. Administrative regulations shall establish eligibility criteria, program guidelines, and standards for personnel.

(2) "Developmentally appropriate preschool program" means a program which focuses on the physical, intellectual, social, and emotional development of young children. The preschool program shall help

children with their interpersonal and socialization skills.

(3) Funds appropriated by the General Assembly for the preschool education programs shall be granted to local school districts according to a grant allotment system approved by the Kentucky Board of Education. Children who are at risk shall be identified based on the Federal School Lunch Program eligibility criteria for free lunch. Appropriations shall be separate from all other funds appropriated to the Department of Education.

(4) The chief state school officer shall receive and review proposals from local school districts for grants to operate or oversee the operation of developmentally appropriate preschool education programs. Districts may submit proposals for implementing new services, enhancing existing preschool education services, or contracting for services. In designing a local early childhood education program, each district shall work with existing preschool programs to avoid duplication of programs and services, to avoid supplanting federal funds, and to maximize Head Start funds in order to serve as many four (4) year old children as possible.

(5) Each program proposal shall include, at a minimum:

(a) A description of the process conducted by the district to assure that the parents or guardians of all eligible participants have been made aware of the program and of their right to participate;

(b) A description of the planned educational programming and related services;

(c) The estimated number of children participating in the program;

(d) Strategies for involving children with disabilities;

(e) Estimated ratio of staff to children with the maximum being one (1) adult for each ten (10) children;

(f) The estimated percentage of children participating in the program who are at risk of educational failure;

(g) Information on the training and qualifications of program staff and documentation that the staff meet required standards;

(h) A budget and per-child expenditure estimate;

(i) A plan to facilitate active parental involvement in the preschool program, including provisions for complementary parent education when appropriate;

(j) Facilities and equipment which are appropriate for young children;

(k) The days of the week and hours of a day during which the program shall operate;

(l) A plan for coordinating the program with existing medical and social services, including a child development and health screening component;

(m) Assurances that participants shall receive breakfast or lunch;

(n) Program sites which meet state and local licensure requirements;

(o) A plan for coordinating program philosophy and activities with the local district's primary school program;

(p) An evaluation component; and

(q) Certification from the Head Start director that the Head Start program is fully utilized pursuant to subsection (4) of this section.

(6) Programs shall reflect an equitable geographic distribution representative of all areas of the Commonwealth.

(Enact. Acts 1990, ch. 476, Pt. I, § 16, effective July 13, 1990; 1992, ch. 456, § 2, effective July 14, 1992; 1996, ch. 362, § 6, effective July 15, 1996.)

Cross-References. Interdisciplinary early childhood education, birth to primary, 704 KAR 20:084.

Preschool associate teachers, 704 KAR 3:420.

Preschool education program for four (4) year old children, 704 KAR 3:410.

Preschool grant allocations, 702 KAR 3:250.

Probationary certificate for teachers of children, birth to primary, 704 KAR 20:082.

Transportation of preschool children, 702 KAR 5:150.

157.318. Network of regional training centers for preschool and early childhood education established.

(1) There is hereby established a network of regional training centers for preschool and early childhood education as specified in the 1987 state preschool grant application for Public Law 99-457. The purpose of the regional training centers shall be to provide peer to peer training, consultation, technical assistance, and materials to personnel from local school districts and other agencies operating programs for disabled and at-risk preschool children.

(2) The regional training centers shall receive federal funds from Public Law 99-457, Education of the Handicapped Act, Part B, and may receive state appropriations, gifts, and grants. No additional centers shall be established unless the existing centers receive at least the same level of funding as in the 1988 fiscal year.

(3) The Kentucky Board of Education shall promulgate such regulations as may be needed in the administration of the regional training centers. In administering this section, the chief state school officer shall consult with the regional training centers and the districts and agencies served by this program.

(Enact. Acts 1990, ch. 453, § 1, effective July 13, 1990; 1994, ch. 405, § 23, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996.)

Compiler's Notes. The Education of the Handicapped Act and the amendments thereto under Public Law 99-457, referred to in subsections (1) and (2), are compiled as 20 U.S.C. § 1400 et seq.

157.320. Definitions for KRS 157.310 to 157.440.

As used in KRS 157.310 to 157.440, unless the context otherwise requires:

(1) "Average daily attendance" means the aggregate days attended by pupils in a public school, adjusted

for weather-related low attendance days if applicable, divided by the actual number of days the school is in session, after the five (5) days with the lowest attendance have been deducted.

(a) Aggregate days shall include, in addition to the aggregate number of days attended by a pupil who was suspended during a school year, the number of days the pupil was suspended, not to exceed ten (10) days in total for the school year; and

(b) Aggregate days shall include, in addition to the aggregate number of days attended by a pupil who was expelled for behavioral problems, the number of days the pupil was expelled up to a total of one hundred seventy-five (175) days. This total may extend into the next school year and shall be counted in the average daily attendance for the next year;

(2) "Base funding level" means a guaranteed amount of revenue per pupil to be provided for each school district, to be used for regular operating and capital expenditures;

(3) "Board" means the board of education of any county or independent school district;

(4) "District" means any school district as defined by law;

(5) "Elementary school" means a school consisting of the primary school program through grade eight (8) as defined in KRS 158.030, or any appropriate combination of grades within this range, as determined by the plan of organization for schools authorized by the district board;

(6) "Support Education Excellence in Kentucky" means the level of educational services and facilities which is to be provided in each district from the public school fund;

(7) "Kindergarten full-time equivalent pupil in average daily attendance" means each kindergarten pupil counted no more than one-half (½) day in the aggregate days attended by kindergarten pupils in a public school divided by the actual number of days school is in session after the five (5) days with the lowest attendance have been deducted. Kindergarten is the entry level of the primary program and shall be provided no less than the equivalent of one-half (½) day, five (5) days a week for a full school year for each kindergarten pupil;

(8) "Public school fund" means the fund created by KRS 157.330 for use in financing education in public elementary and secondary schools;

(9) "Administrative regulations of the Kentucky Board of Education" means those regulations which the Kentucky Board of Education may adopt upon the recommendation and with the advice of the commissioner of education. The commissioner of education shall recommend administrative regulations necessary for carrying out the purposes of KRS 157.310 to 157.440;

(10) "Experience" means employment as a teacher, other than as a substitute or nursery school teacher, for a minimum of one hundred forty (140) days during a school year in a public or nonpublic elementary or secondary school or college or university that is approved by the public accrediting authority in the state in which the teaching duties were performed. A teacher who is employed by a board for at least one hundred forty (140) days of a school year and who performs teaching duties for the equivalent of at least seventy (70) full school days during that school year, regardless of the schedule on which those duties were performed, shall be credited with one (1) year of experience. A teacher who is employed by a board for at least one hundred forty (140) days during each of two (2) school years and who performs teaching duties for the equivalent of at least seventy (70) full school days during those years shall be credited with one (1) year of experience. No more than one (1) year of experience shall be credited for the performance of teaching duties during a single school year;

(11) "Secondary school" means a school consisting of grades seven (7) through twelve (12), or any appropriate combination of grades within this range as determined by the plan of organization for schools authorized by the district board. When grades seven (7) through nine (9) or ten (10) are organized separately as a junior high school, or grades ten (10) through twelve (12) are organized separately as a senior high school and are conducted in separate school plant facilities, each shall be considered a separate secondary school for the purposes of KRS 157.310 to 157.440;

(12) "Single salary schedule" means a schedule adopted by a local board from which all teachers are paid for one hundred eighty-five (185) days and is based on training, experience, and such other factors as the Kentucky Board of Education may approve and which does not discriminate between salaries paid elementary and secondary teachers. If the budget bill contains a minimum statewide salary schedule, no teacher shall be paid less than the amount specified in the biennial budget salary schedule for the individual teacher's educational qualifications and experience;

(13) "Teacher" means any regular or special teacher, principal, supervisor, superintendent, assistant superintendent, librarian, director of pupil personnel, or other member of the teaching or professional staff engaged in the service of the public elementary and secondary school for whom certification is required as a condition of employment;

(14) "Percentage of attendance" means the aggregate days attended by pupils in a public school for the school year divided by the aggregate days' membership of pupils in a public school for the school year;

(15) "Middle school" means a school consisting of grades five (5) through eight (8) or any appropriate combination of grades as determined by the plan of organization for schools authorized by the district board;

(16) "National board certification salary supplement" means an annual supplement added for the life of the certificate to the base salary of a teacher who attains national board certification; and

(17) "Weather-related low attendance day" means a school day on which the district's attendance falls below the average daily attendance for the prior

year due to inclement weather. The district shall submit a request to substitute the prior year's average daily attendance for its attendance on up to ten (10) designated days, along with documentation that the low attendance was due to inclement weather, for approval by the commissioner of education in accordance with Kentucky Board of Education administrative regulations.

(Enact. Acts 1976, ch. 93, § 22, effective July 1, 1976; 1976, ch. 93, § 12, effective July 1, 1977; 1978, ch. 133, § 1, effective June 17, 1978; 1980, ch. 182, § 1, effective July 15, 1980; 1984, ch. 367, § 2, effective July 13, 1984; 1990, ch. 351, § 1, effective July 13, 1990; 1990, ch. 476, Pt. III, § 94, effective July 13, 1990; 1994, ch. 240, § 1, effective July 15, 1994; 1994, ch. 254, § 1, effective July 15, 1994; 1996, ch. 20, § 4, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 6, § 1, effective July 15, 1998; 1998, ch. 309, § 1, effective July 15, 1998; 1998, ch. 591, § 2, effective July 15, 1998; 2000, ch. 257, § 7, effective July 14, 2000; 2000, ch. 389, § 2, effective July 14, 2000.)

Legislative Research Commission Note. (7/14/2000). This section was amended by 2000 Ky. Acts chs. 257 and 389, which do not appear to be in conflict and have been codified together.

Former KRS 157.320 (Enact. Acts 1954, ch. 214, § 2; 1960, ch. 145, § 1; 1968, ch. 208, § 1; 1972, ch. 151, § 3; 1972, ch. 372, § 3; 1974, ch. 265, § 2) was repealed by Acts 1974, ch. 363, § 18, effective June 30, 1976.

Cross-References. Data form, professional staff, 702 KAR 3:100.

Handicapped, reimbursement for, 702 KAR 5:100.

Program cost calculation, 702 KAR 5:020.

Pupil attendance, 702 KAR 7:125.

SEEK funding formula, 702 KAR 3:270.

Teachers' salary scheduling, 702 KAR 3:070.

Vocational pupils, reimbursement for, 702 KAR 5:110.

Withholding funds, 702 KAR 3:045.

Opinions of Attorney General. Teaching experience with a Head Start program does not qualify as "teaching experience" for the purposes of determining a teacher's salary unless the teacher was under contract with an accredited public or nonpublic school at the time of participation in the program. OAG 76-152.

A county school board could prepare a salary schedule so as to increase the salaries of teachers assigned to schools within the jurisdiction of a city which has levied an occupational tax. OAG 77-427.

Even though the contracts entered into between local boards and their teachers fail to reference the minimum 185 day school term, these contracts would not be construed to cover any period less than the 185 school days established by statute since all full-time teachers in the public common schools have, by operation of law, a contract that entitles them to be paid for 185 school days, four (4) of which are to be utilized as in-service and professional development and planning activities; accordingly, the teachers employed by the local school boards for the 1981-82 school year had a vested right to employment and salary for at least 185 school days and the possible reduction in state funds for teachers' salaries for two (2) mandated in-service days in no way could be used to divorce the local school districts from their preexisting obligation of contracts for a minimum school term of 185 days. OAG 82-106.

A reduction in state appropriations to the Minimum Foundation Fund for teachers' salaries, legal or illegal, could not be said to have reduced the number of days required for a minimum school term in the Commonwealth's public common schools; the law still requires 185 days and that four (4) of these days be devoted to in-service training for public common school teachers and the elimination of state money for two (2) in-service days did not take the requirement for the two (2) days away. OAG 82-106.

While KRS 157.330(2) requires that foundation program funds are to be drawn out or appropriated only "as provided by statute," it is entirely proper for the State Board of Education to adopt a regulation intending to implement the statutory law. OAG 84-314.

Language in budget memorandum recommending and directing that 705 KAR 2:030 Section 8 be amended to change the local district transfer provision from 20% to the established value of the capital outlay component of a foundation unit with difference in the transfer to be used to fund the operational costs of the New Rowan County State Vocational-Technical School and the expanded facilities in Ashland and Elizabethtown is precatory in nature and in light of Const., §§ 184 and 186 cannot be carried out, for the funds involved are foundation program funds and not just general funds appropriated for education, and using the difference in the transfer amount of funds to support the operational cost of the New Rowan County State Vocational-Technical School and expanded facilities in Ashland and Elizabethtown would be using foundation program funds for nonfoundation purposes. OAG 84-314.

Salary schedules may properly be prepared so as to increase the salaries of particular county teachers, teaching within the city, in an amount equal to the occupational tax imposed upon those teachers. OAG 86-33.

The provision that kindergarten shall be provided at a minimum for one-half (½) day, five (5) days a week, for a full school year, for each kindergarten pupil, went into effect on July 13, 1990. OAG 90-73.

Cited: Holmes v. Walden, 394 S.W.2d 458 (Ky. 1965); Preuss v. Board of Educ., 667 S.W.2d 391 (Ky. Ct. App. 1984).

NOTES TO DECISIONS

1. Salary Schedule.

Where teachers in one (1) school district earned credits toward salary increases on different basis from teachers in second district, salary plan established pursuant to KRS 157.310 to 157.440 after merging of two (2) districts, which granted teachers from each district the credits under former salary plans, was reasonable and was not discriminatory. Ambs v. Board of Educ., 570 S.W.2d 638 (Ky. Ct. App. 1978).

Collateral References. 78 C.J.S. Schools and School Districts, §§ 2, 58.

157.330. Fund to support education excellence in Kentucky.

(1) There is hereby established the fund to support education excellence in Kentucky consisting of appropriations for distribution to districts in accordance with the provisions of KRS 157.310 to 157.440.

(2) The resources of the public school fund shall be paid into the State Treasury, and shall be drawn out or appropriated only in aid of public schools as provided by statute.

(Enact. Acts 1976, ch. 93, § 23, effective July 1, 1976; 1990, ch. 476, Pt. III, § 95, effective July 13, 1990.)

Legislative Research Commission Note. Former KRS 157.330 (Enact. Acts 1954, ch. 214, § 3; 1956, ch. 106, § 1) was repealed by Acts 1974, ch. 363, § 18, effective June 30, 1976.

Opinions of Attorney General. The present school laws, in light of the Kentucky Constitution, do not authorize or permit any state funded extended employment days to be used for vacation or holidays. OAG 82-356.

While subsection (2) of this section requires that foundation program funds are to be drawn out or appropriated only "as provided by statute," it is entirely proper for the State Board of Education to adopt a regulation intending to implement the statutory law. OAG 84-314.

Language in budget memorandum recommending and directing that 705 KAR 2:030 Section 8 be amended to change the local district transfer provision from 20% to the established value of the capital outlay component of a foundation unit, with difference in the transfer to be used to fund the operational costs of the New Rowan County State Vocational-Technical School and the expanded facilities in Ashland and Elizabethtown, is precatory in nature and in light of Const., §§ 184 and 186 cannot be carried out, for the funds involved are foundation program funds and not just general funds appropriated for education, and using the difference in the transfer amount of funds to support the operational cost of the New Rowan County State Vocational-Technical School and expanded facilities in Ashland and Elizabethtown would be using foundation program funds for nonfoundation purposes. OAG 84-314. (Refers to 1984 Budget)

Collateral References. 78 C.J.S., Schools and School Districts, §§ 9-13.

157.340. Distribution of funds from per capita account. [Repealed.]

Compiler's Notes. This section (Acts 1954, ch. 214, § 4) was repealed by Acts 1956, ch. 106, § 8.

157.350. Eligibility of districts for participation in fund to support education excellence in Kentucky.

Each district which meets the following requirements shall be eligible to share in the distribution of funds from the fund to support education excellence in Kentucky:

(1) Employs and compensates all teachers for not less than one hundred eighty-five (185) days. The Kentucky Board of Education, upon recommendation of the chief state school officer, shall prescribe procedures by which this requirement may be reduced during any year for any district which employs teachers for less than one hundred and eighty-five (185) days, in which case the eligibility of a district for participation in the public school fund shall be in proportion to the length of time teachers actually are employed;

(2) Operates all schools for a term as provided in KRS 158.070 and administrative regulations of the Kentucky Board of Education. If the school term is less than one hundred eighty-five (185) days for any reason not approved by the Kentucky Board of Education on recommendation of the chief state school officer, the eligibility of a district for participation in the public school fund shall be in proportion to the length of term the schools actually operate;

(3) Compensates all teachers on the basis of a single salary schedule and in conformity with the provisions of KRS 157.310 to 157.440;

(4) Includes no nonresident pupils in its average daily attendance, except as follows:

(a) Pupils listed under a written agreement with the district of the pupils' legal residence. If an agreement cannot be reached, either board may appeal to the chief state school officer for settlement of the agreement. The chief state school officer shall have thirty (30) days to establish the terms of agreement. Either board may appeal the chief state school officer's decision to the Kentucky Board of Education. The Kentucky Board of Education shall have sixty (60) days to approve or amend the agreement of the chief state school officer. In consideration of these appeals, the chief state school officer and the Kentucky Board of Education shall give preference to the best interest of the individual student. This subsection does not apply to those pupils enrolled in an approved class conducted in a hospital; and

(b) Pupils who have been expelled for behavioral reasons who shall be counted in average daily attendance under KRS 157.320;

(5) Any secondary school which maintains a basketball team for boys for other than intramural purposes, shall maintain the same program for girls;

(6) Any school district which fails to comply with subsection (5) shall be prohibited from participating in varsity competition in any sport for one (1) year. Determination of failure to comply shall be made by the Department of Education after a hearing requested by any person within the school district. The hearing shall be conducted in accordance with KRS Chapter 13B. A district under this subsection shall, at the hearing, have an opportunity to show inability to comply.

(Enact. Acts 1976, ch. 93, § 24, effective July 1, 1976; 1976, ch. 93, § 13, effective July 1, 1977; 1978, ch. 133, § 2, effective June 17, 1978; 1990, ch. 476, Pt. III, § 96, effective July 13, 1990; 1992, ch. 258, § 1, effective April 7, 1992; 1996, ch. 318, § 50, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 309, § 2, effective July 15, 1998.)

Legislative Research Commission Note. Former KRS 157.350 (Enact. Acts 1954, ch. 214, § 5; 1956, ch. 106, § 2; 1960, ch. 145, § 2; 1974, ch. 349, § 1) was repealed by Acts 1974, ch. 363, § 18, effective June 30, 1976.

Cross-References. Pupil attendance, 702 KAR 7:125.

Opinions of Attorney General. The Fort Knox schools are not public common schools and, therefore, a county school system cannot enter into a written agreement with the Fort Knox system concerning special education children so as to receive minimum foundation program funds for its children's instruction. OAG 76-670.

It is truly in the discretion of the local board of education to establish a reasonable tuition fee for nonresident students; however, the better practice would be for a local board to attempt to establish a tuition fee sufficient to defray any reasonably calculated per capita costs not funded through the state foundation program funds for educating a nonresident child. OAG 78-265.

Even though the contracts entered into between local boards and their teachers fail to reference the minimum 185 day school term, these contracts could not be construed to cover any period less than the 185 school days established by statute since all full-time teachers in the public common schools have, by operation of law, a contract that entitles them

to be paid for 185 school days, four (4) of which are to be utilized as in-service and professional development and planning activities; accordingly, the teachers employed by the local school boards for the 1981-82 school year had a vested right to employment and salary for at least 185 school days and the possible reduction in state funds for teachers' salaries for two (2) mandated in-service days in no way could be used to divorce the local school districts from their preexisting obligation of contracts for a minimum school term of 185 days. OAG 82-106.

A reduction in state appropriations to the Minimum Foundation Fund for teachers' salaries, legal or illegal, could not be said to have reduced the number of days required for a minimum school term in the commonwealth's public common schools, the law still requires 185 days and that four of these days be devoted to in-service training for public common school teachers and the elimination of state money for two (2) in-service days did not take the requirement for the two (2) days away. OAG 82-106.

Should local boards of education fail to enter into a written agreement to allow nonresident pupils to attend school in a certain district, then the local board of education that educates the nonresident pupil is not eligible to receive attendance credit and funding for those pupils. OAG 91-75.

So long as two (2) districts enter into a written agreement that a particular district will allow nonresident pupils to attend, then that district which is educating the nonresident pupils may receive the pupils' share of funds from the Fund to Support Education Excellence in Kentucky. By administrative regulation, the local boards of education that execute written agreements for average daily attendance of nonresident pupils are required to submit a copy of any agreement to the State Department of Education by November 15 of each year. OAG 91-75.

Supplemental agreements in which a district requires that the district taking the greater number of nonresident children must give back to the home district a certain percentage of state funds attributable to the excess nonresident students are impermissible and may be unconstitutional. OAG 91-75.

There appears to be no legal authority for sending money to a district where a child is not being educated, and such a practice may lead to inequitable funding levels in violation of Const., § 183, which requires that the General Assembly provide for an efficient system of schools, and has resulted in a complete revision of the system of school finance, which has set forth careful procedures to ensure that local districts receive the necessary funding per average daily attendance to carry out the mandated education. OAG 91-75.

There is no statutory authorization for any district which enters into an agreement concerning the education of nonresident pupils to require that the districts taking the greater number of nonresident children agree to give back to the home district a percentage of the state funds attributable to the excess nonresident students. OAG 91-75.

Cited: Preuss v. Board of Educ., 667 S.W.2d 391 (Ky. Ct. App. 1984).

DECISIONS UNDER PRIOR LAW

ANALYSIS

1. Tenure law.
2. Single salary schedule.
3. Local tax levy.

1. Tenure Law.

The minimum foundation law requiring a school district to pay all teachers on the basis of a single salary schedule does not affect the tenure law which provides that a teacher with a continuing service status, once promoted in salary, cannot be demoted in salary without such cause as would justify termination of her contract, and elimination of duties or responsibilities cannot be used as a device for demotion in salary. Board of Educ. v. Lawrence, 375 S.W.2d 830 (Ky. 1963). (Decision prior to amendment of KRS 161.760).

2. Single Salary Schedule.

Continuation of extra pay after extra duties have been eliminated are not for extra duties but for extra qualifications and is not an unconstitutional diversion of school funds and a teacher who received compensation in addition to her base pay for her various responsibilities as principal of an elementary school was entitled to receive additional compensation when removed as principal and assigned to ordinary teaching position. Board of Educ. v. Lawrence, 375 S.W.2d 830 (Ky. 1963). (Decision prior to amendment of KRS 161.760).

3. Local Tax Levy.

Any school district otherwise qualified under this section has the right to qualify by requiring a sufficient tax levy. Holmes v. Walden, 394 S.W.2d 458 (Ky. 1965).

157.360. Base funding level — Adjustment — Enforcement of maximum class sizes — Allotment of program funds.

(1) In determining the cost of the program to support education excellence in Kentucky, the statewide guaranteed base funding level, as defined in KRS 157.320, shall be computed by dividing the amount appropriated for this purpose by the prior year's statewide average daily attendance.

(2) Each district shall receive an amount equal to the base funding level for each pupil in average daily attendance in the district in the previous year. Each district's base funding level shall be adjusted by the following factors:

(a) The number of at-risk students in the district. At-risk students shall be identified as those approved for the free lunch program under state and federal guidelines. The number of at-risk students shall be multiplied by a factor to be established by the General Assembly. Funds generated under this paragraph may be used to pay for:

1. Alternative programs for students who are at risk of dropping out of school before achieving a diploma; and
2. A hazardous duty pay supplement as determined by the local board of education to the teachers who work in alternative programs with students who are violent or assaultive;

(b) The number and types of exceptional children in the district as defined by KRS 157.200. Specific weights for each category of exceptionality shall be used in the calculation of the add-on factor for exceptional children; and

(c) Transportation costs. The per-pupil cost of transportation shall be calculated as provided by KRS 157.370. Districts which contract to furnish transportation to students attending nonpublic schools may adopt any payment formula which assures that no public school funds are used for the transportation of nonpublic students.

(3) The program to support education excellence in Kentucky shall be fully implemented by the 1994-95 school year.

(4) (a) Except for those schools which have implemented school-based decision making, the chief state school officer shall enforce maximum class sizes for every academic course requirement in all grades except in vocal and instrumental music, and physical education classes. Except as provided in subsection (5) of this section, the maximum number of pupils enrolled in a class shall be as follows:

1. Twenty-four (24) in primary grades (kindergarten through third grade);
2. Twenty-eight (28) in grade four (4);
3. Twenty-nine (29) in grades five (5) and six (6);
4. Thirty-one (31) in grades seven (7) to twelve (12).

(b) Except for those schools which have implemented school-based decision making, class size loads for middle and secondary school classroom teachers shall not exceed the equivalent of one hundred fifty (150) pupil hours per day.

(c) The chief state school officer, upon approval of the Kentucky Board of Education, shall adopt administrative regulations for enforcing this provision. These administrative regulations shall include procedures for a superintendent to request an exemption from the Kentucky Board of Education when unusual circumstances warrant an increased class size for an individual class. A request for an exemption shall include specific reasons for the increased class size with a plan for reducing the class size prior to the beginning of the next school year. A district shall not receive in any one (1) year exemptions for more classes than enroll twenty percent (20%) of the pupils in the primary grades and grades four (4) through eight (8).

(d) In all schools the chief state school officer shall enforce the special education maximum class sizes set by administrative regulations adopted by the Kentucky Board of Education. A superintendent may request an exemption pursuant to paragraph (c) of this subsection. A local school council may request a waiver pursuant to KRS 156.160(2). An exemption or waiver shall not be granted if the increased class size will impede any exceptional child from achieving his individual education program in the least restrictive environment.

(5) In grades four (4) through six (6) with combined grades, the maximum class size shall be the average daily attendance upon which funding is appropriated for the lowest assigned grade in the class. There shall be no exceptions to the maximum class size for combined classes. In combined classes other than the primary grades, no ungraded students shall be placed in a combined class with graded students. In addition, there shall be no more than two (2) consecutive grade levels combined in any one (1) class in grades four (4) through six (6). However, this shall not apply to schools which have implemented school-based decision making.

(6) If a local school district, through its admission and release committee, determines that an appropriate program in the least restrictive environment for a particular child with a disability includes either part-time or full-time enrollment with a private school or agency within the state or a public or private agency in another state, the school district shall count as average daily attendance in a public school the time that the child is in attendance at the school or agency, contingent upon approval by the chief state school officer.

(7) Pupils attending a center for child learning and study established under an agreement pursuant to KRS 65.210 to 65.300 shall, for the purpose of calculating average daily attendance, be considered as in attendance in the school district in which the child legally resides and which is party to the agreement. For purposes of subsection (1) of this section, teachers who are actually employees of the joint or cooperative action shall be considered as employees of each school district which is a party to the agreement.

(8) Program funding shall be increased when the average daily attendance in any district for the first two (2) months of the current school year is greater than the average daily attendance of the district for the first two (2) months of the previous school year. The program funds allotted the district shall be increased by the percent of increase. The average daily attendance in kindergarten is the kindergarten full-time equivalent pupils in average daily attendance.

(9) If the average daily attendance for the current school year in any district decreases by ten percent (10%) or more than the average daily attendance for the previous school year, the average daily attendance for purposes of calculating program funding for the next school year shall be increased by an amount equal to two-thirds (⅔) of the decrease in average daily attendance. If the average daily attendance remains the same or decreases in the succeeding school year, the average daily attendance for purposes of calculating program funding for the following school year shall be increased by an amount equal to one-third (⅓) of the decrease for the first year of the decline.

(10) If the percentage of attendance of any school district shall have been reduced more than two percent (2%) during the previous school year, the program funding allotted the district for the current school year shall be increased by the difference in the percentage of attendance for the two (2) years immediately prior to the current school year less two percent (2%).

(11) (a) Instructional salaries for vocational agriculture classes shall be for twelve (12) months per year. Vocational agriculture teachers shall be responsible for the following program of instruction during the time period beyond the regular school term established by the local board of education: supervision and instruction of students in agriculture experience programs; group and individual instruction of farmers and agribusinessmen; supervision of

student members of agricultural organizations who are involved in leadership training or other activity required by state or federal law; or any program of vocational agriculture established by the Division of Career and Technical Education in the Department of Education. During extended employment, no vocational agriculture teacher shall receive salary on a day that the teacher is scheduled to attend an institution of higher education class which could be credited toward meeting any certification requirement.

(b) Each teacher of agriculture employed shall submit an annual plan for summer program to the local school superintendent for approval. The summer plan shall include a list of tasks to be performed, purposes for each task, and time to be spent on each task. Approval by the local school superintendent shall be in compliance with the guidelines developed by the State Department of Education. The supervision and accountability of teachers of vocational agriculture's summer programs shall be the responsibility of the local school superintendent. The local school superintendent shall submit to the chief state school officer a completed report of summer tasks for each vocational agriculture teacher. Twenty percent (20%) of the approved vocational agriculture programs shall be audited annually by the State Department of Education to determine that the summer plan has been properly executed.

(12) (a) In allotting program funds for home and hospital instruction, statewide guaranteed base funding, excluding the capital outlay, shall be allotted for each child in average daily attendance in the prior school year who has been properly identified according to Kentucky Board of Education administrative regulations. Attendance shall be calculated pursuant to KRS 157.270 and shall be reported monthly on forms provided by the Department of Education; and

(b) Pursuant to administrative regulations of the Kentucky Board of Education, local school districts shall be reimbursed for home and hospital instruction for pupils unable to attend regular school sessions because of short term health impairments. A reimbursement formula shall be established by administrative regulations to include such factors as a reasonable per hour, per child allotment for teacher instructional time, with a maximum number of funded hours per week, a reasonable allotment for teaching supplies and equipment, and a reasonable allotment for travel expenses to and from instructional assignments, but the formula shall not include an allotment for capital outlay. Attendance shall be calculated pursuant to KRS 157.270 and shall be reported annually on forms provided by the Department of Education.

(13) Except for those schools which have implemented school-based decision making and the school council has voted to waive this subsection, kindergarten aides shall be provided for each twenty-four (24) full-time equivalent kindergarten students enrolled.

(14) Effective July 1, 2001, there shall be no deduction applied against the base funding level for any pupil in average daily attendance who spends a portion of his or her school day in a program at a state-operated career and technical education or vocational facility.

(Enact. Acts 1976, ch. 93, § 25, effective July 1, 1976; 1978, ch. 133, § 3, effective June 17, 1978; 1980, ch. 183, § 6, effective July 15, 1980; 1982, ch. 97, § 3, effective July 15, 1982; 1982, ch. 119, § 3, effective July 15, 1982; 1982, ch. 358, § 2, effective July 15, 1982; 1984, ch. 41, § 1, effective July 13, 1984; 1984, ch. 367, § 3, effective July 13, 1984; 1984, ch. 368, § 1, effective July 13, 1984; 1984, ch. 397, § 6, effective July 13, 1984; 1984, ch. 410, § 10, effective July 13, 1984; 1985 (1st Ex. Sess.), ch. 10, § 5, effective October 18, 1985; 1986, ch. 39, § 1, effective July 15, 1986; 1986, ch. 73, § 1, effective July 15, 1986; 1986, ch. 157, § 1, effective July 15, 1986; 1986, ch. 173, § 1, effective March 28, 1986; 1988, ch. 361, § 14, effective July 15, 1988; 1990, ch. 476, Pt. III, § 97, effective July 13, 1990; 1990, ch. 518, § 3, effective July 13, 1990; 1992, ch. 323, § 1, effective July 14, 1992; 1992, ch. 406, § 1, effective April 10, 1992; 1994, ch. 74, § 1, effective July 15, 1994; 1994, ch. 405, § 24, effective July 15, 1994; 1996, ch. 65, § 1, effective July 15, 1996; 1996, ch. 87, § 1, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 493, § 10, effective April 10, 1998; 2000, ch. 389, § 3, effective July 14, 2000; 2000, ch. 526, § 15, effective July 14, 2000; 2001, ch. 123, § 6, effective June 21, 2001; 2002, ch. 126, § 1, effective April 2, 2002.)

Cross-References. Child find, evaluation, and reevaluation, 707 KAR 1:300.

Children with disabilities enrolled in private schools, 707 KAR 1:370.

Comprehensive system of personnel development, 707 KAR 1:330.

Confidentiality of information, 707 KAR 1:360.

Definitions, 707 KAR 1:280.

Determination of eligibility, 707 KAR 1:310.

Free appropriate public education, 707 KAR 1:290.

Individual education program, 707 KAR 1:320.

Maximum class sizes, 702 KAR 3:190.

Monitoring and recovery of funds, 707 KAR 1:380.

Placement decisions, 707 KAR 1:350.

Procedural safeguards and state complaint procedures, 707 KAR 1:340.

Pupil attendance, 702 KAR 7:125.

SEEK funding formula, 702 KAR 3:270.

Kentucky Bench & Bar. Keating, You Get What You Pay For: Financing Public Schools in Kentucky, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 6.

Opinions of Attorney General. Students who have been excused from school to attend religious instruction, in accordance with the provisions of KRS 158.210 to 158.260, may be considered in attendance at the public schools for purposes of the Minimum Foundation Program. OAG 66-116.

It is proper to afford ADA credit to a public school district for the public school portion of dual enrollment situations involving public and nonpublic schools. OAG 68-150.

The interlocal cooperative board may receive foundation program units in supervision based on a consolidation of the overage generated by the individual participating school districts. OAG 74-351.

A public school district may receive ADA or bonus unit foundation funds for special education program pupils who for a part of the day receive contracted services at a regional state university. OAG 74-742.

Where a board of education contracts for special education services with a private school it would not be entitled to ADA or bonus unit foundation program funds for the pupils involved. OAG 74-742.

The Superintendent of Public Education has adopted 704 KAR 3:175 which defines the criteria which a person filling the position of school psychologist must meet if the position is to be funded by money from the foundation program which criteria do not include the requirement that the "school psychiatrist" be licensed by the Board of Psychological Examiners; rather this regulation does not permit any person who is not licensed by the board to hold himself out as a psychologist or to practice psychology in violation of KRS 319.005 and 319.010, but merely establishes the criteria which an otherwise qualified psychologist must meet if his position is to be funded with money from the foundation program, and any person holding himself out as a "school psychologist" or engaging in the practice of psychology without a license issued by the board violates KRS Chapter 319 and is subject to the penalties contained in KRS 319.990. OAG 79-108.

The Superintendent of Public Education has authority to define the personnel to whom or for whom classroom units are adopted. OAG 79-108.

Where an entire classroom unit (under subsection (9) of this section) is involved, the director of pupil personnel must devote his or her entire time to the duties of that office and would not be able to also serve as the director of transportation; however where a proportionate fraction of a unit is involved, the requirement of KRS 159.140(1) would be met by the director of pupil personnel by spending an amount of time in the same proportion to the normal school day that the fraction bears to the unit will constitute devoting the entire time to the duties of the office. OAG 80-389.

If the General Assembly desires to change the average daily attendance (ADA) formula used for allotment of classroom units for Foundation Program Fund purposes from the previous school year figure as required by this section, it would have to amend this section and not attempt to reach that result with language in an appropriations bill; even if such language did appear in the biennial budget bill, the language would have to be disregarded as not being a constitutional part of the appropriations act, since the budget bill to the extent that it relates to a subject other than the budget must be deemed in violation of § 51 of the Constitution. OAG 83-383. (Refers to 1982 Budget.)

The General Assembly may not constitutionally revise, restrict or modify the provisions of existing substantive statutory law or create new substantive law by language contained in the appropriations act; thus, even if the biennial budget bill had not inadvertently omitted the desired change in the average daily attendance (ADA) formula, the Department of Education could not have legally implemented it. OAG 83-383. (Refers to 1982 Budget.)

Language in budget memorandum recommending and directing that 705 KAR 2:030 Section 8 be amended to change the local district transfer provision from 20% to the established value of the capital outlay component of a foundation unit, with difference in the transfer to be used to fund the operational costs of the New Rowan County State Vocational-Technical School and the expanded facilities in Ashland and Elizabethtown, is precatory in nature and in light of Const., §§ 184 and 186 cannot be carried out, for the funds involved are foundation program funds and not just general funds appropriated for education, and using the difference in the transfer amount of funds to support the operational cost of the New Rowan County State Vocational-Technical School and expanded facilities in Ashland and Elizabethtown would be using foundation program funds for nonfoundation purposes. OAG 84-314. (Refers to 1984 Budget.)

Where the General Assembly failed to include a delayed effective date for the provisions regarding the teachers' duty-free lunch period and class-size limitations in grades 1-8 contained in the education package enacted in the 1985 extraordinary session, the effective date of these provisions was October 18, 1985. However, given the restrictions of KRS 160.530 and 160.550(1), as well as the impracticalities of implementation on October 18, it was doubtful that any local school district could be expected to implement these programs on October 18. Therefore, except where otherwise expressly indicated in a particular provision, the education improvement programs which the local school districts have a duty to implement would have to be implemented by the local school districts beginning with the 1986-87 school year. OAG 85-132.

The language, "districts which contract to furnish transportation for students attending nonpublic schools to adopt any payment formula so long as no public school funds are used," permits school districts to use formulas other than the per capita formula. OAG 90-81.

Fourth grade students are not allowed to be in ungraded classrooms with students from the primary school (K-3) as joint classes with ungraded students are prohibited. OAG 92-42.

NOTES TO DECISIONS

1. Average Daily Attendance.

School board could order school closed when the student population of the school fell below minimum required for state aid. Earle v. Harrison County Bd. of Educ., 404 S.W.2d 455 (Ky. 1966).

157.370. Allotment of transportation units.

(1) In determining the cost of transportation for each district, the chief state school officer shall determine the average cost per pupil per day of transporting pupils in districts having a similar density of transported pupils per square mile of area served by not less than nine (9) different density groups.

(2) The annual cost of transportation shall include all current costs for each district plus annual depreciation of pupil transportation vehicles calculated in accordance with the administrative regulations of the Kentucky Board of Education for such districts that operate district-owned vehicles.

(3) The aggregate and average daily attendance of transported pupils shall include all public school pupils transported at public expense who live one (1) mile or more from school. Children with disabilities may be included who live less than this distance from school. The aggregate and average daily attendance referred to in this subsection shall be the aggregate and average daily attendance of transported pupils the prior year adjusted for current year increases in accordance with Kentucky Board of Education administrative regulations.

(4) The square miles of area served by transportation shall be determined by subtracting from the total area in square miles of the district the area not served by transportation in accordance with ad-

ministrative regulations of the Kentucky Board of Education. However, if one (1) district authorizes another district to provide transportation services for a part of its area, this area shall be deducted from the area served by the authorizing district and added to the area served by the district actually providing the transportation.

(5) The density of transported pupils per square mile of area served for each district shall be determined by dividing the average daily attendance of transported pupils by the number of square miles of area served by transportation.

(6) The chief state school officer shall determine the average cost per pupil per day of transporting pupils in districts having a similar density by constructing a smoothed graph of cost for the density groups required by subsection (1). This graph shall be used to construct a scale showing the average costs of transportation for districts having a similar density of transported pupils. Costs shall be determined separately for county school districts and independent school districts. No independent school district will receive an average cost per pupil per day in excess of the minimum received by any county district or districts. These costs shall be the costs per pupil per day of transported pupils included in the public school fund and these costs shall be recalculated each biennium.

(7) The scale of transportation costs included in the fund to support education excellence in Kentucky for county and independent districts is determined in accordance with the provisions of KRS 157.310 to 157.440 for the biennium beginning July 1, 1990.

(8) The cost of transporting a district's pupils from the parent school to a state vocational-technical school or to a vocational educational center shall be calculated separately from the calculation required by subsections (1) through (7) of this section. The amount calculated shall be paid separately to each district from program funds budgeted for vocational pupil transportation, as a reimbursement based on the district's cost for providing this service. The amount of reimbursement shall be calculated in accordance with Kentucky Board of Education administrative regulations. In the event that the appropriation for vocational pupil transportation in the biennial budget is insufficient to meet the total calculated cost of this service for all districts, the amount paid to each district shall be ratably reduced. For the purpose of this subsection, the parent school shall be interpreted to mean that school in which the pupil is officially enrolled in a district's public common school system.

(9) The Kentucky Board of Education shall determine the type of pupil with a disability that qualifies for special type transportation to and from school. Those qualified pupils for which the district provides special type transportation shall have their aggregate days' attendance multiplied by five (5.0) and added to that part of the district's aggregate days' attendance that is multiplied by the district's adjusted cost per pupil per day in determining the district's pupil transportation program cost for allotment purposes.

(Enact. Acts 1976, ch. 93, § 26, effective July 1, 1976; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, § 98, effective July 13, 1990; 1994, ch. 405, § 25, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996.)

Legislative Research Commission Note. Former KRS 157.370 (Enact. Acts 1954, ch. 214, § 7; 1956, ch. 106, § 8; 1960, ch. 145, § 4; 1972, ch. 372, § 5; 1974, ch. 196, § 2; 1974, ch. 265, § 4; 1976, ch. 78, § 2) was repealed by Acts 1974, ch. 363, § 18, effective June 30, 1976.

Cross-References. Handicapped, reimbursement for, 702 KAR 5:100.

Program cost calculation, 702 KAR 5:020.

Responsibilities of division, 702 KAR 5:010.

SEEK funding formula, 702 KAR 3:270.

Vocational pupils, reimbursement for, 702 KAR 5:110.

NOTES TO DECISIONS

1. High School Pupils Paying Fare.

If high school pupils are charged school bus fares they cannot be counted in the allotment of the school board's transportation units in the Minimum Foundation Program under this section. Japs v. Board of Educ., 291 S.W.2d 825 (Ky. 1956).

Collateral References. 78 C.J.S., Schools and School Districts, § 13.

157.380. Determination of local tax effort. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1976, ch. 93, § 27) was repealed by Acts 1976, ch. 93, § 14, effective July 1, 1977.

A former section (Enact. Acts 1954, ch. 214, § 8; 1956, ch. 106, § 3; 1958, ch. 13; 1960, ch. 145, § 5; 1962, ch. 222; 1965 (1st Ex. Sess.), ch. 2, § 15; 1968, ch. 209; 1976, ch. 260, § 4; 1976, ch. 342, § 1) was repealed by Acts 1974, ch. 363, § 18, effective June 30, 1976.

157.390. Determination of teachers' salaries and other required public school funding components — Additional compensation expenses.

(1) For purposes of the state teacher salary schedule, teachers shall be placed on the schedule based on certification rank as established by the Education Professional Standards Board under KRS 161.1211 and by their years of experience as follows:

1. Zero (0) to three (3) years;
2. Four (4) to nine (9) years;
3. Ten (10) to fourteen (14) years;
4. Fifteen (15) to nineteen (19) years; and
5. Twenty (20) or more years.

(2) The rank and experience of the teacher shall be determined on September 15 of each year.

(3) The amount to be included in the base funding level for capital outlay shall be determined by multiplying the average daily attendance by the amounts set forth in the biennial budget.

(4) The amount to be included in the public school fund of each district for transportation shall be

determined in accordance with the provisions of KRS 157.370.

(5) The total amount of money distributable to each district from the public school fund shall include the base funding per pupil in average daily attendance, an amount for at-risk students, an amount for the types and numbers of students with disabilities, an amount for students served in home and hospital settings, and the allotments in subsections (3) and (4) of this section, less the amount of local tax revenues generated for school purposes, up to a maximum equivalent local rate of thirty cents ($0.30) as defined by KRS 157.615(6).

(6) A classroom teacher or administrator may be provided additional compensation, funds for instructional and program materials, and other related costs for serving as a classroom mentor, teaching partner, or professional development leader in core discipline areas including reading, and other subject areas as appropriate to other education professionals in a state approved program or state approved activities. The Kentucky Department of Education shall administer the funds appropriated for these purposes. The Kentucky Board of Education shall promulgate administrative regulations to define the guidelines for programs and activities that qualify for funds including the application and approval process, the individual participant requirements, the amount of compensation, the timelines, and reporting requirements. The board shall solicit recommendations from the Education Professional Standards Board and staff of the Kentucky Department of Education in developing its administrative regulations.

(Enact. Acts 1976, ch. 93, § 28, effective July 1, 1976; 1978, ch. 133, § 4, effective July 17, 1978; 1984, ch. 367, § 4, effective July 13, 1984; 1984, ch. 368, § 2, effective July 13, 1984; 1985 (1st Ex. Sess.), ch. 10, § 6, effective October 18, 1985; 1988, ch. 41, § 1, effective July 15, 1988; 1990, ch. 476, Pt. III, § 99, effective July 13, 1990; 1992, ch. 195, § 12, effective July 14, 1992; 1992, ch. 392, § 1, effective July 14, 1992; 1996, ch. 298, § 3, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 389, § 4, effective July 14, 2000; 2000, ch. 527, § 12, effective July 14, 2000; 2002, ch. 135, § 5, effective April 2, 2002.)

Legislative Research Commission Note. Former KRS 157.390 (Enact. Acts 1954, ch. 214, § 9; 1956, ch. 106, § 4; 1960, ch. 145, § 6; 1962, ch. 244, Art. V; 1964, ch. 171, § 1; 1966, ch. 24, part 1, § 1; 1968, ch. 210; 1970, ch. 116, § 1; 1972, ch. 333, § 1) was repealed by Acts 1974, ch. 363, § 18, effective June 30, 1976.

Cross-References. Continuing education alternative to planned Fifth-year Program, 704 KAR 20:022.

Data form, professional staff, 702 KAR 3:100.

Emergency certification and out-of-field teaching, 704 KAR 20:120.

Fifth-year Program for renewal of teaching certificates, 704 KAR 20:020.

Planned Fifth-year Program, 704 KAR 20:021.

Professional Development Leadership and Mentor Fund, 704 KAR 3:500.

Ranking of certified school personnel, 704 KAR 3:470.

Ranking of vocational trade instructors, 704 KAR 20:025.

Rank I classification, 704 KAR 20:015.

Substitute teachers' salary scheduling, 702 KAR 3:075.

Teachers' salary scheduling, 702 KAR 3:070.

Kentucky Bench & Bar. Keating, You Get What You Pay For: Financing Public Schools in Kentucky, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 6.

Opinions of Attorney General. Under this section the second experience level is attained with the completion of four years of experience, so that a teacher who has completed three years of teaching and is in his fourth year is only entitled to the salary permitted for "0-3" years of experience. OAG 68-102.

Under this section experience credit can only be given for actual teaching experience and a teacher who was wrongfully excluded from teaching could not receive experience credit for the period of wrongful exclusion. OAG 68-564.

Under subsection (2) of this section and SBE 21.070(3) teachers' salary schedules are required to have only three separate increments for experience, namely 0 to 3 years, 4-9 years, and 10 years and over. There is no requirement that the salary schedules contain ten separate annual increments for experience. OAG 68-395.

In order to rank a teacher, it is incumbent upon the State Board of Education, with its power to make regulations, to specify what criteria may be considered as equivalent to a college degree for those teachers who have completed the required number of college hours but who do not have a bachelor's degree. OAG 75-495.

No authority exists for anyone during the present biennium to increase the value of the "other current expenses" category of a classroom unit above the established levels appropriated by the 1976 General Assembly. OAG 77-358.

Where a school teacher was ill and missed most of one month and part of the next, during which time the schools were closed 17 days due to severe weather and permission was granted by the department of education to cut short the school year by five (5) days, as calamity days, the teacher was entitled to be paid for the calamity days; however, since she would have been unable to teach on these days, she must take these days as sick leave days under KRS 161.155. OAG 78-311.

The present school laws, in light of the Kentucky Constitution, do not authorize or permit any state funded extended employment days to be used for vacation or holidays. OAG 82-356.

There is nothing in the school laws to preclude a school district from establishing a cafeteria insurance plan for its teachers, pursuant to the conditions and criteria set out in Section 125 of the Internal Revenue Code. However the money available to the teacher to be applied, if desired, to a cafeteria plan is still a part of that teacher's salary even though nontaxable; the teacher can elect to take a part of the money provided for by the school district in this regard as cash and, of course, this amount would be taxable. Moreover, the school districts must include the amount of money established for such a plan in all computations required for single salary schedule determinations, including the procedure required for determining the amount of money to be received by a school district for teachers' salaries from the Minimum Foundation Fund. OAG 83-151.

NOTES TO DECISIONS

Analysis

1. Certificate of professional standing.
2. Tenure.
3. Salary.

1. Certificate of Professional Standing.

A certificate of professional standing may be abolished or limited by the Legislature. Gullett v. Sparks, 444 S.W.2d 901 (Ky. 1969).

2. Tenure.

Teacher tenure is statutory and not contractual, and the Legislature may abridge or destroy it. Gullett v. Sparks, 444 S.W.2d 901 (Ky. 1969).

3. Salary.

The General Assembly has the power to provide that teachers with less qualification than a four-year degree shall receive only a minimum salary and the fact that the motive of such a provision might be to make teaching so economically unattractive as to discourage the less-qualified teachers from continuing in service does not make the provision unfair. Gullett v. Sparks, 444 S.W.2d 901 (Ky. 1969).

Where teachers in one (1) school district earned credits toward salary increases on different basis from teachers in second district, salary plan established pursuant to KRS 157.310 to 157.440 after merging of two (2) districts, which granted teachers from each district the credits under former salary plans, was reasonable and was not discriminatory. Ambs v. Board of Educ., 570 S.W.2d 638 (Ky. Ct. App. 1978).

Collateral References. 68 Am. Jur. 2d, Schools, § 129.

78 C.J.S., Schools and School Districts, §§ 315-320, 323-329, 332-349.

157.395. Salary supplement for national board certified teachers.

Notwithstanding any other statute to the contrary, a local board of education shall provide a public school teacher who has attained certification from the National Board for Professional Teaching Standards as of July 14, 2000, or thereafter with an annual national board certification salary supplement of two thousand dollars ($2,000) for the life of the certificate. The supplement shall be added to the teacher's base salary on the local board's single salary schedule and shall be considered in the calculation for contributions to the Kentucky Teachers' Retirement System. If a nationally certified teacher becomes no longer employed as a classroom teacher or a teacher mentor in the field of his or her national certification, the supplement shall cease. A local board of education shall request reimbursement for these purposes from the fund to support education excellence described in KRS 157.330.

(Enact. Acts 2000, ch. 257, § 5, effective July 14, 2000.)

157.400. Procedure for determining amount distributable to each district from foundation program fund. [Repealed.]

Compiler's Notes. This section (Acts 1976, ch. 93, § 29; 1976, ch. 93, § 15) was repealed by Acts 1978, ch. 133, § 9, effective June 17, 1978.

157.410. Payments of funds to districts.

For each school year the Finance and Administration Cabinet, on the certification of the chief state school officer, shall draw warrants on the State Treasurer for the amount of the public school fund due each district. Checks shall be issued by the State Treasurer and transmitted to the Department of Education or electronically transferred for distribution to the proper officials of the school districts when the districts have fully complied with the school laws and administrative regulations of the Kentucky Board of Education. The chief state school officer shall determine on or before August 15 of each year the tentative allotment of school funds to which each district is entitled under the provisions of KRS 157.310 to 157.440. On July 1, August 1, and September 1, of each fiscal year, one-twelfth (1/12) of the prior year's allotment minus the capital outlay shall be paid each school district. On the first of each month thereafter until the final calculation is completed, one-twelfth (1/12) of each district's share of the tentative calculation minus capital outlay shall be distributed. On or before May 1 of each year the chief state school officer shall determine the exact amount of the public common school fund to which each district is entitled and the remainder of the amount due each district for the year shall be distributed in equal installments beginning the first month after completion of final calculation and for each successive month thereafter.

(Enact. Acts 1976, ch. 93, § 30, effective July 1, 1976; 1978, ch. 155, § 82, effective June 17, 1978; 1984, ch. 368, § 3, effective July 13, 1984; 1990, ch. 476, Pt. III, § 100, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 389, § 5, effective July 14, 2000.)

Cross-References. SEEK funding formula, 702 KAR 3:270.

Withholding funds, 702 KAR 3:045.

Collateral References. 78 C.J.S., Schools and School Districts, § 13.

157.420. Restrictions governing expenditure of funds from public school fund — Use of historic settlement school facilities. [Effective until July 1, 2004.]

Public school funds made available to the credit of each district during any year shall be received, held, and expended by the district board, subject to the provisions of law and administrative regulations of the Kentucky Board of Education. The following restrictions shall govern the expenditure of funds from the public school fund:

(1) The salary paid any rank of teachers shall be at least equivalent to the amount set forth in the biennial budget schedule for each rank and experience for a term of one hundred eighty-five (185) days for full-time service during the regular school year.

(2) The Kentucky Board of Education shall not approve any working budget or salary schedule for local boards of education for any school year unless the one hundred eighty-five (185) day salary schedule for certified staff has been adjusted over the previous year's salary schedule by the lesser of:

(a) The percent increase in the average annual consumer price index for all urban consumers between the two (2) most recent calendar years, as published by the United States Bureau of Labor Statistics and stated in the statutory budget memorandum and the biennial budget report; or

(b) The percent increase of the base funding level in the program for support education excellence in Kentucky as defined in KRS 157.320.

(3) A district that compensates its teachers or employees for unused sick leave at the time of retirement, pursuant to KRS 161.155, may create an escrow account to maintain the amount of funds necessary to pay teachers or employees who qualify for receipt of the benefit. The fund is limited to not more than fifty percent (50%) of the maximum liability for the current year to be determined according to the number of staff employed by the district on September 15. Interest generated by the account shall be calculated as part of the total amount. The funds shall not be used for any purpose other than compensation for unused sick leave at the time of retirement and shall not be considered as part of the general fund balance in determining available local revenue for purposes of KRS 157.620.

(4) The per pupil capital outlay allotment for each district from the public school fund and from local sources shall be kept in a separate account and may be used by the district only for capital outlay projects approved by the chief state school officer in accordance with requirements of law, and based on a survey made in accordance with administrative regulations of the Kentucky Board of Education. These funds shall be used for the following capital outlay purposes:

(a) For direct payment of construction costs;

(b) For debt service on voted and funding bonds;

(c) For payment or lease-rental agreements under which the board eventually will acquire ownership of a school plant;

(d) For the retirement of any deficit resulting from overexpenditure for capital construction, if such deficit resulted from an emergency declared by the Kentucky Board of Education under KRS 160.550; and

(e) As a reserve fund for the above-named purposes, to be carried forward in ensuing budgets.

(5) The district may contribute capital outlay funds for energy conservation measures under guaranteed energy savings contracts pursuant to KRS 45A.345, 45A.352, and 45A.353. Use of these funds, provided in KRS 45A.353, 56.774, and 58.600, shall be based on the following:

(a) The energy conservation measures shall include facility alteration;

(b) The energy conservation measures shall be identified in the district's approved facility plan;

(c) The current facility systems are consuming excess maintenance and operating costs;

(d) The savings generated by the energy conservation measures are guaranteed;

(e) The capital outlay funds contributed to the energy conservation measures shall be defined as capital cost avoidance as provided in KRS 45A.345(2) and shall be subject to the restrictions on usage as specified in KRS 45A.352(9); and

(f) The equipment that is replaced shall have exceeded its useful life as determined by a life-cycle cost analysis.

(6) If any district has a special levy for capital outlay or debt service that is equal to the capital outlay allotment or a proportionate fraction thereof, and spends the proceeds of that levy for the above-named purposes, the chief state school officer under administrative regulations of the Kentucky Board of Education, may authorize the district to use all or a proportionate fraction of its capital outlay allotment for current expenses. However, a district which uses capital outlay funds for current expenses shall not be eligible to participate in the School Facilities Construction Commission funds.

(7) If a survey shows that a school district has no capital outlay needs as shown in paragraphs (a), (b), (c), and (d) of subsection (4) of this section, upon approval of the chief state school officer, these funds may be used for school plant maintenance, repair, insurance on buildings, replacement of equipment, purchase of school buses, and the purchase of modern technological equipment, including telecommunications hardware, televisions, computers, and other technological hardware to be utilized for educational purposes only.

(8) In surveying the schools, the Department of Education shall designate each school facility as a permanent, functional, or transitional center.

(a) "Permanent center" means a center which meets the program standards approved by the Kentucky Board of Education, is located so that students are not subjected to an excessive amount of time being transported to the site, and has established an attendance area which will maintain enrollment at capacity but will also avoid overcrowding.

(b) "Functional center" means a center which does not meet all the criteria established for a permanent facility, but is adequate to meet accreditation program standards to insure no substantial academic or building deficiency. The facility plan shall include additions and renovations necessary to meet current accreditation standards for which federal, state, and local funds may be used.

(c) "Transitional center" means a center which the local board of education has determined shall no longer be designated permanent or functional. The center shall be destined to be closed and shall not be eligible for new construction, additions, or major renovation. However, the board of education shall maintain any operating transitional center to provide a safe and healthy environment for students.

(9) If a local school board authorized elementary, middle, or secondary education classes in a facility of a historical settlement school on January 1, 1994, the board shall continue to use the facilities provided by the settlement school if the facilities meet health and safety standards for education facilities as required by administrative regulations. The local school board and the governing body of the settlement school shall enter into a cooperative agreement that delineates the role, responsibilities, and financial obligations for each party.

(Enact. Acts 1976, ch. 93, § 31, effective July 1, 1976; 1978, ch. 133, § 5, effective June 17, 1978; 1984, ch.

188, § 1, effective July 13, 1984; 1988, ch. 292, § 1, effective July 15, 1988; 1990, ch. 476, Pt. III, § 106, effective July 13, 1990; 1990, ch. 518, § 5, effective July 13, 1990; 1992, ch. 183, § 1, effective July 14, 1992; 1994, ch. 435, § 3, effective July 15, 1994; 1996, ch. 87, § 2, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 254, § 1, effective July 15, 1998; 1998, ch. 375, § 9, effective July 15, 1998.)

Legislative Research Commission Note. By reason of the amendment of KRS 157.390 by Acts 1985 (Ex. Sess.), ch. 10, § 6, a technical correction has been made in the reference to that section in subsection (1) above by the Reviser of Statutes, pursuant to KRS 7.136.

Compiler's Notes. For this section as effective July 1, 2004, see the following section also numbered KRS 157.420.

Cross-References. Bond issue approval, 702 KAR 3:020.

Capital construction process, 702 KAR 4:160.

Data form, professional staff, 702 KAR 3:100.

Guidelines for use of capital outlay funds, 702 KAR 3:010.

Implementation guidelines — Kentucky School Facilities Planning Manual, 702 KAR 1:001.

Opinions of Attorney General. Where a school teacher was ill and missed most of one month and part of the next, during which time the schools were closed 17 days due to severe weather and permission was granted by the Department of Education to cut short the school year by five days, as calamity days, the teacher was entitled to be paid for the calamity days; however, since she would have been unable to teach on these days, she must take these days as sick leave days under KRS 161.155. OAG 78-311.

NOTES TO DECISIONS

1. School Closing.

Although school board did not specifically refer to school as a possible "functional center", it clearly considered all ramifications, under this section, of keeping school open; thus, decision to close school was not arbitrary. Coppage v. Ohio County Bd. of Educ., 860 S.W.2d 779 (Ky. Ct. App. 1992).

Collateral References. 78 C.J.S., Schools and School Districts, § 13.

157.420. Restrictions governing expenditure of funds from public school fund — Use of historic settlement school facilities. [Effective July 1, 2004.]

Public school funds made available to the credit of each district during any year shall be received, held, and expended by the district board, subject to the provisions of law and administrative regulations of the Kentucky Board of Education. The following restrictions shall govern the expenditure of funds from the public school fund:

(1) The salary paid any rank of teachers shall be at least equivalent to the amount set forth in the biennial budget schedule for each rank and experience for a term of one hundred eighty-five (185) days for full-time service during the regular school year.

(2) Beginning with the 2004-2006 biennium, the Kentucky Board of Education shall not approve any working budget or salary schedule for local boards of education for any school year unless the one hundred eighty-five (185) day salary schedule for certified staff has been adjusted over the previous year's salary schedule by a percentage increase at least equal to the cost-of-living adjustment that is provided state government workers under the biennial budget. The base funding level in the program for support education excellence in Kentucky as defined in KRS 157.320 shall be increased by the statewide dollar value of the annual required cost-of-living percentage adjustment that shall be estimated on the sum of the previous year's statewide teachers' salaries.

(3) A district that compensates its teachers or employees for unused sick leave at the time of retirement, pursuant to KRS 161.155, may create an escrow account to maintain the amount of funds necessary to pay teachers or employees who qualify for receipt of the benefit. The fund is limited to not more than fifty percent (50%) of the maximum liability for the current year to be determined according to the number of staff employed by the district on September 15. Interest generated by the account shall be calculated as part of the total amount. The funds shall not be used for any purpose other than compensation for unused sick leave at the time of retirement and shall not be considered as part of the general fund balance in determining available local revenue for purposes of KRS 157.620.

(4) The per pupil capital outlay allotment for each district from the public school fund and from local sources shall be kept in a separate account and may be used by the district only for capital outlay projects approved by the chief state school officer in accordance with requirements of law, and based on a survey made in accordance with administrative regulations of the Kentucky Board of Education. These funds shall be used for the following capital outlay purposes:

(a) For direct payment of construction costs;

(b) For debt service on voted and funding bonds;

(c) For payment or lease-rental agreements under which the board eventually will acquire ownership of a school plant;

(d) For the retirement of any deficit resulting from overexpenditure for capital construction, if such deficit resulted from an emergency declared by the Kentucky Board of Education under KRS 160.550; and

(e) As a reserve fund for the above-named purposes, to be carried forward in ensuing budgets.

(5) The district may contribute capital outlay funds for energy conservation measures under guaranteed energy savings contracts pursuant to KRS 45A.345, 45A.352, and 45A.353. Use of these funds, provided in KRS 45A.353, 56.774, and 58.600, shall be based on the following:

(a) The energy conservation measures shall include facility alteration;

(b) The energy conservation measures shall be identified in the district's approved facility plan;

(c) The current facility systems are consuming excess maintenance and operating costs;

(d) The savings generated by the energy conservation measures are guaranteed;

(e) The capital outlay funds contributed to the energy conservation measures shall be defined

as capital cost avoidance as provided in KRS 45A.345(2) and shall be subject to the restrictions on usage as specified in KRS 45A.352(9); and

(f) The equipment that is replaced shall have exceeded its useful life as determined by a life-cycle cost analysis.

(6) If any district has a special levy for capital outlay or debt service that is equal to the capital outlay allotment or a proportionate fraction thereof, and spends the proceeds of that levy for the above-named purposes, the chief state school officer under administrative regulations of the Kentucky Board of Education, may authorize the district to use all or a proportionate fraction of its capital outlay allotment for current expenses. However, a district which uses capital outlay funds for current expenses shall not be eligible to participate in the School Facilities Construction Commission funds.

(7) If a survey shows that a school district has no capital outlay needs as shown in paragraphs (a), (b), (c), and (d) of subsection (4) of this section, upon approval of the chief state school officer, these funds may be used for school plant maintenance, repair, insurance on buildings, replacement of equipment, purchase of school buses, and the purchase of modern technological equipment, including telecommunications hardware, televisions, computers, and other technological hardware to be utilized for educational purposes only.

(8) In surveying the schools, the Department of Education shall designate each school facility as a permanent, functional, or transitional center.

(a) "Permanent center" means a center which meets the program standards approved by the Kentucky Board of Education, is located so that students are not subjected to an excessive amount of time being transported to the site, and has established an attendance area which will maintain enrollment at capacity but will also avoid overcrowding.

(b) "Functional center" means a center which does not meet all the criteria established for a permanent facility, but is adequate to meet accreditation program standards to insure no substantial academic or building deficiency. The facility plan shall include additions and renovations necessary to meet current accreditation standards for which federal, state, and local funds may be used.

(c) "Transitional center" means a center which the local board of education has determined shall no longer be designated permanent or functional. The center shall be destined to be closed and shall not be eligible for new construction, additions, or major renovation. However, the board of education shall maintain any operating transitional center to provide a safe and healthy environment for students.

(9) If a local school board authorized elementary, middle, or secondary education classes in a facility of a historical settlement school on January 1, 1994, the board shall continue to use the facilities provided by the settlement school if the facilities meet health and safety standards for education facilities as required by administrative regulations. The local school board and the governing body of the settlement school shall enter into a cooperative agreement that delineates the role, responsibilities, and financial obligations for each party.

(Enact. Acts 2002, ch. 135, § 1, effective July 1, 2004.)

Compiler's Notes. For this section as effective until July 1, 2004, see the preceding section also numbered KRS 157.420.

157.430. Percentage reduction in allotments in case of insufficient appropriation by General Assembly.

If, when the apportionments are being determined under the provisions of KRS 157.310 to 157.440, funds appropriated by the General Assembly to the public school fund are insufficient to provide the amount of money required under KRS 157.390, the chief state school officer, unless otherwise provided by the General Assembly in a budget bill, shall make a percentage reduction in the allotments to reduce the total of these allotments to funds available.

(Enact. Acts 1976, ch. 93, § 32, effective July 1, 1976; 1978, ch. 133, § 6, effective June 17, 1978; 1984, ch. 410, § 11, effective July 13, 1984; 1990, ch. 476, Pt. III, § 101, effective July 13, 1990.)

Legislative Research Commission Note. By reason of the amendment of KRS 157.390 by Acts 1985 (Ex. Sess.), ch. 10, § 6, a technical correction has been made in the reference to that section by the Reviser of Statutes, pursuant to KRS 7.136.

Cross-References. SEEK funding formula, 702 KAR 3:270.

Collateral References. 78 C.J.S., Schools and School Districts, § 13.

157.440. Levy of an equivalent tax rate — Participation in Facilities Support Program — District may exceed levy authorized by KRS 160.470.

(1) (a) Notwithstanding any statutory provisions to the contrary, effective for school years beginning after July 1, 1990, the board of education of each school district may levy an equivalent tax rate as defined in subsection (9)(a) of KRS 160.470 which will produce up to fifteen percent (15%) of those revenues guaranteed by the program to support education excellence in Kentucky. The levy for the 1990-91 school year shall be made no later than October 1, 1989, and no later than October 1, 1990, for the 1991-92 school year, and by October 1 of each odd-numbered year thereafter. Effective with the 1990-91 school year, revenue generated by this levy shall be equalized at one hundred fifty percent (150%) of the statewide average per pupil assessment.

(b) To participate in the Facilities Support Program of Kentucky, the board of education of each school district shall commit at least an

equivalent tax rate of five cents ($0.05) to debt service, new facilities, or major renovations of existing school facilities. The five cents ($0.05) shall be in addition to the thirty cents ($0.30) required by KRS 160.470(9) and any levy pursuant to paragraph (a) of this subsection. The levy shall be made no later than October 1 of each odd-numbered year. Eligibility for equalization funds for the biennium shall be based on the district funds committed to debt service on that date. The five cents ($0.05) shall be equalized at one hundred fifty percent (150%) of the statewide average per pupil assessment. The equalization funds shall be committed to debt service to the greatest extent possible, but any excess equalization funds not needed for debt service shall be deposited to a restricted building fund account. The funds may be escrowed for future debt service or used to address categorical priorities listed in the approved facilities plan pursuant to KRS 157.420.

(c) The board of education of each school district may contribute the levy equivalent tax rate of five cents ($0.05) and equalization funds for energy conservation measures under guaranteed energy savings contracts pursuant to KRS 45A.345, 45A.352, and 45A.353. Use of these funds, as provided under KRS 45A.353, 56.774, and 58.600 shall be based on the following guidelines:

1. Energy conservation measures shall include facility alteration;
2. Energy conservation measures shall be identified in the district's approved facility plan pursuant to KRS 157.420;
3. The current facility systems are consuming excess maintenance and operating costs;
4. The savings generated by the energy conservation measures are guaranteed;
5. The levy equivalent tax rate of five cents ($0.05) and equalization funds contributed to the energy conservation measures shall be defined as capital cost avoidance as provided in KRS 45A.345(2) and shall be subject to the restrictions on usage as specified in KRS 45A.352(9); and
6. The equipment that is replaced has exceeded its useful life as determined by a life cycle cost analysis.

(d) The rate levied by a district board of education under the provisions of this subsection shall not be subject to the public hearing provisions of KRS 160.470(7) or to the recall provisions of KRS 160.470(8).

(e) A school district which is at or above the equivalent tax rates permitted under the provisions of the Kentucky Education Reform Act of 1990, 1990 Ky. Acts ch. 476, shall not be required to levy an equivalent tax rate which is lower than the rate levied during the 1989-90 school year.

(2) (a) A district may exceed the maximum provided by subsection (1) of KRS 160.470 provided that, upon request of the board of education of the district, the county board of elections shall submit to the qualified voters of the district, in the manner of submitting and voting as prescribed in paragraph (b) of this subsection, the question whether a rate which would produce revenues in excess of the maximum provided by subsection (1) of KRS 160.470 shall be levied. The rate that may be levied under this section may produce revenue up to no more than thirty percent (30%) of the revenue guaranteed by the program to support education excellence in Kentucky plus the revenue produced by the tax authorized by this section. Revenue produced by this levy shall not be equalized with state funds. If a majority of those voting on the question favor the increased rate, the tax levying authority shall, when the next tax rate for the district is fixed, levy a rate not to exceed the rate authorized by the voters.

(b) The election shall be held not less than fifteen (15) or more than thirty (30) days from the time the request of the board is filed with the county clerk, and reasonable notice of the election shall be given. The election shall be conducted and carried out in the school district in all respects as required by the general election laws and shall be held by the same officers as required by the general election laws. The expense of the election shall be borne by the school district.

(3) For the 1966 tax year and for all subsequent years for levies which were approved prior to December 8, 1965, no district board of education shall levy a tax at a rate under the provisions of this section which exceeds the compensating tax rate as defined in KRS 132.010, except as provided in subsection (4) of this section and except that a rate which has been approved by the voters under this section but which was not levied by the district board of education in 1965 may be levied after it has been reduced to the compensating tax rate as defined in KRS 132.010, and except that in any school district where the rate levied in 1965 was less than the maximum rate which had been approved by the voters, the compensating tax rate shall be computed and may be levied as though the maximum approved rate had been levied in 1965 and the amount of revenue which would have been produced from such maximum levy had been derived therefrom.

(4) Notwithstanding the limitations contained in subsection (3) of this section, no tax rate shall be set lower than that necessary to provide such funds as are required to meet principal and interest payments on outstanding bonded indebtedness and payments of rentals in connection with any outstanding school revenue bonds issued under the provisions of KRS Chapter 162.

(5) The chief state school officer shall certify the compensating tax rate to the levying authorities.

(Enact. Acts 1954, ch. 214, § 14; 1965 (1st Ex. Sess.), ch. 2, § 6; 1970, ch. 118, § 3; 1976, ch. 127, § 22; 1978,

ch. 133, § 7, effective June 17, 1978; 1990, ch. 476, Pt. III, § 107, effective July 13, 1990; 1990, ch. 518, § 4, effective July 13, 1990; 1994, ch. 435, § 1, effective July 15, 1994; 1996, ch. 87, § 3, effective July 15, 1996; 1998, ch. 375, § 10, effective July 15, 1998; 2000, ch. 389, § 9, effective July 14, 2000.)

Cross-References. Bond issue approval, 702 KAR 3:020.
Restructuring revenue bond issues, 702 KAR 3:260.
SEEK funding formula, 702 KAR 3:270.

Kentucky Bench & Bar. Keating, You Get What You Pay For: Financing Public Schools in Kentucky, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 6.

Kentucky Law Journal. Stevens, Property Tax Revenue Assessment Levels and Taxing Rate: The Kentucky Rollback Law, 60 Ky. L.J. 105 (1971).

Opinions of Attorney General. A fiscal court may legally levy a tax at a figure above the $1.50 maximum set by KRS 160.475 where the figure is the amount necessary to provide the required local tax effort for participation in the Minimum Foundation Program by the local school district. OAG 65-600.

Former subsections (2) and (4) of KRS 160.470 relate to the basic general fund levy while former subsection (6) of KRS 160.477 (now repealed) and subsection (2) of this section limit special voted levies to the compensating tax rate. Accordingly, these statutes do not authorize an independent school district to apply a 10 percent increase to the special voted tax in effect in the district. OAG 67-300.

The maximum property tax levies for a merged school district for 1968-1969 are calculated as follows: (a) To the revenue that would be produced by applying the old city districts basic general fund levy for 1967-1968 to the assessment for that year add the revenue that would be produced by applying the old county (as it existed before the merger) district's basic general fund levy for 1967-1968 to the assessment for that year. The sum of these figures is the total amount of ad valorem tax revenue in the computation of the maximum permissible ad valorem tax revenue under subsection (3) of KRS 160.470. The proper basic fund levy can be calculated from the combined revenue and combined assessment figures (with net growth treated separately as indicated by former subdivision (3)(b) of KRS 160.470); (b) The special voted general fund rate (KRS 157.440) should be calculated at the proper compensating tax rate under the formula established in subdivision (6) of KRS 132.010 based on the 1965 revenue from this source and the 1966 assessment; (c) The special voted building fund rate (KRS 160.477 (now repealed)) should be calculated at the proper "compensating tax rate," again using the formula appearing in subdivision (6) of KRS 132.010; (d) The overall tax rate can then be determined by adding the rates in (a), (b), and (c) above. OAG 68-343.

A county board of education cannot, under the authority of subsection (3) of this section, levy a tax sufficient to meet the principal and interest payments on an outstanding bond issue authorized by the voters under this section and incurred to finance the construction of a high school, if the bond and rental requirements can be met by the use of total school district tax revenue. OAG 70-302.

Inasmuch as the state is only liable for its share of the expense of a special school tax election if the election is paid for by the county, the state would not be authorized to pay any portion of the election cost where the expense is paid by a citizens' educational advisory committee. OAG 76-214.

Even though the 1990 amendment to KRS 160.470 by Ch. 476, § 105 set a new maximum equivalent tax rate, since in subdivision (1)(c) of this section the 1990 amendment by Ch. 476, § 107 to that section provided that any school district, which is at or above the equivalent tax rate permitted, shall not be required to levy an equivalent tax rate which is lower than the rate levied during the 1989-90 school year, Jefferson County may keep its equivalent tax rate at 75.9 cents for the 1990-91 school year. OAG 90-45.

When levying a utilities gross receipts license tax for the purpose of complying with the minimum equivalent tax rate requirement set forth in KRS 160.470(12)(a) or for the purpose of participating in the "Tier 1" program set forth in this section, a school board must follow the notice and hearing requirements of KRS 160.593 and KRS 160.603, but the recall provisions of KRS 160.597 do not apply. OAG 90-88.

Cited: Miller v. Nunnelley, 468 S.W.2d 298 (Ky. 1971); Baker v. Strode, 348 F. Supp. 1257 (W.D. Ky. 1971).

NOTES TO DECISIONS

Analysis

1. Submission to voters.
2. —Unrelated objective.
3. Specification of maximum rate.
4. Listing of existing taxes.
5. Referendum not required.
6. Increase in building fund levy.
7. Voter recall election.
8. School funding.

1. Submission to Voters.

The Legislature in this section has taken recognizance of the two (2) entirely separate and distinct tax rate limitations of KRS 157.380 (now repealed) and 160.475 and provided that the maximum levy under either statute may be exceeded only by a vote of the people. Holmes v. Walden, 394 S.W.2d 458 (Ky. 1965).

2. —Unrelated Objective.

Combining unrelated objectives in a single question is not necessarily improper or invalid and proposition presenting an essentially unified scheme, all parts of which were reasonably related afforded voter a free and fair choice in determining the merits of the proposal and two (2) separate questions as to whether taxpayer was for or against a combined tax authorization for public school purposes were proper as to form and substance. Hulbert v. Board of Educ., 382 S.W.2d 389 (Ky. 1964).

3. Specification of Maximum Rate.

With respect to the matter of fixing a specific rate this section makes it clear that only a maximum rate need be specified in the proposition submitted to the voters. Hopson v. Board of Educ., 280 S.W.2d 489 (Ky. 1955).

4. Listing of Existing Taxes.

No law requires the listing on the ballot of existing taxes in the proposal for a new tax. Hulbert v. Board of Educ., 382 S.W.2d 389 (Ky. 1964).

5. Referendum Not Required.

Although county voted tax rate was higher, referendum in former city school district was not necessary condition precedent to imposition of uniform tax rate throughout city-county merged school district since the situation of the residents of the former city school district is analogous to that of property owners who automatically become liable for a voted indebtedness of a city upon annexation of their property. Board of Educ. v. Harville, 416 S.W.2d 730 (Ky. 1967).

6. Increase in Building Fund Levy.

Where voted building fund levy of school district had always been insufficient to meet rental payments required for the payment of revenue bonds so that part thereof had been paid from the general fund levy, the addition of subsection (7) to KRS 160.477 (now repealed) in a 1965 "rollback" act did not authorize an increase in building fund levy over the compensating rate as defined in KRS 132.010 to pay all of such rentals since subsection (3) of this section and 160.477(7) simply

restate and reaffirm the proposition that bond and rental payments must come out of the building fund levy, or out of the extra voted general fund levy or out of the basic general fund levy. Fayette County Bd. of Educ. v. White, 410 S.W.2d 612 (Ky. 1966).

7. Voter Recall Election.

County board of education's levy of a utility gross receipts licenses tax, designed to produce additional revenue up to 15% of the base funding level, was subject to statutory recall election provisions. Board of Educ. v. Brooks, 824 S.W.2d 431 (Ky. Ct. App. 1992).

The 1990 change in KRS 160.470(10) and (11) prevents voter recall of a property tax levy if the tax revenue is intended to provide mandatory minimum base funding or permissive Tier One funding, but under the previous funding scheme, the "notwithstanding" language of KRS 160.470 had no abrogative effect on voter recall of permissive utility taxes and the General Assembly preserved this right in the funding scheme. Board of Educ. v. Brooks, 824 S.W.2d 431 (Ky. Ct. App. 1992).

8. School Funding.

The present school funding statutes permit local boards of education to raise funds through property taxes and permissive taxes such as the utilities tax; base funding and Tier One funding can be produced by a property tax not subject to voter recall and this nonrecallable option enables boards of education to fund schools without relying on permissive taxes; the General Assembly has supplied a mechanism to satisfy base funding, as well as Tier One funding according to the mandate of Section 183 of the Kentucky Constitution; and that is all that Rose v. Council for Better Educ., Inc., 790 S.W.2d 186 (Ky. 1989) requires. Board of Educ. v. Brooks, 824 S.W.2d 431 (Ky. Ct. App. 1992).

Experimental Programs

157.510. Definitions. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1974, ch. 265, § 1(1); 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 186, effective July 13, 1990) was repealed by Acts 1996, ch. 10, § 2, effective July 15, 1996.

157.520. Authorization of experimental programs — Administrative regulations. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1974, ch. 265, §§ 1(2) to (5); 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 187, effective July 13, 1990; 1994, ch. 6, § 1, effective July 15, 1994) was repealed by Acts 1996, ch. 10, § 2, effective July 15, 1996.

157.530. Reimbursement of school district — Allotment of funds. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1974, ch. 265, §§ 1(6), (7); 1990, ch. 476, Part III, § 188, effective July 13, 1990) was repealed by Acts 1996, ch. 10, § 2, effective July 15, 1996.

157.540. Evaluation of programs — Annual progress reports. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1974, ch. 265, § 1(8); 1990, ch. 476, Pt. III, § 189, effective July 13, 1990) was repealed by Acts 1996, ch. 10, § 2, effective July 15, 1996.

Power Equalization Program Fund

157.545. Power equalization program fund. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1976, ch. 93, § 2, effective July 1, 1977) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

157.550. Determination of amount of state power equalization support for each school district. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1976, ch. 93, § 3, effective July 1, 1977) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

157.555. Calculation of amount of state power equalization. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1976, ch. 93, § 4, effective July 1, 1977; 1978, ch. 147, § 3, effective March 28, 1978) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

157.560. Determination of maximum rate of power equalization support. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1976, ch. 93, § 5, effective July 1, 1977; 1985 (1st Ex. Sess.), ch. 10, § 8, effective October 18, 1985) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

157.564. Twenty-five cent school levy tax by district school board necessary for eligibility for state power equalization support. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1984, ch. 137, § 1, effective March 27, 1984; 1985 (1st Ex. Sess), ch. 10, § 7, effective October 18, 1985) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

157.565. Procedure for increasing tax rate to maximum support of power equalization — Substitution of revenue from permissive taxes to qualify for matching funds where tax rate not sufficient. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1976, ch. 93, § 6, effective July 1, 1977; 1978, ch. 147, § 1, effective March 28, 1978; 1982, ch. 217, § 2, effective July 15, 1982) was repealed by Acts 1984, ch. 137, § 3, effective March 27, 1984.

157.570. Procedure for payments of funds to districts. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1976, ch. 93, § 7, effective July 1, 1977; 1978, ch. 147, § 27, effective March 28, 1978) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

157.575. Power equalization support — Calculation of equalization tax rate. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1976, ch. 93, § 8, effective July 1, 1977; 1978, ch. 147, § 4, effective March 28, 1978; 1986, ch. 119, § 2, effective July 15, 1986) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

157.580. Use of power of equalization support. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1985 (1st Ex. Sess.), ch. 10, § 9, effective October 18, 1985; 1986, ch. 435, § 1, effective July 15, 1986; 1988, ch. 337, § 1, effective July 15, 1988) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

Ride to the Center for the Arts Program Fund

157.605. Establishment of fund.

There is hereby established the "Ride to the Center for the Arts Program Fund" in the Department of Education. The fund may receive state appropriations, gifts, grants, federal funds, and tax receipts. Moneys from the fund shall be disbursed for purposes specified in KRS 157.606.

(Enact. Acts 1988, ch. 281, § 1, effective July 15, 1988; 1990, ch. 476, Pt. IV, § 190, effective July 13, 1990.)

Cross-References. Ride to the Center for the Arts Program Fund, 704 KAR 7:080.

157.606. Administration — Grants — Authority to promulgate administrative regulations.

(1) To facilitate opportunities for statewide participation by public school children in the Commonwealth in educational experiences available through the Kentucky Center for the Arts, the Department of Education shall administer the Ride to the Center for the Arts Program. Moneys from the ride to the center for the arts fund shall be used to provide matching funds to local school districts for the cost of transportation of students in grades six (6), seven (7), eight (8), and nine (9) for the purpose of visiting the Kentucky Center for the Arts.

(2) Grants shall be in the amount equal to one-half (½) the total transportation cost of the visit, as submitted and certified to by the local district to the chief state school officer or his designee.

(3) The Kentucky Board of Education shall promulgate administrative regulations as may be needed in the administration of the program and disbursement of moneys from the fund.

(Enact. Acts 1988, ch. 281, § 2, effective July 15, 1988; 1990, ch. 476, Pt. IV, § 191, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

Cross-References. Ride to the Center for the Arts Program Fund, 704 KAR 7:080.

Intellectually Gifted or Talented Children Program Fund

157.610. Intellectually gifted or talented children program funds. [Repealed.]

Compiler's Notes. This section (Acts 1978, ch. 133, § 8) was repealed by Acts 1980, ch. 183, § 9, effective July 15, 1980.

School Facilities Construction Commission

157.611. School Facilities Construction Commission — Legislative intent.

(1) By establishing the School Facilities Construction Commission, the General Assembly expresses its commitment to help local districts meet the school construction needs and the education technology needs of the state in a manner which will insure an equitable distribution of funds based on unmet facilities need and the total implementation of the Kentucky Education Technology System.

(2) The commission is empowered to act on behalf of school districts to issue bonds in the name of the commission and to enter into lease agreements with local boards of education to finance construction of new facilities, major renovation of existing school facilities. The commission is also empowered to enter into agreements which may provide for a percentage discount, on a biennially renewable basis, of annual lease agreements due the commission for those districts which participate. The commission is also empowered to enter into lease agreements with the Department of Education to build state-owned facilities operated by the Department of Education or to purchase or lease education technology equipment and related software identified in the technology master plan for those facilities or the Department of Education.

(3) The commission shall assist local school boards meet their education technology needs by distributing state funds appropriated for this purpose and by assisting school boards to design efficient finance plans for the bonding, purchase or lease of education technology equipment and related software identified in the technology master plan.

(4) The commission shall administer two (2) separate programs: the school construction funding program and the education technology funding program. Funds appropriated for each program shall be maintained, administered, and audited separately.

(5) Nothing in KRS 157.611 to 157.640 shall prohibit a school district from issuing bonds in accordance with KRS Chapter 162.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 382, effective July 13, 1990; 1992, ch. 195, § 5, effective April 3, 1992.)

Compiler's Notes. This section (Enact. Acts 1985, (1st Ex. Sess.), ch. 10, § 9, effective October 18, 1985; 1986, ch. 435, § 1, effective July 15, 1986) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 382, effective July 13, 1990.

Opinions of Attorney General. The Kentucky School Facilities Construction Commission Act, KRS 157.611 to 157.640, does not give the Commission unilateral power to choose whether that Act or KRS 162.120 to 162.300 will be used to finance school building construction. OAG 86-50.

The Kentucky School Facilities Construction Commission can enter into participation agreements with local school districts providing for the payment of debt service on bonds issued by local issuing agencies without the necessity of taking title and leasing school projects to local districts. OAG 86-50.

Construction projects for which the School Facilities Construction Commission may provide assistance are those listed on the school facilities plans of eligible school districts approved as of June 30 of the year preceding the session of the General Assembly at which funding for the projects is provided through the appropriation of funds for the payment of debt service on the Commission's bonds. As a result, offers of assistance made by the Commission under the applicable statutes are, by statutory necessity, specific as to projects, and the Commission does not have the authority to allow a school district to expend funds available to the district under the original offer of assistance for a project which was not on the approved facility plan as of June 30 of the year preceding the biennium in which funding is approved, but which has since been added to a duly approved facility plan. OAG 87-46.

157.615. Definitions for KRS 157.611 to 157.640. As used in KRS 157.611 to 157.640, unless the context requires otherwise:

(1) "Available local revenue" means the sum of the school building fund account balance; the bonding potential of the capital outlay and building funds; and the capital outlay fund account balance on June 30 of odd-numbered years. These accounts shall be as defined in the manual for Kentucky school financial accounting systems;

(2) "Board of education" means the governing body of a county school district or an independent school district;

(3) "Bonds" or "bonds of the commission" means bonds issued by the commission, or issued by a city, county, or other agency or instrumentality of the Board of Education, in accordance with KRS Chapter 162, payable as to principal and interest from rentals received from a board of education or from the department pursuant to a lease or from contributions from the commission, and constitute municipal bonds exempt from taxation under the Constitution of the Commonwealth;

(4) "Department" means the State Department of Education;

(5) "District technology plan" means the plan developed by the local district and the Department of Education and approved by the Kentucky Board of Education upon the recommendation of the Council for Education Technology;

(6) "Equivalent tax rate" means the rate which results when the income from all taxes levied by the district for school purposes is divided by the total assessed value of property plus the assessment for motor vehicles certified by the Revenue Cabinet as provided by KRS 160.470;

(7) "Kentucky Education Technology System" means the statewide system set forth in the technology master plan issued by the Kentucky Board of Education with the recommendation of the Council for Education Technology and approved by the Legislative Research Commission;

(8) "Lease" or "lease instrument" means a written instrument for the leasing of one (1) or more school projects executed by the commission as lessor and a board of education as lessee, or executed by the commission as lessor and the department as lessee, as the case may be;

(9) "Lease/purchase agreement" means a lease between the school district or the department and a vendor that includes an option to purchase the technology equipment or software at the end of the lease period;

(10) "Percentage discount" means the degree to which the commission will participate in meeting the bond and interest redemption schedule required to amortize bonds issued by the commission on behalf of a local school district;

(11) "Project" means a defined item of need to construct new facilities or to provide major renovation of existing facilities which is identified on the priority schedule of the approved school facilities plan;

(12) "School facilities plan" means the plan developed pursuant to the survey specified by KRS 157.420 and by administrative regulations of the Kentucky Board of Education;

(13) "Technology master plan" means the long-range plan for the implementation of the Kentucky Education Technology System as developed by the Council for Education Technology and approved by the Kentucky Board of Education and the Legislative Research Commission;

(14) "Unmet facilities need" means the total cost of new construction and major renovation needs as shown by the approved school facilities plan less any available local revenue;

(15) "Unmet technology need" means the total cost of technology need as shown by the approved technology plan of the local district; and

(16) "Eligible district" means any local school district having an unmet facilities need, as defined in this section, in excess of one hundred thousand dollars ($100,000) or a district qualifying for education technology funding.

(Enact. Acts 1985 (1st Ex. Sess.), ch. 10, § 27, effective October 18, 1985; 1988, ch. 213, § 1, effective July 15, 1988; 1990, ch. 476, Pt. IV, § 192, effective July 13, 1990; 1992, ch. 195, § 6, effective April 3, 1992; 1996, ch. 87, § 4, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 2001, ch. 165, § 1, effective June 21, 2001.)

Cross-References. Education Technology Funding Program guidelines, 750 KAR 2:010.

Requirements for school and district report cards, 703 KAR 5:140.

Opinions of Attorney General. The Kentucky School Facilities Construction Commission can enter into participation agreements with local school districts providing for the payment of debt service on bonds issued by local issuing agencies without the necessity of taking title and leasing school projects to local districts. OAG 86-50.

157.617. Creation — Powers — Members — Duties.

(1) An independent corporate agency and instrumentality of the Commonwealth is hereby created and established with all the general corporate powers incidental thereto. The corporation shall be known as "The School Facilities Construction Commission" and shall be endowed with perpetual succession and with the power to contract and to be contracted with, to sue and be sued, to have and to use a corporate seal, to adopt bylaws and regulations, subject to the provisions of KRS Chapter 13A, for the orderly conduct of its affairs.

(2) The commission shall consist of the secretary of the Finance and Administration Cabinet and eight (8) members appointed by the Governor. The members shall possess a knowledge of long-term debt financing or school facility planning and construction. Appointment shall become effective on January 1 and end on December 31, except the initial appointments shall become effective when made by the Governor. Members shall serve staggered six (6) year terms, except when making the initial appointments three (3) members shall be appointed for six (6) year terms, three (3) members shall be appointed for four (4) year terms, and two (2) members shall be appointed for two (2) year terms. The Governor shall appoint a chairman and vice chairman for the first year; thereafter a chairman and vice chairman shall be elected annually by the membership. The commission may elect other officers it considers necessary and shall employ a director and staff necessary to manage the program.

(3) If any of the officers of the commission whose signatures or facsimiles thereof appear on any bonds of the commission, or on any other instruments or documents pertaining to the functions of the commission, shall cease to be such officers before delivery of the bonds, or before the effective date or occasion of such instruments or documents, the signatures, and facsimiles thereof, shall nevertheless be valid for all purposes the same as if the officers had remained in office until such delivery or effective date or occasion.

(4) Officers, employees, and agents of the commission having custody of money shall at all times be bonded to the maximum amount reasonably anticipated to be held at any one (1) time; and each bond shall have good corporate surety, provided by a surety company authorized to do business in the Commonwealth, to be approved in each instance by the commission. Premiums for such surety shall be paid from the budgeted funds of the commission.

(5) The commission shall at all times keep and maintain books of record and account reflecting accurately all its financial transactions. The commission shall be audited annually and shall submit a written report of its activities to the Governor. A copy of each report shall be filed with the Legislative Research Commission.

(6) Moneys received by the commission as rentals under any lease, and from the sale of bonds are declared not to be funds of the Commonwealth, but shall be corporate funds of the commission to be held, administered, invested, and disbursed as trust funds under the terms, provisions, pledges, covenants, and agreements set forth in its leases and bond resolutions and bonds.

(7) The commission and all of its transactions, activities, and proceedings in the authorization and issuance of its bonds, execution of leases, acceptance of conveyances of property, transaction of conveyances of property, and otherwise, shall be exempt from all provisions relating to custodianship by the Secretary of State of title documents, leases, abstracts of title, maps, and other records as provided in KRS 56.020 and 56.320. Conveyances of property to or by the commission shall not be deemed to be conveyances to or by the Commonwealth, and title to any property acquired by the commission shall be held by the commission in its own name.

(8) The Finance and Administration Cabinet shall provide technical assistance to the commission in the issuance of bonds.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 383, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1985, (1st Ex. Sess.), ch. 10, § 28, effective October 18, 1985) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 383, effective July 13, 1990.

Cross-References. Commission procedures, 750 KAR 1:010.

157.620. School district participation requirements.

(1) To participate in the school construction funding program, the district must have unmet needs as defined by KRS 157.615 and must meet the following eligibility criteria:

(a) Commit at least an equivalent tax rate of five cents ($0.05) to debt service, new facilities, or major renovations of existing school facilities as defined by KRS 157.440. A district that levies the five cents ($0.05) and has not accepted an official offer of assistance from the School Facilities Construction Commission, made pursuant to KRS 157.611, may use receipts from the levy for other purposes as determined by the district board of education.

(b) On July 1 of odd-numbered years, the district board of education shall restrict all available local revenue, as defined by KRS 157.615, for school building construction, to be utilized in accordance with the priorities determined by the most current school facilities plan approved by the Kentucky Board of Education.

(2) Interest earned on restricted funds required by this section shall become a part of the restricted funds.

(3) Funds restricted by the requirements of this section may be used by the district for projects or a portion thereof as listed in priority order on the approved school facilities plan prior to receiving state funds. Any local school district which is not an eligible district may be permitted, upon written

application to the Department of Education, to transfer funds restricted by KRS 157.611 to 157.640 for other school purposes.

(4) Not later than October 15 of the year immediately preceding an even-numbered year regular session of the General Assembly, the Kentucky Board of Education shall submit a statement to the School Facilities Construction Commission certifying the following in each district:
   (a) The amount of school facility construction needs in each district;
   (b) The amount of available local revenue in each district; and
   (c) That the district has or has not met the eligibility criteria established by subsection (1) of this section.

(5) Construction needs shall be those needs specified in the school facilities plan approved by the Kentucky Board of Education as of June 30 of the year preceding an even-numbered year regular session of the General Assembly.

(Enact. Acts 1985 (1st Ex. Sess.), ch. 10, § 29, effective July 29, 1985; 1988, ch. 356, § 1, effective April 10, 1988; 1990, ch. 476, Pt. IV, § 193, effective July 13, 1990; 1990, ch. 518, § 6, effective July 13, 1990; 1992, ch. 251, § 1, effective July 14, 1992; 1992, ch. 352, § 1, effective July 14, 1992; 1994, ch. 435, § 2, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996; 2001, ch. 58, § 16, effective June 21, 2001; 2001, ch. 165, § 2, effective June 21, 2001.)

Legislative Research Commission Note. (6/21/2001). This section was amended by 2001 Ky. Acts chs. 58 and 165, which do not appear to be in conflict and have been codified together.

Compiler's Notes. Section 43 of Acts 1985 (Ex. Sess.), ch. 10 read: "Whereas, there are critical school building needs in the state and the fiscal year end school district revenue of 1985-86 is necessary to expedite the implementation of the school facilities construction commission, an emergency is declared to exist and Section 29 of the Senate Committee Substitute of House Bill 6 shall become effective upon its passage and approval by the Governor."

Cross-References. Implementation guidelines — Kentucky School Facilities Planning Manual, 702 KAR 1:001.

School district tax rate formulas, 702 KAR 3:275.

SEEK funding formula, 702 KAR 3:270.

Kentucky Bench & Bar. Keating, You Get What You Pay For: Financing Public Schools in Kentucky, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 6.

Opinions of Attorney General. Construction projects for which the School Facilities Construction Commission may provide assistance are those listed on the school facilities plans of eligible school districts approved as of June 30 of the year preceding the session of the General Assembly at which funding for the projects is provided through the appropriation of funds for the payment of debt service on the Commission's bonds. As a result, offers of assistance made by the Commission under the applicable statutes are, by statutory necessity, specific as to projects, and the Commission does not have the authority to allow a school district to expend funds available to the district under the original offer of assistance for a project which was not on the approved facility plan as of June 30 of the year preceding the biennium in which funding is approved, but which has since been added to a duly approved facility plan. OAG 87-46.

The plain language of this section permits the county prospectively to commit 5¢ of the 36.2¢ equivalent tax rate now in effect for debt service, new facilities or major renovations of existing school facilities in order to qualify to participate in the school construction funding program, regardless of the fact that in the past the district may not have had a voted building tax. OAG 90-80.

This section permits any district which has a current levy exceeding both the required 30¢ and the 5¢ tax, not to levy an additional tax. OAG 90-80.

157.621. Additional tax levy for debt service and new facilities in school districts with student population growth — Criteria — Expiration of section.

(1) Local school districts that have experienced student population growth during a five (5) year period may levy a five cents ($0.05) tax for debt service and new facilities in addition to the five cents ($0.05) levied under the school construction funding program provided in KRS 157.620. The tax rate levied by the district under this provision shall not be subject to a recall vote as provided in KRS 160.470(8) and shall not be equalized by state funding.

(2) A local school district shall meet the following criteria in order to levy the tax provided in subsection (1) of this section:
   (a) Growth of at least one hundred fifty (150) students in average daily attendance and three percent (3%) overall growth for the five (5) preceding years;
   (b) Bonded debt to the maximum capability of at least eighty percent (80%) of capital outlay from the Support Education Excellence in Kentucky funding program, all revenue from the local facility tax, and all receipts from state equalization on the local facility tax;
   (c) Current student enrollment in excess of available classroom space; and
   (d) A local school facility plan that has been approved by the Kentucky Board of Education and certified to the School Facilities Construction Commission.

(3) When the state appropriations amount to the total cost of equalizing the five cents ($0.05) at the rate prescribed in KRS 157.620, as evidenced in the biennial budget and the budget memorandum, the provisions of this section shall expire.

(Enact. Acts 1994, ch. 436, § 1, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 389, § 10, effective July 14, 2000.)

Cross-References. School district tax rate formulas, 702 KAR 3:275.

157.622. Assistance to school districts — Priority order of needs — Exception — Reallocation of funds — Disposition of bond savings and refinancing savings.

The School Facilities Construction Commission shall be governed by the following procedures in providing assistance to school districts for construction purposes:

(1) Upon receipt of the certified statements from the Kentucky Board of Education as required by KRS

157.620, the commission shall compute the unmet needs of all eligible districts as defined by KRS 157.615;

(2) Assistance to each eligible district shall be determined by computing the ratio of the available state funding to total unmet need statewide. Based on the computed ratio, an equivalent percentage of each eligible district's unmet need will be funded;

(3) Each eligible district which has otherwise complied with the provisions of KRS 157.615 and 157.620 shall be offered sufficient funding to finance construction of the portion of its unmet need computed by applying the ratio determined in subsection (2) of this section to the total unmet need of the district. The funds shall be applied to the projects listed on the most current facility plan approved by the Kentucky Board of Education, and the funds shall be applied to projects in the priority order listed on the plan. Exceptions to the priority order of projects may be approved by the School Facilities Construction Commission when it is documented by the local board of education and approved by the Kentucky Board of Education upon the recommendation of the chief state school officer that the school district's priority order of needs has changed. The exceptions shall not alter the amount of the offer of assistance;

(4) The commission shall promulgate administrative regulations whereby an eligible district which fails in any budget period to receive an allocation of state funds that is sufficient to fund the district's priority project or portions thereof may accumulate credit, subject to the availability of funds, for its unused state allocation for a period not to exceed four (4) years. Accumulation and retention of credit is contingent upon the transfer of available local revenue to the restricted construction account by June 30 of each year;

(5) Except as provided in subsection (6) of this section, all unused state allocations accumulated according to the provisions of subsection (3) of this section shall be reallocated by the commission. The reallocation shall follow the process and intent as set forth in this section with eligible districts being those districts which contribute unused state allocations to the reallocation account. Any district which has an unused state allocation after funding its first priority project in a biennium is not eligible for consideration for additional funds from the reallocation account. Any funding received and utilized from the reallocation account by a district shall equally reduce the credit as set forth in this section; and

(6) Refinancing savings that have occurred since July 1, 1997, and subsequent savings to the commission generated over the life of a bond by the local district's refinancing of the bond shall be dedicated to the district's account by the commission. Any funds accumulated in this account shall be used toward the district's next priority, but shall not be deducted from the district's share of commission funds under subsection (3) of this section.

(Enact. Acts 1985 (1st Ex. Sess.), ch. 10, § 30, effective October 18, 1985; 1988, ch. 213, § 2, effective July 15, 1988; 1990, ch. 476, Pt. IV, § 194, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 591, § 1, effective July 15, 1998; 2001, ch. 165, § 3, effective June 21, 2001.)

Legislative Research Commission Note. (6/21/2001). A reference to "subsection (7)" in subsection (5) of this statute has been changed in codification to "subsection (6)" under KRS 7.136(1)(e) and (h). In 2001 Ky. Acts ch. 165, sec. 3, the existing subsection (6) was renumbered as subsection (5), but an internal reference to that subsection in the existing language of this statute was overlooked.

Cross-References. Commission procedures, 750 KAR 1:010.

Implementation guidelines — Kentucky School Facilities Planning Manual, 702 KAR 1:001.

Opinions of Attorney General. The Kentucky School Facilities Construction Commission can enter into participation agreements with local school districts providing for the payment of debt service on bonds issued by local issuing agencies without the necessity of taking title and leasing school projects to local districts. OAG 86-50.

Construction projects for which the School Facilities Construction Commission may provide assistance are those listed on the school facilities plans of eligible school districts approved as of June 30 of the year preceding the session of the General Assembly at which funding for the projects is provided through the appropriation of funds for the payment of debt service on the Commission's bonds. As a result, offers of assistance made by the Commission under the applicable statutes are, by statutory necessity, specific as to projects, and the Commission does not have the authority to allow a school district to expend funds available to the district under the original offer of assistance for a project which was not on the approved facility plan as of June 30 of the year preceding the biennium in which funding is approved, but which has since been added to a duly approved facility plan. OAG 87-46.

157.625. Issuance of bonds.

(1) Bonds of the commission shall be issued in the name of the commission, shall be designated "school building revenue bonds" or, if appropriate, "school building revenue refunding bonds," and shall additionally be identified by the name of the board of education executing the lease. If the commission shall issue more than one (1) series of bonds for the same lessee from time to time, each series, including the first or subsequent to the first, shall additionally be identified distinctly by alphabetical or chronological designation, by date of the bonds, or otherwise as the commission may determine.

(2) For the purpose of determining any limit prescribed by any law for investment of any public funds, or funds of banks, trust companies, insurance companies, building and loan associations, credit unions, pension and retirement funds, and fiduciaries, in obligations of a single obligor, bonds issued by the commission pursuant to KRS 157.615 to 157.640 shall not be deemed to be bonds or obligations of the same obligor except to the aggregate of all series of bonds involving leases of a single board of education.

(3) Bonds issued by the commission under the provisions of KRS 157.615 to 157.640 are hereby made securities in which all public officers and public bodies of the Commonwealth and its political sub-

divisions, all insurance companies, trust companies, banking associations, investment companies, executors, trustees, and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of a similar nature may properly and legally invest funds, including capital in their control or belonging to them. The bonds are hereby made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the Commonwealth for any purpose for which the deposit of bonds or other obligations of the Commonwealth is now or may hereafter be authorized by law.

(4) Nothing contained herein shall be construed to prohibit a board of education from electing to issue bonds on the local level through a city, county, or other agency and instrumentality of the board of education, and in such event the commission may enter into a participation agreement with the board of education implementing the commission's participation in the financing plan represented by the bonds. In the event of the issuance of bonds on the local level, the board of education may pledge and assign the commission's participation to the issuer to secure the bonds, and may contract with the issuer to permit the collection by the commission or the issuer of rentals due from the board of education under the lease in the event of a failure by the board of education to make the payments in a timely manner.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 384, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1985, (1st Ex. Sess.), ch. 10, § 31, effective October 18, 1985; 1988, ch. 213, § 2, effective July 15, 1988) was repealed and reenacted by Acts 1975, ch. 476, Pt. V, § 384, effective July 13, 1990.

Opinions of Attorney General. The Kentucky School Facilities Construction Commission Act, KRS 157.611 to 157.640, does not give the Commission unilateral power to choose whether that Act or KRS 162.120 to 162.300 will be used to finance school building construction. OAG 86-50.

The Kentucky School Facilities Construction Commission can use a composite bond issue to provide funding for multiple school districts in one bond issue, but each district should be identified separately in the issue. OAG 86-50.

157.627. Requirements for issuance — Accounting procedure.

In connection with each bond issue of the commission as defined in KRS 157.615(3), it shall be the duty of the commission:

(1) To require the district board of education to insure the project to its full insurable value, or to the amount of the bonds outstanding from time to time, whichever is the less, against the hazards covered by the standard fire insurance policy with standard endorsement of "extended coverage," and to require that a copy of each policy be delivered to the commission for inspection and for its records;

(2) To require periodic accounting from all depositories of funds, the same to be submitted on forms prepared and supplied by the commission;

(3) To furnish to the certified public accountant auditing the district, summary identification and description of each issue, and to request that the financial records of the board of education relating thereto be audited as a part of the annual audit of the board of education, and that a separate statement or report thereof be filed with the commission;

(4) To send to each board of education at least thirty (30) days before the due date of any rental payment a notice of the amount of rental to become due and the date thereof, and to require acknowledgment thereof; and

(5) To receive from the board of education, satisfactory evidence that sufficient funds have been transmitted to the commission or its agent, or will be so transmitted, in the event of the board's failure to pay debt service and administrative costs when due, as provided in the lease, to notify and request that the department withhold from the board of education a sufficient portion of any undisbursed funds then held or set aside or allocated to it, and to request that the department transfer the required amount thereof to the commission for the account of the board of education.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 385, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1985, (1st Ex. Sess.), ch. 10, § 32, effective October 18, 1985; 1988, ch. 213, § 4, effective July 15, 1988) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 385, effective July 13, 1990.

Opinions of Attorney General. A local school district may contract to allow funds held for the local district by the Kentucky Department of Education to be transferred as directed, assuming all statutory and constitutional requirements relative to the use of those funds, if any, have been met. OAG 87-22.

157.628. Reimbursement for bonds previously issued.

(1) A school district which has issued revenue bonds according to the provisions of KRS Chapter 162 shall be eligible to participate in a reimbursement schedule if all of the following conditions are met:

(a) The district met all criteria for first round financing except that the district had no unmet needs on its facility survey in effect at that time;

(b) An amended facility survey, approved prior to June 30, 1986, is on file with the Department of Education; and

(c) Revenue bonds were issued after January 1, 1986, and prior to January 1, 1987.

(2) Annual reimbursement shall be provided for bond debt service equal to the amount to which the district would have been entitled if the facility survey had been updated prior to first round funding.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 386, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1988, ch. 356, § 2, effective July 15, 1988) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 386, effective July 13, 1990.

157.630. Sale of bonds — Publication area.
Bonds of the commission shall be sold in such form and in such manner as the commission deems appropriate in accordance with prevailing market conditions. If the bonds are sold on the basis of sealed bids or proposals, the "publication area," as that term is used in KRS Chapter 424, shall not be deemed to be the area within which the office of the commission is situated, but shall be deemed to be the "publication area" of the board of education executing the lease. If the bonds are sold on the basis of sealed bids or proposals, the sale shall be publicly advertised by means of a notice conforming to the provisions of KRS 424.140, and the same shall be published at least one (1) time, at least seven (7) days in advance of the date set forth for opening bids, in a daily newspaper having bona fide general circulation throughout the Commonwealth. If such publication is made, it shall be sufficient for publication in the "publication area" to be made only one (1) time, at least seven (7) days in advance of the date set forth for the opening of bids. If a copy of the sale notice be delivered or transmitted in good faith to the qualified newspaper of the "publication area" in time for publication in an issue thereof published seven (7) days or more in advance of the date set forth for the opening of bids, and with direction for publication therein, any failure of such newspaper to make publication as directed shall not invalidate the sale of the bonds by the commission on the designated date, nor require postponement or cancellation thereof.
(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 387, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1985, (1st Ex. Sess.), ch. 10, § 32, effective October 18, 1985) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 387, effective July 13, 1990.

Opinions of Attorney General. The Kentucky School Facilities Construction Commission must sell its bonds or the bonds of local issuing agencies issued on behalf of eligible school districts to which the Commission has made a commitment on a negotiated basis at a publicly advertised, competitive sale pursuant to this section. OAG 86-50.

157.632. Department to require audit.
It shall be the duty of the department, upon written request of the commission:
(1) To cause the certified public accountant auditing the district to audit the financial records relating to any identified and described bond issue of the commission, as an incident to the certified public accountant's next ensuing annual audit of such board of education, and each subsequent annual audit; and to provide a statement or report to the commission.
(2) Upon receiving a notification and request from the commission to ascertain whether the lease of the board of education has been renewed and is in force in accordance with its terms, and if the same is ascertained to be in force; to withhold from the board of education a sufficient portion of any undisbursed funds then held or set aside or allocated by the department for the board of education, and to comply with the terms of the notification and request of the commission for the account of said board of education.
(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 388, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1985, (1st Ex. Sess.), ch. 10, § 32, effective October 18, 1985) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 388, effective July 13, 1990.

157.635. Revenue bonds for state projects.
(1) The School Facilities Construction Commission is hereby authorized to issue revenue bonds for the purpose of financing projects authorized by the General Assembly based upon lease rental agreements with the Kentucky Department of Education for the purpose of:
(a) Acquiring sites and building vocational schools which are to be owned by the state and operated by the Department of Education;
(b) Constructing additions and extensions to the School for the Deaf and the School for the Blind which are owned by the state and operated by the Department of Education; and
(c) Building projects for vocational rehabilitation programs which are owned by the state and operated by the Department of Education.
(2) In exercising the authority in subsection (1) of this section, the commission will act under the applicable provisions of KRS Chapter 56.
(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 389, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1985, (1st Ex. Sess.), ch. 10, § 32, effective October 18, 1985) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 389, effective July 13, 1990.

157.640. Successor agency of Kentucky School Building Authority.
The School Facilities Construction Commission is the successor agency of the Kentucky School Building Authority created by the 1978 Acts of the General Assembly Chapter 153. All powers, duties, obligations, and assets of the Kentucky School Building Authority, including an obligation for only those projects which have been approved for funding or partial funding as of July 1, 1985, and for which funds have been appropriated by the General Assembly as of June 30, 1986, are hereby transferred to the School Facilities Construction Commission. The commission is hereby empowered with all rights of successorship necessary to assure continuance of all legal and contractual functions and liabilities associated with the outstanding bonds issued in the name of the Kentucky School Building Authority and may refund such bonds previously issued in the name of the Kentucky School Building Authority.
(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 390, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1985, (1st Ex. Sess.), ch. 10, § 32, effective October 18, 1985) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 390, effective July 13, 1990.

157.650. Construction of certain sections relating to educational technology — Power of School Facilities Construction Commission.

(1) By establishing the education technology funding program in the School Facilities Construction Commission, the General Assembly expresses its commitment to promote a partnership with the state and the local public school districts to meet the educational technology needs of Kentucky's students in a manner which will insure an equitable distribution of funds. Nothing in KRS 157.611, 157.615, 157.650 to 157.665, or 160.160 shall be construed as limiting a local school district's legal options to acquire education technology equipment and related software with state dollars if the equipment and software is approved under the master technology plan.

(2) The School Facilities Construction Commission is empowered to assist requesting local boards of education to issue bonds or to enter into lease agreements, or both, to finance the purchase or lease of technological equipment and related software or major renovation of existing school facilities to allow the use of educational technology.

(Enact. Acts 1992, ch. 195, § 1, effective April 3, 1992.)

Cross-References. Education Technology Funding Program guidelines, 750 KAR 2:010.

Use of local monies to reduce unmet technology need, 701 KAR 5:110.

157.655. Education technology program.

(1) To participate in the education technology funding program, a local public school district shall have an unmet technology need described in its local district technology plan and approved by the Kentucky Board of Education pursuant to its technology master plan, and shall match equally the amount of funds offered by the School Facilities Construction Commission for this purpose each biennium, except as provided in subsection (2) of this section. Technology approved for the Kentucky Education Technology System and included in the local district technology plan, which was acquired prior to April 3, 1992, and for which the district has an outstanding financial obligation, shall qualify for commission funding. This provision shall not apply to any purchases or contracts made between April 3, 1992, and the first offers of assistance recommended by the Council for Education Technology to the State Board for Elementary and Secondary Education.

(2) For fiscal year 1992-93, funding shall be allotted to districts without an approved plan upon the recommendation of the Council for Education Technology to the State Board for Elementary and Secondary Education.

(3) If a local board of education determines that for any reason the district's approved technology plan is grossly inconsistent with the administrative regulations governing the development of the plan, the local board may certify, by official action, the reason for the inconsistency and may request that the Department of Education reevaluate the technology plan of the district. After review of the data, the chief state school officer may require a reevaluation and the approval of a new technology plan certified prior to an official offer from the School Facilities Construction Commission. If the chief state school officer elects to recommend the new technology plan to the Kentucky Board of Education, the board shall notify the School Facilities Construction Commission of any change required in the offer of assistance for the district.

(Enact. Acts 1992, ch. 195, § 2, effective April 3, 1992; 1996, ch. 362, § 6, effective July 15, 1996.)

Legislative Research Commission Note. (7/15/96). Notwithstanding 1996 Ky. Acts ch. 362, sec. 6, references to the State Board for Elementary and Secondary Education in subsections (1) and (2) of this statute have been left unchanged because those references are historical in nature.

Cross-References. Education Technology Funding Program guidelines, 750 KAR 2:010.

Use of local monies to reduce unmet technology need, 701 KAR 5:110.

157.660. Procedures for providing assistance for education technology.

The School Facilities Construction Commission shall be governed by the following procedures in making an offer of assistance to local public school districts for providing education technology:

(1) The base level of assistance to each eligible district shall be determined by dividing the total amount available for education technology by the total of the prior year's statewide average daily attendance of the eligible districts times the district's prior year's average daily attendance.

(2) The funds shall be applied to the projects listed in the district's technology plan, and the funds shall be applied to projects in the priority order listed on the plan except as provided in KRS 157.655(2). The first priority for the expenditure of each new offer of assistance shall be to meet the previous obligations of bonds, leases, or other financial agreements made for education technology by the district.

(3) The commission shall establish administrative regulations by which a district that receives an offer of assistance but does not have the local match shall be able to accumulate a credit for the state offer of assistance for a period not to exceed three (3) years.

(4) All unused state funds allocated according to the provisions of subsection (1) of this section shall be reallocated by the commission. The reallocation shall follow the process and intent as set forth in this section with eligible districts being those districts which have the available local matching funds and have not completely implemented the Kentucky Education Technology System.

(Enact. Acts 1992, ch. 195, § 3, effective April 3, 1992.)

Cross-References. Education Technology Funding Program guidelines, 750 KAR 2:010.

Use of local monies to reduce unmet technology need, 701 KAR 5:110.

157.665. Kentucky education technology trust fund.

(1) To carry out the purpose of providing educational technology for the public system of education pursuant to KRS Chapter 156, the Kentucky education technology trust fund is hereby established in the Finance and Administration Cabinet. Funds appropriated by the General Assembly in each biennial budget for the purchase or lease of education technology for the public system of education shall be credited to the fund and invested until needed. All interest earned on money in the fund shall be retained in the fund for reinvestment.

(2) All funds appropriated for these purposes by the 1990 and 1992 Regular Sessions of the General Assembly and thereafter, and any interest generated by these funds, shall be transferred to the account on April 3, 1992. All money credited to the fund, including interest, shall be used only for education technology purposes as defined by the Kentucky Board of Education's technology master plan and shall not lapse, but shall be carried forward in the next biennial budget. The purposes expressed in this section shall be deemed to be the purposes for which any budgetary appropriation for educational technology shall have been made.

(3) Funds shall be transferred to the local school districts upon certification of the School Facilities Construction Commission that the district has met the criteria for assistance. All other expenditures shall require the approval of the Kentucky Board of Education.

(Enact. Acts 1992, ch. 195, § 4, effective April 3, 1992; 1996, ch. 362, § 6, effective July 15, 1996.)

Cross-References. Education Technology Funding Program guidelines, 750 KAR 2:010.

Requirements for school and district report cards, 703 KAR 5:140.

Use of local monies to reduce unmet technology need, 701 KAR 5:110.

Bluegrass State Skills Corporation

157.710. Definitions for KRS 157.720 to 157.750. [Renumbered.]

Compiler's Notes. This section (Enact. Acts 1984, ch. 211, § 1, effective July 13, 1984, repealed and reenact. Acts 1990, ch. 476, Pt. V, § 391, effective July 13, 1990) was renumbered as KRS 154.12-204 by the Reviser of Statutes under the authority of KRS 7.136 and 7.140.

157.720. Bluegrass State Skills Corporation — Board. [Renumbered.]

Compiler's Notes. This section (Enact. Acts 1984, ch. 211, § 2, effective July 13, 1984; 1988, ch. 199, § 1, effective July 15, 1988; 1988, ch. 205, § 8, effective July 15, 1988; 1990, ch. 476, Pt. IV, § 195, effective July 13, 1990) was renumbered as KRS 154.12-205 by the Reviser of Statutes under the authority of KRS 7.136 and 7.140.

157.730. Duties of corporation. [Renumbered.]

Compiler's Notes. This section (Enact. Acts 1984, ch. 211, § 3, effective July 13, 1984; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 392, effective July 13, 1990) was renumbered as KRS 154.12-206 by the Reviser of Statutes under the authority of KRS 7.136 and 7.140.

157.740. Grants-in-aid. [Renumbered.]

Compiler's Notes. This section (Enact. Acts 1984, ch. 211, § 4, effective July 13, 1984; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 393, effective July 13, 1990) was renumbered as KRS 154.12-207 by the Reviser of Statutes under the authority of KRS 7.136 and 7.140.

157.750. Annual report. [Renumbered.]

Compiler's Notes. This section (Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 394, effective July 13, 1990) was renumbered as KRS 154.12-208 by the Reviser of Statutes under the authority of KRS 7.136 and 7.140.

Kentucky School Building Authority

157.800. Legislative intent. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1978, ch. 153, § 1, effective July 17, 1978) was repealed by Acts 1985 (Ex. Sess.), ch. 10, § 41, effective June 30, 1986.

157.805. Definitions. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1978, ch. 153, § 2, effective July 17, 1978) was repealed by Acts 1985 (Ex. Sess.), ch. 10, § 41, effective June 30, 1986.

157.810. Trust and agency powers. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1978, ch. 153, § 3, effective July 17, 1978) was repealed by Acts 1985 (Ex. Sess.), ch. 10, § 41, effective June 30, 1986.

157.815. Kentucky school building authority. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1978, ch. 153, § 4, effective July 17, 1978) was repealed by Acts 1985 (Ex. Sess.), ch. 10, § 41, effective June 30, 1986.

157.820. Signatures on bonds — Quorum — Meetings — Bylaws — Rules and regulations. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1978, ch. 153, § 5, effective July 17, 1978; 1980, ch. 114, § 22) was repealed by Acts 1985 (Ex. Sess.), ch. 10, § 41, effective June 30, 1986.

157.825. Duty of authority. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1978, ch. 153, § 6, effective July 17, 1978) was repealed by Acts 1985 (Ex. Sess.), ch. 10, § 41, effective June 30, 1986.

157.830. Director of authority. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1978, ch. 153, § 7, effective July 17, 1978) was repealed by Acts 1985 (Ex. Sess.), ch. 10, § 41, effective June 30, 1986.

157.835. Cost participation formula. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1978, ch. 153, § 8, effective July 17, 1978) was repealed by Acts 1985 (Ex. Sess.), ch. 10, § 41, effective June 30, 1986.

157.840. Eligibility classification system. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1978, ch. 153, § 9, effective July 17, 1978) was repealed by Acts 1985 (Ex. Sess.), ch. 10, § 41, effective June 30, 1986.

157.845. Eligibility for assistance. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1978, ch. 153, § 10, effective July 17, 1978) was repealed by Acts 1985 (Ex. Sess.), ch. 10, § 41, effective June 30, 1986.

157.850. Participation agreements — Bonds. [Repealed.]

Legislative Research Commission Note. Although KRS 157.850 was amended by Acts 1986, ch. 23, § 10, effective July 15, 1986, it was repealed by Acts 1985 (Ex. Sess.), ch. 10, § 41, effective June 30, 1986. Pursuant to KRS 446.100, the repeal prevails.

Compiler's Notes. This section (Enact. Acts 1978, ch. 153, § 11, effective July 17, 1978) was repealed by Acts 1985 (Ex. Sess.), ch. 10, § 41, effective June 30, 1986.

157.855. Moneys from rentals and bond sales as corporate funds. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1978, ch. 153, § 12, effective July 17, 1978) was repealed by Acts 1985 (Ex. Sess.), ch. 10, § 41, effective June 30, 1986.

157.860. Officers, employes and agents to be bonded. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1978, ch. 153, § 13, effective July 17, 1978) was repealed by Acts 1985 (Ex. Sess.), ch. 10, § 41, effective June 30, 1986.

157.865. Records and accounts — Annual audit. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1978, ch. 153, § 14, effective July 17, 1978) was repealed by Acts 1985 (Ex. Sess.), ch. 10, § 41, effective June 30, 1986.

157.870. Prerequisites for bond issue. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1978, ch. 153, § 15, effective July 17, 1978) was repealed by Acts 1985 (Ex. Sess.), ch. 10, § 41, effective June 30, 1986.

157.875. Duties of department. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1978, ch. 153, § 16, effective July 17, 1978) was repealed by Acts 1985 (Ex. Sess.), ch. 10, § 41, effective June 30, 1986.

157.880. Bond issue — Legal investment. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1978, ch. 153, § 17, effective July 17, 1978) was repealed by Acts 1985 (Ex. Sess.), ch. 10, § 41, effective June 30, 1986.

157.885. Exemptions. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1978, ch. 153, § 18, effective July 17, 1978) was repealed by Acts 1985 (Ex. Sess.), ch. 10, § 41, effective June 30, 1986.

157.890. Sale of bonds — Publication area. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1978, ch. 153, § 19, effective July 17, 1978) was repealed by Acts 1985 (Ex. Sess.), ch. 10, § 41, effective June 30, 1986.

157.895. Revenue bond. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1978, ch. 153, § 20, effective July 17, 1978) was repealed by Acts 1985 (Ex. Sess.), ch. 10, § 41, effective June 30, 1986.

Environmental Education

157.900. Statement of legislative purpose.
The General Assembly hereby declares that maintaining a clean and healthy environment is a state priority and is the individual and collective responsibility of all citizens of Kentucky. It is therefore in the public interest that a comprehensive environmental education initiative be undertaken to promote an informed and knowledgeable citizenry with the skills and attributes necessary to effectively and constructively solve existing environmental problems, prevent new ones, and maintain a balanced and economically healthy environment for future generations.
(Enact. Acts 1990, ch. 408, § 1, effective July 13, 1990.)

157.905. Definitions.
As used in KRS 157.900 to 157.915:
(1) "Environmental education" means an education process dealing with the interrelationships among the natural world and its man-made surroundings; is experience-based; interdisciplinary in its approach; and is a continuous life-long process that provides the citizenry with the basic knowledge and skills necessary to individually and collectively encourage positive actions for achieving and maintaining a sustainable balance between man and the environment.
(2) "Environmental literacy" means having adequate knowledge and understanding of environmental information, concepts and processes.
(Enact. Acts 1990, ch. 408, § 2, effective July 13, 1990.)

157.910. Kentucky Environmental Education Council.
(1) There is hereby established the Kentucky Environmental Education Council, referred to hereafter

as the council, to provide leadership and planning for environmental education for the population of Kentucky through the cooperative efforts of educators, government agencies, businesses, and public interests. The council shall be an independent agency and be attached to the Education, Arts, and Humanities Cabinet for administrative purposes.

(2) The nine (9) member council shall be appointed to four (4) year terms by the Governor and be composed of a balance of education, government, industry, and environmental interests. Members appointed by the Governor shall have the authority to carry out the provisions of KRS 157.900 to 157.915.

(3) The council shall hire an executive director, environmental education specialists, and clerical staff to carry out the functions and duties of the council.

(4) The council members shall receive no compensation, but shall be reimbursed for actual expenses incurred in accordance with state procedures and policies.

(5) The council membership shall elect a chairperson to serve a one (1) year term.

(Enact. Acts 1990, ch. 408, § 3, effective July 13, 1990; 1994, ch. 209, § 13, effective July 15, 1994; 1998, ch. 67, § 2, effective July 15, 1998.)

157.915. Functions of council.

The functions of the council shall be to:

(1) Create and update annually a five (5) year management and operational plan to make as effective as possible the coordination, delivery, and marketing of all state environmental education programs;

(2) Establish an interagency subcommittee to advise the council on environmental education matters;

(3) Establish and help coordinate the activities of regional environmental education centers and advisory committees at all state universities to serve as networks for the dissemination of environmental education programs, materials, and information across the state;

(4) Establish a competitive system for awarding grants for the establishment and maintenance of regional environmental education centers;

(5) Seek and receive private support to fund state and regional environmental education initiatives;

(6) Assist in the integration and evaluation of environmental education in existing school curricula;

(7) Monitor and report periodically on environmental literacy in Kentucky and continually assess trends and needs in environmental education on a local, state, national, and global basis; and

(8) Make recommendations and seek changes through regulations, legislation, and other means to promote environmental literacy in Kentucky.

(Enact. Acts 1990, ch. 408, § 4, effective July 13, 1990.)

Geography Education

157.920. Geography education — Legislative findings and goal.

(1) The General Assembly hereby finds that:

(a) The decline in geographic literacy has been widely recognized;

(b) Geographic knowledge is essential to social, political, and environmental leadership potential and civic involvement; and

(c) Support should be given to local efforts to restore geography education to the school curriculum, train teachers, prepare teaching materials, and raise public awareness of the importance of geography education.

(2) The General Assembly establishes, on behalf of the citizens of the Commonwealth, a goal that the next generation of students in Kentucky will graduate with the geographic skills and knowledge that will guarantee their readiness to meet the economic, environmental, and civic challenges of the future.

(Enact. Acts 2000, ch. 259, § 1, effective July 14, 2000.)

157.921. Geographic Education Board — Purpose — Membership — Bylaws.

(1) The Kentucky Geographic Education Board is established to provide leadership and planning for geography education for the population of Kentucky through the efforts of elementary, secondary, and postsecondary educators, government agencies, and public interests. The board shall be an independent agency and be attached to the Education, Arts, and Humanities Cabinet for administrative purposes.

(2) The twelve (12) member board shall be appointed to two (2) year terms, initially appointed by the Governor, and composed of the following members:

(a) Three (3) representatives from postsecondary institutions;

(b) One (1) representative from the Council for Social Sciences;

(c) Six (6) representatives from elementary and secondary schools;

(d) One (1) representative of the Department of Education; and

(e) One (1) representative of the Council on Postsecondary Education.

(3) The board shall select from its membership a chair and establish bylaws, including bylaws governing board membership and length of terms. Upon expiration of the initial appointments and adoption of bylaws governing membership and length of terms by the board, the board shall be self-perpetuating, and the appointment and length of terms shall be made in accordance with the board's bylaws. Vacancies that occur before the expiration of the initial appointments shall be filled by the Governor for the remaining term of the vacancy.

(4) The board members shall receive no compensation but shall be reimbursed for actual expenses incurred in accordance with state procedures and policies.

(Enact. Acts 2000, ch. 259, § 2, effective July 14, 2000.)

157.922. Functions of the board.

The functions of the board shall be to:

(1) Create an annual plan to improve assessment, curriculums, outreach, and professional development related to geography education in Kentucky;

(2) Establish a competitive system for awarding grants for programs to encourage and support geography education;
(3) Seek and receive private support to fund state programs to encourage and support geography education;
(4) Prepare an annual report of its activities and annual plan, forward copies of the report to the Governor, the Legislative Research Commission, the Kentucky Board of Education, and the Council on Postsecondary Education, and make copies available to citizens of the Commonwealth; and
(5) Make recommendations and seek changes through administrative regulations, legislation, and other means to promote geography education in Kentucky.

(Enact. Acts 2000, ch. 259, § 3, effective July 14, 2000.)

157.924. Geography education trust fund — Purposes.

(1) The Kentucky geography education trust fund is established in the State Treasury to award grants for programs that encourage and support geography education in Kentucky. Funds appropriated by the General Assembly in each biennial budget for the purpose of supporting geography education shall be credited to the fund and invested until needed. The fund may also receive gifts, grants from private and public sources, and federal funds. All money credited to the fund, including interest earned on money in the fund, shall be retained in the fund for reinvestment and used for geography education purposes as defined by the Kentucky Geographic Education Board.
(2) Money appropriated to the fund shall not lapse at the end of a fiscal year or a biennium.

(Enact. Acts 2000, ch. 259, § 4, effective July 14, 2000.)

PENALTIES

157.990. Penalties.

(1) Any person who willfully violates any of the provisions of KRS 157.100 to 157.180 shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500).
(2) Any person who willfully violates any of the provisions of KRS 157.310 to 157.440 shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500).

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 395, effective July 13, 1990.)

Legislative Research Commission Note. Former KRS 157.990 (4421c-10: amend. Acts 1954, ch. 214, § 15) was repealed by Acts 1974, ch. 363, § 18, effective June 30, 1976.

Compiler's Notes. This section (Enact. Acts 1976, ch. 93, § 33, effective July 1, 1976) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 395, effective July 13, 1990.

Opinions of Attorney General. A public school cannot use the withholding of grades, diplomas or records as a leverage to force a student to meet his obligations concerning property. OAG 82-386.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 77, 78.

CHAPTER 158

CONDUCT OF SCHOOLS — SPECIAL PROGRAMS

SECTION.

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158.007. Definitions for chapter.

CONDUCT OF SCHOOLS

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158.035. Certificate of immunization.
158.036. [Repealed.]
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158.108. Effect of failure to pay for or rent school supplies.
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158.145. Legislative findings and declarations on school dropout rate.
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158.148. Student discipline guidelines — Local code of acceptable behavior and discipline.
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records — Cause of action — Districtwide standards of behavior for students participating in extracurricular activities.
158.154. Principal's duty to report certain acts to local law enforcement agency.
158.155. Reporting of specified incidents of student conduct which resulted in expulsion — Notation on school records — Report to law enforcement of certain student conduct — Immunity.
158.160. Notification to school by parent or guardian of child's medical condition threatening school safety — Exclusion of child with communicable disease from school — Closing of school during epidemic.
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158.177. Teaching of evolution — Right to include Bible theory of creation.
158.178. Ten Commandments to be displayed. [Unconstitutional.]
158.180. [Repealed.]
158.181. Legislative findings.
158.182. Definitions for KRS 158.181 to 158.187.
158.183. Prohibited acts by students — Rights of student — Administrative remedies.
158.184. Construction favoring establishment clause, religious liberty, and free speech.
158.185. Construction prohibiting school employee from leading, directing, or encouraging religious or anti-religious activity in violation of establishment clause.
158.186. Copies of law to local school board and school-based decision making council.
158.187. Short title for KRS 158.181 to 158.187.
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158.200. Moral instruction.
158.210. Survey of desire for moral instruction may be made.
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158.270. [Repealed.]
158.280. [Repealed.]
158.281. Definitions for KRS 156.476, 158.281, 158.282, and 161.051.
158.282. Instruction of all blind students in the use of braille — Assessment for blind students in program — Exceptions.
158.285. [Repealed.]
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158.290. School fundraising activities.
158.292. Excused absences for students who serve as election officers.
158.293. Excused absences for secondary school students who participate in Military Burial Honor Guard Program — Inclusion in instructional program.
158.294. Excused absences for students who particpate in Veterans' Service Organization Burial Honor Guard — Inclusion in instructional program.
158.295. [Repealed.]

PRESCHOOL PROGRAMS

158.300. [Repealed.]
158.310. [Repealed.]
158.320. [Repealed.]
158.330. [Repealed.]
158.340. [Repealed.]
158.350. [Repealed.]
158.355. [Repealed.]
158.360. Family literacy programs.

VOTER EDUCATION

158.380. [Repealed.]
158.385. [Repealed.]
158.390. [Repealed.]
158.395. [Repealed.]

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158.405. [Repealed.]
158.410. [Repealed.]
158.415. [Repealed.]
158.420. [Repealed.]
158.425. [Repealed.]
158.430. [Repealed.]

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158.440. Legislative findings on school safety and order.
158.441. Definitions for chapter.
158.442. Center for School Safety — Duties — Members of board.
158.443. Terms of board members — Meetings — Selection of administering university — Duties of board of directors.
158.444. Administrative regulations — Role of Department of Education.
158.445. Local assessment of school safety and school discipline — District assessment — Local plans.
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158.450. [Repealed.]
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158.460. [Repealed.]
158.465. [Repealed.]
158.470. [Repealed.]

CAREER EDUCATION

158.505. [Repealed.]
158.510. [Repealed.]
158.515. [Repealed.]
158.520. [Repealed.]
158.525. [Repealed.]
158.530. [Repealed.]
158.535. [Repealed.]
158.540. [Repealed.]
158.545. [Repealed.]
158.550. [Repealed.]

INSTRUCTION FOR GIFTED AND TALENTED STUDENTS

158.600. [Repealed.]
158.605. [Repealed.]
158.607. [Repealed.]
158.610. [Repealed.]
158.615. [Repealed.]
158.617. [Repealed.]

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158.618. [Repealed.]
158.620. [Repealed.]

ADVANCED PLACEMENT AND DUAL ENROLLMENT

158.622. Administrative regulations of Kentucky Board of Education relating to advanced placement courses — Duties of Department of Education relating to advanced placement and dual enrollment programs — Credit for Virtual High School and advanced placement courses.

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158.640. [Repealed.]
158.6401. [Repealed.]
158.6402. [Repealed.]
158.6403. [Repealed.]

EDUCATIONAL IMPROVEMENT

158.645. Capacities required of students in public education system.
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158.6455. System to identify and reward successful schools — School accountability index — Consequences for schools not meeting goals — Scholastic audits — Formula for school accountability and improvement goal — District accountability — Appeals of performance judgments.
158.6457. Definitions for KRS 158.6452, 158.6453, 158.6455, and 158.6457.
158.6458. Plan for implementation of state assessment and accountability system — Report.
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158.647. Education Assessment and Accountability Review Subcommittee — Members — Duties.
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158.648. State Advisory Council for Gifted and Talented Education — Purpose — Duties.
158.649. Achievement gaps — Data on student performance — Policy for reviewing academic performance — Biennial targets — Review and revision of consolidated plan.
158.650. Definitions for KRS 158.680 to 158.710. [Expired. See Compiler's Notes.]
158.660. [Repealed.]
158.665. [Repealed.]
158.670. [Repealed.]
158.680. State Advisory Committee for Educational Improvement. [Expired. See Compiler's Notes.]
158.683. [Renumbered.]
158.685. Standards of student, program, service, and operational performance to be established — Educationally deficient school district — Action to eliminate deficiency — Education development district. [Expired. See Compiler's Notes.]
158.690. [Repealed.]

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158.700. [Repealed.]
158.710. Responsibilities and functions of educationally deficient districts and education development districts — Plans required — Reports required. [Expired. See Compiler's Notes.]
158.720. [Repealed.]
158.730. [Repealed.]
158.740. [Repealed.]
158.750. [Repealed.]
158.760. School-to-Careers System — Legislative intent — Goals.
158.7603. School-to-Careers Grant Program — Authority for administrative regulations — Advisory committee.
158.770. Advisory committee on writing program.
158.775. Writing program pilot project.
158.780. Management improvement programs.
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158.785. Collection and review of management data — Management audit — Conditions for designation as state assisted or state managed district — Actions required.
158.790. [Repealed.]
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158.794. Early Reading Incentive Grant Steering Committee — Membership — Duties.
158.795. [Repealed.]
158.796. Governor's Scholars Program.
158.797. [Repealed.]
158.798. Program to encourage studies in mathematics, science, and related technologies — Role of Kentucky Science and Technology Council, Inc.
158.799. Name for program created by KRS 158.798.
158.800. [Repealed.]
158.801. Definitions for KRS 158.801 and 158.803.
158.803. Early mathematics testing program — Purposes — Development and requirements of program — Annual reports.
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158.830. Legislative findings — Construction of KRS 158.830 to 158.836.
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158.834. Self-administration of medications by students with asthma — Authorization — Written statement — Acknowledgment of liability limitation — Duration of permission.
158.836. Possession and use of asthma medications.

PENALTIES

158.990. Penalties.

158.005. Definition of "character education."
As used in KRS Chapters 156 and 158, unless the context requires otherwise, "character education" means instructional strategies and curricula that:
(1) Instill and promote core values and qualities of good character in students including altruism, citizenship, courtesy, honesty, human worth, justice, knowledge, respect, responsibility, and self-discipline;
(2) Reflect the values of parents, teachers, and local communities; and
(3) Improve the ability of students to make moral and ethical decisions in their lives.
(Enact. Acts 2000, ch. 162, § 1, effective July 14, 2000.)

158.007. Definitions for chapter.
As used in KRS Chapter 158 unless the context requires otherwise:
(1) "Advanced placement" means a college-level course for the College Board Advanced Placement examination that incorporates all topics and instructional strategies specified by the College Board on its standard syllabus for a given subject area.
(2) "Board" means the Kentucky Board of Education.
(3) "College Board Advanced Placement examination" means the advanced placement test administered by the College Entrance Examination Board.
(4) "College Board" means the College Entrance Examination Board, a national nonprofit association that provides college admission guidance and advanced placement examinations.
(5) "Core curriculum" means at least one (1) course in at least four (4) of the six (6) following subject areas: English, science, mathematics, social studies, foreign language, and the arts.
(6) "Department" means the Kentucky Department of Education.
(7) "Dual credit" means a college-level course of study developed in accordance with KRS 164.098 in which a high school student receives credit from both the high school and postsecondary institution in which the student is enrolled upon completion of a single class or designated program of study.
(8) "Dual enrollment" means a college-level course of study developed in accordance with KRS 164.098 in which a student is enrolled in a high school and postsecondary institution simultaneously.
(9) "International Baccalaureate" means the International Baccalaureate Organization's Diploma Programme, a comprehensive two (2) year program designed for highly motivated students.
(10) "Kentucky Virtual High School" means secondary-level instructional programs or courses offered by the Kentucky Department of Education through the Internet and other on-line, computer-based methods.
(11) "Kentucky Virtual University" means a college-level instructional program offered by the Council on Postsecondary Education through the Internet or other on-line, computer-based methods.
(Enact. Acts 2002, ch. 97, § 1, effective July 15, 2002.)

CONDUCT OF SCHOOLS

Legislative Research Commission Note. 1988 Acts, chapter 172, § 1, provides that each public elementary and secondary school classroom in the Commonwealth of Kentucky prominently display a copy of the Bill of Rights, embodying the individual liberties safeguarded by the Constitution of the United States.

158.010. Uniform school system to be maintained — Variations.
(1) A uniform system of common schools shall be maintained in Kentucky.
(2) Local school districts may, with approval of local boards of education, provide special programs and services to one (1) or more areas of the district in contrast to other areas where the variation is a reasonable one based on an attempt to equalize the education progress of the students within the district.
(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 396, effective July 13, 1990.)

Legislative Research Commission Note. 1988 Acts, chapter 172, § 1, provides that each public elementary and secondary school classroom in the Commonwealth of Kentucky prominently display a copy of the Bill of Rights, embodying the individual liberties safeguarded by the Constitution of the United States.

Compiler's Notes. This section (4363-1: amend. Acts 1972, ch. 254, § 5; 1978, ch. 19, § 1, effective June 17, 1978) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 396, effective July 13, 1990.

Cross-References. Certification of school employees, KRS 161.010 to 161.120.
Cigarette smoking prohibited on school ground, KRS 438.050.
Courses of study, Department of Education to prescribe, KRS 156.160.
Flags to be furnished schools, KRS 2.040.
Libraries of schools, Department for Libraries and Archives to aid, KRS 171.140.
Local or special act for common school prohibited, Const., § 59(25).
Practice schools, KRS 164.380.
Regional Educational Compact, education of Negroes under, KRS 164.540.
Students called into active service in National Guard, KRS 38.470.
Textbooks, selection and use, KRS 156.405 to 156.445.
White and colored to share school fund proportionately, Const., § 187.

Opinions of Attorney General. The approval of the State Department of Education is required in order to conduct a school on a continuous basis. OAG 67-277.

Cited: Rose v. Council for Better Educ., Inc., 790 S.W.2d 186 (Ky. 1989).

NOTES TO DECISIONS

ANALYSIS

1. Control over common schools.
2. Equal and uniform educational opportunities.

1. Control Over Common Schools.

Though the funds are raised by both general taxation by the Commonwealth and special taxation by local boards their expenditure is under the control of the State Board of Education and all public schools of the state, even in cities having unusual powers over their schools, are state institutions and members of the Board of Education are state officers and title to school property is in the Commonwealth and is held by the board in trust for the state. Board of Educ. v. Talbott, 286 Ky. 543, 151 S.W.2d 42 (1941).

Maintenance, management and control of public school system is strictly a governmental function provided by the Constitution or statutes enacted pursuant thereto and the Legislature in making such provisions may provide exclusive remedies for the infringement of any rights that may be perpetrated by any officer or officers in the maintenance of the project. Marshall v. White, 287 Ky. 290, 152 S.W.2d 945 (1941).

It is clear that the General Assembly intended that the state board should have control over the common schools with the power of removal of such board members who might be found guilty of specified charges as a means of maintaining a uniform school system. Gearhart v. Kentucky State Bd. of Educ., 355 S.W.2d 667 (Ky. 1962).

2. Equal and Uniform Educational Opportunities.

Operation of two (2) high schools in western part of county and none in eastern part without providing equal and uniform educational opportunities for those in the eastern half is clearly arbitrary, discriminatory, and in violation of this section and Const., § 183. Wooley v. Spalding, 293 S.W.2d 563 (Ky. 1956), aff'd, 365 S.W.2d 323 (Ky. 1962).

The fundamental mandate of the Constitution and the statutes of Kentucky is that there shall be equality and that all public schools shall be nonpartisan and nonsectarian. Wooley v. Spalding, 293 S.W.2d 563 (Ky. 1956), aff'd, 365 S.W.2d 323 (Ky. 1962).

Collateral References. 68 Am. Jur. 2d, Schools, § 6.

158.020. Separate schools for white and colored children. [Repealed.]

Compiler's Notes. This section (4363-8, 4399-49) was repealed by Acts 1966, ch. 184, § 8.

158.021. Exceptions to requirement of separate schools for white and colored students. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1948, ch. 112; 1950, ch. 155) was repealed by Acts 1966, ch. 184, § 8.

158.025. Hospital courses in medicine, surgery or nursing not restricted by KRS 158.020. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1948, ch. 112) was repealed by Acts 1966, ch. 184, § 8.

158.030. "Common school" defined — Attendance at public school and primary school program.

"Common school" means an elementary or secondary school of the state supported in whole or in part by public taxation. No school shall be deemed a "common school" or receive support from public taxation unless the school is taught by a certified teacher for a minimum school term as defined by KRS 158.070 and every child residing in the district who satisfies the age requirements of this section has had the privilege of attending it. Provided, however, that any child who is six (6) years of age, or who may become six (6) years of age by October 1, shall attend public school or qualify for an exemption as provided by KRS 159.030. Any child who is five (5) years of age, or who may become five (5) years of age by October 1, may enter a primary school program, as defined in KRS 158.031.

(4363-2: amend. Acts 1946, ch. 155, § 1; 1950, ch. 108; 1952, ch. 145, § 1; 1962, ch. 74; 1972, ch. 151, § 4; 1978, ch. 136, § 2, effective July 1, 1979; 1980, ch. 306, § 2, effective July 15, 1980; 1984, ch. 367, § 5, effective July 13, 1984; 1984, ch. 397, § 7, effective July 13, 1984; 1988, ch. 33, § 2, effective July 15, 1988; 1990, ch. 476, Pt. I, § 25, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 434, § 3, effective July 15, 1998.)

Cross-References. Penalty to which school board member subject for admission of under-age child, KRS 158.990.

Approval for teaching in the primary school program, 704 KAR 20:660.

Child find, evaluation, and reevaluation, 707 KAR 1:300.

Children with disabilities enrolled in private schools, 707 KAR 1:370.

Comprehensive system of personnel development, 707 KAR 1:330.

Confidentiality of information, 707 KAR 1:360.

Definitions, 707 KAR 1:280.

Determination of eligibility, 707 KAR 1:310.

Free appropriate public education, 707 KAR 1:290.

Individual education program, 707 KAR 1:320.

Interim methods for verifying successful completion of the primary program, 703 KAR 4:040.

Monitoring and recovery of funds, 707 KAR 1:380.

Placement decisions, 707 KAR 1:350.

Primary school program guidelines, 704 KAR 3:440.

Procedural safeguards and state complaint procedures, 707 KAR 1:340.

Pupil attendance, 702 KAR 7:125.

Opinions of Attorney General. A board of education may enter into a tuition contract only with another common school as defined in this section. OAG 61-423.

Breckinridge Training School, state operated vocational schools, and Lincoln Institute are not "common schools" which term is synonymous with the phrase "approved public school" as used in KRS 158.130 (now repealed). OAG 61-423.

The phrase "approved public school" as used in KRS 158.130 (now repealed) is synonymous with the term "common school" as defined in this section. OAG 61-423.

It was the intent of the Legislature to make the last day of December the cutoff date for school admissions so that all children who are or who will become six (6) years of age by December 31 following the opening day of school, may enter school provided they do so within 30 calendar days of the beginning of the school year. OAG 61-507.

No ADA payments could be made to a school district where a child was allowed to enroll in the first grade who did not meet the age requirements. OAG 63-22.

Unless he met the statutory age requirements of Kentucky a child could not be enrolled in the first grade of the common schools of Kentucky even though he had previously been attending first grade in another state. OAG 63-22.

In order for a local school board to have a legal right to spend foundation program funds or revenue raised by local taxation for adults over 21 years of age the program would have to be part of the common school program. OAG 65-410.

Local school boards have a legal right to spend foundation program funds or revenue raised by local taxation for adults over 21 years of age. OAG 65-410.

A child living with its guardian within the county school district would be "residing" in the district within the meaning of the statutes and would be eligible to attend the county schools without the payment of tuition. OAG 66-550.

A county board of education has legal authority to refuse the admission of nonresident children to its schools, but the board would be prohibited from arbitrarily extending school attendance privileges to some nonresident children while denying the same privilege to others. OAG 66-550.

While this section extends the right of school attendance to children six (6) years of age, that right must be exercised within 30 calendar days of the opening of school, and a child who was six (6) years of age in October and who applied for admission to a Kentucky school more than 30 days after the opening of school was not eligible for enrollment since his attendance at kindergarten in Indiana did not constitute an enrollment in regular school classes. OAG 67-102.

So long as a child remains in bona fide residence in the Bellewood Presbyterian Home the child has the privilege of attending schools in the school district in which the home is situated. OAG 68-126.

A child who resides within the geographical boundaries of the school district is not removed therefrom by the mere fact that control over the property in which the child resides has been ceded to the federal government by the Commonwealth, and, under this section, the child may attend the school of the district without payment of tuition. OAG 68-582.

A vocational school does not come within the statutory definition of a "common school" and a pupil attending a vocational school would not be attending a public common school and the district in which he resides cannot receive ADA credit. OAG 73-639.

If a properly accredited school of the state of Florida certifies the enrollment of a child as a first grade pupil, the public school in the district to which she moves in Kentucky should accept her as a first grade pupil. OAG 74-626.

Children who attend tuition-free school must attend the school in the district where they physically live. OAG 76-116.

Inasmuch as common school funds may only be paid to common school districts, a county school board may not expend public common school funds to transport students attending a nonpublic model school. OAG 76-261.

A child placed by the Department for Human Resources in a foster home has a right to attend school in the district where the foster home is located, regardless of where the parents of the child reside. OAG 77-311.

A child is entitled to go to school, tuition free, in the school district in which the guardian is a resident. OAG 78-64.

A child who has reached his eighteenth birthday is entitled to attend school without payment of tuition in the school district in which he actually resides. OAG 78-64.

If a child who is not residing with his legal custodian is not residing in a particular school district primarily for school purposes, tuition generally would not be chargeable but the matter of free tuition must be decided by the school board on a case by case basis. OAG 78-64.

A school district is required to admit for enrollment, tuition free, a child living with the child's custodian declared by court order or other legal process who resides in the school district, irrespective of whether the court order is one for temporary custody or one for permanent custody. OAG 78-64.

Since KRS 157.200 et seq. and 20 U.S.C. § 1401 et seq. mandate equal educational opportunities for exceptional and nonexceptional children; a child with cerebral palsy who will be five (5) after September 1, but before December 31, must be given readiness testing for early kindergarten enrollment, which must be geared to the particular category of exceptionality and comparably equivalent for exceptional and nonexceptional children alike. OAG 79-254.

Since a child who is five (5) years of age by October 1 "may enter a public school kindergarten" under this section, there is no legal authority to support an argument that a six-year-old child can be required to complete kindergarten, irrespective of whether the child has participated in kindergarten before, or that the child can be required to repeat the year of kindergarten if, in the opinion of the kindergarten teacher, the child has not successfully completed the kindergarten program, accordingly, a child reaching the age of six (6) by October 1 is entitled to commence his or her school career in the first grade. OAG 81-287.

Although this section prohibits a school district from "promoting" a child in a kindergarten program into the first grade who has not met the statutory prescribed age of first grade entrance, the district would not be precluded from developing a program of instruction in the kindergarten class that would challenge the child's academic skills and abilities even if the program was equivalent to a first grade program. OAG 82-44.

KRS 158.090 (now repealed) authorizes a local school district to establish a kindergarten program to include children under five (5) but at least four (4) years of age; however, the cost of educating those four-year-old students would have to be totally borne by local school district because only those children meeting the kindergarten requirements set out in this section and the state board regulations can be counted for Minimum Foundation money purposes. OAG 82-44.

Where a child, who had been enrolled in the public school kindergarten program of another state, became five (5) years old on November 30th, she could legally transfer into Kentucky public school kindergarten program, even though she did not meet the requirement of this section that she reach five (5) years of age by October 1st of that year, since the full faith and credit provisions of the United States Constitution, Art. 4, § 1, requires that the child's prior enrollment be recognized by Kentucky. OAG 82-44.

A child who is not old enough to attend a public school as a first grader may nevertheless enroll the following year in a public school as a second grader if the child has completed first grade in a nonpublic school. OAG 82-408.

A child who will not be six (6) years old by October 1, but who has attended a private kindergarten program may not be permitted to enroll in the first grade in a public common school. OAG 82-408.

Strict adherence to the age qualification provisions of this section is called for, absent a transfer-from-out-of-state situation. OAG 82-408.

The last sentence of this section is no longer subject to application; such sentence served only as a transition provision relative to what the law had been prior to 1980 amendment. That is, only for purposes of the 1980-1981 school year could a child who was not yet six (6) years old by October 1, but who would become six (6) years of age by December 31, 1980, and who had successfully completed kindergarten, public or private, still be permitted to enroll in the first grade. OAG 82-408.

There is no statute that regulates the entrance age for a child to attend a nonpublic school and one could not constitutionally be enacted due to the Kentucky Supreme Court's view of Const., § 5 and the proscription against state regulation of nonpublic schools. OAG 82-408.

A kindergarten student may be retained in kindergarten if the parents and school officials feel such retention would be in the best interest of the child; absent parental consent, a child who is six (6) years old by October 1, is entitled to commence his school career in the first grade. OAG 83-106.

Since Kentucky school law lacks a requirement that a child must attend kindergarten, a school district could not require a child old enough to enroll in first grade to enroll in kindergarten; However, parents could hold their child back a year and

initially enroll their child in the kindergarten program even though the child would qualify under this section to enter first grade. OAG 83-106.

The lead-in phrase of this section, which reads "Notwithstanding any statute to the contrary," cannot be construed, by implication, to have lowered the compulsory attendance age range to five (5). OAG 85-55.

Both this section and KRS 158.100 must be considered as addressing and affecting only public common school districts. OAG 85-55.

Existing legislation does not require nonpublic schools in Kentucky to have kindergartens. OAG 85-55.

Where a child attends a nonpublic school kindergarten, so long as the child will be six (6) years old by October 1, the child would be eligible and entitled to enroll in the first grade in a public common school district. If the child would not be six (6) years old until after October 1, the child would be eligible to enroll only in a public school's kindergarten program rather than first grade, even though he has already been in kindergarten in a nonpublic school. OAG 85-55.

A child who is six (6) years old before October 1, but who has not attended any kindergarten, would have to be enrolled, as far as the public common schools are concerned, in a kindergarten program rather than a public school first grade. OAG 85-55.

Where a child attends no kindergarten program, either public or nonpublic, before July 1, 1986, but upon attaining six (6) years of age he enrolls in a nonpublic school first grade, and such child subsequently is presented for enrollment in a public common school for the second or a subsequent grade, the child would be entitled to so enroll subject to the usual application of the provisions of KRS 158.140. OAG 85-55.

The day of birth should no longer be counted when computing age for purposes of this section, and thus, a child whose birthday is October 2 does not actually become a year older until October 2, and as a result, he or she is not required to attend school in the year of becoming six (6), but instead is required to attend school the following year (withdrawing OAG 62-411). OAG 86-40.

The term "school" as used in KRS 218A.990 (now repealed), prohibiting trafficking in controlled substances near such a building, is not restricted to the definition of "common public school" in this section; therefore, it could include vocational/technical schools which have classroom instruction. OAG 88-73.

NOTES TO DECISIONS

Analysis

1. Educational units not included.
2. Recreational training.
3. Residence of child.
4. Public school.

1. Educational Units Not Included.

"Common school" does not include a college. Pollitt v. Lewis, 269 Ky. 680, 108 S.W.2d 671 (1937).

Common schools as used in the Constitution mean "public" or "free" schools maintained by the state at public expense, as distinguished from any private, parochial or sectarian school. Sherrard v. Jefferson County Bd. of Educ., 294 Ky. 469, 171 S.W.2d 963 (1942).

2. Recreational Training.

Common school system embraces physical training. Dodge v. Jefferson County Bd. of Educ., 298 Ky. 1, 181 S.W.2d 406 (1944).

3. Residence of Child.

The solution of the question of residence of a child for purpose of attending school is not to be found always in the site of the property for taxation, either generally or for school purposes, and where house in which child lived was more than half within the city, child resided in the city and could attend city schools without payment of tuition. Turner v. City Bd. of Educ., 313 Ky. 383, 231 S.W.2d 27 (1950).

4. Public School.

The term a "common school" is synonymous with "public" school. Fannin v. Williams, 655 S.W.2d 480 (Ky. 1983).

Decisions Under Prior Law

Analysis

1. Teachers.
2. Curriculum.

1. Teachers.

Common schools were schools actually taught by teachers legally qualified to teach in districts legally established and under the control of the trustees elected under those laws. Collins v. Henderson, 74 Ky. (11 Bush) 74 (1875).

2. Curriculum.

Teaching of higher branches of learning in a common school was not a violation of common school law. Newman v. Thompson, 9 Ky. L. Rptr. 199, 4 S.W. 341 (1887).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 2, 58.

Common or public school, what is, within contemplation of constitutional or statutory provisions as to matriculation and tuition. 113 A.L.R. 721.

158.031. Primary school program — Authority for administrative regulations — Attributes — Part time attendance — Grouping — Reporting requirements.

(1) In this section, "primary school program" means that part of the elementary school program in which children are enrolled from the time they begin school until they are ready to enter the fourth grade. Notwithstanding any statute to the contrary, successful completion of the primary school program shall be a prerequisite for a child's entrance into fourth grade.

(2) The Kentucky Board of Education shall establish, by administrative regulation, methods of verifying successful completion of the primary school program in carrying out the goals of education as described in KRS 158.6451.

(3) The primary program shall include the following critical attributes: developmentally appropriate educational practices; multiage and multiability classrooms; continuous progress; authentic assessment; qualitative reporting methods; professional teamwork; and positive parent involvement.

(4) Each school council or, if none exists, the school shall determine the organization of its ungraded primary program including the extent to which multiage groups are necessary to implement the critical attributes based on the critical attributes and meeting individual student needs.

(5) The implementation of the primary program may take into consideration the necessary arrangements required for students attending part-time and will allow for grouping of students attending their first year of school when determined to be developmentally appropriate.

(6) Data shall be collected by each school district on the number of students, in each school having a primary program, who take five (5) years to complete the primary program. The data shall be reported in the annual performance report described in KRS 158.6453.

(Enact. Acts 1998, ch. 434, § 1, effective July 15, 1998.)

158.032. Flagging record of missing child — Procedure upon recovery — Documents required upon enrollment or transfer.

(1) Upon notification by the chief state school officer of a child's disappearance, any school in which the child is currently or was previously enrolled shall flag the record of the child so that when a copy of or information regarding the child's record is requested, the school shall be alerted that the record is that of a missing child. The school shall immediately report to the Justice Cabinet any request concerning flagged records or any knowledge as to the whereabouts of any missing child.

(2) Upon notification by the chief state school officer of any missing child who has been recovered, the school shall remove the flag from the child's record.

(3) Upon enrollment of a student for the first time in any elementary or secondary school, the school shall notify in writing the person enrolling the student that within thirty (30) days the person shall provide either:

(a) A certified copy of the student's birth certificate; or

(b) Other reliable proof of the student's identity and age, and an affidavit of the inability to produce a copy of the birth certificate.

(4) Upon the failure of a person enrolling the student to comply with this section, the school shall notify the person in writing that unless he complies within ten (10) days the case shall be referred to the Missing Child Information Center and local law enforcement officials for investigation. If compliance is not obtained within the ten (10) day period, the school shall so refer the case.

(5) Within fourteen (14) days after enrolling a transfer student, each elementary or secondary school shall request directly from the student's previous school a certified copy of the student's record. Any school receiving a request of a student's record which has been flagged as the record of a missing child shall not forward the student's record but shall instead notify the Justice Cabinet.

(Enact. Acts 1986, ch. 72, § 3, effective July 15, 1986; 1990, ch. 476, Pt. IV, § 196, effective July 13, 1990.)

Cross-References. Preschool education program for four (4) year old children, 704 KAR 3:410.

158.035. Certificate of immunization.

Except as provided in KRS 214.036, no child shall be eligible to enroll as a student in any public or private elementary or secondary school without first presenting a certificate from a medical or osteopathic physician licensed in any state. The certificate shall state that the child has been immunized against diphtheria, tetanus, poliomyelitis, rubeola, and rubella in accordance with the provisions of this section and KRS 214.010, 214.020, 214.032 to 214.036, and 214.990 and the regulations of the secretary for health services. The governing body of private and public schools shall enforce the provisions of this section.

(Enact. Acts 1962, ch. 95, § 3; 1968, ch. 87, § 3; 1972, ch. 341, § 1; 1974, ch. 74, Art. VI, § 107(1); 1976, ch. 14, § 2; 1988, ch. 436, § 1, effective July 15, 1988; 1990, ch. 476, Pt. IV, § 197, effective July 13, 1990; 1998, ch. 426, § 113, effective July 15, 1998.)

Cross-References. Penalty for violation of this section. KRS 214.990.

Opinions of Attorney General. This section requires local school authorities to refuse enrollment in school, whether initial enrollment in the school system or transfer into the school system, if a child has not been tested or immunized as required by law. OAG 76-256.

The county board of health is authorized to enforce the immunization requirements of this section and KRS 214.034 by entering an order under KRS 212.245 or proceeding directly against the parent, guardian or custodian of the child who fails to have him immunized by having a criminal complaint sworn out against the offender. OAG 78-24.

The July 18, 1979 amendment of 902 KAR 2:060 allowing pupils who have begun, but not completed, immunization to attend school for the limited period of time necessary for completion of the immunization schedule is not in conflict with this section, since the requirement is a certificate that the child has been immunized, not that the immunization schedule has been completed. OAG 79-420.

Cited: Piatt v. Louisville & Jefferson County Bd. of Educ., 556 F.2d 809 (6th Cir. 1977).

NOTES TO DECISIONS

1. Constitutionality.

Since the primary effect of the state immunization program was to improve and protect the health and well being of citizens, the exemption for members of a religious denomination, the teachings of which are opposed to medical immunization against disease, did not make this statute unconstitutional as being in violation of the establishment clause of the first amendment. Kleid v. Board of Educ., 406 F. Supp. 902 (W.D. Ky. 1976).

Collateral References. 68 Am. Jur. 2d, Schools, § 297.

78 C.J.S., Schools and School Districts, §§ 723, 724.

Power of municipal or school authorities to prescribe health measures as a condition of school attendance. 93 A.L.R. 1413.

158.036. Tuberculosis test requirements — Exemption. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1976, ch. 128, § 1) was repealed by Acts 1988, ch. 277, § 4, effective July 15, 1988.

158.037. Report of immunization results.

Each public or private elementary or secondary school shall report immunization results to its local health department in accordance with regulations promulgated by the Cabinet for Health Services.

(Enact. Acts 1976, ch. 128, § 2; 1990, ch. 476, Pt. IV, § 198, effective July 13, 1990; 1998, ch. 302, § 2, effective July 15, 1998; 1998, ch. 426, § 114, effective July 15, 1998.)

Legislative Research Commission Note. (7/15/98). This section was amended by 1998 Ky. Acts chs. 302 and 426 which do not appear to be in conflict and have been codified together.

158.040. Entering age. [Repealed.]

Compiler's Notes. This section (4363-4) was repealed by Acts 1946, ch. 155, § 2.

158.050. School year.

The school year shall begin on July 1 and end on June 30.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 397, effective July 13, 1990.)

Compiler's Notes. This section (4363-3) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 397, effective July 13, 1990.

Cross-References. Fiscal year for school districts, KRS 160.450.

NOTES TO DECISIONS

Analysis

1. Nomination of employees.
2. Approval of employees.

1. Nomination of Employees.

This section contemplates that the superintendent of schools shall nominate teachers for the next school year at some time between April 1 and the beginning of the next school year on July 1, though the particular school may not open until a later date. (See KRS 160.380.) Beckham v. Kimbell, 282 Ky. 648, 139 S.W.2d 747 (1940).

Although the school year shall begin on July 1, the superintendent does not forfeit his right to make nominations of school employees by failing to make them by July 1 of each year and the county board of education has no right or authority to make appointments in the absence of nominations by the superintendent. (See KRS 160.380.) Smith v. Beverly, 314 Ky. 651, 236 S.W.2d 914 (1951).

2. Approval of Employees.

Since the school year begins on July 1, teachers must be chosen by that date, and the school board cannot refuse to act on recommendations submitted before that date, or postpone action until after that date. Cottongim v. Stewart, 277 Ky. 706, 127 S.W.2d 149 (1939).

The board of education cannot divest a nominated teacher of his rights by postponing its approval of his nomination until after July 1 without legal cause. (See KRS 160.380.) Beckham v. Kimbell, 282 Ky. 648, 139 S.W.2d 747 (1940).

158.060. School month and school day — Duty-free lunch period — Nonteaching time for teachers.

(1) Twenty (20) school days, or days in which teachers are actually employed in the schoolroom, shall constitute a school month in the common schools.

(2) Each full-time teacher shall be provided with a duty-free lunch period each day during the regularly scheduled student lunch period. The duty-free lunch period shall be not less than the length of the lunch period specified in the school calendar approved by the chief state school officer. A full-time teacher may be assigned to lunch room duty during the regularly scheduled student lunch period only for an amount of time equal to the noninstructional time in excess of fifty-five (55) minutes included in the teacher's daily schedule. The calculation of noninstructional time shall not include the teacher's duty-free lunch period, the time teachers are required to be at school prior to the start of the student's instructional day, or the time teachers are required to remain at school after the students are dismissed.

(3) Except for children with disabilities and children attending the primary school program who may attend a program of less than six (6) hours per day under policy adopted by the local school district board of education and approved by the commissioner of education and children attending a school district where the local board has approved a schedule that provides at least the equivalent of six (6) hours of daily instruction during the school year, a minimum of six (6) hours of actual school work shall constitute a school day. Kindergarten programs may be operated for less than six (6) hours without state board approval. The Kentucky Board of Education, upon recommendation of the chief state school officer, shall develop and approve regulations governing make up by school districts of whole days missed due to emergencies, or partial days missed as a result of shortening regularly scheduled school days due to emergencies.

(4) Teachers shall be provided additional time for nonteaching activities. The nonteaching time shall be used to provide teachers opportunities for professional development activities as provided in KRS 156.095, instructional planning, school-based decision making as provided in KRS 160.345, curriculum development, and outreach activities involving their students' families and the community.

(5) Character education programs and activities shall be considered valuable and legitimate components of the actual school work constituting a school day under subsection (3) of this section.

(4363-6: amend. Acts 1962, ch. 244, Art. VII, § 1; 1974, ch. 271, § 1; 1976, ch. 345, § 1; 1978, ch. 306, § 1, effective March 30, 1978; 1984, ch. 359, § 1, effective July 13, 1984; 1985 (1st Ex. Sess.), ch. 10, § 12, effective October 18, 1985; 1986, ch. 40, § 1, effective July 15, 1986; 1990, ch. 476, Pt. I, § 26, effective July 13, 1990; 1994, ch. 6, § 2, effective July 15, 1994; 1994, ch. 394, § 21, effective July 15, 1994; 1994, ch. 405, § 26, effective July 15, 1994; 1996, ch. 20, § 1, effective July 15, 1996; 1996, ch. 195, § 24, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 162, § 5, effective July 14, 2000; 2000, ch. 261, § 3, effective July 14, 2000.)

Legislative Research Commission Note. (7/14/2000). This section was amended by 2000 Ky. Acts chs. 162 and 261, which do not appear to be in conflict and have been codified together.

Cross-References. Holidays, KRS ch. 2.

Pupil attendance, 702 KAR 7:125.

Opinions of Attorney General. Lunch periods could not be used to conduct religious classes if the district is utilizing portions of the lunch period to meet the six-hour school work requirement of this section. OAG 64-111.

The term "actual school work" as used in this section means instructional hours, either of purely academic classroom instruction or reasonably calculated to achieve general educational objectives within such standards for school instructional programs as have been approved by the State Board of Education pursuant to its power to prescribe curricula under KRS 156.070. OAG 70-222; OAG 78-344.

A proposed plan of a county school district to institute a pilot program of in-service training of teachers which would require the dismissing of pupils for one-half day each week would be in violation of KRS 158.070(2)(b) which requires a pupil's attendance in school for a minimum term and this section which provides that six hours of actual classroom work shall constitute a school day. OAG 73-98.

Rural teachers who are required by the board to work a reasonably longer day than city teachers in the same district are not entitled to extra compensation solely on the basis of a longer working day. OAG 75-297.

Within the statutory limits of from six to nine hours, each school district may adopt its own schedule of classes and professional duties of its teachers and it is not required that the working day of all teachers in a district be the same length. OAG 75-297.

Neither a teacher who has taught three hours per day for 185 school days nor a teacher who has taught full time for 94 school days may be considered to have a year of actual service for tenure purposes. OAG 76-278.

School administrators may permit a study hall or activity period to be used by a student outside the school for a program of off-school-premises work since participation in such program would not be shortening of the school day but merely shortening the portion of the full regular school day which the child is in attendance in the school classroom. OAG 76-545.

While KRS 158.107 (repealed) did not prohibit the charging of a student to attend sports events, these sports events may not properly be held during any part of the regular school day so as to shorten the six hours required "of actual school work." OAG 79-381.

Where the General Assembly failed to include a delayed effective date for the provisions regarding the teachers' duty-free lunch period and class-size limitations in grades 1-8 contained in the education package enacted in the 1985 extraordinary session, the effective date of these provisions was October 18, 1985. However, given the restrictions of KRS 160.530 and 160.550(1), as well as the impracticalities of implementation on October 18, it was doubtful that any local school district could be expected to implement these programs on October 18. Therefore, except where otherwise expressly indicated in a particular provision, the education improvement programs which the local school districts have a duty to implement would have to be implemented by the local school districts beginning with the 1986-87 school year. OAG 85-132.

Cited: Board of Educ. v. Powell, 792 S.W.2d 376 (Ky. Ct. App. 1990).

158.065. Year-round school program — Legislative intent. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1972, ch. 372, § 1) was repealed by Acts 1974, ch. 265, § 6.

158.070. School term — Professional development — Holidays and days closed — Continuing education for certain students — Breakfast program.

(1) The minimum school term shall be one hundred eighty-five (185) days, including no less than the equivalent of one hundred seventy-five (175) six (6) hour instructional days. A board of education may extend its term beyond the minimum term.

(2) The local board of education, upon recommendation of the local school district superintendent, shall adopt a school calendar for the upcoming school year that establishes the opening and closing dates of the school term, beginning and ending dates of each school month, instructional days, and days on which schools shall be dismissed. The local board may schedule days for breaks in the school calendar that shall not be counted as a part of the minimum school term.

(3) Any local board of education operating its schools on a year-round school program basis shall conform with administrative regulations promulgated and adopted by the Kentucky Board of Education upon the recommendation of the commissioner of education, which regulations must be in conformity with the following criteria:

(a) The year-round school program shall be operated on a fiscal year beginning July 1 and ending June 30;

(b) A pupil's required attendance in school shall be for at least the minimum instructional term; and

(c) No teacher shall be required to teach more than the minimum term during the school year.

(4) (a) Each local board of education shall use four (4) days of the minimum school term for professional development and collegial planning activities for the professional staff without the presence of pupils pursuant to the requirements of KRS 156.095. At the discretion of the superintendent, one (1) day of professional development may be used for district-wide activities and for training that is mandated by federal or state law. The use of three (3) days shall be planned by each school council, except that the district is encouraged to provide technical assistance and leadership to school councils to maximize existing resources and to encourage shared planning.

(b) A local board may approve a school's flexible professional development plan that permits teachers or other certified personnel within a school to participate in professional development activities outside the days scheduled in the school calendar or the regularly scheduled hours in the school work day and receive credit towards the four (4) day professional development requirement within the minimum one hundred eighty-five (185) days that a teacher shall be employed.

1. A flexible schedule option shall be reflected in the school's professional development component within the school improvement plan or consolidated plan and approved by the local board. Credit for approved professional development activities may be accumulated in periods of time other than full day segments.

2. No teacher or administrator shall be permitted to count participation in a profes-

sional development activity under the flexible schedule option unless the activity is related to the teacher's classroom assignment and content area, or the administrator's job requirements, or is required by the school improvement or consolidated plan, or is tied to the teacher's or the administrator's individual growth plan. The supervisor shall give prior approval and shall monitor compliance with the requirements of this paragraph. In the case of teachers, a professional development committee or the school council by council policy may be responsible for reviewing requests for approval.

(c) The local board of each school district may use up to a maximum of four (4) days of the minimum school term for holidays; provided, however, any holiday which occurs on Saturday may be observed on the preceding Friday.

(d) Each local board may use two (2) days for planning activities without the presence of pupils.

(e) Each local board may use the number of days deemed necessary for:

1. National or state disaster or mourning when proclaimed by the President of the United States or the Governor of the Commonwealth of Kentucky;
2. Local disaster which would endanger the health or safety of children; and
3. Mourning when so designated by the local board of education and approved by the Kentucky Board of Education upon recommendation of the commissioner of education.

(5) The Kentucky Board of Education, upon recommendation of the commissioner of education, shall adopt administrative regulations governing the use of school days, including days missed from the regular school day as a result of local disaster, as defined in subsection (4)(e)2. of this section, and regulations setting forth the guidelines and procedures to be observed for the approval of the days utilized for the opening and closing of school and the days utilized for professional development and planning activities for the professional staff.

(6) (a) In setting the school calendar, school may be closed for two (2) consecutive days for the purpose of permitting professional school employees to attend statewide professional meetings. These two (2) days for statewide professional meetings may be scheduled to begin with the first Thursday after Easter, or upon request of the statewide professional education association having the largest paid membership, the commissioner of education may designate alternate dates. If schools are scheduled to operate during days designated for the statewide professional meeting, the school district shall permit teachers who are delegates to attend as compensated professional leave time and shall employ substitute teachers in their absence. The commissioner of education shall designate one (1) additional day during the school year when schools shall be closed to permit professional school employees to participate in regional or district professional meetings. These three (3) days so designated for attendance at professional meetings shall not be counted as a part of the minimum school term. School shall be closed on the day of a regular election, and may be closed on the day of a primary election, and those days may be used for professional development activities, professional meetings, or parent-teacher conferences.

(b) All schools shall be closed on the third Monday of January in observance of the birthday of Martin Luther King, Jr. Districts may:

1. Designate the day as one (1) of the four (4) holidays permitted under subsection (4)(c) of this section; or
2. Not include the day in the minimum school term specified in subsection (1) of this section.

(7) Students applying for excused absence for attendance at the Kentucky State Fair shall be granted one (1) day of excused absence.

(8) Schools shall provide continuing education for those students who are determined to need additional time to achieve the outcomes defined in KRS 158.6451, and schools shall not be limited to the minimum school term in providing this education. Continuing education time may include extended days, extended weeks, or extended years. A local board of education may adopt a policy requiring its students to participate in continuing education. The local policy shall set out the conditions under which attendance will be required and any exceptions which are provided. The Kentucky Board of Education shall promulgate administrative regulations establishing criteria for the allotment of grants to local school districts and shall include criteria by which the commissioner of education may approve a district's request for a waiver to use an alternative service delivery option, including providing services during the school day on a limited basis. These grants shall be allotted to school districts to provide instructional programs for pupils who are identified as needing additional time to achieve the outcomes defined in KRS 158.6451. A school district that has a school operating a model early reading program under KRS 158.792 may use a portion of its grant money as part of the matching funds to provide individualized or small group reading instruction to qualified students outside of the regular classroom during the school day.

(9) Notwithstanding any other statute, each school term shall include no less than the equivalent of the minimum number of instructional days required by this section.

(10) Notwithstanding the provisions of KRS 158.060(3) and the provisions of subsection (1) of this section, a school district shall arrange bus schedules so that all buses arrive in sufficient time to provide breakfast prior to the instructional day.

In the event of an unforeseen bus delay, the administrator of a school that participates in the Federal School Breakfast Program may authorize up to fifteen (15) minutes of the six (6) hour instructional day if necessary to provide the opportunity for children to eat breakfast not to exceed eight (8) times during the school year within a school building.

(4370-7: amend. Acts 1952, ch. 104; 1962, ch. 244, Art. VII, § 2; 1964, ch. 6, § 1; 1964, ch. 133, § 1; 1966, ch. 29, paras. (1), (2); 1966, ch. 255, § 150; 1972, ch. 372, § 2; 1974, ch. 265, § 5; 1976, ch. 209, § 1; 1978, ch. 306, § 2, effective March 30, 1978; 1984, ch. 359, § 2, effective July 13, 1984; 1986, ch. 373, § 1, effective July 15, 1986; 1990, ch. 476, Pt. I, § 27, effective July 13, 1990; 1992, ch. 398, § 1, effective July 14, 1992; 1994, ch. 394, § 22, effective July 15, 1994; 1994, ch. 464, § 1, effective July 15, 1994; 1996, ch. 20, § 2, effective July 15, 1996; 1996, ch. 195, § 25, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 580, § 4, effective July 15, 1998; 1998, ch. 609, § 2, effective July 15, 1998; 2000, ch. 261, § 1, effective July 14, 2000; 2000, ch. 527, § 13, effective July 14, 2000; 2001, ch. 134, § 1, effective June 21, 2001; 2002, ch. 131, § 1, effective July 15, 2002; 2002, ch. 169, § 1, effective July 15, 2002.)

Legislative Research Commission Note. (7/15/2002). This section was amended by 2002 Ky. Acts chs. 131 and 169, which do not appear to be in conflict and have been codified together.

(1/29/2002) The words "upon request of the statewide professional education association having the" were inadvertently omitted from subsection (6)(a) of this section when it was amended by 2001 Ky. Acts ch. 134, sec. 1. These words have been restored to the section by the reviser of statutes under KRS 7.136 and 446.280.

(6/21/2001). A reference to "subsection (3)(c)" in subsection (6)(b)1. of this statute has been changed in codification to "subsection (4)(c)" under KRS 7.136(1)(e) and (h). In 2001 Ky. Acts ch. 134, sec. 1, the existing subsection (3) was renumbered as subsection (4), but an internal reference to that subsection in the existing language of this statute was overlooked.

Cross-References. Annual professional development plan, 704 KAR 3:035.

Early reading incentive grants, 704 KAR 3:480.

Extended school services, 704 KAR 3:390.

Pupil attendance, 702 KAR 7:125.

Kentucky Bench & Bar. Kirby, School-Based Decision Making, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 15.

Opinions of Attorney General. Under this section the school board must provide some form of alternative service to be performed by a teacher who does not wish to attend KEA meetings. OAG 60-374.

The approval of the State Department of Education is required in order to conduct a school on a continuous basis. OAG 67-277.

Since regulations provide days when schools are closed for mourning and disaster shall be counted as school days, a teacher who would have taught had school been conducted was entitled to compensation for those days. OAG 67-289.

If in a specific factual situation the only reasonably available access roads which may be utilized to provide transportation to a particular school or schools of the district are so impassable as to create a substantial risk of injury to the pupils who must use these roads, or if in a specific factual situation the only reasonably available access roads are being used by overweight or oversized vehicles in such a manner as to create a hazard under the circumstances to the transportation of schoolchildren, the superintendent does have the power to declare an emergency day or days. OAG 70-568.

The fact that a superintendent may declare an emergency day in a given factual situation carries with it the power to delay the opening of school, if transportation to the school would create a risk, until the hazardous condition can be rectified. OAG 70-568.

The superintendent of the district is imposed with a positive responsibility to exercise the discretion vested by subsection (2) of this section in the best interest of the health and safety of the children attending the district schools. OAG 70-568.

The superintendent of the school district is vested with the discretion of making a factual determination as to whether conditions beyond the control of the superintendent are such as to endanger the safety of children attending the schools of the district. OAG 70-568.

A proposed plan of a county school district to institute a pilot program of in-service training of teachers which would require the dismissing of pupils for one-half (½) day each week would be in violation of subdivision (2)(b) of this section which requires a pupil's attendance in school for a minimum term and KRS 158.060 which provides that six (6) hours of actual classroom work shall constitute a school day. OAG 73-98.

This section leaves the matter of professional days to the discretion of the local board of education and if the superintendent and the board wish to grant a professional day privilege to a professional educators' organization, there is no reason why they may not do so. OAG 73-668.

A reduction in state appropriations to the minimum foundation fund for teachers' salaries, legal or illegal, could not be said to have reduced the number of days required for a minimum school term in the commonwealth's public common schools; the law still requires 185 days and that four (4) of these days be devoted to in-service training for public common school teachers and the elimination of state money for two (2) in-service days did not take the requirement for the two (2) days away. OAG 82-106.

Even though the contracts entered into between local boards and their teachers fail to reference the minimum 185 day school term, these contracts could not be construed to cover any period less than the 185 school days established by statute since all full-time teachers in the public common schools have, by operation of law, a contract that entitles them to be paid for 185 school days, four (4) of which are to be utilized as in-service and professional development and planning activities; accordingly, the teachers employed by the local school boards for the 1981-82 school year had a vested right to employment and salary for at least 185 school days and the possible reduction in state funds for teachers' salaries for two (2) mandated in-service days in no way could be used to divorce the local school districts from their preexisting obligation of contracts for a minimum school term of 185 days. OAG 82-106. (Refers to 1982 Budget.)

The present school laws, in light of the Kentucky Constitution, do not authorize or permit any state funded extended employment days to be used for vacation or holidays. OAG 82-356.

It is within the legal prerogative of the local board to fairly establish the nature of professional activities for which it will be willing to incur expenses. OAG 83-228.

While there is a legal basis for the expenditure of school moneys for professional activities, a school board is not mandated to approve the incurring of these expenses and costs for reimbursement from school funds. OAG 83-228.

Within reason, school boards are permitted to bear the direct and indirect expenses incurred by teachers and administrators who attend, after prior approval by the board, professional activities and functions; however, school boards are not wholly unfettered in exercising their discretion in

approving attendance at sundry professional activities since Const., §§ 180 and 184 require that school funds may be used only for school purposes, the test being whether the expenditure is for an educational purpose rather than whether an activity might be beneficial to education. OAG 83-228.

It is legal for a board of education to pay salaries and/or expenses, including travel, lodging, and meals for school administrators to attend business sessions of their respective professional organizations, training and professional improvement meetings conducted by their professional organization and accreditation associations to which their schools or districts belong and/or lobbying activities conducted by their professional associations. OAG 83-228.

It is legal for a board of education to pay salaries and/or expenses, including travel, lodging, meals, and substitute teachers, for teachers to attend business sessions of their respective professional organizations, training and professional improvement meetings conducted by their professional organization, and/or lobbying activities conducted by their organization. OAG 83-228.

A teacher may take his or her sick leave days on any day of the school year upon compliance with the statutorily required presentation of a personal affidavit or certificate of a physician or as provided for by an appropriately adopted regulation of policy of a local board of education, and a teacher who uses accumulated sick leave to cover a period of absence is not required to use a sick leave day when the schools are already closed for a paid holiday, since the teacher is authorized by this section to be paid for such holidays without the payment being charged to accumulated sick leave. OAG 83-457.

Schools may offer, but not compel, students who have excessive unexcused absences, attendance in a summer program when attendance in a summer program will enable the students to achieve the appropriate goals. OAG 92-95.

There is no specific statute authorizing a board of education to require a student who has excessive absences to attend a summer program. OAG 92-95.

NOTES TO DECISIONS

1. Snow Days.

Teachers were not entitled to unemployment benefits for days they missed due to snow, where the days were made up at a later date within the contract year and their incomes remained intact. Tackett v. Kentucky Unemployment Ins. Comm'n, 630 S.W.2d 76 (Ky. Ct. App. 1982).

158.080. Private and parochial schools — Courses — Term.

Private and parochial schools shall be taught in the English language and shall offer instruction in the several branches of study required to be taught in the public schools of the state, consistent with KRS 156.445(3). Except in those school districts operating a year-round school program, the term of the school shall not be for a shorter period in each year than the term of the public school provided in the district in which the child attending the school resides. In those school districts which are operating a year-round school program, the minimum term of private and parochial schools shall be one hundred eighty-five (185) days.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 398, effective July 13, 1990; 1996, ch. 10, § 1, effective July 15, 1996.)

Compiler's Notes. This section (4434-3: amend. Acts 1972, ch. 372, § 6; 1978, ch. 136, § 6, effective July 1, 1979; 1978, ch. 155, § 161, effective June 17, 1978; 1978, ch. 384, § 45, effective June 17, 1978) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 398, effective July 13, 1990.

NOTES TO DECISIONS

ANALYSIS

1. Constitutionality.
2. Rights of conscience.
3. Teachers.
4. —Certification.
5. Standardized achievement testing.

1. Constitutionality.

This section does not offend the Bill of Rights provided that the "several branches of study" are rationally related to the education of children to exercise their right of suffrage and to participate in the democratic system. Kentucky State Bd. for Elementary & Secondary Educ. v. Rudasill, 589 S.W.2d 877 (Ky. 1979), cert. denied, 446 U.S. 938, 100 S. Ct. 2158, 64 L. Ed. 2d 792 (1980).

2. Rights of Conscience.

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

3. Teachers.

4. —Certification.

It cannot be said as an absolute that a teacher in a nonpublic school who is not certified under KRS 161.030(2) will be unable to instruct children to become intelligent citizens; certainly, the receipt of "a bachelor's degree from a standard college or university" is an indicator of the level of achievement, but it is not a sine qua non the absence of which establishes that private and parochial school teachers are unable to teach their students to intelligently exercise the elective franchise. Kentucky State Bd. for Elementary & Secondary Educ. v. Rudasill, 589 S.W.2d 877 (Ky. 1979), cert. denied, 446 U.S. 938, 100 S. Ct. 2158, 64 L. Ed. 2d 792 (1980).

5. Standardized Achievement Testing.

If the Legislature wishes to monitor the work of private and parochial schools in accomplishing the constitutional purpose of compulsory education, it may do so by an appropriate standardized achievement testing program, and if the results show that one or more private or parochial schools have failed to reasonably accomplish the constitutional purpose, the Commonwealth may then withdraw approval and seek to close them for they no longer fulfill the purpose of "schools." Kentucky State Bd. for Elementary & Secondary Educ. v. Rudasill, 589 S.W.2d 877 (Ky. 1979), cert. denied, 446 U.S. 938, 100 S. Ct. 2158, 64 L. Ed. 2d 792 (1980).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 58, 811.

Foreign languages, validity of statute or other regulation as to use or teaching of, in schools. 7 A.L.R. 1695; 29 A.L.R. 1452.

Legislative power with respect to attendance and curriculum. 39 A.L.R. 477; 53 A.L.R. 832.

158.090. Kindergartens — Night schools. [Repealed.]

Compiler's Notes. This section (4399-50) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.100. Program required to be provided by school district — Additional programs permitted.

Notwithstanding any statute to the contrary, each school district shall provide an approved preschool school program through twelve (12) grade school service. An approved preschool school program through eight (8) grade school service shall be provided for the children residing in the district by maintaining schools. An approved high school service for all children of high school grade under twenty-one (21) years of age residing in the district shall be provided either by maintaining the schools within the district or by contract with another district. The board of education of any school district, subject to the approval of the chief state school officer, may establish night schools, industrial schools, and other schools for the residents of the district as it deems advisable.

(3480-1, 3480-2, 4363-5a, 4399-2, 4399-3: amend. Acts 1966, ch. 184, § 2; 1978, ch. 20, § 1, effective June 17, 1978; 1984, ch. 367, § 6, effective July 13, 1984; 1990, ch. 476, Pt. I, § 28, effective July 13, 1990.)

Cross-References. Special education facilities for exceptional or handicapped children, KRS 157.230 to 157.290.

Child find, evaluation, and reevaluation, 707 KAR 1:300.

Children with disabilities enrolled in private schools, 707 KAR 1:370.

Comprehensive system of personnel development, 707 KAR 1:330.

Confidentiality of information, 707 KAR 1:360.

Definitions, 707 KAR 1:280.

Determination of eligibility, 707 KAR 1:310.

Free appropriate public education, 707 KAR 1:290.

Individual education program, 707 KAR 1:320.

Monitoring and recovery of funds, 707 KAR 1:380.

Placement decisions, 707 KAR 1:350.

Procedural safeguards and state complaint procedures, 707 KAR 1:340.

Pupil attendance, 702 KAR 7:125.

Opinions of Attorney General. Local school boards have a legal right to spend foundation program funds or revenue raised by local taxation for adults over 21 years of age. OAG 65-410.

A child living with its guardian within the county school district would be "residing" in the district within the meaning of the statutes and would be eligible to attend the county schools without the payment of tuition. OAG 66-550.

A county board of education has legal authority to refuse the admission of nonresident children to its schools, but the board would be prohibited from arbitrarily extending school attendance privileges to some nonresident children while denying the same privilege to others. OAG 66-550.

Where children residing on federal property attend schools operated and financed by the federal government, if the property in the federally-owned areas were subject to local ad valorem taxation by the school districts, and if the responsibility for educating children residing in these areas was transferred to the local school districts, then those resident children could properly and lawfully be included in the computation of state minimum foundation program fund allocations. OAG 68-50.

The duty of the school district to provide transportation under KRS 158.110 extends only to children of elementary grades who reside within its district. OAG 69-140.

A school district which grants nonresident pupils the privilege of attending its school for which tuition is charged, is not compelled to furnish transportation to such nonresident students. OAG 69-140.

The obligation of a local school district to provide an education to those children residing in the school district is not affected by the compulsory attendance laws since said laws affect those children wanting to get away from education in the schools, not those desiring to stay in school. OAG 77-116.

An unmarried girl under the age of 16, who has given birth to a child and is mothering that child, is not required to attend school, even though there is no delineated exemption under KRS 159.030; however, if the girl finds it necessary to remain out of school for several years, she is entitled to attend school later, up until she has received 12 years education or reached the age of 21. OAG 81-73.

Both KRS 158.030 and this section must be considered as addressing and affecting only public common school districts. OAG 85-55.

Existing legislation does not require nonpublic schools in Kentucky to have kindergartens. OAG 85-55.

Where a child attends a nonpublic school kindergarten, so long as the child will be six (6) years old by October 1, the child would be eligible and entitled to enroll in the first grade in a public common school district. If the child would not be six (6) years old until after October 1, the child would be eligible to enroll only in a public school's kindergarten program rather than first grade, even though he has already been in kindergarten in a nonpublic school. OAG 85-55.

A child who is six (6) years old before October 1, but who has not attended any kindergarten, would have to be enrolled, as far as the public common schools are concerned, in a kindergarten program rather than a public school first grade. OAG 85-55.

Where a child attends no kindergarten program, either public or nonpublic, before July 1, 1986, but upon attaining six (6) years of age he enrolls in a nonpublic school first grade, and such child subsequently is presented for enrollment in a public common school for the second or a subsequent grade, the child would be entitled to so enroll subject to the usual application of the provisions of KRS 158.140. OAG 85-55.

Cited: Trenton Graded Sch. Dist. v. Board of Educ., 278 Ky. 607, 129 S.W.2d 143 (1939).

NOTES TO DECISIONS

Analysis

1. School grades.
2. Education facilities for all residents under twenty-one.
3. High school.
4. —Minimum students for maintaining.
5. —Contracts with another district.
6. —Attendance.
7. Uniform or equal facilities.
8. School taken over by city.

1. School Grades.

The county school board is not required to provide for the teaching of twelve (12) grades in each school in the district. Wilson v. Alsip, 256 Ky. 466, 76 S.W.2d 288 (1934).

A school board may maintain schools (1) in which only the elementary grades are taught, (2) in which only the four higher grades are taught, (3) in which all twelve (12) grades are taught, (4) in which the first six (6) grades are taught, (5) junior high schools (seventh, eighth and ninth grades), (6) senior high schools (tenth, eleventh and twelfth grades), (7) or any combination of same, provided it does not act arbitrarily or abuse its discretion. Wilson v. Alsip, 256 Ky. 466, 76 S.W.2d 288 (1934).

2. Education Facilities for All Residents under Twenty-one.

This section mandatorily directs that each board of education shall provide public education facilities for residents of its

district who are under twenty-one. Board of Educ. v. Bentley, 383 S.W.2d 677 (Ky. 1964).

3. High School.

4. —Minimum Students for Maintaining.

A rule of the state Superintendent of Public Instruction, approved by the State Board of Education to the effect that a minimum of 60 students is required for maintenance of a high school, was a valid administrative regulation carrying out the Legislature's intent in its enactment of the school code, and was not an invalid exercise of a legislative function. Dicken v. Kentucky State Bd. of Educ., 304 Ky. 343, 199 S.W.2d 977 (1947).

5. —Contracts with Another District.

The right to contract with another district to teach certain grades is conferred upon the county board of education and an independent school district is not authorized to make such contract. Board of Trustees v. State Bd. of Educ., 269 Ky. 253, 106 S.W.2d 985 (1937).

6. —Attendance.

Law repealing sections dealing with pupil attending the most convenient high school does not violate Const., § 51, and there is now no law requiring the county board of education to give a high school pupil the privilege of attending the most convenient high school. Stallins v. Caldwell County Bd. of Educ., 274 Ky. 824, 120 S.W.2d 656 (1938).

Even though it would be more economical and for the best interests of the high school pupils to attend high schools other than those maintained by the county board, whether they attend high schools other than those maintained by the county board and whether some of the high schools should be discontinued is a matter within the discretion of the board. Stallins v. Caldwell County Bd. of Educ., 274 Ky. 824, 120 S.W.2d 656 (1938).

7. Uniform or Equal Facilities.

The fact that a board of education provided only an eight-month school term for the colored school, while a nine-month term was provided for the white school, did not constitute a violation of Const., § 187, there being no allegation that the faculty, facilities or equipment of the colored school were unequal to that of the white school. Board of Educ. v. Ballard, 299 Ky. 370, 185 S.W.2d 538 (1945) (decision prior to 1966 amendment).

8. School Taken Over by City.

Where school building and grounds located in city of fifth class had been operated by county board of education as a school for colored children, prior to law requiring independent districts in such cities to provide school service for colored children, the county board of education was not entitled to any payment for the property upon its being taken over by the city under the 1936 act. Board of Educ. v. Board of Educ., 292 Ky. 261, 166 S.W.2d 295 (1942) (decision prior to 1966 amendment).

Decisions Under Prior Law

1. Contracts with Another District.

Under law providing that county board could unite with city or town in order to establish a high school for the joint use of the county and city, a county board of education and the board of education of a fourth-class city could contract to establish and maintain a joint colored high and graded school. Board of Educ. v. Knox County Bd. of Educ., 260 Ky. 115, 84 S.W.2d 62 (1935).

Collateral References. 68A Am. Jur. 2d, Schools, §§ 5, 13, 16.

78 C.J.S., Schools and School Districts, §§ 4-6.

158.102. Requirement for library media center — Employment of librarian.

(1) The board of education for each local school district shall establish and maintain a library media center in every elementary and secondary school to promote information literacy and technology in the curriculum, and to facilitate teaching, student achievement, and lifelong learning.

(2) (a) Schools shall employ a school media librarian to organize, equip, and manage the operations of the school media library. The school media librarian shall hold the appropriate certificate of legal qualifications in accordance with KRS 161.020 and 161.030. A certified school media librarian may be employed to serve two (2) or more schools in a school district with the consent of the school councils.

(b) If a vacancy occurs, the school council may fill the vacancy on a temporary basis by employing:

1. A person who is pursuing certification as a school media librarian in accordance with administrative regulations promulgated by the Education Professional Standards Board; or
2. A temporary employee for a period not to exceed sixty (60) days.

(Enact. Acts 2000, ch. 339, § 1, effective July 14, 2000.)

158.105. War veterans may complete high school course without tuition.

Each school district in this state shall admit to its twelve (12) grade school service, without tuition, any veteran of the Armed Forces whose attendance was interrupted, before completing the approved twelve (12) grade school course, because of induction or enlistment in the Armed Forces. The veteran shall apply for reenrollment in the public school system of the district of his residence not later than four (4) years after his honorable discharge from the Armed Forces. However, this is not intended to apply to enrollment by veterans in special courses for which tuition is paid under the provisions of federal laws, or otherwise.

(Enact. Acts 1948, ch. 123; 1990, ch. 476, Pt. IV, § 199, effective July 13, 1990.)

158.107. Fee, rental or purchase of instructional materials prohibited — Exceptions — Annual report on funds expended by public school district. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1978, ch. 132, § 1, effective June 17, 1978; 1980, ch. 306, § 1, effective July 15, 1980) was repealed by Acts 1982, ch. 19, § 2, effective February 26, 1982.

158.108. Effect of failure to pay for or rent school supplies.

No child shall be denied full participation in any educational program due to an inability to pay for, or rent, necessary school supplies, including textbooks.

(Enact. Acts 1982, ch. 19, § 1, effective February 26, 1982; 1986, ch. 462, § 2, effective July 15, 1986; 1990, ch. 476, Pt. IV, § 200, effective July 13, 1990.)

Opinions of Attorney General. KRS 159.140(7) and 160.330 may be read in complete harmony with this section. OAG 82-359.

There is no federal prohibition against charging a fee to the parents of a handicapped child that will be charged to the parents of a nonhandicapped student as a part of the regular education program; but if the object or reason for a fee will solely relate to the fulfillment of a handicapped child's individual educational program, a charge may not be made to the parents of the handicapped child. Nevertheless, a very close scrutiny of the charges to be made by a school district will be required regarding each handicapped child. OAG 82-359.

A school district cannot use parents' inability to pay or refusal to pay against a student. OAG 82-464.

No child is to be denied the opportunity to participate in an educational program due to the parents' inability to pay; how such "inability to pay" is determined is up to the reasonable discretion of each local school board. OAG 82-464.

No school district can use "debt" collection as an obstacle to prevent a child from receiving an education in one of the public common schools. OAG 82-464.

The 1982 General Assembly in repealing KRS 158.107 and enacting this section has again authorized local school districts to charge parents incidental fees associated with the instruction of their children; thus, the school districts may charge parents for materials and supplies for courses and projects that related to any educational program, remembering the special considerations applicable to handicapped children. Parents are entitled to be informed what the fee they are being charged will be used for, that is, what is going to be received by the child in return for the payment of this money by the parent. OAG 82-464.

This section is not to be used for general fund raising, but only to reimburse the school district for materials and supplies provided to a child as a part of a child's educational program. OAG 82-464.

158.110. Transportation of pupils.

(1) Boards of education may provide transportation from their general funds or otherwise for any pupil of any grade to the nearest school to the pupil's residence within the district if the pupil does not live within a reasonable walking distance to such nearest school of appropriate grade level. The local board may provide transportation by means of a board-operated transportation system, transit authorities organized and operating pursuant to KRS Chapter 96A, local governmental mass transit systems, and individual contracted buses and vehicles.

(2) When space is not available at the nearest school, boards of education may provide transportation from their general funds or otherwise for any pupil of any grade who does not live within a reasonable walking distance to the nearest school of appropriate grade level where space is available. Transportation may be provided by means pursuant to subsection (1) of this section.

(3) Public elementary and secondary schools shall not change their present grade level structure without written permission from the Kentucky Board of Education.

(4) The boards of education shall adopt such rules and regulations as will insure the comfort, health, and safety of the children who are transported, consistent with the rules and regulations of the Kentucky Board of Education dealing with the transportation of pupils.

(4399-20: amend. Acts 1944, ch. 173, § 10; 1976, ch. 78, § 3, effective March 29, 1976; 1978, ch. 155, § 82, effective June 17, 1978; 1986, ch. 161, § 1, effective July 15, 1986; 1990, ch. 476, Pt. IV, § 201, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

Cross-References. Insurance of school buses, KRS 160.310.

Transportation of pupils, regulations concerning, KRS 156.160.

Opinions of Attorney General. A school district which grants nonresident pupils the privilege of attending its school for which tuition is charged, is not compelled to furnish transportation to such nonresident students. OAG 69-140.

The duty of the school board to provide transportation extends only to children of elementary grades who reside within its district. OAG 69-140.

Common school funds may be used for transporting pupils from private or parochial schools to public vocational schools where the private school students attend vocational schools on a split day basis and where regular school bus transportation is used. OAG 75-300.

A school bus may be used to transport children to a child care center or scout meeting after school if the delivery point is along the usual bus route, the distance is greater than a reasonable walking distance, and the driver has permission from the principal who in turn has secured permission from the parents. OAG 75-645.

A board of education is not under an obligation to provide transportation where the students or parents have refused the school provided for the children and instead the parents take their children to another public school. OAG 76-55.

If school district money in any respect and in any amount is used to transport nonpublic school children, the Kentucky Constitution will be violated. OAG 82-392.

It was not constitutionally permissible for the board of education to provide transportation for parochial school pupils from their homes to the nearest public schools, so long as they do not live within a reasonable walking distance to such school, where transportation from public schools to parochial schools would then be provided either by the fiscal court or the local parochial school system. OAG 82-392.

To the extent nonpublic school children are transported on public school buses, irrespective of their point of departure, the local school district must be reimbursed on a per capita basis to avoid constitutional violation. Accordingly, it would not be appropriate for the board of education to provide transportation for parochial pupils from their homes to the nearest public school, so long as they do not live within a reasonable walking distance to such school, and for the board of education to be reimbursed by either the fiscal court and/or the local parochial school system for the additional cost (if any) to the school system, since reimbursement is required to be on a "per capita" basis. OAG 82-392.

Cited: Ex parte County Bd. of Educ., 260 Ky. 246, 84 S.W.2d 59 (1935); Cox v. Barnes, 469 S.W.2d 61 (Ky. 1971); Joslin v. Board of Educ., 585 F. Supp. 37 (E.D. Ky. 1983).

NOTES TO DECISIONS

Analysis

1. In general.
2. Constitutionality.
3. Purpose.
4. Application.
5. Elementary pupils.

6. Costs.
7. Definition of "or otherwise."
8. Reasonable walking distance.
9. Reasonable mode of transportation.
10. Charging fees or fares.
11. Purchase of buses.
12. Liability.
13. —County board.
14. Gasoline tax.
15. Hauling voters to polls.

1. In General.

County board of education is an arm of the state and in operating common schools it is engaged in a governmental capacity. Wallace v. Laurel County Bd. of Educ., 287 Ky. 454, 153 S.W.2d 915 (1941).

2. Constitutionality.

This section is not unconstitutional as being a delegation of legislative power. County Bd. of Educ. v. Goodpaster, 260 Ky. 198, 84 S.W.2d 55 (1935).

So much of this section as provides for free transportation for pupils attending private schools is unconstitutional. Sherrard v. Jefferson County Bd. of Educ., 294 Ky. 469, 171 S.W.2d 963 (1942) (decision prior to 1944 amendment).

Paragraphs 1 and 2 of Acts 1976, ch. 78, § 3, which amended subsections (1) and (2) of this section, in effect allowed local school boards to refuse to expend funds for cross district busing, thereby circumventing the state's responsibility to comply with court desegregation orders, and were unconstitutional. Carroll v. Board of Educ., 561 F.2d 1 (6th Cir. 1977), cert. denied, 435 U.S. 904, 98 S. Ct. 1449, 55 L. Ed. 2d 494 (1978).

Paragraph 3 of Acts 1976, ch. 78, § 3, which amended subsection (3) of this section relating to change of grade level structures, violated the provision of Ky. Const., § 51 against more than one (1) subject in legislation. Carroll v. Board of Educ., 561 F.2d 1 (6th Cir. 1977), cert. denied, 435 U.S. 904, 98 S. Ct. 1449, 55 L. Ed. 2d 494 (1978).

3. Purpose.

The statute was enacted to protect children from traffic hazards they would encounter in walking to school, not to protect the children from seeing evidence that the roads are being used for drinking or immoral purposes. Hoefer v. Hardin County Bd. of Educ., 441 S.W.2d 418 (Ky. 1969).

4. Application.

This section applies to independent school districts as well as to county school districts. Schmidt v. Payne, 304 Ky. 58, 199 S.W.2d 990 (1947).

5. Elementary Pupils.

This section is mandatory with respect to elementary pupils, and discretionary as to pupils in higher grades. Ex parte County Bd. of Educ., 260 Ky. 246, 84 S.W.2d 59 (1935).

This section is mandatory as to elementary grades. The school board must either enroll the pupil in a school within reasonable walking distance of his home, or, if facilities are not available for the pupil at such a school, the board must furnish transportation to some other school selected by it. Hines v. Pulaski County Bd. of Educ., 292 Ky. 100, 166 S.W.2d 37 (1942).

6. Costs.

The transportation of pupils does not require the levy of a special tax. The cost is payable from general funds or otherwise. Ex parte County Bd. of Educ., 260 Ky. 246, 84 S.W.2d 59 (1935).

Given the state's constitutional duty to make public education available and to fund the school system thus created, the burden of additional costs of transporting students resulting from a federal desegregation order fell on the state if local school district was unable to fund such transportation. Carroll v. Department of HEW, 410 F. Supp. 234 (W.D. Ky. 1976), aff'd, Carroll v. Board of Educ., 561 F.2d 1 (6th Cir. 1977).

7. Definition of "or otherwise."

The words "or otherwise" have reference to funds that may come to the hands of the board of education other than through the exercise of a coercive revenue producing power. Japs v. Board of Educ., 291 S.W.2d 825 (Ky. 1956).

8. Reasonable Walking Distance.

It is the mandatory duty of a board of education to furnish transportation to children who do not live within reasonable walking distance of the school attended. Madison County Bd. of Educ. v. Skinner, 299 Ky. 707, 187 S.W.2d 268 (1945).

Where young children were required to walk two (2) or three (3) miles to school, over a tortuous and dangerous road crossing narrow bridge, railroad, and federal highway carrying fast moving traffic, independent school board's determination that children were within "reasonable walking distance" was abuse of discretion, and therefore writ of mandamus would be granted to compel board to furnish pupils transportation as soon as possible. Schmidt v. Payne, 304 Ky. 58, 199 S.W.2d 990 (1947).

Walking distances for elementary pupils which do not exceed two (2) miles, where no particularly hazardous road conditions are involved, are not unreasonable and travel for about two (2) miles on a gravel road without shoulders or walkways over which approximately 50 cars passed each day was within reasonable walking distance. Board of Educ. v. Bowling, 312 Ky. 749, 229 S.W.2d 769 (1950).

Where distance children had to walk to school was at the most two and one-quarter (2¼) miles along streets which did not present any particular hazards and they had school safety patrol and traffic patrolwoman to assist them in crossing the streets it was not mandatory upon the board to furnish transportation. Bowen v. Meyer, 255 S.W.2d 490 (Ky. 1953).

The distance alone, which at the most was two and one-quarter (2¼) miles, was not an unreasonable walking distance for pupils in an elementary school. Bowen v. Meyer, 255 S.W.2d 490 (Ky. 1953).

The board of education necessarily must be allowed some discretion in determining what is a reasonable walking distance in any particular situation, and the courts should not interfere unless the board has acted in an arbitrary and unreasonable manner in refusing to furnish transportation. Bowen v. Meyer, 255 S.W.2d 490 (Ky. 1953).

Where the plaintiff's children had to walk one-half (½) to seven-tenths (7/10) of a mile to reach a school bus, there was not sufficient substantial evidence to compel a finding by the trial court that the board of education acted arbitrarily or unreasonably in refusing to take a bus to the plaintiff's home. Hoefer v. Hardin County Bd. of Educ., 441 S.W.2d 418 (Ky. 1969).

The fact that road may be insufficiently patrolled by the law enforcement officers is not sufficient reason to require the school board to send a school bus one-half (½) mile down narrow one-lane gravel road over unsafe bridge to the plaintiff's residence where there was no turnaround to pick up elementary school pupils and board of education did not act arbitrarily and unreasonably in requiring children to walk up the road to the bus line. Hoefer v. Hardin County Bd. of Educ., 441 S.W.2d 418 (Ky. 1969).

9. Reasonable Mode of Transportation.

Where school bus was operated over main highway, but certain pupils lived on dirt side roads, over which it was impossible to operate a school bus of regular size, and in bad weather such roads became in such condition as to make it unsafe for children to travel on foot, order of court requiring school board to furnish "such reasonable mode of transportation as the condition of the roads permit" was affirmed, it being

contemplated that school board would pay for transportation of pupils by parents in private automobiles. Madison County Bd. of Educ. v. Skinner, 299 Ky. 707, 187 S.W.2d 268 (1945).

10. Charging Fees or Fares.

The whole tenor of the statutes is that the transportation shall be furnished for grade school pupils at public expense. Japs v. Board of Educ., 291 S.W.2d 825 (Ky. 1956).

The general powers of a board of education are broad enough to encompass the operation of a transportation system under which high school pupils are charged a fee. Japs v. Board of Educ., 291 S.W.2d 825 (Ky. 1956).

Free transportation may be furnished indigent high school pupils under appropriate and reasonable regulations although high school pupils are charged fees for transportation. Japs v. Board of Educ., 291 S.W.2d 825 (Ky. 1956).

Charging of fares to high school pupils will not have the effect of reducing the per pupil minimum state aid under KRS 157.400 (repealed). Japs v. Board of Educ., 291 S.W.2d 825 (Ky. 1956).

Charging fees to high school pupils does not give a pupil residing within reasonable walking distance of the school a matter of right to tender the fare and ride the bus. Japs v. Board of Educ., 291 S.W.2d 825 (Ky. 1956).

11. Purchase of Buses.

The board may either purchase buses and hire drivers, or contract with persons who own their own vehicles. Smith v. Rose, 293 Ky. 583, 169 S.W.2d 609 (1943).

12. Liability.

13. —County Board.

Act of furnishing transportation is not removed from governmental function, even if provision requiring board to furnish such transportation should be deemed mandatory and not merely permissive. Wallace v. Laurel County Bd. of Educ., 287 Ky. 454, 153 S.W.2d 915 (1941).

County board of education was not liable for personal injuries, allegedly due to negligence of school bus driver, to pupil who alighted from bus and was struck by passing car, since board was engaged in governmental function in furnishing transportation. Wallace v. Laurel County Bd. of Educ., 287 Ky. 454, 153 S.W.2d 915 (1941).

When a board of education has secured an insurance policy, under KRS 160.310, insuring against liability (rather than loss) arising from the operation of its school buses, the board may not interpose the defense, in an action for damages arising from negligent operation of a school bus, that the operation of school buses is a governmental function. Taylor v. Knox County Bd. of Educ., 292 Ky. 767, 167 S.W.2d 700, 145 A.L.R. 1333 (1942).

In suit against county board of education where board carried liability insurance under KRS 160.310 it was within the province of the jury to find bus driver was negligent and that nine-year-old boy was not contributorily negligent in collision of his bicycle with a school bus. Pike County Bd. of Educ. v. Varney, 253 S.W.2d 253 (Ky. 1952).

No liability may be imposed upon the individual board members when they fail to perform or perform negligently some duty owing the public but the transportation of pupils is a necessary part of the school program and the carrying of liability insurance under KRS 160.310 is an expense incident thereto and failing of school board to require bus operators to carry liability insurance renders the members of the board individually liable. Bronaugh v. Murray, 294 Ky. 715, 172 S.W.2d 591 (1943).

14. Gasoline Tax.

Boards of education are liable for tax on gasoline purchased by them. Board of Educ. v. Talbott, 286 Ky. 543, 151 S.W.2d 42 (1941).

Payment of gasoline tax by boards of education does not violate Const., § 184. Board of Educ. v. Talbott, 286 Ky. 543, 151 S.W.2d 42 (1941).

15. Hauling Voters to Polls.

Use of school buses to haul voters to polls at subdistrict tax levy election is not inherently vicious, but is subject to criticism if passengers are limited to adherents of one (1) side. Gill v. Board of Educ., 288 Ky. 790, 156 S.W.2d 844 (1941).

Collateral References. 68 Am. Jur. 2d, Schools, §§ 240-247.

78A C.J.S., Schools and School Districts, §§ 744-756, 758-765.

Constitutionality, under state constitutional provision forbidding financial aid to religious sects, of public provision of school bus service for private school pupils. 41 A.L.R.3d 344.

Transportation of school pupils at expense of public. 63 A.L.R. 413; 118 A.L.R. 806; 146 A.L.R. 625.

158.115. Supplementation of school bus transportation system by county out of general funds.

(1) Each county may furnish transportation from its general funds, and not out of any funds or taxes raised or levied for educational purposes or appropriated in aid of the common schools, to supplement the present school bus transportation system for the aid and benefit of all pupils of elementary grade attending school in compliance with the compulsory school attendance laws of the Commonwealth of Kentucky who do not reside within reasonable walking distance of the school they attend and where there are no sidewalks along the highway they are compelled to travel; and any county may provide transportation from its general funds to supplement the present school bus transportation system for the aid of any pupil of any grade who does not live within reasonable walking distance of the school attended by him in compliance with the compulsory school attendance laws and where there are no sidewalks along the highway he is compelled to travel.

(2) Each county may provide transportation by means of local board of education operated transportation systems, transit authorities organized and operating pursuant to KRS Chapter 96A, local governmental mass transit systems, and individual contracted buses and vehicles.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 399, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1974, ch. 156; 1986, ch. 161, § 6, effective July 15, 1986) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 399, effective July 13, 1990.

Opinions of Attorney General. Under this section the fiscal court may appropriate moneys out of its general fund to pay the transportation expenses of retarded children who are attending nonpublic schools. OAG 61-547.

A fiscal court may appropriate funds to aid a local board of education in the transportation of students attending nonpublic schools. OAG 61-668.

A county can expend money from its properly budgeted general fund to the county board of education for the specific transportation purposes outlined in the statute, provided that such expenditure is actually supplemental to the present school bus transportation system for such affected class of

students, and provided the formula for such expenditure is observed. OAG 67-241.

This section is permissive and the fiscal court is not required to supplement school bus transportation in any given year even though it may have done so in prior years. OAG 67-433.

It seems clear that in enacting this section the Legislature intended that when the fiscal court of a county decided to furnish transportation to pupils in parochial schools, the school board in the county which was then furnishing transportation to the public schools would have to enlarge its operation to include the parochial schools and be compensated from the general funds of the county on a pro rata basis. OAG 72-795.

Common school funds may be used for transporting pupils from private or parochial schools to public vocational schools where the private school students attend vocational schools on a split day basis and where regular school bus transportation is used. OAG 75-300.

Under this section, a fiscal court may fund the cost of transporting students to parochial schools within its district. OAG 76-529.

While this section authorizes a county to supplement the transportation of school children under certain conditions out of its general funds, it does not apply to the rocking and maintenance of a school bus turnaround on private property. OAG 79-200.

A county fiscal court may provide snow removal service to the county schools in exchange for the transporting of nonpublic school students, provided that the value of such service is fairly and accurately determined, provisions are made for the payment to the county school system of any balance due, and appropriate procurement laws are followed where applicable; the best method for handling any legitimate exchange of services as outlined would be for the county school system to pay for the service and for the county fiscal court to pay that amount back to the county school system for the transporting of nonpublic school students. OAG 80-390.

It is not constitutionally permissible for the board of education to provide transportation for parochial school pupils from their homes to the nearest public schools so long as they do not live within a reasonable walking distance to such school, where transportation from public schools to parochial schools would then be provided either by the fiscal court or the local parochial school system. OAG 82-392.

To the extent nonpublic school children are transported on public school buses, irrespective of their point of departure, the local school district must be reimbursed on a per capita basis to avoid constitutional violation. Accordingly, it would not be appropriate for the board of education to provide transportation for parochial pupils from their homes to the nearest public school, so long as they do not live within a reasonable walking distance to such school, and for the board of education to be reimbursed by either the fiscal court and/or the local parochial school system for the additional cost (if any) to the school system, since reimbursement is required to be on a "per capita" basis. OAG 82-392.

A member of the board of education of a particular county would not be personally liable if the school board failed to collect from the fiscal court the amount due under its contract with the fiscal court for the transportation of students to and from parochial schools, when the fiscal court contracted and agreed to pay such transportation expense. Only the school board had a responsibility to collect the money due under the contract with the fiscal court. OAG 82-405.

This section was the authorizing statute for a contract requiring a fiscal court to reimburse a school district on a straight per capita basis for nonpublic school students who ride public school buses and, absent full reimbursement by the fiscal court to the school board, the expenditure of public school moneys for transporting nonpublic school children would create a constitutional violation under Const., § 180 as well as other provisions. Therefore, failure by the school board to enforce the contract with the fiscal court would be tantamount to willful neglect of duty and could lead to removal from office. OAG 82-405.

A proposal by the fiscal court to pay a sum equal to 150 percent of the purported "actual cost" of transporting all the school children in a school district may not be legally tolerated, since it appears that a purported "actual increase cost" figure for the cost of transporting the nonpublic school children may not be constitutionally determined. OAG 83-294.

Cited: Madison County Bd. of Educ. v. Skinner, 299 Ky. 707, 187 S.W.2d 268 (1945).

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Nonpublic school pupils.
3. Expenditure from general fund.
4. —Use of school funds.
5. Limitation on transportation.
6. Transportation subsidies.
7. —Constitutionality.
8. Permissibility.

1. Constitutionality.

This section does not violate Const., § 5 notwithstanding that it would authorize transportation of children to parochial schools as well as public schools for it is simply an exercise of police power for the protection of children against the inclemency of the weather and the hazards of highway traffic. Nichols v. Henry, 301 Ky. 434, 191 S.W.2d 930 (1945).

This section does not violate § 26, of the Constitution. Nichols v. Henry, 301 Ky. 434, 191 S.W.2d 930 (1945).

This section does not violate Const., § 180 as authorizing a diversion of tax proceeds. Nichols v. Henry, 301 Ky. 434, 191 S.W.2d 930 (1945).

This section does not violate either the provisions of Const., § 171 requiring that tax levys be only for public purposes or the provision of Const., § 3 forbidding a special privilege. Nichols v. Henry, 301 Ky. 434, 191 S.W.2d 930 (1945).

This section is valid as legislation intended for public purpose of protecting children from dangers of highways and is not invalid as intended for private purpose of aiding private, parochial or sectarian schools notwithstanding that such schools would indirectly benefit by virtue of transportation of their pupils. Nichols v. Henry, 301 Ky. 434, 191 S.W.2d 930 (1945).

2. Nonpublic School Pupils.

Children attending private, parochial or sectarian schools under the provisions of KRS 159.030 are "attending school in compliance with the compulsory school attendance laws" within the meaning of this section. Nichols v. Henry, 301 Ky. 434, 191 S.W.2d 930 (1945).

Fiscal court may, under this section, bear the expense of transporting children attending parochial or private schools. Rawlings v. Butler, 290 S.W.2d 801 (Ky. 1956).

This section contemplates transportation furnished by the fiscal court to "all pupils" equally, but contemplates neither furnishing transportation selectively to some pupils and not others nor direct payment to the general fund of private institutions. Fiscal Court v. Brady, 885 S.W.2d 681 (Ky. 1994).

3. Expenditure from General Fund.

Fiscal court should make general fund unit in county budget large enough to cover amount to be expended under this section, rather than attempt to levy a special tax for the purpose. Nichols v. Henry, 301 Ky. 434, 191 S.W.2d 930 (1945).

4. —Use of School Funds.

The school district cannot constitutionally expend any of its

funds to transport nonpublic school pupils and expenditures under this section must be by county out of general funds. Board of Educ. v. Jefferson County, 333 S.W.2d 746 (Ky. 1960).

5. Limitation on Transportation.

Transportation may be furnished only to those who did not live within reasonable walking distance of the school, and where there are no sidewalks at or within a reasonable distance of their homes, but having once boarded the bus they will not be required to leave it until they have been transported to within a reasonable distance of their school. Nichols v. Henry, 301 Ky. 434, 191 S.W.2d 930 (1945).

6. Transportation Subsidies.

Taxpayer challenge to expenditures for transportation of nonpublic school students in Acts 1994 (1st Ex. Sess.), ch. 5, Part XI, E. and administrative regulation setting up procedure for distribution of funds provided by the Act (600 KAR 5:010) was not moot for although payment had already been made for the 1994-95 school year at the time of the appeal of the Circuit Court's dismissal of the action the payments for the 1995-96 school year were still pending and since the legislature has historically approved various expenditures pursuant to KRS 158.115 it is a matter likely to come again before the legislature. Price v. Commonwealth, 945 S.W.2d 429 (Ky. Ct. App. 1996).

7. —Constitutionality.

Grants made by fiscal court from county tax revenues by direct payment to certain specified privately-owned schools designated as transportation subsidies violated Const., § 171, which provides that taxes shall be levied for public purposes only, and subsection (1) of KRS 61.080, which provides that county funds may be appropriated only for lawful purposes. Fiscal Court v. Brady, 885 S.W.2d 681 (Ky. 1994).

Award of 99 percent of fiscal court's transportation subsidy to educational institutions that promote religious teachings and beliefs, while equivalent support for the public school optional program was withheld violated Const., §§ 5, 189. Fiscal Court v. Brady, 885 S.W.2d 681 (Ky. 1994).

Grants made by fiscal court from county tax revenue by direct payment to certain specified privately-owned schools which were designated as a transportation subsidies violated Const., § 184 when such payments were made directly to the nonpublic school, for Const., § 184 provides that money cannot be expended for education other than in common schools without a vote of the public, because public money is being expended for the benefit of the private institution rather than providing specifically for the health and safety of all the children. Fiscal Court v. Brady, 885 S.W.2d 681 (Ky. 1994).

8. Permissibility.

This section's use of the word "may" denotes that the section permits county fiscal courts to supplement the present bus school transportation system, but does not require it to do so. Fiscal Court v. Brady, 885 S.W.2d 681 (Ky. 1994).

Collateral References. Transportation of school pupils at expense of public. 63 A.L.R. 413; 118 A.L.R. 806; 146 A.L.R. 625.

158.120. Nonresident pupils — Tuition.

(1) Any board of education may charge a reasonable tuition fee per month for each child attending its schools whose parent, guardian, or other legal custodian is not a bona fide resident of the district. Any controversy as to the fee shall be submitted to the Kentucky Board of Education for final settlement. The fee shall be paid by the board of education of the school district in which the pupil resides, except in cases where the board makes provision for the child's education within his district. If a board of education is required to pay a pupil's tuition fee, the pupil shall be admitted to a school only upon proper certificate of the board of education of the district in which he resides.

(2) When it appears to the board of education of any school district that it is convenient for a pupil of any grade residing in that district to attend an approved public school in another district, the board of education may enter into a tuition contract with the public school authorities of the other school district for that purpose, but before a contract is entered into with public school authorities in another state the school shall have been approved by the state school authorities of that state through the grades in which the pupil belongs. When a district undertakes, under operation of a tuition contract or of law, to provide in its school for pupils residing in another district, the district of their residence shall share the total cost of the school, including transportation when furnished at public expense, in proportion to the number of pupils or in accordance with contract agreement between the two (2) boards.

(4399-51: amend. Acts 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 202, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

Cross-References. Special education program in district other than that of child's residence, KRS 157.280.

Opinions of Attorney General. A child living with its guardian within the county school district would be "residing" in the district within the meaning of the statutes and would be eligible to attend the county schools without the payment of tuition. OAG 66-550.

A county board of education has legal authority to refuse the admission of nonresident children to its schools, but the board would be prohibited from arbitrarily extending school attendance privileges to some nonresident children while denying the same privilege to others. OAG 66-550.

Without a showing that the circumstances differ, the exemption of certain nonresidents without the exemption of all would be arbitrary and illegal. OAG 67-48.

Where the construction of a lake separates a portion of a school district from the remainder of the district and would require high school students in the separated portion to travel 65 miles to attend the district high school, the school is not reasonably accessible to the students and, under this section, it is the obligation of the board of education of the divided district to pay the tuition of those students at the high school of a more readily accessible district. OAG 67-276.

Where children residing on federal property attend schools operated and financed by the federal government, if the property in the federally-owned areas were subject to local ad valorem taxation by the school districts, and if the responsibility for educating children residing in these areas was transferred to the local school districts, then those resident children could properly and lawfully be included in the computation of state minimum foundation program fund allocations. OAG 68-50.

A school district which grants nonresident pupils the privilege of attending its school for which tuition is charged, is not compelled to furnish transportation to such nonresident students. OAG 69-140.

The duty of the school district to provide transportation under KRS 158.110 extends only to children of elementary grades who reside within its district. OAG 69-140.

Under this section and KRS 158.130 (now repealed), the school district in which a parent resides is not required to pay tuition for the children of such parent to attend school in another district where the school district of the parent's residence has provided educational facilities and the children would be sent to another school district merely because of the personal preference of the parent. OAG 72-271.

A school district is required to admit for enrollment, tuition free, a child living with the child's custodian declared by court order or other legal process who resides in the school district, irrespective of whether the court order is one for temporary custody or one for permanent custody. OAG 78-64.

If a child who is not residing with his legal custodian is not residing in a particular school district primarily for school purposes, tuition generally would not be chargeable but the matter of free tuition must be decided by the school board on a case by case basis. OAG 78-64.

A child is entitled to go to school, tuition free, in the school district in which the guardian is a resident. OAG 78-64.

A child who has reached his eighteenth birthday is entitled to attend school without payment of tuition in the school district in which he actually resides. OAG 78-64.

It is truly in the discretion of the local board of education to establish a reasonable tuition fee for nonresident students; however, the better practice would be for a local board to attempt to establish a tuition fee sufficient to defray any reasonably calculated per capita costs not funded through the state foundation program funds for educating a nonresident child. OAG 78-265.

Although a county school district and an independent school district can establish a policy concerning the times when a student could transfer from one school district to another, they could not prevent a student from returning to attend the schools in the district in which he resides. OAG 80-47.

NOTES TO DECISIONS

Analysis

1. Residence in district.
2. Tuition.
3. —Payment.

1. Residence in District.

When an inmate of a children's home is placed in a "boarding home" in another school district, he is entitled to attend school in the latter district without payment of tuition. Wirth v. Board of Educ., 262 Ky. 291, 90 S.W.2d 62 (1935).

2. Tuition.

The fact that the receiving board did not secure as high a tuition from nonresidents as it might have does not, in the absence of corruption or bad faith, make its acts illegal. White v. Board of Educ., 263 Ky. 91, 91 S.W.2d 539 (1936).

3. —Payment.

Where city boundaries extended beyond those of independent school district said school district could enjoin resident of city living beyond the boundaries of the district from sending his children to said school until he paid the tuition charged under this section. Jenkins Indep. Sch. Dist. v. Hunt, 314 Ky. 760, 237 S.W.2d 65 (1951).

Decisions Under Prior Law

Analysis

1. Discretion of board.
2. Pleadings.

1. Discretion of Board.

The matter of whether to pay tuition for a child's attendance at a school of another district is a matter within the board's discretion, and the refusal of the board of such a request, made merely on the ground of convenience, cannot be classed as arbitrary or unreasonable. Wheat v. Adair County Bd. of Educ., 460 S.W.2d 806 (Ky. 1970). (Decision under former KRS 158.130, now repealed).

2. Pleadings.

Where petitioners were closer to a neighboring county school than to a school in their own county, allegations of inconvenience did not state a claim on which relief could be granted against the board of education. Wheat v. Adair County Bd. of Educ., 460 S.W.2d 806 (Ky. 1970). (Decision under former KRS 158.130, now repealed).

Collateral References. 78A C.J.S., Schools and School Districts, §§ 697-699, 710.

Nonresident pupils, constitutionality, construction, and effect of statutes in relation to admission of, to school privileges. 72 A.L.R. 499; 113 A.L.R. 177.

158.130. Pupils sent to other districts. [Repealed.]

Compiler's Notes. This section (4399-52) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.135. Reimbursement for school services for state agency children in state institution or day treatment center or in custody of Department of Juvenile Justice.

(1) As used in this section, unless the context otherwise requires:

(a) "State agency children" means:

1. a. Those children of school age committed to or in custody of the Cabinet for Families and Children and placed, or financed by the cabinet, in a Cabinet for Families and Children operated or contracted institution, treatment center, facility, including those for therapeutic foster care and excluding those for nontherapeutic foster care; or

b. Those children placed or financed by the Cabinet for Families and Children in a private facility pursuant to child care agreements including those for therapeutic foster care and excluding those for nontherapeutic foster care;

2. Those children of school age in home and community-based services provided as an alternative to intermediate care facility services for the mentally retarded; and

3. Those children committed to or in custody of the Department of Juvenile Justice and placed in a department operated or contracted facility or program.

(b) "Current costs and expenses" means all expenditures, other than for capital outlay and debt service, which are in excess of the amount generated by state agency children under the Support Education Excellence in Kentucky funding formula pursuant to KRS 157.360. These expenditures are necessary to provide a two hundred thirty (230) day school year, smaller teacher pupil ratio, related services if

identified on an individual educational plan, and more intensive educational programming.

(c) "Therapeutic foster care" means a remedial care program for troubled children and youth that is in the least restrictive environment where the foster parent is trained to implement planned, remedial supervision and care leading to positive changes in the child's behavior. Children served in this placement have serious emotional problems and meet one (1) or more of the following criteria:

1. Imminent release from a treatment facility;
2. Aggressive or destructive behavior;
3. At risk of being placed in more restrictive settings, including institutionalization; or
4. Numerous placement failures.

(2) (a) Unless otherwise provided by the General Assembly in a budget bill, any county or independent school district that provides elementary or secondary school services to state agency children shall be reimbursed through a contract with the Kentucky Educational Collaborative for State Agency Children. The school services furnished to state agency children shall be equal to those furnished to other school children of the district.

(b) The Department of Education shall, to the extent possible within existing appropriations, set aside an amount of the state agency children funds designated by the General Assembly in the biennial budget to reimburse a school district for its expenditures exceeding twenty percent (20%) of the total amount received from state and federal sources to serve a state agency child.

(3) The General Assembly shall, if possible, increase funding for the education programs for state agency children by a percentage increase equal to that provided in the biennial budget for the base funding level for each pupil in the program to support education excellence in Kentucky under KRS 157.360 and, if applicable, by an amount necessary to address increases in the number of state agency children being served.

(4) The Kentucky Educational Collaborative for State Agency Children shall make to the chief state school officer the reports required concerning school services for state agency children, and shall file with the Cabinet for Families and Children unit operating or regulating the institution or day treatment center, or contracting for services, in which the children are located a copy of the annual report made to the chief state school officer.

(5) The Cabinet for Families and Children shall contract with a university-affiliated training resource center utilizing all funds generated by the children in state agency programs, except Oakwood and Hazelwood funds, and the funds in the Kentucky Department of Education budget, pursuant to this section, as well as any other educational funds for which all Kentucky children are entitled. The total of these funds shall be utilized to provide educational services through the Kentucky Educational Collaborative for State Agency Children established in KRS 605.110.

(6) Notwithstanding the provisions of any other statute, the Kentucky Educational Collaborative for State Agency Children shall operate a two hundred thirty (230) day school program.

(Enact. Acts 1952, ch. 88, §§ 1 to 4; 1958, ch. 126, § 19; 1976, ch. 126, § 1; 1978, ch. 150, § 2, effective June 17, 1978; 1984, ch. 316, § 7, effective July 13, 1984; 1984, ch. 410, § 12, effective July 13, 1984; 1990, ch. 476, Pt. IV, § 203, effective July 13, 1990; 1992, ch. 357, § 1, effective July 1, 1993; 1994, ch. 376, § 2, effective July 15, 1994; 1996, ch. 358, § 65, effective January 1, 1997; 1998, ch. 426, § 115, effective July 15, 1998; 1998, ch. 433, § 1, effective April 13, 1998; 1998, ch. 538, § 1, effective April 13, 1998.)

Legislative Research Commission Note. (7/15/98). This section was amended by 1998 Ky. Acts chs. 426, 433, and 538 which do not appear to be in conflict and have been codified together.

Cross-References. Kentucky Educational Collaborative for State Agency Children, 505 KAR 1:080.

SEEK funding formula, 702 KAR 3:270.

158.137. Educational passports for state agency children.

(1) As used in this section:

(a) "State agency child" or "state agency children" means "state agency children" defined in KRS 158.135;

(b) "School or educational facility" means any public school, private school, day treatment center, or any other public or private entity that provides educational services to state agency children; and

(c) "Educational passport" means a standard form completed by a school or educational facility which a state agency child is leaving which provides a receiving school or facility with basic demographic and academic information about the state agency child.

(2) When the placement of a state agency child is changed and the state agency child must transfer from one school or educational facility to a different school or educational facility, the school or educational facility that the state agency child is leaving shall, within two (2) days of the state agency child leaving, prepare an educational passport for the child, which shall be delivered to the Cabinet for Families and Children or the Department of Juvenile Justice. The Cabinet for Families and Children or the Department of Juvenile Justice shall, within two (2) days of enrolling a state agency child in a new school or educational facility, present the educational passport to the receiving school or educational facility.

(3) A standard educational passport form shall be developed by the Kentucky Department of Education in consultation with the Cabinet for Families and Children and the Department of Juvenile Justice. The Kentucky Department of Education shall make the form available to all schools or

educational facilities serving state agency children.

(Enact. Acts 1998, ch. 398, § 1, effective July 15, 1998.)

Cross-References. Kentucky Educational Collaborative for State Agency Children, 505 KAR 1:080.

158.140. Admission to high school — Promotion — Classification — High school diploma — Vocational certificate of completion.

(1) When a pupil in any public elementary school or any approved private or parochial school completes the prescribed elementary program of studies, he is entitled to a certificate of completion signed by the teacher or teachers under whom the program was completed. The certificate shall entitle the pupil to admission into any public high school. Any promotions or credits earned in attendance in any approved public school are valid in any other public school to which a pupil may go, but the superintendent or principal of a school, as the case may be, may assign the pupil to the class or grade to which the pupil is best suited. In case a pupil transfers from the school of one (1) district to the school of another district, an assignment to a lower grade or course shall not be made until the pupil has demonstrated that he is not suited for the work in the grade or course to which he has been promoted.

(2) Upon successful completion of all state and local board requirements, the student shall receive a diploma indicating graduation from high school.

(3) A local school board may award a diploma indicating graduation from high school to any student posthumously with the high school class the student was expected to graduate.

(4) A local board of education shall award a high school diploma to an honorably discharged veteran who was enrolled in, but did not complete, high school prior to being inducted into the United States Armed Forces during World War II as defined in KRS 40.010. Upon recommendation of the commissioner, the Kentucky Board of Education in consultation with the Kentucky Department of Veterans' Affairs shall promulgate administrative regulations to establish the guidelines for awarding these diplomas.

(5) The Department of Education shall establish the requirements for a vocational certificate of completion. A student who has returned to school after dropping out shall receive counseling concerning the vocational program. A student who has completed the requirements established for a vocational program shall receive a vocational certificate of completion specifying the areas of competence.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 400, effective July 13, 1990; 1998, ch. 598, § 10, effective April 14, 1998; 2002, ch. 121, § 1, effective July 15, 2002.)

Compiler's Notes. This section (4363-5: amend. Acts 1984, ch. 224, § 1, effective July 13, 1984) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 400, effective July 13, 1990.

Cross-References. Recognition of credits when transferring without transcript, 704 KAR 3:307.

Opinions of Attorney General. Retention and promotion of pupils is entirely a matter of local board of education policy and not a matter for control by parents. Parents do not have a right to demand that a child be retained at a particular grade level for any reason, and especially not for athletic purposes. OAG 82-473.

Where a child attends no kindergarten program, either public or nonpublic, before July 1, 1986, but upon attaining six (6) years of age he enrolls in a nonpublic school first grade, and such child subsequently is presented for enrollment in a public common school for the second or a subsequent grade, the child would be entitled to so enroll subject to the usual application of the provisions of this section. OAG 85-55.

Collateral References. 78A C.J.S., Schools and School Districts, §§ 697-699, 710.

158.145. Legislative findings and declarations on school dropout rate.

(1) The General Assembly hereby finds that:

(a) Little progress has been made in reducing the state's student dropout rate;

(b) The number of school dropouts in Kentucky is unacceptable;

(c) The factors, such as lack of academic success, poor school attendance, lack of parental support and encouragement, low socioeconomic status, poor health, child abuse, drug and alcohol addictions, alienation from school and community, and other factors that are associated with an increased probability of students dropping out of school, occur long before the end of compulsory school age;

(d) Students who drop out of school before graduation are less likely to have the basic capacities as defined in KRS 158.645 and the skills as defined in KRS 158.6451;

(e) The number of school dropouts seriously interferes with Kentucky's ability to develop and maintain a well-educated and highly trained workforce;

(f) The effects of students dropping out of school can be felt throughout all levels of society and generations in increased unemployment and underemployment, reduced personal and family incomes, increased crime, decreased educational, social, emotional, and physical well-being, and in increased needs for government services; and

(g) The positive reduction in school dropouts can only be achieved by comprehensive intervention and prevention strategies.

(2) The General Assembly declares on behalf of the people of the Commonwealth the following goals to be achieved by the year 2006:

(a) The statewide annual average school dropout rate will be cut by fifty percent (50%) of what it was in the year 2000;

(b) No school will have an annual dropout rate that exceeds five percent (5%); and

(c) Each county will have thirty percent (30%) fewer adults between the ages of sixteen (16) and twenty-four (24) without a high school

diploma or GED than the county had in the year 2000.

(Enact. Acts 2000, ch. 452, § 1, effective July 14, 2000.)

158.146. Establishment of strategy to address school dropout problem — Department to provide technical assistance, award grants, and disseminate information to school districts and school level personnel.

(1) No later than December 30, 2000, the Kentucky Department of Education shall establish and implement a comprehensive statewide strategy to provide assistance to local districts and schools to address the student dropout problem in Kentucky public schools. In the development of the statewide strategy, the department shall engage private and public representatives who have an interest in the discussion. The statewide strategy shall build upon the existing programs and initiatives that have proven successful. The department shall also take into consideration the following:

(a) Analyses of annual district and school dropout data as submitted under KRS 158.148 and 158.6453;

(b) State and federal resources and programs, including, but not limited to, extended school services; early learning centers; family resource and youth service centers; alternative education services; preschool; service learning; drug and alcohol prevention programs; School-to-Careers; High Schools that Work; school safety grants; and other relevant programs and services that could be used in a multidimensional strategy;

(c) Comprehensive student programs and services that include, but are not limited to, identification, counseling, mentoring, and other educational strategies for elementary, middle, and high school students who are demonstrating little or no success in school, who have poor school attendance, or who possess other risk factors that contribute to the likelihood of their dropping out of school; and

(d) Evaluation procedures to measure progress within school districts, schools, and statewide.

(2) The department, with assistance from appropriate agencies, shall provide technical assistance to districts requesting assistance with dropout prevention strategies and the development of district and schoolwide plans.

(3) The department shall award grants to local school districts for dropout prevention programs based upon available appropriations from the General Assembly and in compliance with administrative regulations promulgated by the Kentucky Board of Education for this purpose. Seventy-five percent (75%) of the available dropout funds shall be directed to services for at-risk elementary and middle school students, including, but not limited to, identification, counseling, home visitations, parental training, and other strategies to improve school attendance, school achievement, and to minimize at-risk factors. Twenty-five percent (25%) of the funds shall be directed to services for high school students identified as likely to drop out of school, including, but not limited to, counseling, tutoring, extra instructional support, alternative programming, and other appropriate strategies. Priority for grants shall be awarded to districts that average, over a three (3) year period, an annual dropout rate exceeding five percent (5%).

(4) The department shall disseminate information on best practices in dropout prevention in order to advance the knowledge for district and school level personnel to address the dropout problem effectively.

(Enact. Acts 2000, ch. 452, § 2, effective July 14, 2000.)

158.148. Student discipline guidelines — Local code of acceptable behavior and discipline.

(1) In cooperation with the Kentucky Education Association, the Kentucky School Boards Association, the Kentucky Association of School Administrators, the Parent-Teachers Association, the Kentucky Chamber of Commerce, the Farm Bureau, members of the Interim Joint Committee on Education, and other interested groups, and in collaboration with the Center for School Safety, the Department of Education shall develop:

(a) Statewide student discipline guidelines to ensure safe schools; and

(b) Recommendations designed to improve the learning environment and school climate, parental and community involvement in the schools, and student achievement.

(2) The department shall obtain statewide data on major discipline problems and reasons why students drop out of school. In addition, the department, in collaboration with the Center for School Safety, shall identify successful strategies currently being used in programs in Kentucky and in other states and shall incorporate those strategies into the statewide guidelines and the recommendations under subsection (1) of this section.

(3) Copies of the discipline guidelines shall be distributed to all school districts. The statewide guidelines shall contain broad principles to guide local districts in developing their own discipline code and school councils in the selection of discipline and classroom management techniques under KRS 158.154; and in the development of the district-wide safety plan.

(4) Each local board of education shall be responsible for formulating a code of acceptable behavior and discipline to apply to the students in each school operated by the board.

(a) The superintendent, or designee, shall be responsible for overall implementation and supervision, and each school principal shall be responsible for administration and implementation within each school. Each school council shall select and implement the appropriate discipline and classroom management techniques necessary to carry out the code. The board shall establish a process for a two-way

communication system for teachers and other employees to notify a principal, supervisor, or other administrator of an existing emergency.

(b) The code shall contain the type of behavior expected from each student, the consequences of failure to obey the standards, and the importance of the standards to the maintenance of a safe learning environment where orderly learning is possible and encouraged.

(c) The principal of each school shall apply the code of behavior and discipline uniformly and fairly to each student at the school without partiality or discrimination.

(d) A copy of the code of behavior and discipline adopted by the board of education shall be posted at each school. Guidance counselors shall be provided copies for discussion with students. The code shall be referenced in all school handbooks. All school employees and parents shall be provided copies of the code.

(Enact. Acts 1984, ch. 397, § 3, effective July 13, 1984; 1985 (1st Ex. Sess.), ch. 10, § 13, effective October 18, 1985; 1990, ch. 476, Pt. IV, § 204, effective July 13, 1990; 1996, ch. 8, § 1, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 493, § 11, effective April 10, 1998; 2000, ch. 452, § 4, effective July 14, 2000.)

Cross-References. Guidelines for dropout prevention programs, 704 KAR 7:070.

Student discipline guidelines, 704 KAR 7:050.

Kentucky Bench & Bar. Kirby, School-Based Decision Making, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 15.

158.150. Suspension or expulsion of pupils.

(1) All pupils admitted to the common schools shall comply with the lawful regulations for the government of the schools:

(a) Willful disobedience or defiance of the authority of the teachers or administrators, use of profanity or vulgarity, assault or battery or abuse of other students, the threat of force or violence, the use or possession of alcohol or drugs, stealing or destruction or defacing of school property or personal property of students, the carrying or use of weapons or dangerous instruments, or other incorrigible bad conduct on school property, as well as off school property at school-sponsored activities, constitutes cause for suspension or expulsion from school; and

(b) Assault or battery or abuse of school personnel; stealing or willfully or wantonly defacing, destroying, or damaging the personal property of school personnel on school property, off school property, or at school-sponsored activities constitutes cause for suspension or expulsion from school.

(2) Each local board of education shall adopt a policy requiring the expulsion from school for a period of not less than one (1) year for a student who is determined by the board to have brought a weapon to a school under its jurisdiction. The board shall also adopt a policy requiring disciplinary actions, up to and including expulsion from school, for a student who is determined by the board to have possessed prescription drugs or controlled substances for the purpose of sale or distribution at a school under the board's jurisdiction, or to have physically assaulted or battered or abused educational personnel or other students at a school or school function under the board's jurisdiction. The board may modify the expulsion requirement for students on a case-by-case basis. A board that has expelled a student from the student's regular school setting shall provide or assure that educational services are provided to the student in an appropriate alternative program or setting, unless the board has made a determination, on the record, supported by clear and convincing evidence, that the expelled student poses a threat to the safety of other students or school staff and cannot be placed into a state-funded agency program. Other intervention services as indicated for each student may be provided by the board or by agreement with the appropriate state or community agency. A state agency that provides the service shall be responsible for the cost. In determining whether a student has brought a weapon to school, a local board of education shall use the definition of "unlawful possession of a weapon on school property" stated in KRS 527.070.

(3) School administrators, teachers, or other school personnel may immediately remove or cause to be removed threatening or violent students from a classroom setting or from the district transportation system pending any further disciplinary action that may occur. Each board of education shall adopt a policy to assure the implementation of this section and to assure the safety of the students and staff.

(4) A pupil shall not be suspended from the common schools until after at least the following due process procedures have been provided:

(a) The pupil has been given oral or written notice of the charge or charges against him which constitute cause for suspension;

(b) The pupil has been given an explanation of the evidence of the charge or charges if the pupil denies them; and

(c) The pupil has been given an opportunity to present his own version of the facts relating to the charge or charges.

These due process procedures shall precede any suspension from the common schools unless immediate suspension is essential to protect persons or property or to avoid disruption of the ongoing academic process. In such cases, the due process procedures outlined above shall follow the suspension as soon as practicable, but no later than three (3) school days after the suspension.

(5) The superintendent, principal, assistant principal, or head teacher of any school may suspend a pupil but shall report the action in writing immediately to the superintendent and to the parent, guardian, or other person having legal custody or control of the pupil. The board of education of any school district may expel any pupil for misconduct as

defined in subsection (1) of this section, but the action shall not be taken until the parent, guardian, or other person having legal custody or control of the pupil has had an opportunity to have a hearing before the board. The decision of the board shall be final.

(6) (a) Suspension of exceptional children, as defined in KRS 157.200, shall be considered a change of educational placement if:

1. The child is removed for more than ten (10) consecutive days during a school year; or
2. The child is subjected to a series of removals that constitute a pattern because the removals accumulate to more than ten (10) school days during a school year and because of other factors, such as the length of each removal, the total amount of time the child is removed, and the proximity of removals to one another.

(b) The admissions and release committee shall meet to review the placement and make a recommendation for continued placement or a change in placement and determine whether regular suspension or expulsion procedures apply. Additional evaluations shall be completed, if necessary.

(c) If the admissions and release committee determines that an exceptional child's behavior is related to his disability, the child shall not be suspended any further or expelled unless the current placement could result in injury to the child, other children, or the educational personnel, in which case an appropriate alternative placement shall be provided that will provide for the child's educational needs and will provide a safe learning and teaching environment for all. If the admissions and release committee determines that the behavior is not related to the disability, the local educational agency may pursue its regular suspension or expulsion procedure for the child, if the behavior so warrants. However, educational services shall not be terminated during a period of expulsion and during a suspension after a student is suspended for more than a total of ten (10) days during a school year. A district may seek temporary injunctive relief through the courts if the parent and the other members of the admissions and release committee cannot agree upon a placement and the current placement will likely result in injury to the student or others.

(7) Suspension of primary school students shall be considered only in exceptional cases where there are safety issues for the child or others.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 401, effective July 13, 1990; 1992, ch. 378, § 1, effective July 14, 1992; 1996, ch. 51, § 1, effective July 15, 1996; 1998, ch. 493, § 12, effective April 10, 1998; 2001, ch. 95, § 1, effective June 21, 2001.)

Compiler's Notes. This section (4363-9: amend. Acts 1978, ch. 271, § 1, effective June 17, 1978; 1982, ch. 12, § 1, effective July 15, 1982; 1986, ch. 255, § 2, effective July 15, 1986) was repealed and reenacted by Acts 1976, Pt. V, § 401, effective July 13, 1990.

Cross-References. Teachers and teachers' aides responsible for conduct of children, KRS 161.180.

Child find, evaluation, and reevaluation, 707 KAR 1:300.

Children with disabilities enrolled in private schools, 707 KAR 1:370.

Comprehensive system of personnel development, 707 KAR 1:330.

Confidentiality of information, 707 KAR 1:360.

Definitions, 707 KAR 1:280.

Determination of eligibility, 707 KAR 1:310.

Free appropriate public education, 707 KAR 1:290.

Individual education program, 707 KAR 1:320.

Monitoring and recovery of funds, 707 KAR 1:380.

Placement decisions, 707 KAR 1:350.

Procedural safeguards and state complaint procedures, 707 KAR 1:340.

Kentucky Law Journal. Taylor, With Temperate Rod: Maintaining Academic Order in Secondary Schools, 58 Ky. L.J. 616 (1970).

Kentucky Law Survey, Oberst and Hunt, Administrative and Constitutional Law, 71 Ky. L.J. 417 (1982-83).

Opinions of Attorney General. This section defines the method of enforcing school disciplinary rules and regulations and does not authorize withholding a pupil's school records at the end of the school year because the pupil has damaged school textbooks and other school property and has not made restitution. OAG 61-315.

This section is not applicable to a model and practice school conducted by a state college or university pursuant to KRS 164.380. OAG 70-149.

A teacher may not lower a student's academic grades because of misconduct. OAG 72-753.

An "in school suspension" is a contradiction in terms and not within the disciplinary procedures authorized by this section as a suspended pupil should be barred from the school premises during the period of suspension in order to produce the desired effect upon the pupil, his parents, and the decorum of the school. OAG 73-305.

This section authorizes expulsion of a child from public school for no longer than the current school year, for it is not the policy of the state to expel a child permanently. OAG 74-165.

Unexcused absence from school may constitute wilful disobedience. OAG 74-312.

If the attendance of a pupil over 16 years of age is so poor as to indicate a lack of interest in completing his school courses, the board of education would be justified in expelling him. OAG 74-312.

A school board regulation providing that a student fails a course after nine (9) absences is invalid since it in effect considers the student to be automatically expelled after the nine (9) absences but does not afford him a hearing or an opportunity to be heard and gives no consideration to the cause of the absences. OAG 75-124.

KRS chapter 387 pertaining to guardians makes no provision for a guardian "for school purposes only" and therefore the appointment of a guardian "for school purposes only" through trial commissioner's order was a nullity and the school board was not legally bound to recognize such an order. OAG 75-170.

Although there is no provision in this section that entitles a student to a hearing prior to a suspension, under the U.S. Constitution, a student may not be withdrawn from the school roll without a notice and hearing by either the superintendent, principal, head teacher or the board of education. OAG 76-735.

School personnel may not temporarily, by suspension or expulsion, deny a child's property interest in educational

benefits without following rudimentary due process procedures. OAG 77-12.

Since this section provides that the decision of the board is final, legal action would be maintainable in a court of competent jurisdiction with the test being whether the school personnel had acted arbitrarily or maliciously in expelling a student. OAG 77-12.

A suspended student, who is compelled to stay at the school building but who is not being afforded any alternative educational program or school counseling, is legally absent from school and may not be counted for purposes of figuring average daily attendance. OAG 77-419.

School officials have authority to withdraw from any pupil the privilege of participating in out-of-class activities of the school band for misconduct during field trips. OAG 77-427.

School personnel would not be required to permit a student who has been suspended to do make-up work for class activities and assignments missed during the period of a suspension from school. OAG 77-547.

A school board attorney, if he is to serve the role as the prosecutor, should limit his advice to the board to explaining the legal obligations the board has in an expulsion hearing before the hearing commences and the school board attorney should at no time advise the board during an expulsion hearing in which he is participating. OAG 78-673.

Notice consists of two (2) parts, first the student should be made aware of the standard of expected behavior in a school system; and second the student and the student's parent(s), guardian or legal custodian should receive adequate written notice from the board of education or its designee containing a statement of the specific charges and grounds which, if proven, would justify expulsion. OAG 78-673.

Only a local board of education, by an official act, can expel a student. OAG 78-673.

Policies regarding discipline of conduct of pupils should be promulgated to the students through the permissive statute outlining the adoption and promulgation of a code of student rights and responsibilities. OAG 78-673.

The board should report in writing the decision of the board to the parent(s), guardian or legal custodian, and if the hearing has involved multiple charges, the report should include which charges, if less than all, the board found to be supported by the evidence, and upon which the board made the decision to expel. OAG 78-673.

The due process hearing of: (1) oral or written notice of the charge or charges, (2) an explanation of the charge or charges, and (3) an opportunity for the pupil to present his own version of the facts is to be followed for all suspensions, irrespective of duration. OAG 78-673.

The minimum requirements to be followed for a due process hearing prior to expulsion are: (1) notice, (2) legal counsel, (3) impartial hearing, and (4) written notification of the decision, but a criminal type due process hearing is not required nor is a judicial or quasi-judicial trial required. OAG 78-673.

The procedural due process which must be afforded in an expulsion situation should be greater than that in a suspension situation and the extent and degree of due process to be given in a hearing will increase as the possible penalty affecting constitutionally protected rights becomes greater. OAG 78-673.

The school board must allow the student to be represented by legal counsel, but the board does not have to provide an attorney if the student and his or her parents choose not to have one, or if an attorney cannot be afforded, and the board need not advise the student or parent that they may retain legal counsel to assist them in preparation of a defense at the expulsion hearing. OAG 78-673.

The student is entitled to an orderly hearing, either closed or open, as the student desires, at which he must be given full opportunity to give his or her side of the story before the board and to produce either oral testimony or written affidavits of witnesses in his or her behalf, and the opportunity should be given to cross-examine witnesses. OAG 78-673.

The student is entitled to have consideration of the evidence by an impartial tribunal which means the board members should have shunned prior involvement in the situation, but exposure to evidence prior to the hearing is insufficient in itself to impugn the fairness of the board member at the adversary hearing and there need not be proof of the charges beyond a reasonable doubt nor that there be a unanimous decision of the board. OAG 78-673.

The written notice should further provide the evidence and the witnesses the school will produce at the hearing and the date, place and time for the hearing should be set forth, which hearing should probably be scheduled to be held no earlier than five (5) days from the day the notice is received or not later than the next regular school board meeting. OAG 78-673.

There is no time duration spelled out in the Kentucky school law or elsewhere for suspension. OAG 78-673.

A general search of all lockers for rotting food, missing library books, or overall cleanliness could be, under most circumstances, an administrative search; and, the fact that contraband, stolen articles, controlled drugs, alcoholic beverages, dangerous weapons, or the like, were inadvertently discovered during the administrative search would not void the search and any such unlawful items found could stand as evidence and as a basis for cause in a possible suspension or expulsion hearing. OAG 79-168.

Even if the primary purpose of a search of an older student is based upon reasonable suspicion and the purpose of the search is for possible school disciplinary action and not criminal prosecution, it must be remembered the "causes" upon which suspension or expulsion may be based are very much with overtones of criminality. OAG 79-168.

In the situation where a search is conducted by a law enforcement officer with a school officer without consent, without a search warrant, and without any of the case law delineated exceptions existing (e.g., search incident to lawful arrest), the evidence seized would most likely be subject to the exclusionary rule in any criminal action and some case authority would support a conclusion that the evidence seized could also not be used in school disciplinary actions. OAG 79-168.

In view of the responsibilities of teachers and school administrators and in view of the fact that teachers and administrators are state officers or employees they are within the purview of fourth amendment and Const., § 10 restraint upon activities of the government. OAG 79-168.

For good cause shown a local board may deny readmission of a nonresident student based upon the student's prior failure to abide by the board-adopted standards of conduct to which he may be lawfully held. OAG 79-327.

Once a student is permitted to enroll in a nonresident school for a school year, the law applicable to student conduct and the possibility of suspension and/or expulsion under this section comes into play. OAG 79-327.

Termination of the privilege of attending a nonresident school during the course of a school year is an expulsion and must be so handled and effected only after a hearing before the "foreign" board of education. OAG 79-327.

The term "drugs" means controlled substances or illegal drugs. OAG 82-633.

Pursuant to this section, a school board may adopt a policy establishing as a separate legal cause for suspension or expulsion those practices prohibited by KRS 218A.350 concerning substances that simulate controlled substances. OAG 82-633.

The power of suspension granted to the superintendent, principal, assistant principal, or head teacher of a school may be carried over to the next school year if the student's misconduct fell within the prohibited behavior described in this section; in the instance that a hearing cannot be held

immediately following willful disobedience of the student, the hearing must be held during the summer vacation in accordance with the appropriate due process procedures. OAG 88-65 (overruling OAG 74-165).

The board, in deciding whether a carry-over expulsion is appropriate, should examine whether the student's behavior was so egregious as to endanger the health and safety of students and staff, and whether continued attendance by the student would be in the best interest of the district in light of the denial of future education for the student. OAG 88-65 (overruling OAG 74-165).

Behavior which occurs after a student arrives at home and outside school sponsored activities will not be a basis for school discipline unless the behavior is of a serious violent nature or would directly affect the school's discipline or the welfare of its students and employees. OAG 91-171.

A school board may not adopt a plan to deduct points from a student's final grade for each unexcused absence. Despite the board's stated intent to act in the best interest of the students, the deduction of five (5) points from a pupil's final grade is a penalty. Such a penalty, in the guise of an incentive to get children to attend school, is not permissible; providing an opportunity for a student to make up the points does not change this conclusion — it is still an impermissible penalty. OAG 96-28.

A school board's decision not to differentiate between excused and unexcused absences was fatal to its policy of withholding promotion to the next level from students for failure to make up absences in excess of an approved number of days. OAG 96-28.

Cited: Kaelin v. Grubbs, 682 F.2d 595 (6th Cir. 1982); Trzop v. Centre College, — S.W.3d —, 2000 Ky. App. LEXIS 85 (Ky. Ct. App. Aug. 11, 2000).

NOTES TO DECISIONS

ANALYSIS

1. Regulations.
2. —Insubordination.
3. —Vaccination.
4. —Married students.
5. —Alcohol or drugs.
6. Smoking marijuana.
7. Consumption of alcohol.
8. Refusal to consent to search.
9. Due process.

1. Regulations.

The superintendent of a school may make reasonable rules for the school, and suspend students for violation thereof. Byrd v. Begley, 262 Ky. 422, 90 S.W.2d 370 (1936).

A rule requiring students to be in their rooms by a certain hour is reasonable. Byrd v. Begley, 262 Ky. 422, 90 S.W.2d 370 (1936).

Refusal to obey rule requiring students to be in their rooms by a certain hour constitutes wilful disobedience and defiance. Byrd v. Begley, 262 Ky. 422, 90 S.W.2d 370 (1936).

This section and KRS 161.180 plainly authorize public schools to make and enforce reasonable regulations for the government of such schools during school hours. Casey County Bd. of Educ. v. Luster, 282 S.W.2d 333 (Ky. 1955).

This statute preempts the right of the school officials to promulgate disciplinary regulations that impose additional punishment for the conduct that results in suspension. Dorsey v. Bale, 521 S.W.2d 76 (Ky. 1975).

2. —Insubordination.

A suspension for insubordination conditioned upon apology before the students is not unreasonable. Byrd v. Begley, 262 Ky. 422, 90 S.W.2d 370 (1936).

3. —Vaccination.

This section together with KRS 160.290 and 214.050 (repealed) authorized county board of education to promulgate and enforce its own rules requiring compulsory vaccination of school children or it would enforce such a rule of the county or State Board of Health by excluding from the schools children who were not vaccinated. Mosier v. Barren County Bd. of Health, 308 Ky. 829, 215 S.W.2d 967 (1948).

4. —Married Students.

School board regulation requiring that any student who shall marry shall withdraw from the school, subject to being readmitted after one year if the principal permits it, is unreasonable and arbitrary and for that reason invalid. Board of Educ. v. Bentley, 383 S.W.2d 677 (Ky. 1964).

5. —Alcohol or Drugs.

A high school regulation, which provides for mandatory suspension on the first offense for the use of, possession of, or trafficking in drugs or alcoholic beverages on school property or at school functions, does not exceed the authority granted to a school under this section, which allows for either suspension or expulsion for the use or possession of alcoholic beverages or drugs. Clark County Bd. of Educ. v. Jones, 625 S.W.2d 586 (Ky. Ct. App. 1981).

With regard to both observers and participants, school athletic events held at other schools are school-sponsored activities; thus student was properly suspended when he was found to be in possession of alcohol during a basketball tournament in which his school was participating. Pirschel v. Sorrell, 2 F. Supp. 2d 930 (E.D. Ky. 1998).

6. Smoking Marijuana.

Where student was expelled for remainder of school year under this section for smoking marijuana, the offense was of sufficient gravity so that the discipline imposed was not excessive to the extent of violating the student's right to substantive due process. Petrey v. Flaugher, 505 F. Supp. 1087 (E.D. Ky. 1981).

7. Consumption of Alcohol.

Where a county board of education automatically expelled several high school students for consuming alcohol on a school-sponsored trip, the trial court's finding that the board acted arbitrarily was not clearly erroneous, since the record showed that the board had not given consideration to any other factors such as the previous general conduct of the students involved, the probability of a recurring violation, or the possibility of alternative punishment or restrictions. Clark County Bd. of Educ. v. Jones, 625 S.W.2d 586 (Ky. Ct. App. 1981).

8. Refusal to Consent to Search.

Where freshman high school student, implicated by fellow students in bringing to school firecrackers which were set off during class, refused request of the school administration to search her purse, which request was reasonable under the circumstances, a suspension of five (5) days was not inappropriate. Bahr v. Jenkins, 539 F. Supp. 483 (E.D. Ky. 1982).

9. Due Process.

Where the principal testified that each of the requirements provided for under subsection (2) of this section were met, and no proof controverted that testimony, the plaintiffs failed to demonstrate that they were denied procedural due process in their five-day suspension from school as a penalty for using alcoholic beverages at a school-sponsored convention. Katchak v. Glasgow Indep. Sch. Sys., 690 F. Supp. 580 (W.D. Ky. 1988).

There was no procedural due process violation where principal informed student that he was being suspended for possession of alcohol on school property rather than at a school-sponsored activity off school property, because this did not prevent student from stating his own version of the facts;

furthermore, student did not dispute or deny possessing alcohol. Pirschel v. Sorrell, 2 F. Supp. 2d 930 (E.D. Ky. 1998).

DECISIONS UNDER PRIOR LAW

ANALYSIS

1. Refusal to participate in commencement.
2. Interference by courts.

1. Refusal to Participate in Commencement.

Refusal to take a part assigned in commencement exercises constituted disobedience and was ground for suspension. Cross v. Board of Trustees, 129 Ky. 35, 33 Ky. L. Rptr. 472, 110 S.W. 346 (1908).

2. Interference by Courts.

A pupil could be expelled for violation of rules of a school, and courts would not interfere with such an action unless it was arbitrary or malicious. Board of Educ. v. Booth, 110 Ky. 807, 62 S.W. 872 (1901).

Collateral References. 78A C.J.S., Schools and School Districts, §§ 798-801.

Marriage or pregnancy of public school student as ground for expulsion or exclusion, or of restriction of activities, 11 A.L.R.3d 996.

Participation of student in demonstration on or near campus as warranting expulsion or suspension from school or college, 32 A.L.R.3d 864.

Right of student to hearing on charges before suspension or expulsion from educational institution. 58 A.L.R.2d 903.

158.153. Punishment based on child's records — Disclosure of records — Cause of action — Districtwide standards of behavior for students participating in extracurricular activities.

(1) Unless the action is taken pursuant to KRS 158.150, no school, school administrator, teacher, or other school employee shall expel or punish a child based on information contained in a record of an adjudication of delinquency or conviction of an offense received by the school pursuant to KRS 610.345 or from any other source. Nothing in this subsection shall be construed to prohibit a local school board or school official from instituting disciplinary proceedings against any student for violating the discipline policy of the school or school district or taking actions necessary to protect staff and students. Actions to protect staff and students may be taken only after the principal makes a determination that the conduct of the student reflected in the records of the school or obtained by the school from the court indicates a substantial likelihood of an immediate and continuing threat that the student will cause harm to students or staff, and that the restrictions to be ordered represent the least restrictive alternative available and appropriate to remedy the threat, and that the determination and supporting material be documented in the child's record. The action of the principal, in addition to or in lieu of any other procedure available, may be appealed by the child or the child's parent or guardian to the superintendent of the school system or to the Circuit Court in the county in which the school is located, and the appealing party may be represented by counsel.

(2) No school, school administrator, teacher, or other school employee who has custody of records received or maintained by the school pursuant to KRS 610.345 or who has received information contained in or relating to a record received by the school pursuant to KRS 610.345 shall disclose the fact of the record's existence, or any information contained in the record or received from the record to any other person, including but not limited to other teachers, school employees, pupils, or parents other than the pupil, or parents of the pupil who is the subject of the record.

(3) The child and his parent or guardian shall have a civil cause of action against the school board and against any school administrator violating subsection (1) or (2) of this section or divulging information in violation of KRS 610.345 or 610.340. This civil cause of action shall be in addition to any other criminal or administrative remedy provided by law.

(4) Nothing in this section shall be construed to prohibit a local board of education from establishing districtwide standards of behavior for students who participate in extracurricular and cocurricular activities, including athletics. A school principal may deny or terminate a student's eligibility to participate in extracurricular or cocurricular activities if the student has violated the local district behavior standards or the council's criteria for participation, as described in KRS 160.345(2)(i)8. A student's right to participate in extracurricular or cocurricular activities, including athletics, may be suspended, pending investigation of an allegation that the standards of behavior have been violated.

(Enact. Acts 1996, ch. 358, § 61, effective July 15, 1996; 1998, ch. 107, § 1, effective July 15, 1998.)

Legislative Research Commission Note. (7/15/96). Under 1996 Ky. Acts ch. 358, sec. 67(2), this statute becomes effective July 15, 1996.

158.154. Principal's duty to report certain acts to local law enforcement agency.

When the principal has a reasonable belief that an act has occurred on school property or at a school-sponsored function involving assault resulting in serious physical injury, a sexual offense, kidnapping, assault involving the use of a weapon, possession of a firearm in violation of the law, possession of a controlled substance in violation of the law, or damage to the property, the principal shall immediately report the act to the appropriate local law enforcement agency. For purposes of this section, "school property" means any public school building, bus, public school campus, grounds, recreational area, or athletic field, in the charge of the principal.

(Enact. Acts 1998, ch. 493, § 13, effective April 10, 1998.)

158.155. Reporting of specified incidents of student conduct which resulted in expulsion — Notation on school records — Report to law enforcement of certain student conduct — Immunity.

(1) If a student has been adjudicated guilty of an offense specified in this subsection or has been expelled from school for an offense specified in this subsection, prior to a student's admission to any school, the parent, guardian, or other person or agency responsible for a student shall provide to the school a sworn statement or affirmation indicating on a form provided by the Kentucky Board of Education that the student has been expelled from school attendance at a public or private school in this state or another state for homicide, assault, or an offense in violation of state law or school regulations relating to weapons, alcohol, or drugs.

(2) If any student who has been expelled from attendance at a public or private school in this state for homicide, assault, or an offense in violation of state law or school regulations relating to weapons, alcohol, or drugs requests transfer of his records, those records shall reflect the charges and final disposition of the expulsion proceedings.

(3) If any student who is subject to an expulsion proceeding at a public or private school in this state for homicide, assault, or an offense in violation of state law or school regulations relating to weapons, alcohol, or drugs requests transfer of his records to a new school, the records shall not be transferred until that proceeding has been terminated and shall reflect the charges and any final disposition of the expulsion proceedings.

(4) A person who is an administrator, teacher, or other employee of a public or private school shall promptly make a report to the local police department, sheriff, or Kentucky State Police, by telephone or otherwise, if:

(a) The person knows or has reasonable cause to believe that conduct has occurred which constitutes:

1. A misdemeanor or violation offense under the laws of this Commonwealth and relates to:

a. Carrying, possession, or use of a deadly weapon; or

b. Use, possession, or sale of controlled substances; or

2. Any felony offense under the laws of this Commonwealth; and

(b) The conduct occurred on the school premises or within one thousand (1,000) feet of school premises, on a school bus, or at a school-sponsored or sanctioned event.

(5) A person who is an administrator, teacher, supervisor, or other employee of a public or private school who receives information from a student or other person of conduct which is required to be reported under subsection (1) of this section shall report the conduct in the same manner as required by that subsection.

(6) Neither the husband-wife privilege of KRE 504 nor any professional-client privilege, including those set forth in KRE 506 and 507, shall be a ground for refusing to make a report required under this section or for excluding evidence in a judicial proceeding of the making of a report and of the conduct giving rise to the making of a report. However, the attorney-client privilege of KRE 503 and the religious privilege of KRE 505 are grounds for refusing to make a report or for excluding evidence as to the report and the underlying conduct.

(7) Nothing in this section shall be construed as to require self-incrimination.

(8) A person acting upon reasonable cause in the making of a report under this section in good faith shall be immune from any civil or criminal liability that might otherwise be incurred or imposed from:

(a) Making the report; and

(b) Participating in any judicial proceeding that resulted from the report.

(Enact. Acts 1994, ch. 471, § 1, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996.)

Legislative Research Commission Note. (7/15/94). A comma has been added after the second use of the word "premises" in paragraph (b) of subsection (4) of this statute. The drafter of 1994 Ky. Acts ch. 471 advises and the context clearly establishes that the omission of this comma in that Act was a manifest clerical or typographical error. See KRS 7.136(1)(h).

158.160. Notification to school by parent or guardian of child's medical condition threatening school safety — Exclusion of child with communicable disease from school — Closing of school during epidemic.

(1) A parent, legal guardian, or other person or agency responsible for a student shall notify the student's school if the student has any medical condition which is defined by the Cabinet for Health Services in administrative regulation as threatening the safety of the student or others in the school. The notification shall be given as soon as the medical condition becomes known and upon each subsequent enrollment by the student in a school. The principal, guidance counselor, or other school official who has knowledge of the medical condition shall notify the student's teachers in writing of the nature of the medical condition.

(2) If any student is known or suspected to have or be infected with a communicable disease or condition for which a reasonable probability for transmission exists in a school setting, the superintendent of the district may order the student excluded from school. The time period the student is excluded from school shall be in accordance with generally accepted medical standards which the superintendent shall obtain from consultation with the student's physician or the local health officer for the county in which the school district is located. During the presence in any district of dangerous epidemics, the board of education of the school district may order the school closed.

(4399-59: amend. Acts 1990, ch. 213, § 1, effective July 13, 1990; 1990, ch. 476, Pt. V, § 402, effective July 13,

1990; 1992, ch. 393, § 1, effective July 14, 1992; 1998, ch. 426, § 116, effective July 15, 1998.)

Legislative Research Commission Note. (7/13/90) The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

Compiler's Notes. This section (4399-59) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 402, effective July 13, 1990.

Cross-References. Certificate of immunization required prior to enrollment, KRS 158.035.

Collateral References. 68 Am. Jur. 2d, Schools, §§ 130, 152, 224, 225, 248-250.

78 C.J.S., Schools and School Districts, §§ 396, 397; 78A C.J.S., Schools and School Districts, § 778.

158.163. Earthquake and tornado emergency procedure system.

The board of each local school district, and the governing body of each private and parochial school or school district, shall establish an earthquake and tornado emergency procedure system in every public or private school building in its jurisdiction having a capacity of fifty (50) or more students, or having more than one (1) classroom. The earthquake and tornado emergency procedure system shall include, but not be limited to, all of the following:

(1) A school building disaster plan, ready for implementation at any time, for maintaining the safety and care of students and staffs. A drop procedure and safe area evacuation practice shall be held at least twice during each school year;

(2) A drop procedure. As used in this section, "drop procedure" means an activity by which each student and staff member takes cover under a table or desk, dropping to his or her knees, with the head protected by the arms, and the back to the windows;

(3) A safe area. As used in this section, "safe area" means a designated space including an enclosed area with no windows, a basement or the lowest floor using the interior hallway or rooms, or taking shelter under sturdy furniture;

(4) Protective measures to be taken before, during, and following an earthquake or tornado; and

(5) A program to ensure that the students and the certificated and classified staff are aware of, and properly trained in, the earthquake and tornado emergency procedure system.

(Enact. Acts 1992, ch. 29, § 1, effective July 14, 1992; 2000, ch. 433, § 1, effective July 14, 2000.)

158.165. Possession and use of personal telecommunications device by public school student.

(1) The board of education of each school district shall develop a policy regarding the possession and use of a personal telecommunications device by a student while on school property or while attending a school-sponsored or school-related activity on or off school property, and shall include the policy in the district's written standards of student conduct. A student who violates the policy shall be subject to discipline as provided by board policy.

(2) In this section, "personal telecommunications device" means a device that emits an audible signal, vibrates, displays a message, or otherwise summons or delivers a communication to the possessor, including, but not limited to, a paging device and a cellular telephone.

(Enact. Acts 1990, ch. 87, § 1, effective March 19, 1990; 2000, ch. 34, § 1, effective July 14, 2000.)

158.170. Bible to be read.

The teacher in charge shall read or cause to be read a portion of the Bible daily in every classroom or session room of the common schools of the state in the presence of the pupils therein assembled, but no child shall be required to read the Bible against the wish of his parents or guardian.

(4363-7.)

Kentucky Bench & Bar. Tobergte, The Impact of Kentucky's Present Constitution Upon Business Growth & Development, Volume 51, No. 3, Summer 1987 Ky. Bench & Bar 21.

Kentucky Law Journal. Lassiter, The McCollum Decision and the Public School, 37 Ky. L. J. 402 (1949).

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

Opinions of Attorney General. A school teacher may read any portion of the New Testament to students while in a public classroom. OAG 60-1099.

The prohibition against the conduct of religious or devotional exercises through a reading of the Bible in the common school system is not circumvented by the designation of such activities as "classes." OAG 63-790.

Because of the difficulty of communication for community churches, nonsectarian nondenominational religious instruction can be given to deaf children at the deaf school on a voluntary basis on Sunday by teachers employed by the school. OAG 64-111.

Children can say grace before lunch in the schools. OAG 64-111.

Lunch periods could not be used to conduct religious classes if the district is utilizing portions of the lunch period to meet the six-hour school work requirement of KRS 158.060. OAG 64-111.

Missionaries would be precluded from making periodic visits to the schools to conduct religious services during regular scheduled periods. OAG 64-111.

The nativity scene can be used in schools at Christmas so long as no religious significance is attached thereto. OAG 64-111.

The utterance of prayers or the reading of the Bible can continue in PTA meetings and voluntary Bible classes held without the regular school hours or school curriculum. OAG 64-111.

There would be nothing objectionable in a student, during a period of meditation, voluntarily or spontaneously saying a prayer, silent or vocal, but a teacher could not do so. OAG 64-111.

This section is unconstitutional as violative of the first and fourteenth amendments of the United States Constitution under the doctrine of Engel v. Vitale, 370 U.S. 421, 82 S. Ct. 1261, 8 L. Ed. 2d 601 (1962) and School Dist. v. Schempp, 374 U.S. 203, 83 S. Ct. 1560, 10 L. Ed. 2d 844 (1963). OAG 79-463.

For those school officials, employees and school board members that participate in or permit the continued practice of Bible reading as denounced by the United States Supreme Court, there stands a strong possibility of a legal claim by a student against them that the student's constitutional rights

are being infringed under color of state law by these school personnel's actions. OAG 79-463.

DECISIONS UNDER PRIOR LAW

1. Sectarian Book.

The Bible is not a sectarian book. Hackett v. Brooksville Graded Sch. Dist., 120 Ky. 608, 27 Ky. L. Rptr. 1021, 87 S.W. 792, 117 Am. St. R. 599 (1905).

Collateral References. 68 Am. Jur. 2d, Schools, §§ 337-339.

78A C.J.S., Schools and School Districts, § 684.

Power of school authorities to provide course of Bible study. 70 A.L.R. 1314.

Constitutionality of regulation or policy governing prayer, meditation, or "moment of silence" in public schools. 110 A.L.R. Fed. 211.

Bible distribution or use in public schools—modern cases. 111 A.L.R. Fed. 121.

158.175. Recitation of Lord's prayer and pledge of allegiance — Instruction in proper respect for and display of the flag — Observation of moment of silence or reflection.

(1) As a continuation of the policy of teaching our country's history and as an affirmation of the freedom of religion in this country, the board of education of a local school district may authorize the recitation of the traditional Lord's prayer and the pledge of allegiance to the flag in public elementary schools. Pupil participation in the recitation of the prayer and pledge of allegiance shall be voluntary. Pupils shall be reminded that this Lord's prayer is the prayer our pilgrim fathers recited when they came to this country in their search for freedom. Pupils shall be informed that these exercises are not meant to influence an individual's personal religious beliefs in any manner. The exercises shall be conducted so that pupils shall learn of our great freedoms, including the freedom of religion symbolized by the recitation of the Lord's prayer.

(2) The board of education of each school district shall establish a policy and develop procedures whereby the pupils in each elementary and secondary school may participate in the pledge of allegiance to the flag of the United States at the commencement of each school day.

(3) The Kentucky Board of Education shall develop a program of instruction relating to the flag of the United States of America, including instruction in etiquette, the correct use and display of the flag, and other patriotic exercises as may be related. This program of instruction shall be provided to each public school for use in its course of instruction. The program of instruction, at a minimum, shall include the provisions of 4 U.S.C. secs. 1 to 3 and 4 U.S.C. secs. 5 to 9.

(4) The board of education of each local school district may purchase or otherwise acquire and provide for display in each classroom copies of the Declaration of Independence, the Gettysburg Address, and other documents the local board deems significant to the history of Kentucky and the United States.

(5) At the commencement of the first class of each day in all public schools, the teacher in charge of the room may announce that a moment of silence or reflection not to exceed one (1) minute in duration shall be observed.

(Enact. Acts 1976, ch. 145, § 1; 1980, ch. 304, § 1, effective July 15, 1980; 1986, ch. 339, § 1, effective July 15, 1986; 1988, ch. 435, § 3, effective July 15, 1988; 1990, ch. 476, Pt. IV, § 205, effective July 13, 1990; 1996, ch. 85, § 1, effective July 15, 1996; 2000, ch. 235, § 1, effective July 14, 2000.)

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

Opinions of Attorney General. Students who, for religious or political beliefs or other personal convictions, do not participate in the salute and pledge of allegiance to the flag should remain in their seats quietly, and school employees should be directed to avoid any action intended to coerce or influence a student to participate in the pledge if the student desires not to so participate. OAG 80-456.

The clear intent of the General Assembly in subsection (2) of this section is that: (1) The pledge of allegiance ceremony of recitation will be offered each school day, not just once or twice a week, and (2) that the opportunity to participate in the pledge of allegiance will occur as a first item on the school day agenda, not at midmorning or at the end of the school day. OAG 80-456.

This section as it relates to the pledge of allegiance violates no provision of either the United States or Kentucky Constitutions; the key to the facial constitutionality of this section is that pupil participation in the recitation of the pledge of allegiance to the flag is voluntary. OAG 80-456.

158.177. Teaching of evolution — Right to include Bible theory of creation.

(1) In any public school instruction concerning the theories of the creation of man and the earth, and which involves the theory thereon commonly known as evolution, any teacher so desiring may include as a portion of such instruction the theory of creation as presented in the Bible, and may accordingly read such passages in the Bible as are deemed necessary for instruction on the theory of creation, thereby affording students a choice as to which such theory to accept.

(2) For those students receiving such instruction, and who accept the Bible theory of creation, credit shall be permitted on any examination in which adherence to such theory is propounded, provided the response is correct according to the instruction received.

(3) No teacher in a public school may stress any particular denominational religious belief.

(4) This section is not to be construed as being adverse to any decision which has been rendered by any court of competent jurisdiction.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 403, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1976, ch. 261, § 1) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 403, effective July 13, 1990.

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

158.178. Ten Commandments to be displayed. [Unconstitutional.]

(1) It shall be the duty of the Superintendent of Public Instruction, provided sufficient funds are available as provided in subsection (3) of this section, to ensure that a durable, permanent copy of the Ten Commandments shall be displayed on a wall in each public elementary and secondary school classroom in the Commonwealth. The copy shall be sixteen (16) inches wide by twenty (20) inches high.

(2) In small print below the last commandment shall appear a notation concerning the purpose of the display, as follows: "The secular application of the Ten Commandments is clearly seen in its adoption as the fundamental legal code of Western Civilization and the Common Law of the United States."

(3) The copies required by this section shall be purchased with funds made available through voluntary contributions made to the State Treasurer for the purposes of this section.

(Enact. Acts 1978, ch. 436, § 1, effective June 17, 1978.)

Compiler's Notes. This section (Acts 1978, ch. 436, § 1, effective June 17, 1978) was declared unconstitutional in Stone v. Graham, 449 U.S. 39, 101 S. Ct. 192, 66 L. Ed. 2d 199 (1980), rehearing denied, 449 U.S. 1104, 101 S. Ct. 904, 66 L. Ed. 2d 832 (1981).

Kentucky Law Journal. Comment, Stone v. Graham: A Fragile Defense of Individual Religious Autonomy, 69 Ky. L.J. 392 (1980-81).

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

Opinions of Attorney General. The United States Supreme Court in Stone v. Graham, 449 U.S. 39, 101 S. Ct. 192, 66 L. Ed. 2d 199 (1980) determined that this section is unconstitutional, concluding that the permanent posting of copies of the Ten Commandments in the public common schools of Kentucky violates the First Amendment and the Fourteenth Amendment of the United States Constitution and the decision requires the removal of the copies presently hanging on the walls of the public common schools since the court found that the pre-eminent purpose for posting is plainly religious in nature. OAG 81-12. (Withdraws OAG 78-605).

NOTES TO DECISIONS

1. Constitutionality.

Since the pre-eminent purpose for posting the Ten Commandments on schoolroom walls is plainly religious in nature, this section has no secular legislative purpose and is therefore unconstitutional as violative of the establishment clause of the First Amendment of the United States Constitution; it does not matter that the posted copies are financed by voluntary private contributions, for the mere posting of the copies under the auspices of the Legislature provides the official support of the state government that the establishment clause prohibits. Stone v. Graham, 449 U.S. 39, 101 S. Ct. 192, 66 L. Ed. 2d 199 (1980).

158.180. Books criticizing school of healing prohibited. [Repealed.]

Compiler's Notes. This section (4363-11a) was repealed by Acts 1978, ch. 21, § 2, effective June 17, 1978.

158.181. Legislative findings.

(1) The General Assembly finds the following:

(a) Judicial decisions concerning religion, free speech, and public education are widely misunderstood and misapplied;

(b) Confusion surrounding these decisions has caused some to be less accommodating of the religious liberty and free speech rights of students than permitted under the First Amendment to the United States Constitution;

(c) Confusion surrounding these decisions has resulted in needless conflicts and litigation;

(d) The Supreme Court of the United States has ruled that the establishment clause of the First Amendment to the United States Constitution requires that public schools neither advance or inhibit religion. Public schools should be neutral in matters of faith and should treat religion with fairness and respect;

(e) Neutrality to religion does not require hostility to religion. The establishment clause does not prohibit reasonable accommodation of religion, nor does the clause prohibit appropriate teaching about religion;

(f) Accommodation of religion is required by the free speech and free exercise clauses of the First Amendment to the United States Constitution; and

(g) Setting forth the religious liberty rights of students in a statute would assist students and parents in the enforcement of the religious liberty rights of students and would provide impetus to efforts in public schools to accommodate religious belief in feasible cases.

(2) The purpose of KRS 158.181 to 158.187 is to create a safe harbor for schools desiring to avoid litigation and to allow the free speech and religious liberty rights of students to the extent permissible under the establishment clause.

(Enact. Acts 1998, ch. 294, § 1, effective July 15, 1998.)

158.182. Definitions for KRS 158.181 to 158.187.

As used in KRS 158.181 to 158.187, unless the context requires otherwise:

(1) "Establishment clause" means the portion of the First Amendment to the United States Constitution that forbids laws respecting an establishment of religion;

(2) "Free exercise clause" means the portion of the First Amendment to the United States Constitution that forbids laws prohibiting the free exercise of religion;

(3) "Free speech clause" means the portion of the First Amendment to the United States Constitution that forbids laws abridging the freedom of speech;

(4) "Public school" means any school that is operated by the state, a political subdivision of the state, or a governmental agency within the state; and

(5) "Student" means an individual attending a public school.

(Enact. Acts 1998, ch. 294, § 2, effective July 15, 1998.)

158.183. Prohibited acts by students — Rights of student — Administrative remedies.

(1) A student shall have the right to carry out an activity described in any of paragraphs (a) to (d) of

subsection (2) of this section, if the student does not:

(a) Infringe on the rights of the school to:

1. Maintain order and discipline;
2. Prevent disruption of the educational process; and
3. Determine educational curriculum and assignments;

(b) Harass other persons or coerce other persons to participate in the activity; or

(c) Otherwise infringe on the rights of other persons.

(2) Subject to the provisions of subsection (1) of this section, a student shall be permitted to voluntarily:

(a) Pray in a public school, vocally or silently, alone or with other students to the same extent and under the same circumstances as a student is permitted to vocally or silently reflect, meditate, or speak on nonreligious matters alone or with other students in the public school;

(b) Express religious viewpoints in a public school to the same extent and under the same circumstances as a student is permitted to express viewpoints on nonreligious topics or subjects in the school;

(c) Speak to and attempt to discuss religious viewpoints with other students in a public school to the same extent and under the same circumstances as a student is permitted to speak to and attempt to share nonreligious viewpoints with other students. However, any student may demand that this speech or these attempts to share religious viewpoints not be directed at him or her;

(d) Distribute religious literature in a public school, subject to reasonable time, place, and manner restrictions to the same extent and under the same circumstances as a student is permitted to distribute literature on nonreligious topics or subjects in the school; and

(e) Be absent, in accordance with attendance policy, from a public school to observe religious holidays and participate in other religious practices to the same extent and under the same circumstances as a student is permitted to be absent from a public school for nonreligious purposes.

(3) No action may be maintained under KRS 158.181 to 158.187 unless the student has exhausted the following administrative remedies;

(a) The student or the student's parent or guardian shall state his or her complaint to the school's principal. The principal shall investigate and take appropriate action to ensure the rights of the student are resolved within seven (7) days of the date of the complaint;

(b) If the concerns are not resolved, then the student or the student's parent or guardian shall make a complaint in writing to the superintendent with the specific facts of the alleged violation;

(c) The superintendent shall investigate and take appropriate action to ensure that the rights of the student are resolved within thirty (30) days of the date of the written complaint; and

(d) Only after the superintendent's investigation and action may a student or the student's parent or legal guardian pursue any other legal action.

(Enact. Acts 1998, ch. 294, § 3, effective July 15, 1998.)

158.184. Construction favoring establishment clause, religious liberty, and free speech.

(1) Nothing in KRS 158.181 to 158.187 shall be construed to affect, interpret, or in any way address the establishment clause.

(2) The specification of religious liberty or free speech rights in KRS 158.181 to 158.187 shall not be construed to exclude or limit religious liberty or free speech rights otherwise protected by federal, state, or local law.

(Enact. Acts 1998, ch. 294, § 4, effective July 15, 1998.)

158.185. Construction prohibiting school employee from leading, directing, or encouraging religious or anti-religious activity in violation of establishment clause.

Nothing in KRS 158.181 to 158.187 shall be construed to support, encourage, or permit a teacher, administrator, or other employee of the public schools to lead, direct, or encourage any religious or anti-religious activity in violation of the portion of the First Amendment of the United States Constitution prohibiting laws respecting an establishment of religion.

(Enact. Acts 1998, ch. 294, § 5, effective July 15, 1998.)

158.186. Copies of law to local school board and school-based decision making council.

The Department of Education shall send copies of KRS 158.181 to 158.187 to each local school board and school-based decision making council in Kentucky on an annual basis.

(Enact. Acts 1998, ch. 294, § 6, effective July 15, 1998.)

158.187. Short title for KRS 158.181 to 158.187.

KRS 158.181 to 158.187 may be cited as the Nicole Hadley, Jessica James, and Kayce Steger Act.

(Enact. Acts 1998, ch. 294, § 7, effective July 15, 1998.)

158.190. Sectarian, infidel, or immoral books prohibited.

No book or other publication of a sectarian, infidel, or immoral character, or that reflects on any religious denomination, shall be used or distributed in any common school. No sectarian, infidel, or immoral doctrine shall be taught in any common school.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 404, effective July 13, 1990.)

Compiler's Notes. This section (4363-11) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 404, effective July 13, 1990.

Kentucky Law Journal. Lassiter, The McCollum Decision and the Public School, 37 Ky. L.J. 402 (1949).

Cited: Rawlings v. Butler, 290 S.W.2d 801 (Ky. 1956).

NOTES TO DECISIONS

1. Injunction for Enforcement.

An injunction should have been issued by the Circuit Court prohibiting school officers, including the board of education, from violating this section, expending public school funds for religious or sectarian purposes, keeping sectarian periodicals in and about the libraries of the county schools and stopping the operating of public school buses on religious holidays not legalized as state or national holidays. Wooley v. Spalding, 293 S.W.2d 563 (Ky. 1956), aff'd 365 S.W.2d 323 (Ky. 1962).

DECISIONS UNDER PRIOR LAW

1. Bible.

The Bible is not a sectarian book. Hackett v. Brooksville Graded Sch. Dist., 120 Ky. 608, 27 Ky. L. Rptr. 1021, 87 S.W. 792, 117 Am. St. R. 599 (1905).

Collateral References. 78A C.J.S., Schools and School Districts, § 786.

158.194. Bill of Rights to be displayed.

Each public elementary and secondary school classroom in the Commonwealth of Kentucky shall prominently display a copy of the Bill of Rights, embodying the individual liberties safeguarded by the Constitution of the United States.

(Enact. Acts 1988, ch. 172, § 1, effective July 15, 1988.)

Legislative Research Commission Note. (9/30/99). This statute was created by a joint resolution of the 1988 Regular Session of the General Assembly and was previously carried as an LRC Note under KRS 158.010. Because the enactment is permanent in nature, see KRS 7.131(2), the Reviser of Statutes has codified this text as KRS 158.194 under KRS 7.136(1)(a).

158.195. Reading and posting in public schools of texts and documents on American history and heritage.

Local boards may allow any teacher or administrator in a public school district of the Commonwealth to read or post in a public school building, classroom, or event any excerpts or portions of: the national motto; the national anthem; the pledge of allegiance; the preamble to the Kentucky Constitution; the Declaration of Independence; the Mayflower Compact; the writings, speeches, documents, and proclamations of the founding fathers and presidents of the United States; United States Supreme Court decisions; and acts of the United States Congress including the published text of the Congressional Record. There shall be no content-based censorship of American history or heritage in the Commonwealth based on religious references in these writings, documents, and records.

(Enact. Acts 1992, ch. 170, § 4, effective July 14, 1992.)

Cited: Doe v. Harlan County Sch. Dist., 96 F. Supp. 2d 667 (E.D. Ky. 2000).

158.200. Moral instruction.

The boards of education of independent and county school districts may provide for moral instruction of pupils in their jurisdiction, in the manner provided in KRS 158.210 to 158.260.

(4363-7a: amend. Acts 1990, ch. 476, Pt. IV, § 206, effective July 13, 1990.)

Opinions of Attorney General. This section is permissive, not mandatory. OAG 60-953.

The State Department of Education has no responsibility for released time religious instruction carried on by a school board in cooperation with churches in the school district. OAG 73-481.

Sections KRS 158.200 to 158.260 do not authorize the releasing of pupils for moral instruction on any basis other than one hour per week and thus a release on an accumulated basis, though equivalent, violates the statutes. OAG 75-218.

Collateral References. 78A C.J.S., Schools and School Districts, § 781.

Releasing public school pupils from attendance for purpose of attending religious education classes. 2 A.L.R.2d 1371.

158.210. Survey of desire for moral instruction may be made.

The board of education of each school district may authorize a complete survey of all the pupils attending the public schools within the district and determine those pupils who desire moral instruction and have the consent of parent or guardian for the instruction.

(4363-7b: amend. Acts 1990, ch. 476, Pt. IV, § 207, effective July 13, 1990.)

Opinions of Attorney General. Students who have been excused from school to attend religious instruction, in accordance with the provisions of KRS 158.210 to 158.260, may be considered in attendance at the public schools for purposes of the Minimum Foundation Program. OAG 66-116.

158.220. Time allowed for moral instruction in suitable place.

The boards of education shall allow pupils who have expressed a desire for moral instruction to be excused for at least one (1) hour, one (1) day each week to attend their respective places of worship or some other suitable place to receive moral instruction in accordance with the religious faith or preference of the pupils.

(4363-7c: amend. Acts 1990, ch. 476, Pt. IV, § 208, effective July 13, 1990.)

Kentucky Law Journal. Lassiter, The McCollum Decision and the Public School, 37 Ky. L.J. 402 (1949).

Opinions of Attorney General. Under this section the Church of the Good Shepherd could, on a released time basis, provide confirmation instruction of one (1) hour each week in parish buildings to students attending the public school system. OAG 61-508.

The Legislature intended that the students be released from school for one (1) hour a week to go to religious instruction conducted by religious organizations of their faith without any coercion by teachers or school administration. OAG 63-937.

Whether students will actually be excused to receive moral instruction at a parochial school is discretionary with the board of education. OAG 66-116.

Under this section a local school board has authority to excuse students for organized religious services or instruction but that authority is limited to one (1) day per week and to a number of hours to be established by the board within the limits prescribed, the minimum being one (1) hour and the

maximum determined by the length of the services or instruction. OAG 68-254.

Sections KRS 158.200 to 158.260 do not authorize the releasing of pupils for moral instruction on any basis other than one (1) hour per week, and thus a release on an accumulated basis, though equivalent, violates this section. OAG 75-218.

This section prohibits the use of public school buildings for moral instruction classes, irrespective of whether or not rent is paid for the use of the premises. OAG 75-595.

Cited: Illinois ex rel. McCollum v. Board of Educ., 333 U.S. 203, 68 S. Ct. 461, 92 L. Ed. 649, 2 A.L.R.2d 1338 (1948); Wooley v. Spalding, 293 S.W.2d 563 (Ky. 1956).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 809, 810.

158.230. Arrangements with persons in charge.

Each board of education may make arrangements with the persons in charge of the moral instruction as the board deems necessary and advisable.

(4363-7d: amend. Acts 1990, ch. 476, Pt. IV, § 209, effective July 13, 1990.)

Opinions of Attorney General. Whether students will actually be excused to receive moral instruction at a parochial school is discretionary with the board of education. OAG 66-116.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 809, 810.

158.240. Credit for moral instruction.

Pupils who attend the classes for moral instruction at the time specified and for the period fixed shall be credited with the time spent as if they had been in actual attendance in school, and the time shall be calculated as part of the actual school work required by KRS 158.060. The pupil shall not be penalized for any school work missed during the specified time.

(4363-7e: amend. Acts 1990, ch. 70, § 1, effective July 13, 1990; 1990, ch. 476, Pt. IV, § 210, effective July 13, 1990.)

Legislative Research Commission Note. (7/13/90) This section was amended by two 1990 Acts which do not appear to be in conflict and have been compiled together.

Cross-References. Pupil attendance, 702 KAR 7:125.

Kentucky Law Journal. Lassiter, The McCollum Decision and the Public School, 37 Ky. L.J. 402 (1949).

Opinions of Attorney General. Students who have been excused from school to attend religious instruction, in accordance with the provisions of KRS 158.210 to 158.260, may be considered in attendance at the public schools for purposes of the Minimum Foundation Program. OAG 66-116.

It is impermissible for a teacher incorporating classroom participation as part of the overall academic grade to give a student a lower grade in a course than he earned while in class for failure to participate in class on days when he was absent under a legitimate excused absence. OAG 79-539.

A school board may not adopt a plan to deduct points from a student's final grade for each unexcused absence. Despite the board's stated intent to act in the best interest of the students, the deduction of five (5) points from a pupil's final grade is a penalty. Such a penalty, in the guise of an incentive to get children to attend school, is not permissible; providing an opportunity for a student to make up the points does not change this conclusion — it is still an impermissible penalty. OAG 96-28.

A school board's decision not to differentiate between excused and unexcused absences was fatal to its policy of withholding promotion to the next level from students for failure to make up absences in excess of an approved number of days. OAG 96-28.

Collateral References. 78A C.J.S., Schools and School Districts, §§ 782, 783.

158.250. Activities for nonparticipants in moral instruction classes.

Any pupil who does not participate in the moral instruction shall remain in school during the time when the instruction is being given, and shall take noncredit enrichment courses or participate in educational activities not required in the regular curriculum, and that time shall be calculated as part of the actual schoolwork required by KRS 158.060. Students of different grade levels may be placed into combined classrooms in accordance with maximum class size allotments as described in KRS 157.360. These courses or activities shall be supervised by certified school personnel and may include, but are not limited to, the following: study hall, computer instruction, music, art, library, physical education, and tutorial assistance.

(4363-7f: amend. Acts 1990, ch. 70, § 2, effective July 13, 1990; 1990, ch. 476, Pt. IV, § 211, effective July 13, 1990.)

Legislative Research Commission Note. (7/13/90) This section was amended by two 1990 Acts which do not appear to be in conflict and have been compiled together.

Kentucky Law Journal. Lassiter, The McCollum Decision and the Public School, 37 Ky. L.J. 402 (1949).

Collateral References. 78A C.J.S., Schools and School Districts, §§ 782, 783.

158.260. Cost of moral instruction.

Moral instruction shall be given without expense to any board of education beyond the cost of the original survey. These courses or activities shall be supervised by certified school personnel and may include but are not limited to the following: study hall, computer instruction, music, art, library, physical education, and tutorial assistance.

(4363-7g: amend. Acts 1990, ch. 476, Pt. IV, § 212, effective July 13, 1990.)

Opinions of Attorney General. School buses may be used to transport children participating in a released school time program of moral instruction where the school is reimbursed by the sponsors of the program for the actual expense of operating the buses for that purpose. OAG 75-643.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 809, 810.

158.270. Instruction as to nature and effect of alcoholic liquor and narcotics required — Textbooks to include these subjects. [Repealed.]

Compiler's Notes. This section (Acts 1942, ch. 50) was repealed by Acts 1974, ch. 392, § 13.

158.280. Instruction in the environment — Selection of books for. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1944, ch. 157; 1972, ch. 41, § 1) was repealed by Acts 1984, ch. 105, § 1, effective July 13, 1984.

158.281. Definitions for KRS 156.476, 158.281, 158.282, and 161.051.

As used in KRS 156.476, 158.282, 161.051, and this section:

(1) "Braille" means the system of reading and writing through touch commonly known as Standard English Braille;

(2) "Individualized education program (IEP)" means a written statement developed for an exceptional student eligible for special education services in accordance with administrative regulations promulgated pursuant to KRS 157.200 to 157.290;

(3) "Blind student" means a student between the ages of three (3) and twenty-one (21) for whom an individualized education program is required and who:

(a) Has a visual acuity of 20/200 or less in the better eye with correcting lenses or has a limited field of vision such that the widest diameter subtends an angular distance of no greater than twenty degrees; or

(b) Has a medically indicated expectation of visual deterioration which would bring the student within the provisions of subsection (3)(a) of this section; or

(c) Functions as if he is blind even though the student may not technically meet the visual acuity or medical standards set forth in this subsection.

(Enact. Acts 1992, ch. 382, § 1, effective July 14, 1992.)

158.282. Instruction of all blind students in the use of braille — Assessment for blind students in program — Exceptions.

(1) The purpose of KRS 156.476, 158.281, 161.051, and this section shall be to assure, to the maximum extent possible, that all blind students shall be instructed in the use of braille.

(2) The written individualized education program for each exceptional student, as promulgated by administrative regulation, shall also include the following assessment for blind students:

(a) A braille skills inventory, including an assessment of the student's strengths and weaknesses;

(b) A statement as to whether the use of braille shall be that student's primary mode of communication;

(c) The date on which braille instruction shall begin;

(d) The length of the period of instruction, and the frequency and duration of each instructional session; and

(e) The level of competency in braille reading and writing to be achieved, and the assessment measures to be used in determining if that level has been achieved.

(3) Braille instruction and use shall not be required by this section if, during the course of developing the blind student's individualized educational program, the members of the Administrative Admission and Release Committee as established for this purpose, pursuant to administrative regulations, concur that the student shall not be required to learn to read and write braille. In reaching its decision, the committee shall consider the student's reading readiness, functional reading skills, reading comprehension rate and stamina, functional writing skills, communication skills, eye condition and prognosis, and functional vision and tactile discrimination skills. Upon reaching this determination the committee shall write into the individualized education program of a blind student, the factors and evidence considered by the committee in reaching its decision.

(4) Nothing in this section shall require the exclusive use of instruction in braille if other methods of reading and writing may also be learned by the student.

(Enact. Acts 1992, ch. 382, § 2, effective July 14, 1992.)

158.285. Teaching of Kentucky government — Statewide program — Instruction of all grade levels. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1988, ch. 373, § 1) was repealed by Acts 1990, ch. 476, Art. VI, § 616, effective July 13, 1990.

158.286. Teaching of Kentucky government — Adoption of policies by local school districts. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1988, ch. 373, § 2) was repealed by Acts 1966, ch. 184, § 8.

158.290. School fundraising activities.

(1) No student shall be compelled to solicit or meet any kind of quota in a fundraising activity. Solicitations by students shall be on a completely voluntary basis and no grade changes or any other sanctions shall be imposed for refusal or failure of a student to engage in any solicitations or other fundraising activity. No public school shall promote or engage in a schoolwide fundraising project without the prior approval of the local board of education.

(2) Nothing in this section shall prohibit student participation in classes in which salesmanship is an integral part of the prescribed curriculum.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 405, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1978, ch. 150, § 1, effective June 17, 1978) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 405, effective July 13, 1990.

Opinions of Attorney General. The phrase "schoolwide fund raising project" refers to each individual school or school building, and not the schools collectively within a school system, and only when the solicitation affects the entire school, not necessarily a percentage of the students participating, i.e., when the classes, clubs and organizations, etc., solicit or participate in a fund-raising activity, the profits from which will go to purchase an item for the school, then such a fund raising activity would need to be approved by the local board of education. OAG 78-508.

The prohibition of subsection (1) of this section does not reach participation or involvement in voluntary extracurricu-

lar activities sponsored or endorsed by a local school system. OAG 79-330.

The fact that school children participate during nonschool hours in Booster Club activities, or that the activity takes place on school property with prior approval of the local board, does not require the school board to approve of the Booster Club fund raising activity even if it is a so-called "school wide fund raising project." OAG 79-556.

158.292. Excused absences for students who serve as election officers.

Students who serve as election officers under KRS 117.045(9) shall be granted one (1) day of excused absence for each election day served.

(Enact. Acts 2002, ch. 265, § 2, effective July 15, 2002.)

158.293. Excused absences for secondary school students who participate in Military Burial Honor Guard Program — Inclusion in instructional program.

(1) An excused absence may be granted, subject to approval by the local school board, to all students of Kentucky secondary schools who participate in the Military Burial Honor Guard Program, as set out in KRS 36.390 to 36.396. Most likely these would be students already participating in JROTC, drum corps, or other military programs; however, the Military Burial Honor Guard Program is not limited to these students. This excused absence should include time spent training, traveling, and participating in the Military Burial Honor Guard Program.

(2) The local school board may also adopt a policy to allow students to participate in the Military Burial Honor Guard Program as a part of the instructional program.

(3) This policy of either excused absences or including Military Burial Honor Guard Program participation as a part of the instructional program shall not in any way penalize the local school district.

(Enact. Acts 2000, ch. 378, § 5, effective July 1, 2000.)

158.294. Excused absences for students who particpate in Veterans' Service Organization Burial Honor Guard — Inclusion in instructional program.

(1) An excused absence may be granted, subject to approval by the local school board, to all students of Kentucky secondary schools who participate in the Veterans' Service Organization Burial Honor Guard Program. Most likely these would be students already participating in JROTC, drum corps, or other military programs; however, the Veterans' Service Organization Burial Honor Guard Program is not limited to these students. This excused absence should include time spent training, traveling, and participating in the Veterans' Service Organization Burial Honor Guard Program.

(2) The local school board may also adopt a policy to allow students to participate in the Veterans' Service Organization Burial Honor Guard Program as a part of the instructional program.

(3) This policy of either excused absences or including Veterans' Service Organization Burial Honor Guard Program participation as a part of the instructional program shall not in any way penalize the local school district.

(Enact. Acts 2002, ch. 43, § 5, effective July 15, 2002.)

158.295. Development of program to deal with delinquency, drug abuse, vandalism, absenteeism and other related acts of student behavior. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1978, ch. 443, § 1, effective June 17, 1978) was repealed by Acts 1990, ch. 476, Part VI, § 616, effective July 13, 1990.

Preschool Programs

158.300. Definitions for KRS 158.300 to 158.350. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1956, ch. 168, § 1; 1962, ch. 196, § 5; 1964, ch. 194, § 1) was repealed by Acts 1982, ch. 350, § 1, effective July 15, 1982.

158.310. Permit — Requirements. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1956, ch. 168, § 2; 1964, ch. 194, § 2) was repealed by Acts 1982, ch. 350, § 1, effective July 15, 1982.

158.320. Centers, inspection of — Records to be kept — Reports to be made. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1956, ch. 168, § 3; 1964, ch. 194, § 3) was repealed by Acts 1982, ch. 350, § 1, effective July 15, 1982.

158.330. Board of education to make rules and regulations. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1956, ch. 168, § 4; 1964, ch. 194, § 4; 1978, ch. 155, § 82, effective June 17, 1978) was repealed by Acts 1982, ch. 350, § 1, effective July 15, 1982.

158.340. Fees, how credited in state treasury. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1956, ch. 168, § 5; 1964, ch. 194, § 5) was repealed by Acts 1982, ch. 350, § 1, effective July 15, 1982.

158.350. Advisory committee, appointment of — Duties. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1956, ch. 168, § 6, effective May 18, 1956) was repealed by Acts 1982, ch. 350, § 1, effective July 15, 1982.

158.355. Early childhood education — State policy. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1985 (1st Ex. Sess.), ch. 10, § 11, effective October 18, 1985) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.360. Family literacy programs.

(1) The Department for Adult Education and Literacy shall provide technical assistance to providers to develop family literacy services. The technical assistance shall be evaluated on a regular basis by contracted evaluators outside the department.

(2) The programs shall:

(a) Provide parents with instruction in basic academic skills, life skills which include parenting skills, and employability skills;

(b) Provide the children with developmentally appropriate educational activities;

(c) Provide planned high-quality educational experiences requiring interaction between parents and their children;

(d) Be of sufficient intensity and duration to help move families to self-sufficiency and break the cycle of under education and poverty; and

(e) Be designed to reduce duplication with other educational providers to ensure high quality and efficient services.

(Enact. Acts 1986, ch. 378, § 1, effective July 15, 1986; 1988, ch. 158, § 1, effective July 15, 1988; 1990, ch. 470, § 25, effective July 1, 1990; 1990, ch. 476, Pt. V, § 406, effective July 13, 1990; 1992, ch. 456, § 1, effective July 14, 1992; 1994, ch. 405, § 27, effective July 15, 1994; 1996, ch. 145, § 4, effective July 15, 1996; 1998, ch. 127, § 1, effective July 15, 1998; 2000, ch. 526, §§ 11, 26, effective July 14, 2000.)

Legislative Research Commission Note. (7/14/2000). This section was amended by 2000 Ky. Acts ch. 526, secs. 11 and 26, which do not appear to be in conflict and have been codified together.

(7/13/90) The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts ch. 476, pursuant to Section 653(1) of Acts ch. 476.

Compiler's Notes. This section (Enact. Acts 1986, ch. 378, § 1, effective July 15, 1986; 1988, ch. 158, § 1, effective July 15, 1988) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 406, effective July 13, 1990.

The Family Support Act of 1988, referred to in this section, is compiled throughout Title 42 U.S.C.

Voter Education

158.380. Administration of voter education law. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1988, ch. 149, § 1, effective July 14, 1988) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.385. Instruction required in grades nine to twelve. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1988, ch. 149, § 2, effective July 14, 1988) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.390. Development of comprehensive statewide program for public service. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1988, ch. 149, § 3, effective July 14, 1988) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.395. Local school district policy. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1988, ch. 149, § 4, effective July 14, 1988) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

Alcohol and Drug Education

158.405. Administration — Rules and regulations. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1974, ch. 392, § 2; 1978, ch. 155, § 82, effective June 17, 1978) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.410. Instruction. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1974, ch. 392, § 3) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.415. Development of program. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1974, ch. 392, § 4) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.420. Teacher's and administrator's training program. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1974, ch. 392, § 5) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.425. Policy of local school district. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1974, ch. 392, § 6; 1978, ch. 155, § 83, effective June 17, 1978) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.430. Teacher's assistants permitted. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1974, ch. 392, § 7) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

School Safety and School Discipline

158.440. Legislative findings on school safety and order.

The General Assembly finds that:

(1) Every student should have access to a safe, secure, and orderly school that is conducive to learning;

(2) All schools and school districts must have plans, policies, and procedures dealing with measures for assisting students who are at risk of academic failure or of engaging in disruptive and disorderly behavior; and
(3) State and local resources are needed to enlarge the capacities for research, effective programming, and program evaluation that lead to success in addressing safety and discipline within the schools.
(Enact. Acts 1998, ch. 493, § 1, effective April 10, 1998.)

Cross-References. Requirements for school and district report cards, 703 KAR 5:140.

158.441. Definitions for chapter.
As used in this chapter, unless the context requires otherwise:
(1) "Intervention services" means any preventive, developmental, corrective, supportive services or treatment provided to a student who is at risk of school failure, is at risk of participation in violent behavior or juvenile crime, or has been expelled from the school district. Services may include, but are not limited to, screening to identify students at risk for emotional disabilities and antisocial behavior; direct instruction in academic, social, problem solving, and conflict resolution skills; alternative educational programs; psychological services; identification and assessment of abilities; counseling services; medical services; day treatment; family services; work and community service programs.
(2) "School resource officer" means a sworn law enforcement officer who has specialized training to work with youth at a school site. The school resource officer shall be employed through a contract between a local law enforcement agency and a school district.
(Enact. Acts 1998, ch. 493, § 2, effective April 10, 1998.)

158.442. Center for School Safety — Duties — Members of board.
(1) The General Assembly hereby authorizes the establishment of the Center for School Safety. The center's mission shall be to serve as the central point for data analysis; research; dissemination of information about successful school safety programs, research results, and new programs; and, in collaboration with the Department of Education and others, to provide technical assistance for safe schools.
(2) To fulfill its mission, the Center for School Safety shall:
(a) Establish a clearinghouse for information and materials concerning school violence prevention;
(b) Provide program development and implementation expertise and technical support to schools, law enforcement agencies, and communities, which may include coordinating training for administrators, teachers, students, parents, and other community representatives;
(c) Analyze the data collected in compliance with KRS 158.444;
(d) Research and evaluate school safety programs so schools and communities are better able to address their specific needs;
(e) Administer a school safety grant program for local districts as directed by the General Assembly;
(f) Promote the formation of interagency efforts to address discipline and safety issues within communities throughout the state in collaboration with other postsecondary education institutions and with local juvenile delinquency prevention councils;
(g) Prepare and disseminate information regarding best practices in creating safe and effective schools;
(h) Advise the Kentucky Board of Education on administrative policies and administrative regulations; and
(i) Provide an annual report by July 1 of each year to the Governor, the Kentucky Board of Education, and the Interim Joint Committee on Education regarding the status of school safety in Kentucky.
(3) The Center for School Safety shall be governed by a board of directors appointed by the Governor. Members shall consist of:
(a) The commissioner or a designee of the Department of Education;
(b) The commissioner or a designee of the Department of Juvenile Justice;
(c) The commissioner or a designee of the Department for Mental Health and Mental Retardation Services;
(d) The commissioner or a designee of the Department for Community Based Services;
(e) The secretary or a designee of the Education, Arts, and Humanities Cabinet;
(f) A juvenile court judge;
(g) A local school district board of education member;
(h) A local school administrator;
(i) A school council parent representative;
(j) A teacher;
(k) A classified school employee; and
(l) A superintendent of schools who is a member of the Kentucky Association of School Administrators.

In appointing the board of education member, the school administrator, the school superintendent, the school council parent member, the teacher, and the classified employee, the Governor shall solicit recommendations from the following groups respectively: the Kentucky School Boards Association, the Kentucky Association of School Administrators, the Kentucky Association of School Councils, the Kentucky Education Association, and the Kentucky Education Support Personnel Association. The initial board shall be appointed by July 15, 1998. The board shall hold its first meeting no later than thirty (30) days after the appointment of the members.
(Enact. Acts 1998, ch. 493, § 3, effective April 10, 1998; 2000, ch. 14, § 11, effective July 14, 2000.)

158.443. Terms of board members — Meetings — Selection of administering university — Duties of board of directors.

(1) Each nonstate-government employee member of the board of directors for the Center for School Safety shall serve a term of two (2) years and may be reappointed, but a member shall not serve more than two (2) consecutive terms.

(2) The members who are nonstate-government employees shall be reimbursed for travel, meals, and lodging and expenses relating to official duties of the board from funds appropriated for this purpose.

(3) The board of directors shall meet a minimum of four (4) times per year. The board of directors shall be attached to the office of the secretary of the Education, Arts, and Humanities Cabinet for administrative purposes.

(4) The board of directors shall annually elect a chair and vice chair from the membership. The board may form committees as needed.

(5) Using a request-for-proposal process, the board of directors shall select a public university to administer the Center for School Safety for a period of not less than four (4) years unless funds for the center are not appropriated or the board determines that the university is negligent in carrying out its duties as specified in the request for proposal and contract. The initial request for proposals shall be issued not later than September 15, 1998. The board shall select a university no later than January 1, 1999. The university shall be the fiscal agent for the center and:

(a) Receive funds based on the approved budget by the board of directors and the General Assembly's appropriation for the center. The center shall operate within the fiscal policies of the university and in compliance with policies established by the board of directors per the request for proposal and contract; and

(b) Employ the staff of the center who shall have the retirement and employee benefits granted other similar university employees.

(6) The board of directors shall annually approve:

(a) A work plan for the center;

(b) A budget for the center;

(c) Operating policies as needed; and

(d) Recommendations for grants, beginning in the 1999-2000 school year and subsequent years, to local school districts and schools to assist in the development of programs and individualized approaches to work with violent, disruptive, or academically at-risk students, and consistent with provisions of KRS 158.445.

(7) The board of directors shall prepare a biennial budget request to support the Center for School Safety and to provide program funds for local school district grants.

(8) The board shall develop model interagency agreements between local school districts and other local public agencies, including, among others, health departments, departments of social services, mental health agencies, and courts, in order to provide cooperative services and sharing of costs for services to students who are at risk of school failure, are at risk of participation in juvenile crime, or have been expelled from the school district.

(Enact. Acts 1998, ch. 493, § 4, effective April 10, 1998.)

158.444. Administrative regulations — Role of Department of Education.

(1) The Kentucky Board of Education shall promulgate appropriate administrative regulations relating to school safety, student discipline, and related matters.

(2) The Kentucky Department of Education shall:

(a) Collaborate with the Center for School Safety in carrying out the center's mission; and

(b) Establish and maintain a statewide data collection system by which school districts shall report by sex, race, and grade level:

1. All incidences of violence and assault against school employees and students; incidences of possession of guns or other deadly weapons on school property or at school functions; and incidences of the possession or use of alcohol, prescription drugs, or controlled substances on school property or at school functions;

2. The number of arrests, the charges, and whether civil damages were pursued by the injured party;

3. The number of suspensions, expulsions, and corporal punishments; and

4. Data required during the assessment process under KRS 158.445.

The department shall provide all data collected relating to this subsection to the Center for School Safety according to timelines established by the center.

(Enact. Acts 1998, ch. 493, § 5, effective April 10, 1998.)

158.445. Local assessment of school safety and school discipline — District assessment — Local plans.

(1) Each local school shall begin an assessment of school safety and student discipline during the 1998-1999 school year including a review of the following:

(a) Reports of school incidents relating to disruptive behaviors;

(b) The school's behavior and discipline codes for clarity and appropriate notice to students and parents;

(c) The school's hierarchy of responses to discipline problems and actual disciplinary outcomes;

(d) Training needs for instructional staff in classroom management, student learning styles, and other specialized training to enhance teachers' capacity to engage students and minimize disruptive behavior;

(e) The array of school services to students at risk of academic failure, dropping out, or truancy;

(f) The engagement of parents at the earliest stages of problem behavior;

(g) Training needs for students in the development of core values and qualities of good character, anger reduction, conflict resolution, peer mediation, and other necessary skills;
(h) Training needs of parents;
(i) Existing school council policies relating to student discipline and student information;
(j) The school's physical environment;
(k) The school's student supervision plan;
(l) Existing components of the school improvement plan or consolidated plan that focus on school safety and at-risk students, and the effectiveness of the components; and
(m) Other data deemed relevant by the school council or school administration.

A school that does not complete an assessment process shall not be eligible for funds under the state school safety grant program in 1999-2000 and subsequent years.

(2) By May 15, 1999, each local school district shall complete a district-level assessment of district-level data, resources, policies and procedures, and district-wide needs as identified from the individual school assessment process. The district shall engage local community agencies including law enforcement and the courts in the assessment process.

(3) As a result of the district assessment and analysis of data, resources, and needs, each board of education shall adopt a plan for immediate and long-term strategies to address school safety and discipline. The development of the plan shall involve at least one (1) representative from each school in the district as well as representatives from the community as a whole, including representatives from the local juvenile delinquency prevention council if a council exists in that community. The process of planning shall be determined locally depending to a large extent on the size and characteristics of the district.

(4) The district plan under subsection (3) of this section shall be the basis for any request for funds under the state school safety grant program for 1999-2000 and subsequent years. The district plan shall include the local code of acceptable behavior and discipline as required under KRS 158.148 and a description of instructional placement options for threatening or violent students.

(Enact. Acts 1998, ch. 493, § 6, effective April 10, 1998; 2000, ch. 162, § 6, effective July 14, 2000.)

158.446. Use of appropriated funds.

Of the funds appropriated to support the school safety fund program in the biennial budget, twenty percent (20%) of the funds in 1998-99, and ten percent (10%) in 1999-2000, shall be used for the operation of the Center for School Safety and grants to be distributed by the Center to support exemplary programs in local school districts. The remainder of the appropriation shall be distributed to local school districts on a per pupil basis. The funds shall be used for the purpose of improving school safety and student discipline through alternative education programs and intervention services in compliance with KRS 158.148, 158.150, and 158.445. School districts shall be responsible for documenting the purposes for which these funds were expended.

(Enact. Acts 1998, ch. 493, § 7, effective April 10, 1998.)

Consumer Education

158.450. Administration — Rules and regulations. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1974, ch. 392, § 8; 1978, ch. 155, § 82, effective June 17, 1978) was repealed by Acts 1984, ch. 105, § 1, effective July 13, 1984.

158.455. Instruction. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1974, ch. 392, § 9) was repealed by Acts 1984, ch. 105, § 1, effective July 13, 1984.

158.460. Development of program — Curricula. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1974, ch. 392, § 10) was repealed by Acts 1984, ch. 105, § 1, effective July 13, 1984.

158.465. Teacher's and administrator's training programs. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1974, ch. 392, § 11) was repealed by Acts 1984, ch. 105, § 1, effective July 13, 1984.

158.470. Policy of local school district. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1974, ch. 392, § 12; 1978, ch. 155, § 83, effective June 17, 1978) was repealed by Acts 1984, ch. 105, § 1, effective July 13, 1984.

Career Education

158.505. Definitions. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1976, ch. 56, § 2, effective March 16, 1976) was repealed by Acts 1984, ch. 105, § 1, effective July 13, 1984.

158.510. Purpose. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1976, ch. 56, § 3, effective March 16, 1976) was repealed by Acts 1984, ch. 105, § 1, effective July 13, 1984.

158.515. Administration — Rules and regulations. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1976, ch. 56,

§ 4, effective March 16, 1976; 1978, ch. 155, § 82, effective June 17, 1978) was repealed by Acts 1984, ch. 105, § 1, effective July 13, 1984.

158.520. Curriculum — Areas included. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1976, ch. 56, § 5, effective March 16, 1976; 1978, ch. 155, § 82, effective June 17, 1978) was repealed by Acts 1984, ch. 105, § 1, effective July 13, 1984.

158.525. Development of program — Functions of department. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1976, ch. 56, § 6, effective March 16, 1976) was repealed by Acts 1984, ch. 105, § 1, effective July 13, 1984.

158.530. Policy of local school district. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1976, ch. 56, § 7, effective March 16, 1976; 1978, ch. 155, § 82, effective June 17, 1978) was repealed by Acts 1984, ch. 105, § 1, effective July 13, 1984.

158.535. Assistance from persons outside school system permitted. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1976, ch. 56, § 8, effective March 16, 1976; 1978, ch. 155, § 82, effective June 17, 1978) was repealed by Acts 1984, ch. 105, § 1, effective July 13, 1984.

158.540. Implementation of KRS 158.510 to 158.545. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1976, ch. 56, § 9, effective March 16, 1976; 1978, ch. 155, § 82, effective June 17, 1978) was repealed by Acts 1984, ch. 105, § 1, effective July 13, 1984.

158.545. Application by school district for funding — Grants. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1976, ch. 56, § 10, effective March 16, 1976) was repealed by Acts 1984, ch. 105, § 1, effective July 13, 1984.

158.550. Title. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1976, ch. 56, § 1, effective March 16, 1976) was repealed by Acts 1984, ch. 105, § 1, effective July 13, 1984.

Instruction for Gifted and Talented Students

158.600. Intent and purpose of KRS 158.605 to 158.620. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1978, ch. 149, § 1, effective June 17, 1978; 1980, ch. 183, § 1, effective July 15, 1980; 1984, ch. 128, § 5, effective July 13, 1984) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.605. Definitions for KRS 158.600 to 158.620 and 157.360. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1978, ch. 149, § 1, effective June 17, 1978; 1980, ch. 183, § 2, effective July 15, 1980) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.607. Advisory council for gifted and talented education. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1984, ch. 298, § 1, effective July 13, 1984; 1986, ch. 309, § 1, effective July 15, 1986) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.610. Experimental program for gifted and talented students. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1978, ch. 149, § 3, effective June 17, 1978; 1980, ch. 183, § 3, effective July 15, 1980; 1984, ch. 298, § 2, effective July 15, 1984) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.615. Reimbursement for experimental programs. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1978, ch. 149, § 4, effective June 17, 1978; 1980, ch. 183, § 8, effective July 15, 1980) was repealed by Acts 1988, ch. 254, § 4, effective July 15, 1988.

158.617. Inservice training. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1980, ch. 183, § 5, effective July 15, 1980) was repealed by Acts 1988, ch. 254, § 4, effective July 15, 1988.

158.618. Evaluation procedure to monitor gifted and talented programs. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1984, ch. 298, § 3, effective July 13, 1984) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.620. Reports required. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1978, ch. 149, § 5, effective June 17, 1978; 1980, ch. 183, § 4, effective July 15, 1980; 1986, ch. 309, § 2, effective July 15, 1986) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

ADVANCED PLACEMENT AND DUAL ENROLLMENT

158.622. Administrative regulations of Kentucky Board of Education relating to advanced placement courses — Duties of Department of Education relating to advanced placement and dual enrollment programs — Credit for Virtual High School and advanced placement courses.

(1) By December 31, 2002, the Kentucky Board of Education shall promulgate administrative regulations establishing the criteria a school shall meet in order to designate a course an advanced placement course, including content and program standards concerning student admission criteria, data collection, and reporting.

(2) Upon receipt of adequate federal funding for these purposes, by December 31, 2002, the Department of Education shall:

(a) Expand advanced placement teacher training institutes, including offering advanced placement teacher training instruction and assistance through the Kentucky Virtual High School or in conjunction with the Council on Postsecondary Education through the Kentucky Virtual University;

(b) Require teachers who are planning to participate in advanced placement teacher training and complete advanced placement training at advanced placement institutes facilitated by the department to sign an agreement to teach at least one (1) advanced placement course in a Kentucky public school or the Kentucky Virtual High School when assigned by the school principal;

(c) Develop the Kentucky Virtual Advanced Placement Academy which shall offer school districts and their students access to a core advanced placement curriculum through the Kentucky Virtual High School;

(d) Identify, in conjunction with the Council on Postsecondary Education, resources at the secondary and postsecondary levels that can be directed toward advanced placement or dual enrollment instruction;

(e) Compare the costs of offering advanced placement courses through traditional on-site instruction, the Kentucky Virtual High School, and other methods and shall offer each school district assistance, if requested, in analyzing how the school district can most cost-effectively offer the largest number of advanced placement courses;

(f) Identify current and future funding sources for advanced placement or dual enrollment instructional programs and the amount of funds available or anticipated from those sources; and

(g) Submit a report to the Kentucky General Assembly outlining compliance with this section.

(3) Beginning with the 2002-2003 school year and thereafter, each school district shall:

(a) Accept for credit toward graduation any course a student successfully completes through the Kentucky Virtual High School and incorporate the grade the student receives in a Kentucky Virtual High School course in calculating that student's grade point average without distinction between the grade received in the Kentucky Virtual High School course and courses taught within the school district for which the student receives a grade;

(b) Accept for credit toward graduation and completion of high school course requirements an advanced placement, a high school equivalent, or a Kentucky Virtual High School course taken by a student in grades 5, 6, 7, or 8 if that student attains performance levels expected of high school students in that district as determined by achieving a score of "3" or higher on a College Board Advanced Placement examination or a grade of "B" or better in a high school equivalent or a Kentucky Virtual High School course; and

(c) Pay tuition and other costs for students from their districts who are enrolled in a Kentucky Virtual High School course for credit that is part of the student's regular school day coursework by proportionately sharing funds generated under KRS 157.360 or other funding sources.

(Enact. Acts 2002, ch. 97, § 2, effective July 15, 2002.)

SPORTS MEDICINE PROGRAM

158.640. Legislative purpose. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1986, ch. 144, § 1, effective July 15, 1986) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.6401. Definitions. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1986, ch. 144, § 2, effective July 15, 1986) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.6402. Advisory council for sports medicine programs. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1986, ch. 144, § 3, effective July 15, 1986) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.6403. Implementation of experimental incentive program to assist local school district sports medicine programs. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1986, ch. 144, § 4, effective July 15, 1986) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

EDUCATIONAL IMPROVEMENT

158.645. Capacities required of students in public education system.

The General Assembly recognizes that public education involves shared responsibilities. State government, local communities, parents, students, and school employees must work together to create an efficient public school system. Parents and students must assist schools with efforts to assure student attendance, preparation for school, and involvement in learning. The cooperation of all involved is necessary to assure that desired outcomes are achieved. It is the intent of the General Assembly to create a system of public education which shall allow and assist all students to acquire the following capacities:

(1) Communication skills necessary to function in a complex and changing civilization;
(2) Knowledge to make economic, social, and political choices;
(3) Core values and qualities of good character to make moral and ethical decisions throughout his or her life;
(4) Understanding of governmental processes as they affect the community, the state, and the nation;
(5) Sufficient self-knowledge and knowledge of his mental and physical wellness;
(6) Sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage;
(7) Sufficient preparation to choose and pursue his life's work intelligently; and
(8) Skills to enable him to compete favorably with students in other states.

(Enact. Acts 1990, ch. 476, Pt. I, § 2, effective July 13, 1990; 2000, ch. 162, § 2, effective July 14, 2000.)

Cross-References. Academic expectations, 703 KAR 4:060.

Interim accountability model, 703 KAR 5:060.

School district accountability, 703 KAR 5:130.

Statewide Assessment and Accountability Program; school building appeal of performance judgments, 703 KAR 5:050.

The formula for determining school performance classifications and school rewards, 703 KAR 5:020.

Kentucky Law Journal. Russo, School-Based Decision Making in Kentucky: Dawn of a New Era or Nothing New Under the Sun?, 83 Ky. L.J. 123 (1994-95).

Cited: Board of Educ. v. Bushee, 889 S.W.2d 809 (Ky. 1994).

NOTES TO DECISIONS

ANALYSIS

1. Intent of kentucky educational reform act of 1990.
2. Testing program.

1. Intent of Kentucky Educational Reform Act of 1990.

The essential strategic point of the Kentucky Educational Reform Act (Enact. Acts 1990, ch. 476) is the decentralization of decision making authority so as to involve all participants in the school system, not limited to, but including school councils and local school boards; affording each the opportunity to contribute actively to the educational process and the provisions set out the structural framework by which this decentralization of decision making authority is to occur. Board of Educ. v. Bushee, 889 S.W.2d 809 (Ky. 1994).

2. Testing Program.

Regulations promulgated under the authority of KRS 156.160 authorize local school boards to establish additional graduation requirements above the minimum requirements established by the Kentucky Board of Education; such requirements may include a requirement that students take the Kentucky Instructional Results Information System (KIRIS) examination, established by the Board under this act. Triplett v. Livingston County Bd. of Educ., 967 S.W.2d 25 (Ky. Ct. App. 1997), cert. denied, 525 U.S. 1104, 119 S. Ct. 870, 142 L. Ed. 2d 771 (1999).

158.6451. Legislative declaration on goals for Commonwealth's schools — Model curriculum framework.

(1) The General Assembly finds, declares, and establishes that:
   (a) Schools shall expect a high level of achievement of all students.
   (b) Schools shall develop their students' ability to:
      1. Use basic communication and mathematics skills for purposes and situations they will encounter throughout their lives;
      2. Apply core concepts and principles from mathematics, the sciences, the arts, the humanities, social studies, and practical living studies to situations they will encounter throughout their lives;
      3. Become self-sufficient individuals of good character exhibiting the qualities of altruism, citizenship, courtesy, honesty, human worth, justice, knowledge, respect, responsibility, and self-discipline;
      4. Become responsible members of a family, work group, or community, including demonstrating effectiveness in community service;
      5. Think and solve problems in school situations and in a variety of situations they will encounter in life; and
      6. Connect and integrate experiences and new knowledge from all subject matter fields with what they have previously learned and build on past learning experiences to acquire new information through various media sources.
   (c) Schools shall increase their students' rate of school attendance.
   (d) Schools shall reduce their students' dropout and retention rates.
   (e) Schools shall reduce physical and mental health barriers to learning.
   (f) Schools shall be measured on the proportion of students who make a successful transition to work, post-secondary education, and the military.

(2) The Kentucky Board of Education shall disseminate to local school districts and schools a model curriculum framework which is directly tied to the goals, outcomes, and assessment strategies developed pursuant to this section and KRS 158.645 and 158.6453. The framework shall provide direction to local districts and schools as they develop their curriculum. The framework shall identify teaching and assessment strategies, instructional material

resources, ideas on how to incorporate the resources of the community, a directory of model teaching sites, alternative ways of using school time, and strategies to incorporate character education throughout the curriculum.

(Enact. Acts 1990, ch. 476, Pt. I, § 3, effective July 13, 1990; 1994, ch. 256, § 2, effective July 1, 1994; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 162, § 3, effective July 14, 2000.)

Cross-References. Academic expectations, 703 KAR 4:060.

Assistance for schools; guidelines for scholastic audit, 703 KAR 5:120.

Interim accountability model, 703 KAR 5:060.

Interim methods for verifying successful completion of the primary program, 703 KAR 4:040.

Kentucky teaching certificates, 704 KAR 20:670.

Minimum requirements for high school graduation, 704 KAR 3:305.

Procedures for the inclusion of special populations in the state-required assessment and accountability programs, 703 KAR 5:070.

Required program of studies, 704 KAR 3:303.

School district accountability, 703 KAR 5:130.

Statewide Assessment and Accountability Program; relating accountability index to school classification (A1-A6), 703 KAR 5:040.

Statewide Assessment and Accountability Program; school building appeal of performance judgments, 703 KAR 5:050.

The formula for determining school performance classifications and school rewards, 703 KAR 5:020.

Cited: Board of Educ. v. Bushee, 889 S.W.2d 809 (Ky. 1994).

158.6452. School Curriculum, Assessment, and Accountability Council.

(1) A School Curriculum, Assessment, and Accountability Council is hereby created to study, review, and make recommendations concerning Kentucky's system of setting academic standards, assessing learning, holding schools accountable for learning, and assisting schools to improve their performance. The council shall advise the Kentucky Board of Education and the Legislative Research Commission on issues related to the development and communication of the academic expectations and core content for assessment, the development and implementation of the statewide assessment and accountability program, the distribution of rewards and imposition of sanctions, and assistance for schools to improve their performance under KRS 158.6453, 158.6455, 158.782, and 158.805.

(2) The School Curriculum, Assessment, and Accountability Council shall be composed of seventeen (17) voting members appointed by the Governor. On making appointments to the council, the Governor shall assure broad geographical representation and representation of elementary, middle, and secondary school levels; assure equal representation of the two (2) sexes, inasmuch as possible; and assure that appointments reflect the minority racial composition of the Commonwealth. The members shall serve terms of two (2) years with no member serving more than two (2) consecutive terms, except that seven (7) of the initial appointments shall be for four (4) year terms. The members shall be appointed as follows:

(a) Two (2) parents from recommendations submitted by organizations representing school councils and parents;

(b) Two (2) teachers from recommendations submitted by organizations representing teachers;

(c) Two (2) superintendents from recommendations submitted by organizations representing superintendents;

(d) Two (2) principals from organizations representing school administrators;

(e) Two (2) local school board members from recommendations submitted by organizations representing school boards;

(f) Two (2) school district assessment coordinators from recommendations submitted by organizations representing district assessment coordinators;

(g) Two (2) employers in the state from recommendations submitted by organizations representing business and industry;

(h) Two (2) university professors with expertise in assessment and measurement; and

(i) One (1) at-large member.

(3) The School Curriculum, Assessment, and Accountability Council shall elect a chair annually from its membership.

(4) The members shall be remunerated for actual and necessary expenses incurred while attending meetings of the council or while serving as representative of the council.

(5) The School Curriculum, Assessment, and Accountability Council shall meet at least four (4) times each year at times and places as it determines by resolution.

(6) The School Curriculum, Assessment, and Accountability Council shall be attached to the Department of Education for administrative purposes. It shall be provided appropriate staff and resources to conduct its work.

(Enact. Acts 1998, ch. 598, § 5, effective April 14, 1998.)

158.6453. Assessment of achievement of goals — Development of Commonwealth Accountability Testing System — Components — Assessment design — Biennial plan for validation studies — Local assessment — School report card.

(1) The Kentucky Board of Education shall be responsible for creating and implementing a statewide assessment program to be known as the Commonwealth Accountability Testing System to ensure school accountability for student achievement of the goals set forth in KRS 158.645 and 158.6451. The board shall seek the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability in the development of the program. The statewide assessment program shall not include measurement of a student's ability to be-

come a self-sufficient individual or to become a responsible member of a family, work group, or community.

(2) The assessment program shall include the following components:

(a) A customized or commercially available norm-referenced test that measures, to the extent possible, the core content for assessment. The test shall provide valid and reliable results for individual students;

(b) Open-response or multiple-choice items, or both, to assess student skills in reading, mathematics, science, social studies, the arts, the humanities, and practical living and vocational studies; and an on-demand assessment of student writing. These assessments shall measure, to the extent possible, the core content for assessment;

(c) Writing portfolios consisting of samples of student work. After receiving the advice of the Writing Advisory Committee, the Kentucky Board of Education shall, by September 1 following April 14, 1998, file a notice of intent to promulgate an administrative regulation which reduces the teacher and student time involved in preparing a writing portfolio. Time reduction strategies included in the administrative regulation may include, but are not limited to, limiting the time spent on a single portfolio entry, limiting the number of revisions, or collecting entries at different grade levels;

(d) Performance assessment events for schools that have students enrolled in performing arts organizations sponsoring sanctioned events with an established protocol for adjudication; and

(e) A technically sound longitudinal comparison of the assessment results for the same students.

(3) Kentucky teachers shall have a significant role in the design of the assessments. The assessments shall be designed to:

(a) Measure grade appropriate core academic content, basic skills, and higher-order thinking skills and their application. The assessment shall measure the core content for assessment used by the Department of Education during the 1997-98 school year. Any revisions to the core content for assessment shall be developed through a public process involving parents; educators at the elementary, secondary, and postsecondary education levels; professional education advocacy groups and organizations; and business and civic leaders and shall be distributed to all public schools;

(b) Provide valid and reliable scores for schools. If scores are reported for students individually, they shall be valid and reliable; and

(c) Minimize the time spent by teachers and students on assessment.

(4) Results from the state assessment under this section shall be reported to the school districts and schools no later than one hundred fifty (150) days following the first day the assessment can be administered.

(5) The Department of Education shall gather information to establish the validity of the assessment and accountability program. It shall develop a biennial plan for validation studies that shall include but not be limited to the consistency of student results across multiple measures, the congruence of school scores with documented improvements in instructional practice and the school learning environment, and the potential for all scores to yield fair, consistent, and accurate student performance level and school accountability decisions. Validation activities shall take place in a timely manner and shall include a review of the accuracy of scores assigned to students and schools, as well as of the testing materials. The plan shall be submitted to the Commission by July 1 of the first year of each biennium. A summary of the findings shall be submitted to the Legislative Research Commission by September 1 of the second year of the biennium.

(6) In addition to statewide testing for the purpose of determining school success, the board shall have the responsibility of assisting local school districts and schools in developing and using continuous assessment strategies needed to assure student progress. The continuous assessment shall provide diagnostic information to improve instruction to meet the needs of individual students.

(7) The Kentucky Board of Education, after the Department of Education has received advice from the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, shall promulgate an administrative regulation under KRS Chapter 13A to establish the components of a school report card that clearly communicates with parents and the public about school performance. The school report card shall be sent to the parents of the students of the districts, and a summary of the results for the district shall be published in the newspaper with the largest circulation in the county. It shall include but not be limited to the following components reported by race, gender, and disability when appropriate:

(a) Student academic achievement, including the results from each of the assessments administered under this section;

(b) Nonacademic achievement, including the school's attendance, retention, dropout rates, and student transition to adult life; and

(c) School learning environment, including measures of parental involvement.

(Enact. Acts 1990, ch. 476, Pt. I, § 4, effective July 13, 1990; 1994, ch. 256, § 3, effective July 15, 1994; 1994, ch. 408, § 2, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 598, § 11, effective April 14, 1998; 2002, ch. 213, § 1, effective July 15, 2002.)

Cross-References. Academic expectations, 703 KAR 4:060.

Administration Code for Kentucky's Educational Assessment Program, 703 KAR 5:080.

Assistance for schools; guidelines for scholastic audit, 703 KAR 5:120.

Interim accountability model, 703 KAR 5:060.

Procedures for the inclusion of special populations in the state-required assessment and accountability programs, 703 KAR 5:070.

Requirements for school and district report cards, 703 KAR 5:140.

School district accountability, 703 KAR 5:130.

Statewide Assessment and Accountability Program; relating accountability index to school classification (A1-A6), 703 KAR 5:040.

Statewide Assessment and Accountability Program; school building appeal of performance judgments, 703 KAR 5:050.

The formula for determining school performance classifications and school rewards, 703 KAR 5:020.

Writing portfolio procedures, 703 KAR 5:010.

Cited: Board of Educ. v. Bushee, 889 S.W.2d 809 (Ky. 1994).

NOTES TO DECISIONS

1. Testing Program.

Regulations promulgated under the authority of KRS 156.160 authorize local school boards to establish additional graduation requirements above the minimum requirements established by the Kentucky Board of Education; such requirements may include a requirement that students take the Kentucky Instructional Results Information System (KIRIS) examination, established by the Board under KRS 158.645 et seq. Triplett v. Livingston County Bd. of Educ., 967 S.W.2d 25 (Ky. Ct. App. 1997), cert. denied, 525 U.S. 1104, 119 S. Ct. 870, 142 L. Ed. 2d 771 (1999).

158.6454. National Technical Advisory Panel on Assessment and Accountability.

The Legislative Research Commission shall appoint a National Technical Advisory Panel on Assessment and Accountability composed of no fewer than three (3) professionals with a variety of expertise in education testing and measurement. The panel shall advise the Commission and, upon approval of the director of the Commission, the Kentucky Board of Education and the Department of Education, in the implementation of KRS 158.6453 and 158.6455. The Commission is authorized to contract for the services and expenses of the panel members.

(Enact. Acts 1998, ch. 598, § 6, effective April 14, 1998.)

158.6455. System to identify and reward successful schools — School accountability index — Consequences for schools not meeting goals — Scholastic audits — Formula for school accountability and improvement goal — District accountability — Appeals of performance judgments.

It is the intent of the General Assembly that schools succeed with all students and receive the appropriate consequences in proportion to that success.

(1) (a) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate administrative regulations in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A to establish a system for identifying and rewarding successful schools. A reward shall be distributed to successful schools based on the number of full-time, part-time, and itinerant certified staff employed in the school on the last working day of the year of the reward to be used for school purposes as determined by the school council or, if none exists, the principal. The Kentucky Board of Education shall identify reports, paperwork requirements, and administrative regulations from which high performing schools shall be exempt.

(b) Effective July 1, 2006, the Kentucky Board of Education shall reward schools that exceed their improvement goal and have an annual average dropout rate below five percent (5%).

(2) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate by administrative regulation in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A the formula for a school accountability index to classify schools every two (2) years based on whether they have met their threshold level for school improvement, with school years 1998-2000 serving as the baseline. The formula shall reflect the school goals described in KRS 158.6451, except there shall be no measurement of the goals included in subsection (1)(b)3. and (1)(b)4.

(3) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate an administrative regulation in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A to establish appropriate consequences for schools failing to meet their threshold. The consequences shall be designed to improve teaching and learning and may include, but not be limited to:

(a) A scholastic audit process under subsection (4) of this section to determine the appropriateness of a school's classification and to recommend needed assistance;

(b) School improvement plans;

(c) Eligibility to receive Commonwealth school improvement funds under KRS 158.805;

(d) Education assistance from highly skilled certified staff under KRS 158.782;

(e) Evaluation of school personnel; and

(f) Student transfer to successful schools.

(4) (a) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate an ad-

ministrative regulation in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A establishing the guidelines for conducting scholastic audits, which shall include the process for:

1. Appointing and training team members. The team shall include at least a highly skilled certified educator under KRS 158.782, a teacher, a principal or other local district administrator, a parent, and a university faculty member;
2. Reviewing a school's learning environment, efficiency, and academic performance of students and the quality of the school council's data analysis and planning in accordance with KRS 160.345(2)(j);
3. Evaluating each certified staff member assigned to the school. Only certified members of the audit team shall evaluate personnel; and
4. Making a recommendation to the Kentucky Board of Education about the appropriateness of a school's classification and a recommendation concerning the assistance required by the school to improve teaching and learning.

(b) For information purposes, the board shall also conduct scholastic audits in a sample of schools that achieved their goal and report to the public on the resulting findings regarding each aspect of the schools' operations required under subparagraph 2. of paragraph (a) of this subsection.

(5) (a) Notwithstanding subsections (2), (3), and (4) of this section and KRS 158.645 to 158.805, the Kentucky Board of Education, after receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, shall promulgate an administrative regulation in conformity with the provisions of KRS 158.6471 and 158.6472 and in accordance with KRS Chapter 13A, establishing a formula for school accountability and a school improvement goal for each school for the 1998-1999 and 1999-2000 school years, with the 1996-97 and 1997-98 school years serving as the baseline. The formula shall be based on the academic and nonacademic components that are administered in a consistent manner during the four (4) year period.

(b) 1. The Kentucky Board of Education shall reward schools that exceed their improvement goal and have an annual average dropout rate below eight percent (8%).

2. Schools failing to improve as identified by the board shall be reviewed by a scholastic audit team appointed by the state board under subsection (4) of this section. The audit shall not include a formal evaluation of each certified staff member. The team shall determine whether the school shall have highly skilled education assistance for advisory purposes. All schools failing to achieve their goal shall develop a school improvement plan and shall be eligible for school improvement funds under KRS 158.805.

(6) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education may promulgate by administrative regulation, in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A, a system of district accountability that includes establishing a formula for accountability, goals for improvement over a two (2) year period, rewards for leadership in improving teaching and learning in the district, and consequences that address the problems and provide assistance when the district fails to achieve its goals set by the board.

(7) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate administrative regulations in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A, to establish a process whereby a school shall be allowed to appeal a performance judgment which it considers grossly unfair. Upon appeal, an administrative hearing shall be conducted in accordance with KRS Chapter 13B. The state board may adjust a performance judgment on appeal when evidence of highly unusual circumstances warrants the conclusion that the performance judgment is based on fraud or a mistake in computations, is arbitrary, is lacking any reasonable basis, or when there are significant new circumstances occurring during the biennial assessment period which are beyond the control of the school.

(Enact. Acts 1990, ch. 476, Pt. I, § 5, effective July 13, 1990; 1994, ch. 256, § 4, effective July 1, 1994; 1994, ch. 408, § 3, effective July 15, 1994; 1996, ch. 318, § 49, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 598, § 12, effective April 14, 1998; 2000, ch. 212, § 2, effective July 14, 2000; 2000, ch. 452, § 6, effective July 14, 2000.)

Legislative Research Commission Note. (7/14/2000). This section was amended by 2000 Ky. Acts, chs. 212 and 452, which do not appear to be in conflict and have been codified together.

Cross-References. Academic expectations, 703 KAR 4:060.

Administration Code for Kentucky's Educational Assessment Program, 703 KAR 5:080.

Assistance for schools; guidelines for scholastic audit, 703 KAR 5:120.

Interim accountability model, 703 KAR 5:060.

Kentucky Distinguished Educator Program criteria, 703 KAR 4:030.

Procedures for the inclusion of special populations in the state-required assessment and accountability programs, 703 KAR 5:070.

School district accountability, 703 KAR 5:130.

Statewide Assessment and Accountability Program; relating accountability index to school classification (A1-A6), 703 KAR 5:040.

Statewide Assessment and Accountability Program; school building appeal of performance judgments, 703 KAR 5:050.

The formula for determining school performance classifications and school rewards, 703 KAR 5:020.

Kentucky Bench & Bar. Keating, You Get What You Pay For: Financing Public Schools in Kentucky, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 6.

Kirby, School-Based Decision Making, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 15.

Kentucky Law Journal. Russo, School-Based Decision Making in Kentucky: Dawn of a New Era or Nothing New Under the Sun?, 83 Ky. L.J. 123 (1994-95).

Opinions of Attorney General. A recommendation of dismissal of a certified staff member from a distinguished educator is binding on the superintendent. Upon receiving the recommendation, the superintendent is required to "notify the staff member pursuant to KRS 161.790." OAG 92-135.

Following the State Board's declaration that a school is "in crisis," the full-time and part-time members of the certified staff are automatically to be placed on probation. This occurs before any determination is made as to whether any particular teacher shall be dismissed, retained, or transferred. Once assigned to work with the school, the Kentucky Distinguished Educator is required, every six (6) months, to evaluate the certified staff, and to make recommendations to the superintendent regarding continued employment. OAG 92-135.

Only recommendations of dismissal from a distinguished educator to a superintendent are binding. Recommendations for transfer must conform to bargained contracts that are in effect between the school district and employees. Accordingly, the superintendent has discretion, when recommendations other than dismissal are made, to take such actions as are feasible, given the limitations of bargained contracts and of available vacancies. OAG 92-135.

Success of each school is to be determined by measuring the school's improvement in its proportion of successful students, based on the outcome goals. OAG 92-135.

Teachers dismissed upon recommendation of a distinguished educator continue to have a statutory right to be given cause for their dismissal and a right of appeal. OAG 92-135.

Termination of a teacher who is placed on probation under the criteria of subsection (5) of this section constitutes termination for cause under KRS 161.790, and accordingly invokes a right of appeal. OAG 92-135.

The distinguished educator has authority to override decisions of the school staff. The distinguished educator also has authority to override decisions of the local superintendent when recommending dismissal of certified personnel. OAG 92-135.

When a distinguished educator makes a dismissal recommendation to the superintendent pursuant to this section, that recommendation is binding on the superintendent. The recommendation is based on an individual evaluation of the teacher by the distinguished educator after a minimum of six (6) months of evaluation. In view of the fact that the termination is for cause, based on an evaluation of the teacher, some documentation or evidence is required. OAG 92-135.

This section permits a local school council or principal to use school reward money to pay teacher bonuses, and these bonuses are permissible under the Kentucky Constitution because they are "for school purposes." OAG 00-2.

Cited: Board of Educ. v. Bushee, 889 S.W.2d 809 (Ky. 1994).

NOTES TO DECISIONS

ANALYSIS

1. Testing program.
2. Unconstitutionally vague.
3. Reward entitlement.

1. Testing Program.

Regulations promulgated under the authority of KRS 156.160 authorize local school boards to establish additional graduation requirements above the minimum requirements established by the Kentucky Board of Education; such requirements may include a requirement that students take the Kentucky Instructional Results Information System (KIRIS) examination, established by the Board under KRS 158.645 et seq. Triplett v. Livingston County Bd. of Educ., 967 S.W.2d 25 (Ky. Ct. App. 1997), cert. denied, 525 U.S. 1104, 119 S. Ct. 870, 142 L. Ed. 2d 771 (1999).

2. Unconstitutionally Vague.

The statute is not unconstitutionally vague. Walker v. Kentucky Dep't of Educ., 981 S.W.2d 128 (Ky. Ct. App. 1998).

3. Reward Entitlement.

A person who was a certified staff member when a school earned a reward, but was no longer on staff when the reward was received by the school, was entitled to a portion of the reward; further, a person who was on staff at the time the reward was received, but not when it was earned, is not entitled to a portion of the reward. Walker v. Kentucky Dep't of Educ., 981 S.W.2d 128 (Ky. Ct. App. 1998).

158.6457. Definitions for KRS 158.6452, 158.6453, 158.6455, and 158.6457.

As used in this section and KRS 158.6452, 158.6453, and 158.6455, unless the context requires otherwise:

(1) "Accountability index" means the statistic, as provided by KRS 158.6455(2), that combines a school's academic and nonacademic factors;

(2) "Core content for assessment" means the content identified for all students to know that is to be included on the state assessment; and

(3) "Nonacademic factors" means the statistic that describes school success on:

(a) Increasing attendance and decreasing retention rates at the elementary school level;

(b) Increasing attendance rates and decreasing retention and dropout rates at the middle school level; and

(c) Increasing attendance rates and decreasing retention and dropout rates and improving the transition to adult life at the secondary school level.

(Enact. Acts 1998, ch. 598, § 1, effective April 14, 1998.)

Cross-References. The formula for determining school performance classifications and school rewards, 703 KAR 5:020.

158.6458. Plan for implementation of state assessment and accountability system — Report.

The Department of Education shall develop a plan for implementing the state assessment and accountability system created under KRS 158.6453 and 158.6455 and shall report quarterly to the Interim Joint Committee on Education on its progress in the following areas:

(1) Establishing a consistent structure of test components, grade-level testing distribution, and test administration procedures;

(2) Beginning a new cycle of equating procedures for which their adequacy and precision can be tested

rigorously and conducting appropriate equating analyses to accommodate the new accountability system;

(3) Publishing more complete and informative guides for interpreting school accountability index score changes that include information about the estimated error of the accountability index, as well as information about the connections between index score changes and estimated changes in student performance levels;

(4) Reviewing school accountability classifications to assure their construct validity in all cases where they are applied;

(5) Maintaining and strengthening the annual audit of portfolio scores in ways that serve to minimize the differences between teacher-produced scores and audit-generated scores;

(6) Developing and implementing a validity research plan as required under KRS 158.6453;

(7) Establishing additional routine audits of key processes in the assessment and accountability program;

(8) Maintaining and cataloging a library of technical documents related to the assessment and accountability program for internal and external review purposes. In addition, the department shall produce an annual technical report for audiences that include educators, testing coordinators, parents, and legislators; and

(9) Maintaining a vigorous ongoing program of research and documentation of the effects of the assessment and accountability system on Kentucky schools.

(Enact. Acts 1998, ch. 598, § 17, effective April 14, 1998.)

158.646. Kentucky Institute for Education Research Board.

(1) The Kentucky Institute for Education Research Board is hereby created.

(2) The board shall establish a corporation which can qualify and obtain status under Section 501(c)(3) of the Internal Revenue Code. The purpose and mission of the corporation shall be to solicit and raise funds through private foundations, grants, and government agencies to support the independent evaluation of the Kentucky Education Reform Act and related activities. The corporation shall serve as a stimulus and clearinghouse for Kentucky Education Reform Act related research projects.

(3) (a) The board shall cause an in-depth evaluation of the impact of Kentucky Education Reform Act to be performed. This evaluation shall include, but not be limited to, the effect of the reforms on students, individual schools, school systems, and educators. The evaluation shall also include an analysis of the reliability and validity of the changes in scores between baseline scores and scores from subsequent administrations of tests.

(b) The board shall make recommendations to the citizens and elected leaders of the Commonwealth concerning the enhancement of the benefits of the Kentucky Education Reform Act and the expansion and improvement of services to students.

(c) The board shall establish an organizational capacity to:

1. Develop and manage implementation of a research design to include the issuing of requests for proposals; awarding of contracts; and general oversight and coordination of the quality and quantity of research;
2. Conduct research in accordance with a comprehensive research design and establish priorities; and
3. Design and implement a comprehensive educational data information system.

(d) The board shall prepare an annual report of its activities and the activities of the corporation and forward copies to the Governor, the Legislative Research Commission, the Kentucky Board of Education, and the Council on Postsecondary Education and make copies available to the citizens of the Commonwealth.

(e) The board shall hire an executive officer and other necessary personnel to carry out its responsibilities.

(f) The board shall consist of ten (10) members who shall initially be appointed to two (2) year terms by the Governor. The board shall select from its membership a chairperson and establish bylaws, including bylaws governing board membership and length of terms. Upon expiration of the initial appointments and adoption of bylaws governing membership and length of terms by the board, the board shall be self-perpetuating, and the appointment and length of terms shall be made in accordance with the board's bylaws. Vacancies which occur before the expiration of the initial appointments shall be filled by the Governor for the remaining term of the vacancy.

(Enact. Acts 1994, ch. 408, § 1, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996; 1997 (1st Ex. Sess.), ch. 1, § 62, effective May 30, 1997.)

Legislative Research Commission Note. (9/16/96). This statute has been renumbered as KRS 158.646 from KRS 158.683 in order to remove the statute from the sunset provision contained in KRS 158.710(6). Initial placement of this statute within the range set out in the sunset provision was an inadvertent mistake in codification. 1994 Ky. Acts ch. 408, sec. 1 did not direct that the statute be placed within the range set out in the sunset provision.

Compiler's Notes. This section was formerly codified as KRS 158.683 and was renumbered by the Reviser of Statutes as KRS 158.646, effective September 16, 1996.

Section 501(c)(3) of the Internal Revenue Code is compiled as 26 U.S.C. § 501(c)(3).

The Kentucky Education Reform Act referred to in subsection (2) of this section was enacted by Acts 1990, ch. 476 and is compiled mainly throughout Title XII. Education.

Kentucky Law Journal. Russo, School-Based Decision Making in Kentucky: Dawn of a New Era or Nothing New Under the Sun?, 83 Ky. L.J. 123 (1994-95).

158.647. Education Assessment and Accountability Review Subcommittee — Members — Duties.

(1) A permanent subcommittee of the Legislative Research Commission to be known as the Education Assessment and Accountability Review Subcommittee is hereby created. The subcommittee shall be composed of eight (8) members, including four (4) members from each chamber. The Legislative Research Commission shall appoint, from the membership of the General Assembly, the members of the subcommittee for terms of two (2) years, and the members appointed from each chamber shall elect one (1) member from their chamber to serve as co-chair. The co-chairs shall have joint responsibilities for subcommittee meeting agendas and presiding at subcommittee meetings. At least one (1) member appointed from each chamber shall be a member of the minority party in that chamber. A majority of the membership shall constitute a quorum and all actions authorizing a study, dropping a study, or adopting a final report on any subject under study shall require the affirmative vote of a majority of the full subcommittee membership. All other actions of the subcommittee may be undertaken by a simple majority. Any vacancy that may occur in the membership of the subcommittee shall be filled by the Legislative Research Commission at its next regularly scheduled meeting after the occurrence of the vacancy.

(2) The subcommittee shall review administrative regulations and advise the Kentucky Board of Education concerning the implementation of the state system of assessment and accountability, established in KRS 158.6453, 158.6455, and 158.782.

(3) The subcommittee shall advise and monitor the Office of Education Accountability in the performance of its duties according to the provisions of KRS 7.410.

(4) The subcommittee may meet monthly at a time and place as the co-chairs may determine. The members of the subcommittee shall be compensated for attending meetings as provided in KRS 7.090.

(5) Any professional, clerical, or other employees required by the subcommittee shall be provided in accordance with the provisions of KRS 7.090.

(Enact. Acts 1998, ch. 598, § 2, effective April 14, 1998; 2000, ch. 437, § 2, effective July 14, 2000; 2002, ch. 235, § 1, effective April 8, 2002.)

158.6471. Meetings — Required attendance for department representative — Report — Assignment of regulation to committee — Consideration.

(1) Within forty-five (45) days after publication of an administrative regulation in "The Administrative Register" or within forty-five (45) days of the receipt of a statement of consideration, the Education Assessment and Accountability Review Subcommittee shall meet to review the administrative regulation.

(2) The meetings shall be open to the public.

(3) Public notice of the time, date, and place of the subcommittee meeting shall be given in The Administrative Register.

(4) A representative of the Department of Education shall be present to explain the administrative regulation and to answer questions thereon. If a representative of the Department of Education is not present at the subcommittee meeting, the administrative regulation shall be deferred to the next regularly scheduled meeting of the subcommittee.

(5) Following the meeting and before the next regularly scheduled meeting of the Legislative Research Commission, the subcommittee shall forward to the Commission its findings, recommendations, or other comments it deems appropriate in writing. The subcommittee shall also forward to the Commission its findings, recommendations, or other comments it deems appropriate on an existing administrative regulation it has reviewed. One (1) copy shall be sent to the Department of Education. The subcommittee's findings shall be published in The Administrative Register.

(6) (a) After review by the subcommittee, the Commission shall at its next regularly scheduled meeting assign the matter as appropriate to the Interim Joint Committee on Education, the Senate standing Education Committee, the House standing Education Committee, or the Senate and the House standing committees meeting jointly.

(b) Upon notification of the assignment by the Commission, the Education Committee shall notify the regulations compiler:

1. Of the date, time, and place of the meeting at which it will consider the matter; or
2. That it will not meet to consider the matter.

(7) Within thirty (30) days of the assignment, the Education Committee, when it plans to consider an administrative regulation, shall hold a public meeting during which the regulation shall be reviewed. If the thirtieth day of the assignment falls on a Saturday, Sunday, or holiday, the deadline for review shall be the workday following the Saturday, Sunday, or holiday. The committee may also review an existing administrative regulation and make a determination as provided by KRS 13A.030(2) and (3). Notice of the time, date, and place of the meeting shall be placed in the legislative calendar.

(8) The Department of Education shall comply with subsection (4) of this section.

(9) The Education Committee shall be empowered to make the same nonbinding determinations and to exercise the same authority as the subcommittee as provided in KRS 13A.030(2) and (3).

(10) (a) Upon adjournment of the meeting at which the Education Committee has considered an administrative regulation pursuant to subsection (7) of this section, the committee shall

inform the regulations compiler of its findings, recommendations, or other action taken on the administrative regulation.

(b) Following the meeting and before the next regularly scheduled meeting of the Commission, the committee shall forward to the Commission its findings, recommendations, or other comments it deems appropriate in writing. One (1) copy shall be sent to the Department of Education. The committee's findings shall be published in The Administrative Register.

(Enact. Acts 1998, ch. 598, § 4, effective April 14, 1998.)

158.6472. Review of administrative regulations. The review of administrative regulations promulgated by the Kentucky Board of Education under the authority granted by KRS 158.6453, 158.6455, and 158.782 shall comply with the provisions of KRS 158.6471 and KRS Chapter 13A.

(Enact. Acts 1998, ch. 598, § 3, effective April 14, 1998.)

158.648. State Advisory Council for Gifted and Talented Education — Purpose — Duties.

(1) The State Advisory Council for Gifted and Talented Education is hereby created and attached to the Kentucky Department of Education. The council's purpose is to make recommendations regarding the provisions of services for gifted and talented students in Kentucky's education system.

(a) The council shall be composed of nineteen (19) voting members who shall be appointed by the Governor and three (3) nonvoting, ex officio members. The members shall be appointed representing various constituencies as follows:

1. Four (4) members shall be teachers within local school districts representing elementary, middle, and high school levels with at least one (1) full-time teacher of gifted and talented students and one (1) full-time teacher who teaches in a regular classroom;
2. Four (4) members shall be parents of students in local school districts, including two (2) parents of students identified as gifted and talented and at least one (1) who serves or has served on a school council;
3. Three (3) members shall be from postsecondary education institutions, including one (1) from an independent college or university;
4. One (1) member shall be a superintendent of a local school district;
5. Two (2) members shall be principals, including one (1) from an elementary or middle school and one (1) from a high school;
6. Two (2) members shall be coordinators of gifted and talented programs and services in local school districts;
7. One (1) member shall be a local board of education member;
8. One (1) member shall represent the visual and performing arts; and
9. One (1) member shall be appointed from the private business sector.

(b) The three (3) nonvoting ex officio members shall be: the state consultant for gifted and talented education in the Kentucky Department of Education, a staff person designated by the executive secretary of the Education Professional Standards Board, and a staff person designated by the president of the Council on Postsecondary Education. Vacancies shall be filled by the Governor as they occur in a manner consistent with the provisions for initial appointment.

(c) Each board member shall serve a three (3) year term or until a successor is appointed, except that for initial appointments to the board, three (3) of the members shall be appointed to serve a one (1) year term, eight (8) of the members shall be appointed to serve a two (2) year term, and eight (8) of the members shall be appointed to serve a three (3) year term. A member may be reappointed but may not serve more than two (2) consecutive terms.

(2) The council shall advise the commissioner of education, the Kentucky Board of Education, and the Education Professional Standards Board concerning the development of administrative regulations and education policy regarding gifted and talented students. The commissioner of education and the executive secretary for the Education Professional Standards Board shall submit proposed administrative regulations and educational policies relating to gifted and talented education and other administrative regulations that impact gifted and talented students for review by the advisory council prior to seeking approval of the appropriate board.

(3) As the advisory council considers issues relating to gifted and talented students, it shall seek dialogue with other agencies and organizations, including the Parent Teachers Association, the Governor's Scholars Program, the Governor's School for the Arts, the Kentucky Association of School Councils, the Kentucky Association for Gifted Education, the Kentucky School Boards Association, the Kentucky Association of School Administrators, and the Kentucky Council for Exceptional Children.

(4) The advisory council shall annually elect a chair from its membership, establish meeting operational procedures, and meet at least two (2) times annually.

(5) The Department of Education shall provide staff and administrative support and shall administer the funds appropriated to support the expenses of the council.

(6) The members of the advisory council shall serve without compensation but shall be reimbursed for necessary expenses in the same manner as state employees.

(Enact. Acts 1998, ch. 547, § 1, effective July 15, 1998.)

158.649. Achievement gaps — Data on student performance — Policy for reviewing academic performance — Biennial targets — Review and revision of consolidated plan.

(1) "Achievement gap" means a substantive performance difference on each of the tested areas by grade level of the Commonwealth Accountability Testing System between the various groups of students including male and female students, students with and without disabilities, students with and without English proficiency, minority and nonminority students, and students who are eligible for free and reduced lunch and those who are not eligible for free and reduced lunch.

(2) By November 1 of each year, the Department of Education shall provide each school council, or the principal if a school council does not exist, data on its students' performance as shown by the Commonwealth Accountability Testing System. The data shall include, but not be limited to, information on performance levels of all students tested, and information on the performance of students disaggregated by race, gender, disability, English proficiency, and participation in the federal free and reduced price lunch program. The information from the department shall include an equity analysis that shall identify the substantive differences among the various groups of students identified in subsection (1) of this section.

(3) By December 1, 2002, each local board of education upon the recommendation of the local district superintendent shall adopt a policy for reviewing the academic performance on the state assessments required under KRS 158.6453 for various groups of students, including major racial groups, gender, disability, free and reduced price school lunch eligibility, and limited English proficiency. The local board policy shall be consistent with Kentucky Board of Education administrative regulations. Upon agreement of the school-based decision making council, or the principal if there is not a council, and the superintendent, the local board shall establish a biennial target for each school for reducing identified gaps in achievement as set out in subsection (4) of this section.

(4) By February 1, 2003, and each February 1 in odd-numbered years thereafter, the school-based decision making council, or the principal if there is not a council, with the involvement of parents, faculty, and staff shall set the school's biennial targets for eliminating any achievement gap and submit them to the superintendent for consideration. The superintendent and the school-based decision making council, or the principal if there is not a council, shall agree on the biennial targets before they are submitted to the local board of education for adoption.

(5) By April 1, 2003, and each April 1 in odd-numbered years thereafter, the school council, or the principal if a school council does not exist, with the involvement of parents, faculty, and staff, shall review the data and revise the consolidated plan to include the biennial targets, strategies, activities, and a time schedule calculated to eliminate the achievement gap among various groups of students to the extent it may exist. The plan shall include but not be limited to activities designed to address the following areas:

(a) Curriculum alignment within the school and with schools that send or receive the school's students;

(b) Evaluation and assessment strategies to continuously monitor and modify instruction to meet student needs and support proficient student work;

(c) Professional development to address the goals of the plan;

(d) Parental communication and involvement;

(e) Attendance improvement and dropout prevention; and

(f) Technical assistance that will be accessed.

(6) The principal shall convene a public meeting at the school to present and discuss the plan prior to submitting it to the superintendent and the local board of education for review, in the public meeting required under KRS 160.340.

(7) Based on the disaggregated biennial assessment results, the local board shall determine if each school achieved its biennial targets for each group of students. Only data for a group of students including ten (10) or more students shall be considered.

(8) Notwithstanding KRS 160.345(8) and 158.070(8), if a local board determines that a school has not met its biennial target to reduce the identified gap in student achievement for a group of students, the local board shall require the council, or the principal if no council exists, to submit its revisions to the consolidated plan describing the use of professional development funds and funds allocated for continuing education to reduce the school's achievement gap for review and approval by the superintendent. The plan shall address how the school will meet the academic needs of the students in the various groups identified in subsection (1) of this section.

(9) The superintendent shall report to the commissioner of education if a school fails to meet its targets to reduce the gap in student achievement for any student group for two (2) successive biennia. The school's consolidated plan shall be subject to review and approval by the Kentucky Department of Education and the school shall submit an annual status report. The Department of Education may provide assistance to schools as it deems necessary to assist the school in meeting its goals.

(10) The school-based decision making council, or the principal if there is not a council, shall no longer be required to seek approval of the plan under subsections (8) and (9) of this section when it meets its biennial target for reducing the gap in student achievement for the various groups of students identified in subsection (1) of this section.

(Enact. Acts 2002, ch. 302, § 1, effective July 15, 2002.)

158.650. Definitions for KRS 158.680 to 158.710. [Expired. See Compiler's Notes.]

As used in KRS 158.680 to 158.710, unless the context otherwise requires:

(1) "Department" means the Department of Education;
(2) "Competencies" means the possession of skills, knowledge, and understandings to the degree they can be demonstrated or measured;
(3) "Performance goals" means expected student and school district outcomes as approved by the State Board for Elementary and Secondary Education;
(4) "Interim performance goal" means the specified amount of improvement the district shall achieve toward meeting the performance goal agreed upon in the district improvement plan;
(5) "Process goals" means systematic and orderly procedures, including specific actions and time frames to be followed in achieving performance goals;
(6) "Standards" means acceptable levels of attainment school districts shall meet in student, program, service, and operational performance as established in administrative regulations adopted by the State Board for Elementary and Secondary Education;
(7) "Educationally deficient school district" means a school district which does not meet minimum standards in student, program, service, or operational performance;
(8) "Education development district" means an educationally deficient district which fails to meet all process goals or to achieve all interim performance goals according to the timelines established in the district improvement plan;
(9) "Annual performance report" means the report published annually by each local board of education that presents the district's performance with regard to performance goals as established by State Board for Elementary and Secondary Education administrative regulations; and
(10) "District improvement plan" means the plan developed by a local school district in consultation with the Department of Education, that establishes the process goals and timelines for correcting identified deficiencies in the achievement of performance goals and the interim performance goals. The plan shall be approved by the local board of education and the State Board for Elementary and Secondary Education.

(Enact. Acts 1978, ch. 151, § 2, effective June 17, 1978; 1982, ch. 13, § 1, effective July 15, 1982; 1984, ch. 65, § 1, effective July 13, 1984; 1984, ch. 347, § 1, effective July 13, 1984; 1988, ch. 357, § 1, effective July 15, 1988; 1990, ch. 476, Pt. I, § 8, effective July 13, 1990.)

Legislative Research Commission Note. (7/15/96). Because this statute has expired as of June 30, 1996, under KRS 158.710(6), references to the State Board for Elementary and Secondary Education within the statute have not been changed to the Kentucky Board of Education as required by 1996 Ky. Acts ch. 362, sec. 6.

Compiler's Notes. Pursuant to subsection (7) of KRS 158.710, this section became null and void on June 30, 1996.

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

158.660. Intent and purpose. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1978, ch. 151, § 3, effective June 17, 1978; 1982, ch. 13, § 2, effective July 15, 1982; 1984, ch. 347, § 2, effective July 13, 1984) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.665. Basic skills development regulations. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1984, ch. 397, § 42, effective July 13, 1984) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.670. Department to administer educational improvement act — Regulations. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1978, ch. 151, § 4, effective June 17, 1978; 1984, ch. 347, § 4, effective July 13, 1984) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.680. State Advisory Committee for Educational Improvement. [Expired. See Compiler's Notes.]

There shall be appointed by the Governor a State Advisory Committee for Educational Improvement in accordance with the following:
(1) The State Advisory Committee for Educational Improvement shall be eighteen (18) members broadly representative of citizens, parents, teachers, and administrators. Their principal duties shall be to advise the Governor, the State Board for Elementary and Secondary Education, and the department on the implementation of the provisions of KRS 158.650 to 158.710 and KRS 158.6453 and 158.6455.
(2) All members shall be voting members appointed by the Governor and shall serve terms of four (4) years, except that the original appointments will be made as follows:
  (a) Five (5) members for four (4) year terms;
  (b) Five (5) members for three (3) year terms;
  (c) Four (4) members for two (2) year terms; and
  (d) Four (4) members for a one (1) year term.
(3) The State Advisory Committee for Educational Improvement shall elect a chairman annually from its membership;
(4) The members shall be remunerated for actual and necessary expenses incurred while attending meetings of the State Advisory Committee for Educational Improvement or while serving in the capacity as representative of the State Advisory Committee for Educational Improvement.
(5) The State Advisory Committee for Educational Improvement shall meet at least three (3) times each year at times and places as it determines by resolution.

(Enact. Acts 1978, ch. 151, § 5, effective June 17, 1978; 1988, ch. 357, § 4, effective July 15, 1988; 1990, ch. 476, Pt. I, § 9, effective July 13, 1990; 1998, ch. 194, § 4, effective July 15, 1998.)

Legislative Research Commission Note. (7/15/98). This statute expired June 30, 1996, under KRS 158.710(6), although this expiration was suspended for the period of the

1996-98 biennium. See LRC Note of 7/2/97. Because the statute had expired, its amendment in 1998 Ky. Acts ch. 194, sec. 4, was without effect.

(7/2/97). Although this statute has expired under the terms of KRS 158.710(6), this expiration has been suspended for the period of the 1996-98 biennium by 1996 Ky. Acts ch. 380, part IX, item 12. d., at 1965. 1996 Ky. Acts ch. 362, sec. 4 renamed the State Board for Elementary and Secondary Education, referenced in subsection (1) of this statute, as the Kentucky Board of Education.

(7/15/96). Because this statute has expired as of June 30, 1996, under KRS 158.710(6), a reference to the State Board for Elementary and Secondary Education in subsection (1) of this statute has not been changed to the Kentucky Board of Education as required by 1996 Ky. Acts ch. 362, sec. 6.

Compiler's Notes. Pursuant to subsection (7) of KRS 158.710, this section became null and void on June 30, 1996.

158.683. Kentucky Institute for Education Research Board. [Renumbered.]

Compiler's Notes. This section was renumbered as KRS 158.646, effective September 16, 1996.

158.685. Standards of student, program, service, and operational performance to be established — Educationally deficient school district — Action to eliminate deficiency — Education development district. [Expired. See Compiler's Notes.]

Legislative Research Commission Note. (7/15/96). Because this statute has expired as of June 30, 1996, under KRS 158.710(6), references to the State Board for Elementary and Secondary Education within the statute have not been changed to the Kentucky Board of Education as required by 1996 Ky. Acts ch. 362, sec. 6.

Compiler's Notes. Pursuant to subsection (7) of KRS 158.710, this section became null and void on June 30, 1996.

Kentucky Bench & Bar. Kirby, School-Based Decision Making, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 15.

158.690. Assessment and testing program — Publication of test results. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1978, ch. 151, § 6, effective June 17, 1978; 1982, ch. 13, § 3, effective July 15, 1982; 1984, ch. 66, § 1, effective July 13, 1984; 1984, ch. 347, § 5, effective July 13, 1984; 1986, ch. 341, § 1, effective July 15, 1986, 1988, ch. 357, § 6, effective July 15, 1988) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.700. Specific duties of department relating to testing. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1978, ch. 151, § 7, effective June 17, 1978; 1982, ch. 13, § 4, effective July 15, 1982; 1984, ch. 347, § 6, effective July 13, 1984; 1984, ch. 397, § 1, effective July 13, 1984, 1988, ch. 357, § 7, effective July 15, 1988) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.710. Responsibilities and functions of educationally deficient districts and education development districts — Plans required — Reports required. [Expired. See Compiler's Notes.]

Each educationally deficient district and education development district shall assume the following responsibilities and functions in implementing the provisions of KRS 158.680 to 158.710:

(1) The district shall develop a plan to improve the education of all students enrolled in preschool and the primary program through grade twelve (12). In developing the plan and prior to approval by the local board of education, the district shall involve local citizens, parents, students, teachers, and administrators. The district, pursuant to KRS 158.685, shall involve Department of Education consultants in the development of the plan;

(2) Educationally deficient districts and education development districts pursuant to KRS 158.685 shall submit a plan each year, or more frequently if ordered by the State Board for Elementary and Secondary Education, listing new process goals, the interim performance goals, and timelines until the deficiency has been eliminated;

(3) Local school personnel shall ascertain areas of strength and areas needing improvement in the school program as revealed by the test results and other student assessments and with the advice and counsel of the representatives mentioned in subsection (1) of this section, shall develop appropriate programs to address educational areas needing improvement for all students in preschool and the primary program through grade twelve (12);

(4) The district improvement plan developed and submitted to the department shall include the following:

(a) Performance goals or interim performance goals;

(b) Product goals;

(c) A list of individuals, by occupation, or groups involved in developing the plan;

(d) The areas of needed improvement as revealed by the district assessment results;

(e) A list of priorities for program implementation;

(f) The objectives and activities deemed appropriate and necessary for alleviating the observed educational areas of needed improvement;

(g) A calendar of events and timeline, for implementation;

(h) A brief report, each succeeding year, or more frequently if required by the State Board for Elementary and Secondary Education, after submission of the initial plan, of the program status and progress made in areas of needed improvement.

(5) The district improvement plan shall be coordinated with the master staff development plan and the Department of Education shall provide technical assistance in the planning, implementation, and evaluation of this coordination.

(6) Effective June 30, 1996, KRS 158.650 to 158.710 shall become null and void.

(Enact. Acts 1978, ch. 151, § 8, effective June 17, 1978; 1982, ch. 13, § 5, effective July 15, 1982; 1984, ch. 347, § 7, effective July 13, 1984; 1988, ch. 357, § 8, effective July 15, 1988; 1990, ch. 476, Pt. I, § 11, effective July 13, 1990.)

Legislative Research Commission Note. (7/15/96). Because this statute has expired as of June 30, 1996, under subsection (6) of the statute, references to the State Board for Elementary and Secondary Education within the statute have not been changed to the Kentucky Board of Education as required by 1996 Ky. Acts ch. 362, sec. 6.

Compiler's Notes. Pursuant to subsection (7) of KRS 158.710, this section became null and void on June 30, 1996.

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

158.720. Coordination of local educational improvement plan with master inservice educational plan — Technical assistance by department. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1978, ch. 151, § 9, effective June 17, 1978; 1982, ch. 13, § 6, effective July 15, 1982) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.730. Department to submit plans and reports to various officers and agencies. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1978, ch. 151, § 10, effective June 17, 1978; 1984, ch. 347, § 8, effective July 13, 1984; 1988, ch. 357, § 9, effective July 15, 1988) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.740. Title. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1978, ch. 151, § 1, effective June 17, 1978; 1988, ch. 357, § 10, effective July 15, 1988) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.750. Testing on basic skills — Exemption — Remedial instruction — Supplemental classroom units — Selection of students for remedial instruction. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1984, ch. 403, § 1, effective July 13, 1984; 1986, ch. 341, § 2, effective July 15, 1986; 1988, ch. 357, § 11, effective July 15, 1988) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.760. School-to-Careers System — Legislative intent — Goals.

(1) It is the intent of the General Assembly that a School-to-Careers System be developed to serve as an umbrella for career-related programs in the public schools, including School-to-Work, Tech Prep, and High Schools That Work initiatives.

(2) The goals of the School-to-Careers System shall be to:

(a) Increase the math, science, communications, social studies, and technical skills of all students through the implementation of a more rigorous and relevant applied curriculum and instructional process;

(b) Increase the awareness of job and career availability in the future workforce and the skills required to obtain those positions;

(c) Increase the postsecondary education's entry and completion rates and reduce the percentage of students taking remedial courses;

(d) Decrease the high school dropout rate through a system of increased guidance and extra help focused on academics and career achievement;

(e) Make all students aware of employer expectations in order to be successful;

(f) Increase the daily attendance rate at all secondary schools; and

(g) Provide the educational experiences that will cause all students to meet the goals and capacities identified in KRS 158.645 and KRS 158.6451 for Kentucky students.

(Enact. Acts 1998, ch. 444, § 1, effective April 9, 1998.)

158.7603. School-to-Careers Grant Program — Authority for administrative regulations — Advisory committee.

(1) The School-to-Careers Grant Program shall be provided by the General Assembly to provide matching funds to school districts or consortia of school districts for the development and implementation of comprehensive plans that include:

(a) A comprehensive career awareness and exploration program for all students in grades K-8 to include study of Kentucky's fourteen (14) career clusters;

(b) High level academic and vocational courses for all secondary students to replace a general track curriculum;

(c) A comprehensive career guidance program to assist all secondary students in developing individual graduation plans;

(d) Applied academic instructional models for all disciplines and integration of academics and vocational education curriculum;

(e) Implementation of industry skill standards within all relevant academic and vocational education programs;

(f) Planned instructional programs to meet the needs of students with disabilities and other special needs students;

(g) Opportunity for students to receive, in addition to a high school diploma, a Career Major Certificate upon completion of the high school graduation requirements, work-based learning experiences, specific course work, and a career culminating project;

(h) Opportunity for students to participate in structured workbased learning;

(i) Linkages with postsecondary institutions that create a smooth and seamless transition from secondary to postsecondary education;
(j) Professional development for faculty and staff focused on developing integrated and applied curriculum; and
(k) A School-to-Careers Partnership Council composed of representatives of business, labor, education agencies, parents, students, teachers, administrators, and community organizations.

(2) The Kentucky Board of Education shall promulgate administrative regulations that set forth the request for proposal process, the criteria for grant awards, the responsibilities of local districts and consortia seeking matching funds, the level of funding available, and criteria for evaluating the success of the programs.

(3) The Department of Education shall administer the funds and shall provide technical assistance to local districts and consortia in developing, implementing, and evaluating School-to-Careers programs.

(4) The commissioner of education shall establish a state advisory committee composed of business, industry, labor, education, and government with a minimum of fifty-one percent (51%) of its membership from the employment sector to advise the department in the School-to-Careers program. The members shall serve without compensation but may be reimbursed for necessary travel expenses.

(5) The grant funds may be used to enhance on-going efforts such as Tech Prep, School-to-Work, and High Schools that Work initiatives.

(Enact. Acts 1998, ch. 444, § 2, effective April 9, 1998.)

158.770. Advisory committee on writing program.

An advisory committee on writing shall be created by the Kentucky Board of Education to make recommendations to the board regarding the establishment of an intensive writing component in the state program of studies for grades seven (7) through ten (10) and the establishment of innovative pilot writing programs in selected local school districts in grades seven (7) through ten (10).

(1) The advisory committee shall be composed of nine (9) members appointed by the Kentucky Board of Education. The majority of the membership shall be educators currently employed by local school districts or public universities.

(2) (a) On July 13, 1990, the terms of the current members of the advisory committee shall expire and the Kentucky Board of Education shall appoint members as follows: three (3) members shall serve two (2) year terms, three (3) members shall serve three (3) year terms, and three (3) members shall serve four (4) year terms.
(b) As the terms described in subsection (a) of this section expire, members appointed thereafter shall serve four (4) year terms.

(3) All operating expenses of the committee shall be approved by the Kentucky Board of Education and paid from funds budgeted to the writing programs. Members shall be reimbursed for actual expenses for attendance at committee meetings and for other actual expenses incurred in carrying out their official duties.

(4) The functions of the committee shall be as follows:
(a) Analyze the program of studies of grades seven (7) through ten (10) and make recommendations to the Kentucky Board of Education on the options for including an intensive writing program;
(b) Make recommendations to the Kentucky Board of Education on methods of integrating writing into the curriculum in grades seven (7) through ten (10);
(c) Make recommendations to the Kentucky Board of Education relative to the development of teacher training programs and workshops designed to facilitate the effective teaching of writing;
(d) Develop and recommend to the Kentucky Board of Education criteria for local district participation in the pilot program;
(e) Develop a monitoring and ongoing evaluation system; and
(f) Recommend to the Kentucky Board of Education a grant allotment system to award funds to eligible districts.

(Enact. Acts 1985 (1st Ex. Sess.), ch. 10, § 14, effective October 18, 1985; 1990, ch. 476, Pt. IV, § 213, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

158.775. Writing program pilot project.

(1) The Kentucky Board of Education shall select school districts to participate in pilot programs based upon the criteria recommended by the advisory committee on writing.

(2) The Kentucky Board of Education shall authorize grants of funds to school districts selected for participation in the program based on the grant allotment system recommended by the advisory committee on writing.

(3) Teacher aides may be employed in selected districts to assist in the implementation of this program. Such aides shall meet the same qualifications required of kindergarten aides in KRS 161.044.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 407, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

Compiler's Notes. This section (Enact. Acts 1985 (1st Ex. Sess.), ch. 10, § 15, effective October 18, 1985) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 407, effective July 13, 1990.

158.780. Management improvement programs.

(1) The Kentucky Board of Education shall establish a program for voluntary management improvement, for involuntary supervision, and for assuming full control of a local school district.
(a) The voluntary improvement program shall assist local districts with the development of

innovative management practices and help them adopt currently accepted practices.

(b) If the Kentucky Board of Education believes that a critical lack of efficiency or effectiveness in the governance or administration of a local school district exists, it shall conduct an administrative hearing in compliance with KRS Chapter 13B. If it is determined that there is a critical lack of efficiency or effectiveness in the governance or administration, the state board shall assume sufficient supervision of the district to ensure that appropriate corrective action occurs. Neither the state board, the chief state school officer, nor his designee shall assume the supervision of the district until an administrative hearing has been conducted under KRS Chapter 13B.

(c) If the Kentucky Board of Education believes that the pattern of a lack of efficiency or effectiveness in the governance or administration of a school district warrants action, it shall conduct an administrative hearing in compliance with KRS Chapter 13B. If it is determined that the pattern does warrant action, it shall declare the district a "state assisted district" or a "state managed district" and the state board shall then assume control of the district as set forth in this section and KRS 158.785.

(2) The Kentucky Board of Education shall adopt necessary administrative regulations to carry out the provisions of this section and KRS 158.785, including an administrative regulation to more specifically establish and implement the standards for designation as a "state assisted district" and a "state managed district."

(3) The Kentucky Board of Education may delegate to the chief state school officer the authority it deems necessary to carry out the provisions of this section and KRS 158.785. However, neither the state board, the chief state school officer, nor his designee shall assume the supervision of the district until an administrative hearing has been conducted under the provisions of KRS Chapter 13B.

(Enact. Acts 1985 (1st Ex. Sess.), ch. 10, § 16, effective October 18, 1985; 1990, ch. 476, Pt. IV, § 214, effective July 13, 1990; 1992, ch. 184, § 1, effective July 14, 1992; 1996, ch. 32, § 1, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996.)

Cross-References. Management improvement program, 703 KAR 3:205.

158.782. Guidelines to provide highly skilled education assistance to schools and districts — Professional leave for selected employee — Review of paperwork requirements.

(1) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate administrative regulations in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A, to set forth the guidelines for providing highly skilled education assistance to schools and school districts. The program shall be designed to support improved teaching and learning and may include, but not be limited to, establishing the following:

(a) Criteria for identifying successful strategies of assistance;

(b) Policies and procedures for providing education assistance, which may include training, making assignments, employing certified personnel, and setting salaries that may include supplements; and

(c) Duties of those providing education assistance, which may include personnel evaluation and recommendations concerning retention, dismissal, or transfer of personnel.

(2) A district employee selected to provide assistance shall be granted professional leave pursuant to KRS 161.770 though the time may exceed two (2) years if determined by the state board to be necessary. A certified employee shall not lose any employee benefits as a result of a special assignment.

(3) The Kentucky Board of Education shall annually review the paperwork required of schools receiving highly skilled certified education assistance. It shall assure that paperwork requirements are kept to a minimum, relevant to the needs of the school, and are directly related to improving teaching and learning.

(Enact. Acts 1990, ch. 476, Pt. I, § 6, effective July 13, 1990; 1994, ch. 408, § 4, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 598, § 14, effective April 14, 1998.)

Cross-References. Assistance for schools; guidelines for scholastic audit, 703 KAR 5:120.

Kentucky Distinguished Educator Program criteria, 703 KAR 4:030.

Kentucky Law Journal. Russo, School-Based Decision Making in Kentucky: Dawn of a New Era or Nothing New Under the Sun?, 83 Ky. L.J. 123 (1994-95).

Opinions of Attorney General. Both KRS 161.770 and subdivision (2)(e) of this section provide for the granting of a leave for a period of not more than two consecutive school years; however, both statutes authorize renewal of a leave of absence, upon approval. OAG 91-134.

The distinguished educator has authority to override decisions of the school staff. The distinguished educator also has authority to override decisions of the local superintendent when recommending dismissal of certified personnel. OAG 92-135.

158.785. Collection and review of management data — Management audit — Conditions for designation as state assisted or state managed district — Actions required.

(1) The Kentucky Board of Education shall establish a program to improve specific aspects of the management of local school districts as described in KRS 158.780.

(2) The State Department of Education shall, pursuant to administrative regulations promulgated by

the Kentucky Board of Education, collect and review data relative to the instructional and operational performance of local school districts. When a review of the data or of any other information, including site investigations of local management practices, indicates the presence of critically ineffective or inefficient management, the chief state school officer shall order a management audit of the governance and administration of the district. A local school board or superintendent may also request a management audit of the district.

(3) If a management audit, conducted for any of the reasons set forth in subsection (2) of this section, indicates that there is a pattern of a significant lack of efficiency and effectiveness in the governance or administration of a school district, the chief state school officer shall recommend the district to the Kentucky Board of Education either as a "state assisted district" or a "state managed district."

(4) The Kentucky Board of Education shall promulgate an administrative regulation establishing a procedure for considering the recommendation of the chief state school officer to declare a district a "state assisted district" or a "state managed district." This procedure shall fully comply with the procedures for administrative hearings established in KRS Chapter 13B.

(5) When the chief state school officer presents a recommendation to the state board for designation as a "state assisted district" or a "state managed district," he shall establish the following:

(a) Existence of a pattern of a significant lack of efficiency and effectiveness in the governance or administration of the school district;

(b) The pattern of a significant lack of efficiency and effectiveness in the governance or administration of the school district continues to exist; and

(c) State assistance or state management is necessary to correct the inefficiencies and ineffectiveness.

(6) When a district is designated a "state assisted district" under subsection (4) of this section, the following actions shall be required of the chief state school officer:

(a) Management assistance shall be provided to the district to develop and implement a plan to correct deficiencies found in the management audit.

(b) The Department of Education shall monitor the development and implementation of the correctional plan to improve the governance or administration of the school district. If the chief state school officer determines that the plan is being inadequately developed or implemented, he shall make a recommendation to the Kentucky Board of Education to declare the district a "state managed district."

(7) If the state board designates a district a "state managed district" under subsection (4) of this section, the following actions shall be required of the chief state school officer:

(a) All administrative, operational, financial, personnel, and instructional aspects of the management of the school district formerly exercised by the local school board and the superintendent shall be exercised by the chief state school officer or his designee.

(b) Any local school board member or the local superintendent may be removed from office by the Kentucky Board of Education pursuant to KRS 156.132.

(c) Notwithstanding any statute to the contrary, after thirty (30) days after a district becomes a "state managed district" any appointment to an administrative position may be revoked by the chief state school officer and the individual employee may be reassigned to any duty for which that person is qualified. The chief state school officer shall provide to the reassigned employee written reasons for the reassignment. The individual shall not be dismissed from subsequent employment except as provided by KRS 156.132 and 161.790.

(d) The chief state school officer shall make the administrative appointments as necessary to exercise full and complete control of all aspects of the management of the district. The chief state school officer, through the appointments, may make any and all decisions previously made by the local school board and the local superintendent. The chief state school officer shall retain clear supervisory and monitoring powers over the operation and management of the district.

(8) A school district shall be designated as a "state managed district" until the Kentucky Board of Education determines that the pattern of ineffective and inefficient governance or administration and the specific deficiencies determined by the management audit have been corrected. Each year following the school year in which the designation of a "state managed district" was made, the chief state school officer shall report the status of the corrective action being taken to the Kentucky Board of Education. No local school district shall remain in the status of a "state managed district" longer than three (3) consecutive school years unless the Kentucky Board of Education extends the time after a complete review of a new management audit. Any judicial review of actions taken by the chief state school officer or the board under KRS 158.780 or this section shall be in accordance with the provisions for conducting judicial review of administrative hearings outlined in KRS Chapter 13B.

(Repealed and reenact., Acts 1990, ch. 476, Pt. V, § 408, effective July 13, 1990; 1992, ch. 184, § 2, effective July 14, 1992; 1996, ch. 32, § 2, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996.)

Compiler's Notes. This section (Enact. Acts 1985 (1st Ex. Sess.), ch. 10, §§ 17 and 18, effective October 18, 1985) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 408, effective July 13, 1990.

Cross-References. Management improvement program, 703 KAR 3:205.

158.790. Governor's commission on literacy. [Repealed, reenacted, and amended.]

Compiler's Notes. This section (Enact. Acts 1985 (1st Ex. Sess.), ch. 10, § 23, effective October 18, 1985; 1988, ch. 179, § 2, effective July 15, 1988) was repealed, reenacted, and amended as KRS 151B.135 by Acts 1990, ch. 470, § 26, effective July 1, 1990. It was also amended by Acts 1990, ch. 476, Pt. IV, § 215; however, the repeal, reenactment, and amendment by ch. 470 prevails.

158.792. Definitions for KRS 158.792 and 164.0207 — Early reading incentive fund — Grants for reading models — Administrative regulations.

(1) As used in this section and KRS 164.0207, unless the context requires otherwise:
   (a) "Reading" means the process of comprehending the meaning of written text by depending on:
      1. The ability to use phonics skills, that is, knowledge of letters and sounds, to decode printed words quickly and effortlessly, both silently and aloud;
      2. The ability to use previously learned strategies for reading comprehension; and
      3. The ability to think critically about the meaning, message, and aesthetic value of the text.
   (b) "Reliable, replicable research" means objective, valid, scientific studies that:
      1. Include rigorously defined samples of subjects that are sufficiently large and representative to support the general conclusions drawn;
      2. Rely on measurements that meet established standards of reliability and validity;
      3. Test competing theories, where multiple theories exist;
      4. Are subjected to peer review before their results are published; and
      5. Discover effective strategies for improving reading skills.

(2) The early reading incentive fund is created to improve the reading skills of students in the primary program. The Department of Education, upon the recommendation of the Early Reading Incentive Grant Steering Committee, shall provide grants to schools to support teachers in the implementation of reliable, replicable research-based reading models that use a balance of instructional strategies, including phonics instruction, to address the diverse learning needs of those students reading at low levels. Any moneys in the fund at the close of the fiscal year shall not lapse but shall be carried forward to be used for the purposes specified in this section.

(3) Upon recommendation of the Early Reading Incentive Grant Steering Committee, the state board shall establish by promulgation of an administrative regulation in accordance with provisions of KRS Chapter 13A an application process and the criteria for funding grants. The application shall include, but not be limited to, the following:
   (a) Identification of the research-based model to be implemented;
   (b) The method for identifying qualified students to be served;
   (c) An implementation plan and timeline, including supporting professional development efforts;
   (d) A plan for evaluation to assess the short-term and long-term success of the program;
   (e) A budget; and
   (f) Approval of the application by the school council if one exists, the principal, and the superintendent of schools.

(4) In order to qualify for funding, the school council, or if none exists, the superintendent of schools, shall allocate matching funds. Funding for professional development allocated to the school council under KRS 160.345 and for continuing education under KRS 158.070 may be used as part of the school's match.

(5) The Department of Education shall make available to schools:
   (a) Information concerning successful, research-based early reading models, including phonics instruction, from the Collaborative Center for Literacy Development created under KRS 164.0207;
   (b) Strategies for successfully implementing early reading programs, including professional development support and the identification of funding sources; and
   (c) A list of professional development providers offering teacher training related to phonics instruction.

(6) The Department of Education shall submit a report to the Interim Joint Committee on Education no later than September 1 of each year outlining the use of grant funds and a summary of the program's evaluation conducted by the Collaborative Center for Literacy Development under KRS 164.0207.

(Enact. Acts 1998, ch. 580, § 1, effective July 15, 1998.)

Cross-References. Early reading incentive grants, 704 KAR 3:480.

158.794. Early Reading Incentive Grant Steering Committee — Membership — Duties.

(1) The Early Reading Incentive Grant Steering Committee is hereby created for the purpose of advising the Kentucky Board of Education and the Department of Education concerning the implementation and administration of the early reading incentive grant fund created by KRS 158.792. The committee shall be composed of fifteen (15) members including the commissioner of education or the commissioner's designee, the president of the Council on Postsecondary Education or the president's designee, the commissioner of the Department for Adult Education and Literacy or the commissioner's des-

ignee, and the following members, to be appointed by the Governor:

(a) Two (2) primary program teachers with a specialty or background in reading and literacy;

(b) Eight (8) university professors with a specialty or background in reading and literacy representing each of the public universities; and

(c) Two (2) individuals from the state at large with background and interest in reading and literacy.

(2) Each member of the committee, other than members who serve by virtue of their position, shall serve for a term of three (3) years or until a successor is appointed and qualified, except that upon initial appointment, four (4) members shall serve a one (1) year term, four (4) members shall serve a two (2) year term, and four (4) members shall serve a three (3) year term.

(3) A majority of the full authorized membership shall constitute a quorum.

(4) The committee shall elect, by majority vote, a chair, who shall be the presiding officer of the committee, preside at all meetings, and coordinate the functions and activities of the committee. The chair shall be elected or reelected each calendar year.

(5) The committee shall be attached to the Department of Education for administrative purposes.

(6) The committee shall:

(a) Identify needs in schools throughout the state regarding reading and literacy programs;

(b) Develop criteria for the solicitation, review, and approval of grant applications provided under KRS 158.792;

(c) Develop a process for monitoring grants that are awarded; and

(d) Recommend approval of grant applications based upon criteria established by the committee.

(Enact. Acts 1998, ch. 580, § 2, effective July 15, 1998; 2000, ch. 204, § 2, effective July 14, 2000.)

Cross-References. Early reading incentive grants, 704 KAR 3:480.

158.795. Statewide adult literacy program. [Repealed, reenacted, and amended.]

Compiler's Notes. This section (Enact. Acts 1985 (1st Ex. Sess.), ch. 10, § 24, effective October 18, 1985; 1988, ch. 179, § 3, effective July 15, 1988) was repealed, reenacted, and amended as KRS 151B.140 by Acts 1990, ch. 470, § 26, effective July 1, 1990. It was also amended by Acts 1990, ch. 476, Pt. IV, § 215; however, the repeal, reenactment, and amendment by ch. 470 prevails. The section was subsequently repealed by Acts 1994, ch. 469, § 40, July 15, 1994.

Cross-References. Adult Literacy Program fund, 700 KAR 1:010.

State Adult Literacy Program plan, 700 KAR 1:020.

158.796. Governor's Scholars Program.

The Governor's Scholars Program is established in the Office of the Secretary of the Education, Arts, and Humanities Cabinet and shall be headed by an executive director appointed by the secretary of the Education, Arts, and Humanities Cabinet with approval by the Governor. This program shall be responsible for implementing an enrichment program for academically-gifted students.

(Enact. Acts 1994, ch. 209, § 6, effective July 15, 1994.)

158.797. Parenting and family life skills education. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1988, ch. 147, § 1, effective July 15, 1988) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.798. Program to encourage studies in mathematics, science, and related technologies — Role of Kentucky Science and Technology Council, Inc.

(1) It is the intention of the General Assembly to generate a substantial increase in the number of mathematicians, scientists, and engineers in the Kentucky workforce in order to foster economic growth in the business sector and to provide high quality jobs for Kentuckians. A program shall be established to encourage studies in math, science, and related technologies, beginning with middle school and continuing through advanced college level work, leading to sustained job placements in Kentucky's technological and innovative businesses and industries. Principal activities for developing, coordinating, and implementing this program shall be conducted by the Kentucky Science and Technology Council, Inc., a private, nonprofit corporation comprised of leaders from education, government, and the private sector.

(2) The Kentucky Science and Technology Council, Inc., may solicit, accept, receive, invest, and expend funds from any public or private source for the purpose of implementing the provisions in this section.

(3) The Kentucky Science and Technology Council, Inc., shall coordinate, promote, and support activities designed to:

(a) Recognize Kentucky middle school students with a high interest, aptitude, or achievement in math, science, and technology related courses, events, and activities; and

(b) Develop additional learning experiences outside the traditional classroom courses, to enhance interest in math and science for middle and high school students, including summer and weekend institutes, skills, application in real world situations, business and industry internships and mentorships, and career awareness exploration.

(c) Solicit program support, cooperation, and funds from private businesses, industries, and government entities with an interest and need for technological innovation;

(d) Develop a college-level academic scholarship program for students in math, science, engineering, and other technology related disci-

plines, soliciting contributions from private businesses and industries;

(e) Develop internship and post-degree placement commitment plans for industries and those students participating in internships or receiving scholarships; and

(f) Submit an annual report to the Governor and the Legislative Research Commission concerning:

1. Activities related to achieving the program's objectives for the preceding year;
2. Factual information about Kentucky students' progress in math, science, and related technologies and business and industries' changing technological needs; and
3. Recommendations to improve the program in achieving its purposes.

(Enact. Acts 1992, ch. 408, § 1, effective July 14, 1992.)

158.799. Name for program created by KRS 158.798.

The Kentucky Science and Technology Council, Inc., shall, in cooperation with the Department for Education and the Council on Postsecondary Education, develop and conduct a competition among Kentucky middle and high school students for the purpose of choosing a Kentuckian of national or international acclaim as a scientist, mathematician, or engineer for whom the programs developed under KRS 158.798 shall be named.

(Enact. Acts 1992, ch. 408, § 5, effective July 14, 1992; 1997 (1st Ex. Sess.), ch. 1, § 63, effective May 30, 1997.)

158.800. Educational excellence improvement fund — Intent — Allotment of funds. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1985, (1st Ex. Sess.), ch. 10, § 37, effective October 18, 1985) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

158.801. Definitions for KRS 158.801 and 158.803.

As used in this section and 158.803, unless the context otherwise requires:

(1) "Program" means the Kentucky Early Mathematics Testing Program; and

(2) "Participating colleges or universities" means all public postsecondary education institutions in Kentucky and any private college or university in Kentucky that chooses to participate in the Kentucky Early Mathematics Testing Program.

(Enact. Acts 2000, ch. 258, § 1, effective July 14, 2000.)

158.803. Early mathematics testing program — Purposes — Development and requirements of program — Annual reports.

(1) The Kentucky Early Mathematics Testing Program is created to lower the number of high school graduates in Kentucky who require remediation in mathematics upon enrollment in postsecondary education institutions, by providing information to primarily high school sophomores and juniors statewide regarding their level of mathematics knowledge in relation to standards required for community and technical colleges and university level mathematics courses early enough for students to address deficiencies while still in high school.

(2) The testing program shall be a computer website-based program that incorporates a variety of diagnostic mathematics tests to identify knowledge and skills needed for postsecondary education courses.

(3) The testing program shall be developed and conducted by a public university. The Council on Postsecondary Education, with the advice of the Department of Education, shall develop a process to solicit, review, and select a proposal for the development and implementation of the computer website-based testing program. The council shall approve the location of the program at a public university no later than September 1, 2000. The university shall be the fiscal agent for the testing program and shall receive the funds appropriated by the General Assembly.

(4) The program shall be available to all interested Kentucky public and private high school students in grades ten (10) and eleven (11). Student participation in the program shall be voluntary, and program test scores shall not be:

(a) Placed on a student's high school transcript; or

(b) Used by postsecondary education institutions in the admissions process.

(5) The computer website testing program shall be available to all Kentuckians for evaluation of an individual's mathematics knowledge and skills.

(6) The program shall encourage the active participation of all public and private high schools in Kentucky.

(7) The computer website testing program shall:

(a) Develop or adopt appropriate tests to determine the level of mathematics knowledge of high school students in relation to the standards of placement tests given at the community and technical colleges and undergraduate public universities. In the development or adoption of the tests, consideration shall be given to the program of studies and the minimum requirements for high school graduation established in KRS 156.160 and the alignment of these standards with postsecondary course standards;

(b) Develop a structure to permit each participating student the opportunity to take the computer-based test at school in the presence of school personnel or at the student's home in the presence of his or her parents or guardian;

(c) Score the completed tests and provide the test scores and diagnostic information on a student's knowledge and skills electronically to the student and the high school upon completion of the test in the form of electronic mail or printable files or screens.

(d) Provide the following information for up to three (3) participating postsecondary education institutions specified by the student as a possible college choice:
1. The student's test score;
2. A list of mathematics courses required for the student's intended major at a postsecondary education institution;
3. A list of any remedial courses the student might be required to take based on the student's current level of mathematics knowledge as demonstrated on the test;
4. The estimated cost of the remedial courses the student might be required to take; and
5. The high school courses and the specific mathematical concepts or functions a student should consider studying in order to address any deficiencies;

(e) Encourage the chair of the mathematics department or the academic dean at each of the participating postsecondary education institutions specified by the student as a possible college choice to send a personalized letter to the student that:
1. Encourages the student to take additional high school mathematics courses to address deficiencies in mathematics knowledge; or
2. Congratulates the student who does well on the test for his or her achievement and encourages continued study in mathematics; and

(f) Develop and implement a strategy to raise awareness and encourage participation in the program, targeting high school students, parents, high school faculty and administrators, mathematics departments or faculty at postsecondary education institutions, and the general public.

(8) The Kentucky Department of Education shall provide assistance as necessary to the Kentucky Early Mathematics Testing Program to implement the provisions of this section and KRS 158.801.

(9) The public university that conducts the testing program shall submit an annual report to the Kentucky Board of Education and the Council on Postsecondary Education regarding its activities, and the effects of the program on levels of remediation required by participating students.

(Enact. Acts 2000, ch. 258, § 2, effective July 14, 2000.)

158.805. Commonwealth school improvement fund — Purposes — Criteria for grants to schools needing assistance.

(1) There is hereby created the Commonwealth school improvement fund to assist local schools in pursuing new and innovative strategies to meet the educational needs of the school's students and raise the school's performance level. Except for the school years 2002-2003 and 2003-2004 when the priority for the use of the fund shall be to provide technical assistance to schools identified under subsection (2) of this section to reduce the achievement gaps among the various groups of students as described in KRS 158.649, the Kentucky Board of Education shall utilize the Commonwealth school improvement fund to provide grants to schools for the following purposes:

(a) To support teachers and administrators in the development of sound and innovative approaches to improve instruction or management;

(b) To assist in replicating successful programs developed in other districts including those calculated to reduce achievement gaps as defined in KRS 158.649;

(c) To encourage cooperative instructional or management approaches to specific school educational problems; and

(d) To encourage teachers and administrators to conduct experimental programs to test concepts and applications being advanced as solutions to specific educational problems.

(2) The Kentucky Board of Education shall develop criteria for awards of grants from the Commonwealth school improvement fund to schools identified by the board as needing assistance under KRS 158.6455.

(3) The Kentucky Board of Education shall have the sole authority to approve grants from the fund.

(4) The Kentucky Board of Education may establish priorities for the use of the funds and, through the Department of Education, shall provide assistance to schools in preparing their grant proposals. The board shall require that no funds awarded under the Commonwealth school improvement fund are used to supplant funds from any other source. Requests for necessary equipment may be approved at the discretion of the state board, however the cost of equipment purchased by any grantee shall not exceed twenty percent (20%) of the total amount of money awarded for each proposal and shall be matched by local funds on a dollar for dollar basis.

(5) The Kentucky Board of Education shall establish maximums for specific grant awards. All fund recipients shall provide the board with an accounting of all money received from the fund and shall report the results and conclusions of any funded projects to the Kentucky Board of Education. All fund recipients shall provide the board with adequate documentation of all projects to enable replication of successful projects in other areas of the state.

(Enact. Acts 1985 (1st Ex. Sess.), ch. 10, § 10, effective October 18, 1985; 1990, ch. 476, Pt. I, § 7, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 598, § 13, effective April 14, 1998; 2002, ch. 302, § 3, effective July 15, 2002.)

Cross-References. Assistance for schools; guidelines for scholastic audit, 703 KAR 5:120.

Kentucky Bench & Bar. Keating, You Get What You Pay For: Financing Public Schools in Kentucky, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 6.

SECONDARY CAREER AND TECHNICAL EDUCATION

158.810. Definitions for KRS 158.810 to 158.816.
For purposes of KRS 158.810 to 158.816:
(1) "Career and technical education" or "secondary vocational education" or "secondary vocational study" means a program of study that leads to the development of academic and specialized occupational skills in career fields;
(2) "Technical literacy" means a student's ability to read and comprehend the language of a field of study, understand the major technical concepts of that field, and apply the appropriate mathematics concepts to typical problems encountered in the workplace;
(3) "Secondary area technology center" or "secondary area center" means a school facility dedicated to the primary purpose of offering five (5) or more technical preparation programs that lead to skill development focused on specific occupational areas. An area center may be called a "magnet technology center" or "career center" or may be assigned another working title by the parent agency. An area center may be either state or locally operated; and
(4) "Vocational department" means a portion of a school facility that has five (5) or more technical preparation programs that lead to skill development focused on specific occupational areas.
(Enact. Acts 2001, ch. 123, § 1, effective June 21, 2001.)

158.812. Legislative findings and declarations.
(1) The purposes of elementary and secondary education programs of career and technical education:
(a) Provide students opportunities to increase academic skills in mathematics, science, English, and communications as well as technical literacy in work-based settings;
(b) Provide students a variety of opportunities to master the usage of technology;
(c) Prepare individuals with specialized, transferable academic skills and technical skills for gainful employment in entry-level positions in broad-based career fields; and
(d) Assist individuals in the process of preparing for successful transition from school to work, or to postsecondary education, or to the military.
(2) The General Assembly acknowledges that:
(a) Rigorous, high-quality career and technical education offers students an opportunity to develop skills in mathematics, science, communication, problem-solving, and career and technical areas that are essential to meet the goals for Kentucky education as described in KRS 158.6451 and to help students achieve the capacities required of all students and defined in KRS 158.645;
(b) Students need access to programs that meet high standards and connect technical skills with core academic requirements for high school students;
(c) Students can accelerate their overall scholastic achievement when given an opportunity to learn in an integrated school- and work-based environment; and
(d) The General Assembly has a responsibility to provide the resources that recognize the increased costs for offering high-quality, relevant technical programs.
(Enact. Acts 2001, ch. 123, § 2, effective June 21, 2001.)

158.814. Joint comprehensive plan on secondary career and technical education programs.
(1) In order to ensure that high-quality, relevant secondary career and technical programs are available to students in all school districts that enable them to gain the academic and technical skills to meet high school graduation requirements and for successful transition to postsecondary education, work, or the military and to support present-day and future needs of Kentucky employers, the Kentucky Department of Education and the Department for Technical Education shall jointly implement a comprehensive plan between July 1, 2001, and January 1, 2004, to:
(a) Review and revise as needed the equipment and facilities standards for each career and technical education program identified and described in the career and technical supplement to the Kentucky program of studies and published by the Kentucky Department of Education; and
(b) Establish a needs assessment process tied to specific criteria for assisting all providers of programs in determining if the current programs offered in their respective facilities are appropriate for the students in the school districts served as well as for determining if new programs are needed.
(2) Representatives from local school districts, the Kentucky Community and Technical College System, business and industry, colleges, universities, and other appropriate agencies shall be consulted in carrying out the requirements of this section.
(Enact. Acts 2001, ch. 123, § 3, effective June 21, 2001.)

158.816. Annual statewide analysis and report of academic achievement of technical education students — Assistance plan — Occupation skill standards and assessments.
(1) The Kentucky Department of Education and the Department for Technical Education, with involvement of representatives from the local school districts and teacher preparation institutions, shall jointly complete an annual statewide analysis and report of academic achievement of technical education students who have completed or are enrolled in a sequence of a technical program of at least three (3) high school credits.
(2) The analysis shall include the previous year's results from the Commonwealth Accountability Testing System. The data shall be disaggregated for all high school students by career cluster areas of agriculture, business and marketing, human services, health services, transportation, construc-

tion, communication, and manufacturing and by special populations. Where available, disaggregated data from other national assessments shall also be used.

(3) (a) The Kentucky Department of Education, with assistance from the Department for Technical Education, shall coordinate the development of a statewide technical assistance plan to aid providers of programs in identifying areas for improvement for those schools that do not meet their school performance goal and for those schools where technical students as a group do not score equal to or better than the school average in each of the academic areas. The plan shall address methodologies for further analysis at each school including, but not limited to:

1. The academic course-taking patterns of the technical students;
2. The rigor and intensity of the technical programs and expectations for student performance in reading, math, science, and writing and other academic skills as well as in technical skill development;
3. The level of communication and collaboration between teachers in technical programs and academic programs, planning, and opportunity for analyzing student achievement, particularly between faculty in the comprehensive high schools with the faculty in state-operated or locally operated secondary area centers and vocational departments;
4. The faculties' understanding of Kentucky's program of studies, academic expectations, and core content for assessment;
5. The knowledge and understanding of academic teachers and technical teachers in integrating mutually supportive curricula content;
6. The level of curricula alignment and articulation in grades eight (8) to sixteen (16);
7. The availability of extra help for students in meeting higher standards;
8. The availability and adequacy of school career and guidance counseling;
9. The availability and adequacy of work-based learning;
10. The availability and adequacy of distance learning and educational technology;
11. The adequacy of involvement of business and industry in curricula, work-based learning, and program development; and
12. The adequacy of teachers' preparation to prepare them for teaching both academic and technical skills to all students that are necessary for successful transition to postsecondary education, work, or the military.

(b) The departments, in cooperation with teacher preparation programs, postsecondary education institutions, and other appropriate partners, shall ensure that academic core content is imbedded or integrated within the performance requirements for students.

(c) The departments, in cooperation with the Kentucky Community and Technical College System, shall encourage postsecondary education and business and industry to provide professional development and training opportunities to engage technical faculty in continuous improvement activities to enhance their instructional skills.

(d) The departments shall continue efforts with business and industry to develop occupation skill standards and assessments. All efforts shall be made with the involvement of business, industry, and labor. Skill standards and assessments, where available, shall be used as the focus of the curricula.

(4) The departments shall consult with the Education Professional Standards Board in carrying out the requirements of this section as they relate to teacher preparation.

(Enact. Acts 2001, ch. 123, § 4, effective June 21, 2001.)

Asthma Medications

158.830. Legislative findings — Construction of KRS 158.830 to 158.836.

The General Assembly of the Commonwealth of Kentucky finds that:

(1) Asthma is the seventh-most prevalent chronic health condition in the United States and is the leading serious chronic illness of children;

(2) Asthma is the third-ranking cause of hospitalization among children under age fifteen (15) and accounts for almost one (1) in six (6) of all pediatric emergency room visits;

(3) Approximately two hundred fifty thousand (250,000) Kentuckians suffer from asthma, including over sixty thousand (60,000) children;

(4) Nationally more than five thousand four hundred (5,400) individuals die from asthma each year;

(5) Asthma is the number-one cause of school absences attributed to chronic conditions;

(6) Asthma is manageable with treatment and medications;

(7) Physicians and other health care practitioners instruct children with asthma in the proper use of asthma medications; and

(8) KRS 158.830 to 158.836 shall be construed to provide unobstructed access to asthma medications for elementary and secondary school students with asthma.

(Enact. Acts 2002, ch. 50, § 1, effective July 15, 2002.)

158.832. Definitions for KRS 158.830 to 158.836.

As used in KRS 158.830 to 158.836:

(1) "Medications" means all medicines individually prescribed by a health care practitioner for the student that pertain to his or her asthma;

(2) "Health care practitioner" means a physician or other health care provider who has prescriptive authority; and

(3) "Self-administration" means the student's use of his or her prescribed asthma medications, pursu-

ant to prescription or written direction from the health care practitioner.

(Enact. Acts 2002, ch. 50, § 2, effective July 15, 2002.)

158.834. Self-administration of medications by students with asthma — Authorization — Written statement — Acknowledgment of liability limitation — Duration of permission.

(1) The board of each local public school district and the governing body of each private and parochial school or school district shall permit the self-administration of medications by a student with asthma if the student's parent or guardian:
   (a) Provides written authorization for self-administration to the school; and
   (b) Provides a written statement from the student's health care practitioner that the student has asthma and has been instructed in self-administration of asthma medications. The statement shall also contain the following information:
      1. The name and purpose of the medications;
      2. The prescribed dosage;
      3. The time or times the medications are to be regularly administered and under what additional special circumstances the medications are to be administered; and
      4. The length of time for which the medications are prescribed.

(2) The statements required in subsection (1) of this section shall be kept on file in the office of the school nurse or school administrator.

(3) The school district or the governing body of each private and parochial school or school district shall inform the parent or guardian of the student that the school and its employees and agents shall incur no liability as a result of any injury sustained by the student from the self-administration of asthma medications. The parent or guardian of the student shall sign a statement acknowledging that the school shall incur no liability and the parent or guardian shall indemnify and hold harmless the school and its employees against any claims relating to the self-administration of asthma medications. Nothing in this subsection shall be construed to relieve liability of the school or its employees for negligence.

(4) The permission for self-administration of medications shall be effective for the school year in which it is granted and shall be renewed each following school year upon fulfilling the requirements of subsections (1) to (3) of this section.

(Enact. Acts 2002, ch. 50, § 3, effective July 15, 2002.)

158.836. Possession and use of asthma medications.

Upon fulfilling the requirements of KRS 158.834, a student with asthma may possess and use asthma medications when at school, at a school-sponsored activity, under the supervision of school personnel, or before and after normal school activities while on school properties including school-sponsored child care or after-school programs.

(Enact. Acts 2002, ch. 50, § 4, effective July 15, 2002.)

PENALTIES

158.990. Penalties.

(1) Any member of a school board who votes to permit entrance to a school of any child not eligible therefor under the provisions of KRS 158.030 shall be fined not less than five dollars ($5) nor more than fifty dollars ($50).

(2) Any person required to report under KRS 158.155 who fails to report promptly or who refuses to make a report is guilty of a Class A misdemeanor.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 409, effective July 13, 1990; 1994, ch. 471, § 2, effective July 15, 1994.)

Compiler's Notes. This section (4363-7, 4363-8, 4363-11a: amend. Acts 1952, ch. 145, § 2; 1974, ch. 308, § 34; 1978, ch. 21, § 1, effective June 17, 1978) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 409, effective July 13, 1990.

Kentucky Law Journal. Lassiter, The McCollum Decision and the Public School, 37 Ky. L. J. 402 (1949).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 77, 78.

CHAPTER 159

COMPULSORY ATTENDANCE

SECTION.

159.010. Parent or custodian to send child to school — Age limits for compulsory attendance — Notification and counseling prior to withdrawal — Encouragement to reenroll after withdrawal.
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159.130. Powers of directors of pupil personnel.
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159.150. Definitions of truant, habitual truant and being tardy — Adoption of truancy policies by local school boards.
159.160. Attendance reports to superintendent.
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159.180. Parents responsible for children's violations.
159.190. [Repealed.]
159.200. [Repealed.]
159.210. [Repealed.]
159.220. [Repealed.]
159.230. [Repealed.]
159.240. [Repealed.]
159.250. Nature of census.
159.260. [Repealed.]
159.270. False report of census prohibited.

PENALTIES

159.990. Penalties.

159.010. Parent or custodian to send child to school — Age limits for compulsory attendance — Notification and counseling prior to withdrawal — Encouragement to reenroll after withdrawal.

(1) Except as provided in KRS 159.030, each parent, guardian, or other person residing in the state and having in custody or charge any child who has entered the primary school program or any child between the ages of six (6) and sixteen (16) shall send the child to a regular public day school for the full term that the public school of the district in which the child resides is in session or to the public school that the board of education of the district makes provision for the child to attend. A child's age is between six (6) and sixteen (16) when the child has reached his sixth birthday and has not passed his sixteenth birthday.

(2) An unmarried child between the ages of sixteen (16) and eighteen (18) who wishes to terminate his public or nonpublic education prior to graduating from high school shall do so only after a conference with the principal or his designee, and the principal shall request a conference with the parent, guardian, or other custodian. Written notification of withdrawal must be received from his parent, guardian, or other person residing in the state and having custody or charge of him. The parent(s) and child shall be required to attend a one (1) hour counseling session with a school counselor on potential problems of nongraduates.

(3) A child's age is between sixteen (16) and eighteen (18) when the child has reached his sixteenth birthday and has not passed his eighteenth birthday. Written permission for withdrawal shall not be required after the child's eighteenth birthday. Every child actually resident in this state is subject to the laws relating to compulsory attendance, and neither he nor the person in charge of him shall be excused from the operation of those laws or the penalties under them on the ground that the child's residence is seasonable or that his parent is a resident of another state.

(4) Each school district shall contact each student between the ages of sixteen (16) and eighteen (18) who has voluntarily withdrawn from school within three (3) months of the date of withdrawal to encourage the student to reenroll in a regular program, alternative program, or GED preparation program. In the event the student does not reenroll at that time, the school district shall make at least one (1) more attempt to reenroll the student before the beginning of the school year following the school year in which the student terminated his or her enrollment.

(4434-1, 4434-18: amend. Acts 1978, ch. 136, § 3, effective July 1, 1979; 1984, ch. 74, § 1, effective July 13, 1984; 1985 (1st Ex. Sess.), ch. 10, § 42, effective October 18, 1985; 1988, ch. 312, § 1, effective July 15, 1988; 1990, ch. 476, Pt. I, § 29, effective July 13, 1990; 1998, ch. 611, § 1, effective July 15, 1998; 2000, ch. 452, § 5, effective July 14, 2000.)

Cross-References. Certificate of immunization required, KRS 158.035.

When minor under 16 may be employed during school hours, KRS 339.230.

Entrance of five (5) year olds into primary school program for compulsory attendance purposes, 704 KAR 5:060.

Pupil attendance, 702 KAR 7:125.

Kentucky Law Journal. Taylor, With Temperate Rod: Maintaining Academic Order in Secondary Schools, 58 Ky. L. J. 616 (1970).

Walters, The Constitutional Duty of Teachers to Protect Students: Employing the "Sufficient Custody" Test, 83 Ky. L.J. 229 (1994-95).

Opinions of Attorney General. The marriage of a child under the age of 16 years emancipates said child from the provisions of this section for the reason that the marriage gives rise to a new relation inconsistent with the concept of subjection to the control and care of the parent. OAG 61-953.

Parents of Negro children who presented their children for admission to two (2) schools located in South Frankfort which were within five blocks of their homes but to which only first grade Negro children had been admitted, who, despite the fact that there was unused classroom space for about 75 or 90 pupils, were refused admission and directed to an all-Negro school located in North Frankfort, about one and one-half (1½) miles from their homes and in poor physical condition, could not be prosecuted under this section upon their failure or refusal to comply, since parents can only be required to send their children to a school that meets constitutional standards. OAG 62-855.

If, when a child becomes 7 years of age he cannot attend school in compliance with this section because his parents refuse to have the smallpox immunization required by KRS 214.050 (repealed), the parents of the child would be subject to prosecution for failure to comply with the compulsory attendance laws. OAG 63-662.

A county board of education has legal authority to refuse the admission of nonresident children to its schools, but the board would be prohibited from arbitrarily extending school attendance privilege to some nonresident children while denying the same privilege to others. OAG 66-550.

A child living with its guardian within the county school district would be "residing" in the district within the meaning of the statutes and would be eligible to attend the county schools without the payment of tuition. OAG 66-550.

Children aged 14 and 15 who are resident enrollees of a job corps center situated in Kentucky would be subject to the provisions of this section and in order to be excused from compulsory school attendance must come within one (1) of the exceptions contained in KRS 159.030. OAG 68-137.

The State Superintendent of Education's statement in an official publication that a pupil boycott gained nothing and lost money for the school system was a statement of policy and the publication of such statement was not an improper use of taxpayer's money. OAG 69-529.

A board of education could accept pupils of all school employees without tuition payment regardless of where they live as long as the board complies with the requirements of KRS 159.240 to 159.260 (KRS 159.240 and 159.260 now repealed) and with foundation program provisions of KRS Chapter 157. OAG 72-154.

Under this section a parent residing in one (1) school district who desires to send his children to school in another district out of personal preference may not require the school district in which he is a resident to pay tuition charges for the children sent to a school in another district. OAG 72-271.

It is not the district in which taxes are paid but the district in which children reside with their parents or guardian that determines where the children may attend the public schools without the payment of tuition. OAG 72-593.

Although a board of education does not have to accept nonresident students on a tuition basis, if it decides to do so it must charge all pupils at the same rate which is not based

upon a varying scale that is determined upon some extraneous factor such as the assessed value of a person's residential property. OAG 73-837.

A true dual enrollment whereby pupils attend a public school part time and a private school part time is legally permissible. OAG 74-331.

A child who is unable to sit still in school or remain in the classroom because of an emotional problem is eligible to be excused from public school and may be taught by a teacher coming to his home but it would be reasonable for the attendance officer to require a medical report on the child each year until he is able regularly to attend school. OAG 74-633.

The boards of education of high school districts within a county may require that students transferring to another school without changing residence complete that school year in the school transferred to without further transferring. OAG 75-602.

The compulsory attendance laws only apply to children between the ages of seven (7) and 16. OAG 76-566. (Decision prior to 1978 amendment).

Since KRS 159.990(1) refers only to actions against adults failing to comply with KRS 159.010 to 159.170 and not to juveniles charged under KRS 159.150, KRS 159.990(1) is not applicable in a juvenile proceeding for habitual truancy under KRS 208.020(1)(c) (now repealed). OAG 76-607.

If a parent or legal guardian of a child enrolls that child in a private or parochial day school that has not been approved by the State Board of Education, the parent or legal guardian is not fulfilling his obligation mandated by this section. OAG 77-514.

In keeping with the legislative intent of being as all encompassing as possible, the terms "other person" and "custody or charge" cover everyone from the adult having legal custody of a child to one having mere custody or control. OAG 78-64.

The only exemptions authorized by statute to the compulsory attendance provisions set forth in this section are those spelled out in KRS 159.030, and mode of transportation to school is not included. OAG 78-392.

The lead-in phrase of KRS 158.030, which reads "Notwithstanding any statute to the contrary," cannot be construed, by implication, to have lowered the compulsory attendance age range to five (5). OAG 85-55.

Existing legislation does not require nonpublic schools in Kentucky to have kindergartens. OAG 85-55.

Where a child attends a nonpublic school kindergarten, so long as the child will be six (6) years old by October 1, the child would be eligible and entitled to enroll in the first grade in a public common school district. If the child would not be six (6) years old until after October 1, the child would be eligible to enroll only in a public school's kindergarten program rather than first grade, even though he has already been in kindergarten in a nonpublic school. OAG 85-55.

A child who is six (6) years old before October 1, but who has not attended any kindergarten, would have to be enrolled, as far as the public common schools are concerned, in a kindergarten program rather than a public school first grade. OAG 85-55.

Where a child attends no kindergarten program, either public or nonpublic, before July 1, 1986, but upon attaining six (6) years of age he enrolls in a nonpublic school first grade, and such child subsequently is presented for enrollment in a public common school for the second or a subsequent grade, the child would be entitled to so enroll subject to the usual application of the provisions of KRS 158.140. OAG 85-55.

A married child under the age of 16 has a legal responsibility to attend school, but once a child marries, the parent or guardian no longer has a legal obligation to ensure that the child attends school; however, if the spouse of a minor who is under the age of 16 and who is an habitual truant, is found to be a person exercising custodial control or supervision as defined in subdivision (26) of KRS 600.020, the spouse may be subject to penalties under the Juvenile Code. OAG 87-40.

A parent, guardian, or other custodian may be subject to the penalties found in KRS 159.990 for failure to comply with subsection (2) of this section, which requires 60 days' written notice and counseling prior to an unmarried child between the ages of 16 and 18 withdrawing from school. OAG 87-40, modifying OAG 64-312 to extent inconsistent.

It is clear from the language of KRS 600.020(24) and KRS 610.010(1)(c) that a student under the age of 18 years who is failing to attend school in violation of this section is subject to a delinquency prosecution in accordance with the Juvenile Code. OAG 90-106.

This section requires that all students under the age of 18 years attend school and requires that a student over the age of 16 years and under the age of 18 years may withdraw *only* after the written notification and school conference, the obvious purpose of the statute being to deter students from leaving high school before graduation. OAG 90-106.

Cited: Jones v. Board of Educ., 470 S.W.2d 829 (Ky. 1971), cert. denied, 405 U.S. 975, 92 S. Ct. 1196, 31 L. Ed. 2d 249 (1972).

NOTES TO DECISIONS

Analysis

1. Compulsory attendance.
2. —Exemption.
3. Removal of superintendent.
4. Purpose of schools.

1. Compulsory Attendance.

This section requiring compulsory attendance at school does not make members of board of education insurers of child's safety and well-being while attending school. Wood v. Board of Educ., 412 S.W.2d 877 (Ky. 1967).

Jury verdict against school administrator on malicious prosecution claim reversed even though there was a lack of probable cause for the sexual misconduct charges brought against father, because the charges were brought by the county attorney's office rather than the county school administrator, and the administrator did not allege in his criminal complaint that the father had induced his daughter to engage in sexual activity, merely that the father had failed to send the child to school. Collins v. Williams, 10 S.W.3d 493 (Ky. Ct. App. 1999).

2. —Exemption.

Section 159.030 does not have the effect of exempting from compulsory attendance under this section those pupils who are enrolled in private, sectarian or parochial schools; it merely exempts them from attending the common schools. Nichols v. Henry, 301 Ky. 434, 191 S.W.2d 930 (1945).

3. Removal of Superintendent.

Evidence that county superintendent of schools disregarded teachers' and directors of pupil personnel's duties to enforce the compulsory school law assisted in sustaining county board of education's action in removing him from office. Hunter v. Board of Educ., 265 Ky. 162, 96 S.W.2d 265 (1936).

4. Purpose of Schools.

If the Legislature wishes to monitor the work of private and parochial schools in accomplishing the constitutional purpose of compulsory education, it may do so by an appropriate standardized achievement testing program, and if the results show that one or more private or parochial schools have failed to reasonably accomplish the constitutional purpose, the Com-

monwealth may then withdraw approval and seek to close them for they no longer fulfill the purpose of "schools." Kentucky State Bd. for Elementary & Secondary Educ. v. Rudasill, 589 S.W.2d 877 (Ky. 1979), cert. denied, 446 U.S. 938, 100 S. Ct. 2158, 64 L. Ed. 2d 792 (1980).

Research References. Caldwell's Kentucky Form Book, Prac. & Proc. Forms, 4th Ed., Parent and Child, General Note; Form 118.24.

Petrilli, Kentucky Family Law, Juvenile Court, § 32.31.

Petrilli, Kentucky Family Law, Forms, Family Offenses, Form 4.7.

Collateral References. 68 Am. Jur. 2d, Schools, §§ 228-239.

78A C.J.S., Schools and School Districts, §§ 734-739.

Applicability of compulsory attendance law covering children of a specified age, with respect to a child who has passed the anniversary date of such age. 73 A.L.R.2d 874.

Extent of legislative power with respect to attendance. 39 A.L.R. 477; 53 A.L.R. 832.

159.020. Transferring child from one district to another.

Any parent, guardian, or other person having in custody or charge any child who has entered the primary school program or any child between the ages of six (6) and sixteen (16) who removes the child from a school district during the school term shall enroll the child in a regular public day school in the district to which the child is moved, and the child shall attend school in the district to which he is moved for the full term provided by that district.

(4434-2: amend. Acts 1984, ch. 367, § 7, effective July 13, 1984; 1988, ch. 312, § 2, effective July 15, 1988; 1990, ch. 476, Pt. I, § 30, effective July 13, 1990.)

Cross-References. Entrance of five (5) year olds into primary school program for compulsory attendance purposes, 704 KAR 5:060.

Collateral References. 78A C.J.S., Schools and School Districts, § 734.

159.030. Exemptions from compulsory attendance.

(1) The board of education of the district in which the child resides shall exempt from the requirement of attendance upon a regular public day school every child of compulsory school age:
   (a) Who is a graduate from an accredited or an approved four (4) year high school; or
   (b) Who is enrolled and in regular attendance in a private, parochial, or church regular day school. It shall be the duty of each private, parochial, or church regular day school to notify the local board of education of those students in attendance at the school. If a school declines, for any reason, to notify the local board of education of those students in attendance, it shall so notify each student's parent or legal guardian in writing, and it shall then be the duty of the parent or legal guardian to give proper notice to the local board of education; or
   (c) Who is less than seven (7) years old and is enrolled and in regular attendance in a private kindergarten-nursery school; or
   (d) Whose physical or mental condition prevents or renders inadvisable attendance at school or application to study; or
   (e) Who is enrolled and in regular attendance in private, parochial, or church school programs for exceptional children; or
   (f) Who is enrolled and in regular attendance in a state-supported program for exceptional children;
   (g) For purposes of this section, "church school" shall mean a school operated as a ministry of a local church, group of churches, denomination, or association of churches on a nonprofit basis.
(2) Before granting an exemption under subsection (1)(d) of this section, the board of education of the district in which the child resides shall require satisfactory evidence, in the form of a signed statement of a licensed physician, advanced registered nurse practitioner, psychologist, psychiatrist, chiropractor, or public health officer, that the condition of the child prevents or renders inadvisable attendance at school or application to study. On the basis of such evidence, the board may exempt the child from compulsory attendance. Any child who is excused from school attendance more than six (6) months shall have two (2) signed statements from a combination of the following professional persons: a licensed physician, advanced registered nurse practitioner, psychologist, psychiatrist, chiropractor, and health officer. Exemptions of all children under the provisions of subsection (1)(d) of this section shall be reviewed annually with the evidence required being updated.
(3) For any child who is excluded under the provisions of subsection (1)(d) of this section, home, hospital, institutional, or other regularly scheduled and suitable instruction meeting standards, rules, and regulations of the Kentucky Board of Education shall be provided.

(4434-3: amend. Acts 1948, ch. 107, § 27; 1974, ch. 75, § 1; 1978, ch. 136, § 4, effective July 1, 1979; 1978, ch. 155, § 82, effective June 17, 1978; 1980, ch. 286, § 8, effective July 15, 1980; 1984, ch. 111, § 91, effective July 13, 1984; 1984, ch. 297, § 3, effective July 13, 1984; 1990, ch. 476, Pt. IV, § 216, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 173, § 1, effective July 15, 1998; 2000, ch. 451, § 1, effective July 14, 2000.)

Cross-References. Home/hospital instruction, 704 KAR 7:120.

Pupil attendance, 702 KAR 7:125.

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

Opinions of Attorney General. A child who is unable to sit still in school or remain in the classroom because of an emotional problem is eligible to be excused from public school and may be taught by a teacher coming to his home, but it would be reasonable for the attendance officer to require a medical report on the child each year until he is able regularly to attend school. OAG 74-633.

Pursuant to KRS 157.270, a local board of education is required to provide home training for exceptional children but an institutional home for exceptional children cannot, under KRS 157.230, legally require a school district to establish and

maintain special education classes for its inmates. OAG 74-681.

Exceptional children who are residents of a private nonsectarian institution are entitled to attend the public schools in the county in which the institution is located free of charge if they are physically and mentally able and qualified to be educated in regular classes. OAG 74-681.

Exceptional children who are residents of a private nonsectarian institution may be instructed in the institution, either in a leased or donated room, by a public school teacher. OAG 74-681.

If a parent or legal guardian of a child enrolls that child in a private or parochial day school that has not been approved by the state board of education, the parent or legal guardian is not fulfilling his obligation mandated by KRS 159.010. OAG 77-514.

The only exemptions authorized by statute to the compulsory attendance provisions set forth in KRS 159.010 are those spelled out in this section, and mode of transportation to school is not included. OAG 78-392.

Although there is no delineated exemption under this section, a married student, even though under the age of 16 years, may not be required to attend school, since requiring attendance ignores the hard facts of reality and is in conflict with the concept that marriage is a domestic relation which is highly favored by law. OAG 81-73.

An unmarried girl under the age of 16, who has given birth to a child and is mothering that child, is not required to attend school, even though there is no delineated exemption under this section; however, if the girl finds it necessary to remain out of school for several years, she is entitled to attend school later, up until she has received 12 years education or reached the age of 21, under KRS 158.100. OAG 81-73.

Prior to childbirth, an unmarried pregnant girl under the age of 16 years is required to go to school unless she can meet one (1) of the exemptions under this section. OAG 81-73.

Existing legislation does not require nonpublic schools in Kentucky to have kindergartens. OAG 85-55.

Where a child attends a nonpublic school kindergarten, so long as the child will be six (6) years old by October 1, the child would be eligible and entitled to enroll in the first grade in a public common school district. If the child would not be six (6) years old until after October 1, the child would be eligible to enroll only in a public school's kindergarten program rather than first grade, even though he has already been in kindergarten in a nonpublic school. OAG 85-55.

A child who is six (6) years old before October 1, but who has not attended any kindergarten, would have to be enrolled, as far as the public common schools are concerned, in a kindergarten program rather than a public school first grade. OAG 85-55.

Where a child attends no kindergarten program, either public or nonpublic, before July 1, 1986, but upon attaining six (6) years of age he enrolls in a nonpublic school first grade, and such child subsequently is presented for enrollment in a public common school for the second or a subsequent grade, the child would be entitled to so enroll subject to the usual application of the provisions of KRS 158.140. OAG 85-55.

A married child under the age of 16 has a legal responsibility to attend school, but once a child marries, the parent or guardian no longer has a legal obligation to ensure that the child attends school; however, if the spouse of a minor who is under the age of 16 and who is an habitual truant, is found to be a person exercising custodial control or supervision as defined in subdivision (26) of KRS 600.020, the spouse may be subject to penalties under the Juvenile Code. OAG 87-40.

The decision to refuse to enroll a student who is a legal resident of the district, but has been expelled from another district for activities placing the safety and welfare of other students at risk, must be made on a case by case basis. OAG 91-171.

There is nothing to prevent a second school district from initiating an exemption based on evidence supplied from another district that attendance is unadvisable. OAG 91-171.

Where the first district finds a child to be unable to attend school based on this section, there is nothing to require the second school district to require the evaluation described under subsection (3) of this section prior to enrollment; nevertheless, the child may qualify for evaluation for special education services under KRS 157.200 through 157.290. OAG 91-171.

The opinion issued in OAG 87-40 reversed OAG 81-79 and therefore married children under sixteen (16) years old must attend school. OAG 93-37.

Cited: Fannin v. Williams, 655 S.W.2d 480 (Ky. 1983).

NOTES TO DECISIONS

Analysis

1. Attendance at private or parochial school.
2. Transportation.
3. Nonpublic schools.
4. —Closing.
5. —Teachers.
6. —Right to attend.

1. Attendance at Private or Parochial School.

This section does not have the effect of exempting from compulsory attendance laws those pupils who are enrolled in private, sectarian or parochial schools; it merely exempts them from attending the common schools. Nichols v. Henry, 301 Ky. 434, 191 S.W.2d 930 (1945).

2. Transportation.

KRS 158.115 providing that county may provide transportation out of general funds applies to children attending private, sectarian or parochial schools in compliance with the compulsory school attendance laws. Nichols v. Henry, 301 Ky. 434, 191 S.W.2d 930 (1945).

3. Nonpublic Schools.

4. —Closing.

If the Legislature wishes to monitor the work of private and parochial schools in accomplishing the constitutional purpose of compulsory education, it may do so by an appropriate standardized achievement testing program, and if the results show that one (1) or more private or parochial schools have failed to reasonably accomplish the constitutional purpose, the Commonwealth may then withdraw approval and seek to close them for they no longer fulfill the purpose of "schools." Kentucky State Bd. for Elementary & Secondary Educ. v. Rudasill, 589 S.W.2d 877 (Ky. 1979), cert. denied, 446 U.S. 938, 100 S. Ct. 2158, 64 L. Ed. 2d 792 (1980).

5. —Teachers.

It cannot be said as an absolute that a teacher in a nonpublic school who is not certified under KRS 161.030(2) will be unable to instruct children to become intelligent citizens; certainly, the receipt of "a bachelor's degree from a standard college or university" is an indicator of the level of achievement, but it is not a sine qua non the absence of which establishes that private and parochial school teachers are unable to teach their students to intelligently exercise the elective franchise. Kentucky State Bd. for Elementary & Secondary Educ. v. Rudasill, 589 S.W.2d 877 (Ky. 1979), cert. denied, 446 U.S. 938, 100 S. Ct. 2158, 64 L. Ed. 2d 792 (1980).

6. —Right to Attend.

While the state has an interest in the education of its citizens which could be furthered through compulsory education, the rights of conscience of those who desire education of their children in private and parochial schools should be protected. Kentucky State Bd. for Elementary & Secondary

Educ. v. Rudasill, 589 S.W.2d 877 (Ky. 1979), cert. denied, 446 U.S. 938, 100 S. Ct. 2158, 64 L. Ed. 2d 792 (1980).

Research References. Caldwell's Kentucky Form Book, Prac. & Proc. Forms, 4th Ed., Parent and Child, Form 118.24.

Petrilli, Kentucky Family Law, Forms, Family Offenses, Form 4.7.

Collateral References. 78A C.J.S., Schools and School Districts, §§ 734-739.

159.035. Participation in 4-H activities to be considered attendance.

Notwithstanding the provisions of any other statute, any student in a public school who is enrolled in a properly organized 4-H club shall be considered present at school for all purposes when participating in regularly scheduled 4-H club educational activities, provided, the student is accompanied by or under the supervision of a county extension agent or the designated 4-H club leader for the 4-H club educational activity participated in.

(Enact. Acts 1960, ch. 245; 1990, ch. 476, Pt. IV, § 217, effective July 13, 1990.)

Cross-References. Pupil attendance, 702 KAR 7:125.

Opinions of Attorney General. It is impermissible for a teacher incorporating classroom participation as part of the overall academic grade to give a student a lower grade in a course than he earned while in class for failure to participate in class on days when he was absent under a legitimate excused absence. OAG 79-539.

A school board may not adopt a plan to deduct points from a student's final grade for each unexcused absence. Despite the board's stated intent to act in the best interest of the students, the deduction of five (5) points from a pupil's final grade is a penalty. Such a penalty, in the guise of an incentive to get children to attend school, is not permissible; providing an opportunity for a student to make up the points does not change this conclusion — it is still an impermissible penalty. OAG 96-28.

A school board's decision not to differentiate between excused and unexcused absences was fatal to its policy of withholding promotion to the next level from students for failure to make up absences in excess of an approved number of days. OAG 96-28.

159.040. Attendance at private and parochial schools.

Attendance at private and parochial schools shall be kept by the authorities of such schools in a register provided by the Kentucky Board of Education, and such school authorities shall make attendance and scholarship reports in the same manner as is required by law or by regulation of the Kentucky Board of Education of public school officials. Such schools shall at all times be open to inspection by directors of pupil personnel and officials of the Department of Education.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 410, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

Compiler's Notes. This section (4434-3: amend. Acts 1978, ch. 155, § 82, effective June 17, 1978) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 410, effective July 13, 1990.

Cross-References. Courses of instruction and term required of private and parochial schools, KRS 158.080.

Collateral References. 78A C.J.S., Schools and School Districts, § 737.

What constitutes "private school" within statute making attendance at such a school compliance with compulsory school attendance law. 65 A.L.R.3d 1222.

159.050. Attendance of blind or deaf children at special school. [Repealed.]

Compiler's Notes. This section (4434-3: amend. Acts 1966, ch. 89, § 3) was repealed by Acts 1980, ch. 286, § 14, effective July 15, 1980.

159.051. Loss of driver's license by student for dropping out of school or for academic deficiency.

(1) When a student age sixteen (16) or seventeen (17) drops out of school or is declared to be academically deficient, the school administrator or his designee shall notify the superintendent of schools of the district in which the student is a resident or is enrolled. The reports shall be made at the end of each semester but may be made earlier in the semester for accumulated absences. A student shall be deemed to have dropped out of school when he has nine (9) or more unexcused absences in the preceding semester. Any absences due to suspension shall be unexcused absences. A student shall be deemed to be academically deficient when he has not received passing grades in at least four (4) courses, or the equivalent of four (4) courses, in the preceding semester. The local school board shall adopt a policy to reflect a similar standard for academic deficiency for students in alternative, special education, or part-time programs.

(2) Within ten (10) days after receiving the notification, the superintendent shall report the student's name and Social Security number to the Transportation Cabinet. As soon as possible thereafter, the cabinet shall notify the student that his operator's license, permit, or privilege to operate a motor vehicle has been revoked or denied and shall inform the student of his right to a hearing before the District Court of appropriate venue to show cause as to the reasons his driver's license should be reinstated. Within fifteen (15) days after this notice is sent, the custodial parent, legal guardian, or next friend of the student may request an ex parte hearing before the District Court. The student shall not be charged District Court filing fees. The notification shall inform the student that he is not required to have legal counsel. Revocation under this subsection shall not be permitted unless the local school district shall operate an alternative education program approved by the Department of Education designed to meet the learning needs of students who are unable to succeed in the regular program.

(3) In order for the student to have his license reinstated, the court shall be satisfied that the license is needed to meet family obligations or family economic considerations which if unsatisfied would create an undue hardship or that the student is the only licensed driver in the household or the stu-

dent is not considered a dropout or academically deficient pursuant to this section. If the student satisfies the court, the court shall notify the cabinet to reinstate the student's license at no cost. The student, if aggrieved by a decision of the court issued pursuant to this section, may appeal the decision within thirty (30) days to the Circuit Court of appropriate venue. A student who is being schooled at home shall be considered to be enrolled in school.

(4) A student who has had his license revoked under the provisions of this section may reapply for his driver's license as early as the end of the semester during which he enrolls in school and successfully completes the educational requirements. A student may also reapply for his driver's license at the end of a summer school semester which results in the student having passed at least four (4) courses, or the equivalent of four (4) courses, during the successive spring and summer semesters, and the courses meet the educational requirements for graduation. He shall provide proof issued by his school within the preceding sixty (60) days that he is enrolled and is not academically deficient.

(Enact. Acts 1990, ch. 234, § 1, effective July 13, 1990; 1994, ch. 503, § 1, effective July 15, 1994.)

Cross-References. Approval of operation of alternative education programs for purposes of driver's license revocation, 704 KAR 7:100.

Opinions of Attorney General. The requirements of Acts 1990, ch. 234 (KRS 186.450, 186.470 and this section) that applicants for driving permits and operator's licenses who are under the age of 18 and who have not graduated from high school provide proof that they are currently enrolled or have been enrolled in the prior semester of school may be implemented immediately if it is limited to requiring the applicants to provide this proof based only on whether the applicants have withdrawn from school; requiring the applicants to provide proof of enrollment based on whether the applicants have "dropped out" of school as defined in Section 1(1) of the Act (KRS 159.051) should not be implemented immediately, because such immediate implementation would cause the Act to be applied retroactively without statutory authorization. In addition, the Act's requirement that these applicants provide proof that they are not or have not been found academically deficient should not be implemented immediately, because such immediate implementation would cause the Act to be applied retroactively without statutory authorization; those requirements of the Act which will not be implemented immediately should be implemented at any future date in which the "preceding semester" referred to in the Act will have occurred after July 13, 1990. OAG 90-54.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Construction with other law.
3. Application.

1. Constitutionality.

The "No Pass-No Drive" law, operating to suspend 16 or 17 year olds' licenses for dropping out or deficient academics, is constitutional since it rationally relates to its objective, provides for sufficient judicial review (limited to clerical errors), and violates neither Equal Protection nor Procedural Due Process (since the interest here is a legitimately regulated privilege, not a fundamental right). Codell v. D.F., — S.W.3d —, 2001 Ky. App. LEXIS 71 (Ky. Ct. App. June 22, 2001).

2. Construction With Other Law.

The Transportation Cabinet is authorized to enforce KRS 159.051 as it relates to KRS 186.440, 186.450, and 186.470, all of which concern persons under the age of 18 who apply for or possess an instruction permit or driver's license. Codell v. D.F., — S.W.3d —, 2001 Ky. App. LEXIS 71 (Ky. Ct. App. June 22, 2001).

Although KRS 159.051 violates the Family Education Rights and Privacy Act of 1974 (FERPA), that does not strike the "No Pass-No Drive" law from the books, since FERPA does not ban disclosures of education records, but simply directs that funds will not be available to any educational agency which has such a policy; moreover, FERPA concerns only nonconsensual disclosure meaning that once a parent has consented to the disclosure of such information, the policy may be continued without sacrificing the entitlement to federal funds. Codell v. D.F., — S.W.3d —, 2001 Ky. App. LEXIS 71 (Ky. Ct. App. June 22, 2001).

3. Application.

KRS 159.051 provides for disclosure of education information regardless of whether the student has actually applied for an instruction (driver) permit, thereby consenting to the release of the information. Codell v. D.F., — S.W.3d —, 2001 Ky. App. LEXIS 71 (Ky. Ct. App. June 22, 2001).

159.060. Special schools for handicapped children. [Repealed.]

Compiler's Notes. This section (4434-33) was repealed by Acts 1948, ch. 4, § 13.

159.070. Attendance districts — Enrollment permitted in school nearest home.

Each school district shall constitute a separate attendance district unless two (2) or more contiguous school districts, with the approval of the Kentucky Board of Education, unite to form one (1) attendance district. Controversies arising in attendance districts relating to attendance matters shall be submitted to the Kentucky Board of Education for settlement. In case an agreement suitable to all parties cannot be reached, the Kentucky Board of Education may dissolve a united district. In case of dissolution, each school district involved may unite with other contiguous school districts in forming a united attendance district or may act as a separate attendance district. Within the appropriate school district attendance area, parents or legal guardians shall be permitted to enroll their children in the public school nearest their home.

(4434-5, 4436-6: amend. Acts 1976, ch. 79, § 1, effective March 29, 1976; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 218, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

NOTES TO DECISIONS

1. Application to Jefferson County.

The last sentence of this section violates the Fourteenth Amendment insofar as it applies to Jefferson County, in that it would operate to frustrate the mandates of the Sixth Circuit to eradicate state-imposed segregation in the Jefferson County school system. Newburg Area Council, Inc. v. Board of Educ., 583 F.2d 827 (6th Cir. 1978).

Collateral References. 78 C.J.S., Schools and School Districts, § 32.

159.080. Director of pupil personnel.

(1) Each superintendent of a local school district shall appoint a director of pupil personnel and assistants as are deemed necessary. Salaries of directors and assistants shall be fixed by the board of education.

(2) Directors of pupil personnel and assistants shall have the general qualifications of teachers and, in addition, shall hold a valid certificate issued in accordance with the administrative regulations of the Education Professional Standards Board. Certificates valid on January 1, 1956, for attendance officer shall hereafter be valid for the positions of director of pupil personnel. Certificates shall be reissued or renewed in accordance with the terms of the administrative regulations of the Education Professional Standards Board in effect at the time of application for reissuance or renewal.

(3) Directors of pupil personnel and assistants shall be allowed their necessary and authorized expenses incurred in the performance of their duties. Each board shall bear the expense of its directors of pupil personnel and assistants incurred in its district.

(4) The office of the superintendent of schools shall be the office of the director of pupil personnel and suitable space shall be provided therein or adjacent thereto for him.

(4434-6: amend. Acts 1956, ch. 237, § 1; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 219, effective July 13, 1990; 1992, ch. 42, § 2, effective July 14, 1992; 1996, ch. 343, § 2, effective July 15, 1996.)

Cross-References. Professional certificate for directors of pupil personnel and assistants, 704 KAR 20:540.

Opinions of Attorney General. A person may not serve as director of pupil personnel of a county school district, a state office, and county judge (now county judge/executive) pro tem, a county office, as the two offices are incompatible under KRS 61.080. OAG 74-382.

The mere fact that the legislature has enacted KRS 159.080 to 159.140 does not automatically preempt the Lexington-Fayette Urban County Government from enacting local legislation, which would allow the police to stop youths who are off school property during school hours and return to their schools those who do not have a legitimate excuse for their absence; however, such activity by the police would be in direct contravention with KRS 630.030 of the state juvenile code, thus would be deemed invalid. OAG 95-36.

Cited: Bernard v. Humble, 298 Ky. 74, 182 S.W.2d 24 (1944).

NOTES TO DECISIONS

Analysis

1. Appointment.
2. Rejection of nominee.

1. Appointment.

This section is mandatory, and the board must appoint the director of pupil personnel recommended by the superintendent, unless the recommendee does not possess the statutory qualifications, is morally or educationally unfit, or some other valid reason for rejection is shown. Bernard v. Sims, 279 Ky. 565, 131 S.W.2d 505 (1939).

2. Rejection of Nominee.

This section contemplates that director of pupil personnel shall be appointed before July 1, but where recommendation was made before July 1, and board illegally rejected nominee, the nomination remained before the board and the nominee should be appointed, in the absence of valid reasons for rejecting him, at a subsequent meeting. Bernard v. Sims, 279 Ky. 565, 131 S.W.2d 505 (1939).

If original nominee is validly rejected, superintendent may nominate another qualified person. Bernard v. Sims, 279 Ky. 565, 131 S.W.2d 505 (1939).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 117, 129.

159.090. Directors of pupil personnel for united districts.

Two (2) or more contiguous school districts may unite to form one (1) attendance district and the superintendent of schools of the districts shall appoint directors of pupil personnel as are necessary. The salary of directors of pupil personnel in united districts shall be borne by the employing boards in the proportion that the average daily attendance of each district bears to the total average daily attendance of the united district.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 411, effective July 13, 1990; 1992, ch. 42, § 3, effective July 14, 1992.)

Compiler's Notes. This section (4434-6: amend. Acts 1956, ch. 237, § 2) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 411, effective July 13, 1990.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 117, 129.

159.100. Qualifications of attendance officers. [Repealed.]

Compiler's Notes. This section (4434-6) was repealed by Acts 1956, ch. 237, § 3.

159.110. Expenses of directors of pupil personnel. [Repealed.]

Compiler's Notes. This section (4434-6: amend. Acts 1956, ch. 237, § 4) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

159.120. Office quarters of director of pupil personnel. [Repealed.]

Compiler's Notes. This section (4434-7: amend. Acts 1956, ch. 237, § 4) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

159.130. Powers of directors of pupil personnel.

The director of pupil personnel and his assistants shall be vested with the powers of peace officers, provided, however, that they shall not have the authority to serve warrants. They may investigate in their district any case of nonattendance at school of any child of compulsory school age or suspected of being of that age. They may take such action in accordance with law as the superintendent directs. They may under the direction

of the superintendent of schools and the board of education or the Kentucky Board of Education, institute proceedings against any person violating any provisions of the laws relating to compulsory attendance and the employment of children. They may enter all places where children are employed and do whatever is necessary to enforce the laws relating to compulsory attendance and employment of children of compulsory school age. No person shall refuse to permit or in any way interfere with the entrance therein of a director of pupil personnel or in any way interfere with any investigation therein.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 412, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

Compiler's Notes. This section (4434-12, 4434-136: amend. Acts 1946, ch. 30; 1956, ch. 237, § 5; 1978, ch. 155, § 82, effective June 17, 1978) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 412, effective July 13, 1990.

Cross-References. Child labor, KRS ch. 339.

Entrance of five (5) year olds into primary school program for compulsory attendance purposes, 704 KAR 5:060.

Opinions of Attorney General. Where a child between the ages of seven (7) and 16 is enrolled in a day school not approved by the State Board of Education, the board of education, through its director of pupil personnel, shall conduct an investigation as to why a child of compulsory school age is not attending public school and report to the school board and, under the direction from either the superintendent of schools or the local board of education or the state board of education, institute the appropriate legal proceedings against anyone found violating the compulsory attendance laws. OAG 77-514.

Cited: Hunter v. Board of Educ., 265 Ky. 162, 96 S.W.2d 265 (1936).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 142-149, 153, 154, 156, 157.

159.140. Duties of director of pupil personnel.

The director of pupil personnel shall:

(1) Devote his entire time to the duties of his office;

(2) Enforce the compulsory attendance and census laws in the attendance district he serves;

(3) Acquaint the school with the home conditions of the student, and the home with the work and advantages of the school;

(4) Ascertain the causes of irregular attendance and truancy, and seek the elimination of these causes;

(5) Secure the enrollment in school of all students who should be enrolled and keep all enrolled students in reasonably regular attendance;

(6) Visit the homes of students who are absent from school or who are reported to be in need of books, clothing, or parental care;

(7) Provide for the interviewing of students and the parents of those students who quit school to determine the reasons for the decision. The interviews shall be conducted in a location that is nonthreatening for the students and parents and according to procedures and interview questions established by an administrative regulation promulgated by the Kentucky Board of Education. The questions shall be designed to provide data that can be used for local district and statewide research and decision-making. Data shall be reported annually to the local board of education and the Department of Education.

(8) Report to the superintendent of schools in the district in which the student resides the number and cost of books and school supplies needed by any student whose parent, guardian, or custodian does not have sufficient income to furnish the child with the necessary books and school supplies;

(9) Keep the records and make the reports that are required by law, by regulation of the Kentucky Board of Education, and by the superintendent and board of education.

(4434-6, 4434-8 to 4434-10: amend. Acts 1956, ch. 237, § 6; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 220, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 514, § 7, effective July 15, 1998.)

Cross-References. Board of education to furnish books and supplies for indigent children, KRS 160.330.

Child labor law, enforcement, KRS 339.450.

Reports as to handicapped children, KRS 157.260.

Pupil attendance, 702 KAR 7:125.

Opinions of Attorney General. Although the positions of county director of pupil personnel and city director of pupil personnel are not incompatible as such, they are incompatible in fact because subdivision (1) of this section requires that a director of pupil personnel must devote his entire time to his duties which he could not do in two (2) such positions. OAG 60-1027.

Even though the language of this section provides that the director of pupil personnel shall devote his entire time to the duties of his office, such director may be a member of the board of trustees of a public library district. OAG 67-83.

Where a child between the ages of seven (7) and 16 is enrolled in a day school not approved by the State Board of Education, the board of education through its director of pupil personnel, shall conduct an investigation as to why a child of compulsory school age is not attending public school and report to the school board and, under the direction from either the superintendent of schools or the local board of education or the State Board of Education, institute the appropriate legal proceedings against anyone found violating the compulsory attendance laws. OAG 77-514.

Where an entire classroom unit (under KRS 157.360(9)) is involved, the director of pupil personnel must devote his or her entire time to the duties of that office and would not be able to also serve as the director of transportation; however where a proportionate fraction of a unit is involved, the requirement of subdivision (1) of this section would be met by the director of pupil personnel by spending an amount of time in the same proportion to the normal school day that the fraction bears to the unit will constitute devoting the entire time to the duties of the office. OAG 80-389.

Subdivision (7) of this section and KRS 160.330 may be read in complete harmony with KRS 158.108. OAG 82-359.

NOTES TO DECISIONS

ANALYSIS

1. "Full time" mandatory.
2. Construction.

1. "Full Time" Mandatory.

This section is mandatory in providing that the director of personnel spend his full time on his duties. Board of Educ. v. Miller, 299 S.W.2d 626 (Ky. 1957).

2. Construction.

Where administrator no longer worked for the Board of

Education (Board), claim that the Board violated this section by assigning her job responsibilities not explicitly enumerated in the statute was rendered moot and the injunctive relief granted by the court in response was vacated. Buntin v. Breathitt County Bd. of Educ., 134 F.3d 796, 1998 Fed. App. 25 (6th Cir. 1997).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 142-149, 153, 154, 156, 157.

159.150. Definitions of truant, habitual truant and being tardy — Adoption of truancy policies by local school boards.

Any child who has been absent from school without valid excuse for three (3) or more days, or tardy without valid excuse on three (3) or more days, is a truant. Any child who has been reported as a truant three (3) or more times is an habitual truant. Being absent for less than half of a school day shall be regarded as being tardy. A local board of education may adopt reasonable policies that:

(1) Require students to comply with compulsory attendance laws;
(2) Require truants and habitual truants to make up unexcused absences; and
(3) Impose sanctions for noncompliance.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 413, effective July 13, 1990; 1998, ch. 611, § 2, effective July 15, 1998.)

Compiler's Notes. This section (4434-14: amend. Acts 1982, ch. 33, § 1, effective July 15, 1982) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 413, effective July 13, 1990.

Opinions of Attorney General. Even though a child over 16 years of age is truant, the penalties of KRS 159.990 cannot be imposed upon the child's parent, guardian or custodian. OAG 64-312.

Since a boycott by pupils is regarded as offending the truancy statutes, statement by State Superintendent of Education in an official publication that a pupil boycott gained nothing and lost money for the school system was a statement of policy and the publication of such statement was not an improper use of taxpayer's money. OAG 69-529.

A child is delinquent who, inter alia, is an habitual truant from school pursuant to KRS 208.020 (now repealed) and the punishment for truancy for either the child or his parents is a matter within the discretion of the Juvenile Court. OAG 73-390.

The determination of what is a "valid excuse" for an absence from school rests in the policy making authority of the local board of education and a child may not be determined a truant if the absence is excused in accordance with guidelines concerning excused versus unexcused absences developed by the local board. OAG 76-566.

While the two definitions of "habitual truant" in this section and KRS 600.020(24) cannot be reconciled in terms of their language, it may be possible to reconcile them in their application. KRS 159.140 gives directors of pupil personnel authority to enforce compulsory attendance laws, including this section. Penalties are set forth under KRS 159.990 and are enforced by the District Court. Through exclusive jurisdiction over habitual truants the District Court has discretion in enforcement. The court may either rely on a director of pupil personnel to initiate proceedings for violations of this section, or the court may order a director of pupil personnel to enforce KRS 600.020(24), in which case the director would have authority to apply the definition found therein. OAG 91-79.

The opinion issued in OAG 87-40 reversed OAG 81-79 and therefore married children under sixteen (16) years old must attend school. OAG 93-37.

A married female under 16 years of age is a "child" as defined in KRS 600.020. OAG 93-37.

KRS 600.020(26) controls over this section in ascertaining the number of days a child must have unexcused absences prior to being found habitually truant under the Unified Juvenile Code. OAG 93-37.

A school board's decision not to differentiate between excused and unexcused absences was fatal to its policy of withholding promotion to the next level from students for failure to make up absences in excess of an approved number of days. OAG 96-28.

Collateral References. 78A C.J.S., Schools and School Districts, §§ 740-743.

159.160. Attendance reports to superintendent.

The principal or teacher in charge of any public, private, or parochial school shall report to the superintendent of schools of the district in which the school is situated the names, ages, and places of residence of all pupils in attendance at his school, together with any other facts that the superintendent may require to facilitate carrying out the laws relating to compulsory attendance and employment of children. The reports shall be made within two (2) weeks of the beginning of each school year.

(4434-15: amend. Acts 1990, ch. 476, Pt. IV, § 221, effective July 13, 1990.)

Collateral References. 78 C.J.S., Schools and School Districts, §§ 351, 352; 78A C.J.S., Schools and School Districts, §§ 734, 737.

159.170. Withdrawals and transfers — Teachers to investigate and report.

Whenever any child of compulsory school age withdraws from school, the teacher of the child shall ascertain the reason. The fact of the withdrawal and the reason for it shall be immediately transmitted by the teacher to the superintendent of schools of the district in which the school is located. If the child has withdrawn because of change of residence, the next residence shall be ascertained and included in the report. The superintendent shall thereupon forward a card showing the essential facts regarding the child and stating the place of his new residence to the superintendent of schools of the district to which the child has moved. The Kentucky Board of Education shall prescribe the forms to be used in the operation of this section.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 414, effective July 13, 1990; amend. 1996, ch. 362, § 6, effective July 15, 1996.)

Compiler's Notes. This section (4434-16: amend. Acts 1978, ch. 155, § 82; effective June 17, 1978) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 414, effective July 13, 1990.

The reference to State Board of Elementary and Secondary Education in this section has been changed to Kentucky Board of Education on authority of Acts 1996, ch. 362, § 6, effective July 15, 1996.

Cross-References. Pupil attendance, 702 KAR 7:125.

Cited: Hunter v. Board of Educ., 265 Ky. 162, 96 S.W.2d 265 (1936).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 351, 352.

159.180. Parents responsible for children's violations.

Every parent, guardian, or custodian of a child residing in any school district in this state is legally responsible for any violation of KRS 159.010 to 159.170 by the child. Before any proceedings are instituted against the parent, guardian, or custodian for violation of KRS 159.010 to 159.170, a written notice of the violation shall be served on the person by the director of pupil personnel, and one (1) day shall be given for the termination of the violation. After such notice, if the violation is continued or if the provisions of KRS 159.010 to 159.170 are again violated during the school term by the child, no further notice shall be necessary and the parent or guardian shall be punishable as provided in KRS 159.990. A notice by certified mail, return receipt requested, or by personal service by the director of pupil personnel shall be a legal notice.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 415, effective July 13, 1990.)

Compiler's Notes. This section (4434-17: amend. Acts 1958, ch. 128, § 16; 1966, ch. 89, § 4; 1974, ch. 315, § 16; 1980, ch. 114, § 23, effective July 15, 1980) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 415, effective July 13, 1990.

Cross-References. Parent and child, KRS ch. 405.

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

Opinions of Attorney General. Since a boycott by pupils is regarded as offending the truancy statutes statement by State Superintendent of Education in an official publication that a pupil boycott gained nothing and lost money for the school system was a statement of policy and the publication of such statement was not an improper use of taxpayer's money. OAG 69-529.

A child is delinquent who, inter alia, is an habitual truant from school pursuant to KRS 208.020 (now repealed) and the punishment for truancy for either the child or his parents is a matter within the discretion of the Juvenile Court. OAG 73-390.

As Judge of the Juvenile Court, the county judge (now county judge/executive) has exclusive jurisdiction over any child who is found to be an habitual truant as well as all persons, including parents, who contribute to conditions which cause a child to become delinquent and any violation can be punished by a fine or imprisonment or both, or a parent or guardian can be fined for violation of the compulsory attendance law but no statute provides for committing a child to jail for truancy. OAG 73-769.

Research References. Caldwell's Kentucky Form Book, Prac. & Proc. Forms, 4th Ed., Parent and Child, General Note.

Collateral References. 78A C.J.S., Schools and School Districts, §§ 734, 739.

159.190. Parental or truant schools may be provided in certain districts. [Repealed.]

Compiler's Notes. This section (4434-2) was repealed by Acts 1978, ch. 22, § 1, effective June 17, 1978.

159.200. Location of parental or truant schools. [Repealed.]

Compiler's Notes. This section (4434-32) was repealed by Acts 1978, ch. 22, § 1, effective June 17, 1978.

159.210. Religious instruction in parental or truant schools. [Repealed.]

Compiler's Notes. This section (4434-32) was repealed by Acts 1978, ch. 22, § 1, effective June 17, 1978.

159.220. Probation — Children placed on. [Repealed.]

Compiler's Notes. This section (4434-32; amend. 1976 (Ex. Sess.), ch. 14, § 162) was repealed by Acts 1978, ch. 22, § 1, effective June 17, 1978.

159.230. Violation of probation — Effect of. [Repealed.]

Compiler's Notes. This section (4434-32: amend. 1976 (Ex. Sess.), ch. 14, § 163) was repealed by Acts 1978, ch. 22, § 1, effective June 17, 1978.

159.240. Continuing school census to be maintained. [Repealed.]

Compiler's Notes. This section (4434-25) was repealed by Acts 1990, ch. 476, Part VI, § 616, effective July 13, 1990.

159.250. Nature of census.

The director of pupil personnel of each school district, working under the direction of the superintendent of schools, shall institute and maintain a complete, accurate, permanent, and continuous census of all children between the ages of five (5) and twenty-one (21) enrolled in the public schools in the district. A child's age is between five (5) and twenty-one (21) when the child has reached his fifth birthday and has not passed the twenty-first birthday. The school census shall specify the name, date of birth, and sex of each child; the name, nationality, and post-office address of each parent, guardian, or custodian of the child; the school district in which the child resides; and the school in which the child is enrolled. The school shall be described by number and name. The census shall contain any other data required by the chief state school officer. Each board of education shall furnish its director of pupil personnel with assistance it deems necessary for the institution and maintenance of the census.

(4434-25, 4434-26: amend. Acts 1966, ch. 89, § 5; 1984, ch. 367, § 8, effective July 13, 1984; 1988, ch. 94, § 1, effective July 15, 1988; 1990, ch. 476, Pt. IV, § 222, effective July 13, 1990.)

Opinions of Attorney General. Since the purpose of maintaining public school census records is to serve the interest of the state in enforcing the compulsory attendance law the use of such records to compile a private mailing list is not legally warranted. OAG 75-274.

The public school census records are public records but are not always open for public inspection since opening them

thereto, without the written consent of the parents, might jeopardize a school district's entitlement to federal funds. OAG 75-274.

NOTES TO DECISIONS

1. Use.

The pupil census records are superior to teacher's affidavit in establishing whether individual attended school. Spurlock v. Commonwealth ex rel. Breckinridge, 350 S.W.2d 472 (Ky. 1961).

DECISIONS UNDER PRIOR LAW

1. Questioning Report.

State superintendent may question in a judicial proceeding the accuracy of census reports. Louisville Sch. Bd. v. Superintendent of Pub. Instrn., 102 Ky. 394, 19 Ky. L. Rptr. 1350, 43 S.W. 718 (1897). (Decided under former KRS 159.260, now repealed).

159.260. Report of census to superintendent of public instruction. [Repealed.]

Compiler's Notes. This section (4434-27; amend. Acts 1966, ch. 89, § 6; 1978, ch. 155, ch. 82, effective June 17, 1978; 1984, ch. 367, § 9, effective July 13, 1984) was repealed by Acts 1988, ch. 94, § 3, effective July 15, 1988.

159.270. False report of census prohibited.

No director of pupil personnel or other person shall willfully or fraudulently report a larger number of children of school age in any district than the actual number, or otherwise make a false report of the census. (4434-28: amend. Acts 1966, ch. 89, § 7; 1990, ch. 476, Pt. IV, § 223, effective July 13, 1990; 1996, ch. 20, § 3, effective July 15, 1996.)

PENALTIES

159.990. Penalties.

(1) Any parent, guardian, or custodian who intentionally fails to comply with the requirements of KRS 159.010 to 159.170 shall be fined one hundred dollars ($100) for the first offense, and two hundred fifty dollars ($250) for the second offense. Each subsequent offense shall be classified as a Class B misdemeanor. A new offense shall not be constituted until any previous offense has been finally adjudicated. The court trying the case may suspend enforcement of the fine if the child is immediately placed in attendance at a school, and may finally remit the fine if the attendance continues regularly for the full school term. School attendance may be proved by an attested certificate of the principal or teacher in charge of the school.

(2) Any principal, teacher, director of pupil personnel, assistant director of pupil personnel, or other school officer who intentionally fails to comply with the provisions of KRS 159.010 to 159.250, or of KRS 160.330 shall be fined not less than twenty-five dollars ($25) nor more than fifty dollars ($50). Upon conviction under this subsection, a director of pupil personnel or assistant director of pupil personnel shall be removed from office and have his certificate revoked, and a principal, teacher, or other school officer may have his certificate revoked.

(3) Any person, other than those persons mentioned in subsections (1) and (2) of this section, who fails to comply with any of the provisions of this chapter relating to compulsory attendance, or who violates any of the provisions of KRS 159.130, shall be fined not less than fifty dollars ($50) nor more than two hundred dollars ($200), or imprisoned in the county jail for not more than sixty (60) days, or both.

(4) Any person who violates any of the provisions of KRS 159.270 shall be liable to a fine of not less than fifty dollars ($50) and shall be liable to the punishment prescribed by law for the crime of false swearing. If he is an officer, he shall be removed from office; and if he is a director of pupil personnel, his certificate shall be revoked.

(5) All fines imposed and all sums required to be paid as penalties under this section shall, after payment of the costs of prosecution and recovery thereof, be paid into the treasury of the district board of education and become a part of the school fund of the district.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 416, effective July 13, 1990; 1992, ch. 42, § 1, effective July 14, 1992.)

Compiler's Notes. This section (4434-13, 4434-20 to 4434-24, 4434-28: amend. Acts 1966, ch. 89, § 8) was repealed and reenacted by Acts 1976, ch. 476, Pt. V, § 416, effective July 13, 1990.

Opinions of Attorney General. A police court has jurisdiction to try parents of children who fail to attend school in violation of the statute. OAG 61-880.

Even though a child over 16 years of age is truant, the penalties of this section cannot be imposed upon the child's parent, guardian or custodian. OAG 64-312, modified by OAG 87-40 to the extent of conflict.

Since a boycott by pupils is regarded as offending the truancy statutes statement by state Superintendent of Education in an official publication that a pupil boycott gained nothing and lost money for the school system was a statement of policy and the publication of such statement was not an improper use of taxpayer's money. OAG 69-529.

A child is delinquent who, inter alia, is an habitual truant from school pursuant to KRS 208.020 (now repealed) and the punishment for truancy for either the child or his parents is a matter within the discretion of the juvenile court. OAG 73-390.

As Judge of the Juvenile Court, the county judge (now county judge/executive) has exclusive jurisdiction over any child who is found to be an habitual truant as well as all persons, including parents, who contribute to conditions which cause a child to become delinquent and any violation can be punished by a fine or imprisonment or both or a parent or guardian can be fined for violation of the compulsory attendance law but no statute provides for committing a child to jail for truancy. OAG 73-769.

The penalty for failure to comply with the compulsory education statutes can only be by fine, and no amount of jail detention is authorized by statute. OAG 73-846.

Unless a child is excepted from immunization or testing for tuberculosis under this section, a child who does not comply with immunization and testing requirements cannot enroll in any public or private school system, and the child's failure to

attend school will subject the parents or the custodians to the penalties set forth in this section. OAG 76-256.

Since subsection (1) of this section refers only to actions against adults failing to comply with KRS 159.010 to 159.170 and not to juveniles charged under KRS 159.150, subsection (1) of this section is not applicable in a juvenile proceeding for habitual truancy under KRS 208.020(1)(c) (now repealed). OAG 76-607.

A charge under subsection (1)(c) of KRS 530.070 requires proof of habitual truancy which is not required to be proved to establish a charge under subsection (1) of this section; therefore a parent or legal guardian could be charged and punished under subsection (1) of this section and a prosecution under one of these sections would not be a bar to a prosecution under the other. OAG 77-514.

A parent, guardian, or other custodian may be subject to the penalties found in this section for failure to comply with subsection (2) of KRS 159.010, which requires 60 days' written notice and counseling prior to an unmarried child between the ages of 16 and 18 withdrawing from school. OAG 87-40, modifying OAG 64-312 to extent inconsistent.

Cited: Hunter v. Board of Educ., 265 Ky. 162, 96 S.W.2d 265 (1936).

Research References. Caldwell's Kentucky Form Book, Prac. & Proc. Forms, 4th Ed., Parent and Child, General Note.

CHAPTER 160

SCHOOL DISTRICTS

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GENERAL PROVISIONS

160.010. County school district, what constitutes.

Each county in this state constitutes a county school district, except that, in counties in which there are independent school districts, the county school district consists of the remainder of the county outside of the boundaries of the independent school districts.
(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 417, effective July 13, 1990.)

Compiler's Notes. This section (4399-2) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 417, effective July 13, 1990.

Cross-References. T.V.A., prorated distribution to school districts of payments to Revenue Cabinet, made by, KRS 96.895.

Kentucky Law Journal. Lewis, Kostas, Carnes, Consolidation — Complete or Functional — of City and County Governments in Kentucky, 42 Ky. L.J. 295 (1954).

Opinions of Attorney General. Library districts organized under KRS 173.470 or 173.720 are not exempt from the payment of the tax imposed by this chapter. OAG 68-241.

Where territory annexed by the city was omitted from the city's school boundary lines but was also dropped from the county school district, it would continue to remain in the county school district. OAG 70-634.

As a school district is a municipality having jurisdiction over the disposal of its own sewage, it would be fully eligible to participate and receive any grant from the Federal Environmental Protection Agency for the construction of a sewage treatment facility or septic tank system. OAG 72-573.

A school district is a political subdivision of the state, a public body, and a district created by statute with specific powers and a municipality within the meaning of 33 U.S.C. § 1173(f). OAG 72-573.

Cited: Brumleve v. Ruth, 302 Ky. 813, 195 S.W.2d 777 (1946); Brown v. Hardin County Bd. of Educ., 358 S.W.2d 488 (Ky. 1962); Wigginton v. Nelson County Bd. of Educ., 408 S.W.2d 647 (Ky. 1966).

NOTES TO DECISIONS

ANALYSIS

1. Principal school district units.
2. Merger.

1. Principal School District Units.

Under the statutes counties are the principal school district units. Thomas v. Spragens, 308 Ky. 97, 213 S.W.2d 452 (1948).

2. Merger.

Since matters affecting the schools and their management were vested in the local board of education, a school board could not delegate or shift its responsibilities to a fiscal court or the electorate by requesting that the fiscal court place on ballot the question of whether the voters favored the consolidation or merger of certain county schools. Hickman County Fiscal Court v. Workman, 528 S.W.2d 730 (Ky. 1975).

Collateral References. 68 Am. Jur. 2d, Schools, §§ 24-30, 32-62.

78 C.J.S., Schools and School Districts, § 84.

160.020. Composition of independent school districts.

All school districts embracing cities of the first five (5) classes together with the territory within their limits, including any territory added for school purposes outside of the city limits, and all independent graded common school districts having a school census enumeration of two hundred (200) or more children, constitute independent school districts, except those which have merged with a county school district since June 14, 1934. No independent district other than a city of the first five (5) classes shall continue to operate when its school census enumeration of children falls below two hundred (200) pupils unless it appears to the Kentucky Board of Education that the district can maintain a more efficient program of school service by operating as an independent district.
(4399-3: amend. Acts 1974, ch. 49, § 2; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 224, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

Kentucky Law Journal. Lewis, Kostas, Carnes, Consolidation — Complete or Functional — of City and County Governments in Kentucky, 42 Ky. L.J. 295 (1954).

Opinions of Attorney General. A person seeking election to an independent school district board must live and reside within the district. OAG 76-121.

Cited: Brumleve v. Ruth, 302 Ky. 813, 195 S.W.2d 777 (1946); Schmidt v. Payne, 304 Ky. 58, 199 S.W.2d 990 (1947); Cawood v. Hensley, 247 S.W.2d 27 (Ky. 1952); Newburg Area Council, Inc. v. Board of Educ., 510 F.2d 1358 (6th Cir. 1974).

NOTES TO DECISIONS

ANALYSIS

1. Boundaries conterminous with city.
2. Change of city's classification.
3. Annexation.
4. Pupil census below minimum.
5. Contracts by district.
6. Desegregation.

1. Boundaries Conterminous with City.

The action of a city in appropriating funds to supplement the salaries of teachers in an independent school district whose boundaries were conterminous with those of the city is inhibited by Const., § 179. Board of Educ. v. City of Corbin, 301 Ky. 686, 192 S.W.2d 951 (1946).

Although some of the independent districts are conterminous with cities of the Commonwealth, each is a municipality or political subdivision separate and distinct from such a city and over which the city has no control. Board of Educ. v. City of Corbin, 301 Ky. 686, 192 S.W.2d 951 (1946).

An appropriation of funds by a city, to supplement salaries of teachers in independent school districts having boundaries conterminous with those of city, would violate Const., § 159. Board of Educ. v. City of Corbin, 301 Ky. 686, 192 S.W.2d 951 (1946).

The General Assembly in enacting this section and KRS 160.010 intended and did establish an independent school district in the city of Louisville, free from the control of the city though the boundaries are conterminous. City of Louisville v. Board of Educ., 302 Ky. 647, 195 S.W.2d 291 (1946).

2. Change of City's Classification.

This section does not automatically create a new independent school district when a sixth-class city is made a fifth-class city. Board of Educ. v. Board of Educ., 293 S.W.2d 568 (Ky. 1956).

3. Annexation.

Property in county school district annexed by city does not, by operation of this section automatically become part of the city independent school district. Thomas v. Spragens, 308 Ky. 97, 213 S.W.2d 452 (1948).

KRS 160.045 provides the exclusive procedures by which an independent school district may annex county school district territory. Thomas v. Spragens, 308 Ky. 97, 213 S.W.2d 452 (1948).

City school districts are independent of the city government and legislative provision for school purpose annexation must be considered apart from statutes authorizing cities to annex territory for other purposes involving other consideration. Thomas v. Spragens, 308 Ky. 97, 213 S.W.2d 452 (1948).

4. Pupil Census Below Minimum.

Where, after annexation of part of town by city, census enumeration of children in town independent school district fell below 250, no action was necessary by State Board of Education to place what remained of town school district with county district. Board of Educ. v. Board of Educ., 284 Ky. 774, 146 S.W.2d 30 (1940).

Where State Board abolished independent school district whose white pupil census fell below the required minimum and the school was continued by county board until State Board of Education deferred accrediting it because it had less than 60 pupils, consolidation of the high school with other high schools in the county by the county board was not an abuse of discretion. Nethery v. McMullen, 313 Ky. 39, 230 S.W.2d 79 (1950).

5. Contracts by District.

Since the school board was a body politic and corporate, a government agency, and a public corporation, it was authorized to enter into a lease or contract with another governmental agency. City of Bowling Green v. Board of Educ., 443 S.W.2d 243 (Ky. 1969).

6. Desegregation.

Where it was stipulated that no student was ever excluded from independent school district because of race and there was no evidence that such district had committed other racial segregatory practices or that the boundaries of the district were drawn in 1911 to include whites and exclude blacks, district was not required to be included in court ordered desegregation plan, for the court rejected the argument that as a matter of law the very existence of an independent school district created under this section prior to the 1974 amendment indicated that the system must of necessity be a vestige of state-imposed segregation. Cunningham v. Grayson, 541 F.2d 538 (6th Cir. 1976), cert. denied, 429 U.S. 1074, 97 S. Ct. 812, 50 L. Ed. 2d 792 (1977).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 64, 65.

What constitutes separate and independent political units within the rule permitting separate computation of constitutional debt limit notwithstanding overlapping or identical boundaries. 141 A.L.R. 729.

160.030. Temporary independent districts. [Repealed.]

Compiler's Notes. This section (4399-3: amend. Acts 1974, ch. 49, § 3; 1978, ch. 155, § 82, effective June 17, 1978) was repealed by Acts 1982, ch. 351, § 1, effective July 15, 1982.

160.040. Merger of districts.

Boards of education of any two (2) or more contiguous school districts may by concurrent action merge their districts into one (1). In case of a merger, the members of the boards of education of the merged districts may serve out the terms for which they were elected. The resulting district shall take over all the assets and legal liabilities of the districts joining in the merger. Tax levies authorized for the payment of interest and the retirement of bonds or to create sinking funds for such purposes shall continue to be levied and collected over the same area by or for the new board in accordance with the laws under which the levies were originally made until all bonded obligations of the old district have been retired.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 418, effective July 13, 1990.)

Compiler's Notes. This section (4399-4) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 418, effective July 13, 1990.

Kentucky Law Journal. Lewis, Kostas, Carnes, Consolidation — Complete or Functional — of City and County Governments in Kentucky, 42 Ky. L.J. 295 (1954).

Opinions of Attorney General. Where, under the provisions of this section and KRS 160.041, there is a merger of a city and a county school district each of which has special voted taxes applicable to it: (1) The city school district would continue to be subject to its special voted taxes unless the merger agreement provided otherwise. (2) The city board of education may decline to have levied the special voted tax if it deems the tax unnecessary or unwise; however, the county board of education, both as originally constituted and as a joint board following merger must concur and cooperate in an agreement to this end. The city board will cease to exist on merger; hence it will have nothing to say about the special voted tax of the county school district. Acting ex parte, the city board may not, prior to merger, adopt the county districts voted levy. (3) The property owners in the city district will be subject to the county district's special voted tax when the merger is completed. This will occur automatically upon merger without any referendum. (4) The merger agreement should be drawn so as to coincide merger with applicable tax and school years to avoid any question about the tax levied for a current school year based upon an assessment that predated merger. OAG 67-315.

Once two school districts have been merged, there is no procedure by which the merger can be dissolved. OAG 71-380.

This section and KRS 160.041 provide that in the event of a merger of two school districts the members of the boards of education of the merged districts may serve out the terms for which they were elected. OAG 72-252.

This section and KRS 160.041 provide the exclusive means by which school districts may be merged. OAG 72-252.

The fiscal court, under KRS 67.083, has no authority to place a question on the ballot to be submitted to the voters concerning the merger of school districts as KRS 67.083 limits the powers of a county to those that do not conflict with the constitution or statutes and as the legislature, under this section, has provided the procedure for merging school districts, this field is pre-empted, and since the school districts

are agencies of the state, not the county, all decisions affecting school questions are to be made by the district boards of education and the State Department of Education. OAG 73-272.

Inasmuch as this section is not restricted to the merger of an independent school district with a county school district, it would be possible for two county school districts to merge. OAG 77-777.

Following the merger of an independent school district with a county school district the resultant district is the county district. OAG 83-325.

Upon a merger of a county school district and an independent school district, the utility gross receipts license tax of three percent in effect in the county school district would become effective as to the entire merged district. OAG 83-325.

Cited: Stull v. Webster County Bd. of Educ., 339 S.W.2d 189 (Ky. Ct. App. 1960); Board of Educ. v. Board of Educ., 522 S.W.2d 854 (Ky. 1975).

NOTES TO DECISIONS

ANALYSIS

1. Town district with city and county.
2. Two districts when one in two counties.
3. "Concurrent action."
4. Terms of merger.
5. —Motive.
6. —Joint board members.
7. —Powers and duties.
8. —Disposition of assets and liabilities.
9. —Ouster of superintendent.
10. Consummation of original plan of financing building.
11. Discretion of boards.
12. Delegation of board authority.

1. Town District with City and County.

Merger of town independent school district with city district and with county district resulted, where on dissolution of town district part of it went to city district and part to county district. Board of Educ. v. Board of Educ., 284 Ky. 774, 146 S.W.2d 30 (1940).

2. Two Districts When One in Two Counties.

Two contiguous independent school districts may consolidate and merge into a single new independent school district under this section even though portions of one district lie in two counties. Board of Educ. v. Butler, 256 S.W.2d 516 (Ky. 1953).

3. "Concurrent Action."

"Concurrent action" does not necessitate simultaneous action in joint session. It is sufficient that such steps be taken in cooperation and looking to the same purpose. McGlone v. Horton, 258 Ky. 453, 80 S.W.2d 522 (1935).

4. Terms of Merger.

This section as opposed to KRS 160.041 governs the powers of the two districts in making a merger agreement to fix the terms of such merger. LaFollette v. Ovesen, 314 Ky. 535, 236 S.W.2d 457 (1951).

5. —Motive.

The motive for merging districts is immaterial. Board of Educ. v. Stevens, 261 Ky. 475, 88 S.W.2d 3 (1935).

6. —Joint Board Members.

All members of the boards of the merged districts become members of the joint board clothed with all the authority conferred by law upon the members of such boards. McGlone v. Horton, 258 Ky. 453, 80 S.W.2d 522 (1935).

The merger agreements, which provided that if, for any reason, any appointed member of the merged board could not complete his temporary term, the position was to be filled with an alternate, did not conflict with KRS 160.190 as the agreements merely provided temporary security for all school districts during the critical transition, and authority for the agreements was provided for by the general authority granted by virtue of the merger statute, this section. In re Muhlenberg County Bd. of Educ., 714 S.W.2d 168 (Ky. Ct. App. 1986).

7. —Powers and Duties.

Where two contiguous school districts were merged, the members of the board of education of the merged districts who were serving out the terms for which they were elected had the power to execute a contract with the superintendent of one of the former districts as superintendent of the new merged district and upon declaration of vacancy of the office before expiration of his contract term he was entitled to salary withheld. McClellan v. Darnell, 351 S.W.2d 191 (Ky. 1961).

8. —Disposition of Assets and Liabilities.

The last part of this section, respecting disposition of assets and liabilities, applies to mergers effected under KRS 160.030 (repealed), as well as to those effected by concurrent action of two contiguous districts. Board of Educ. v. Nelson, 268 Ky. 83, 103 S.W.2d 691 (1937).

The assumption of debts by a county school district under this section does not violate Const., § 157. Board of Educ. v. Nelson, 268 Ky. 83, 103 S.W.2d 691 (1937).

Provision in resolution of city board directing employment of superintendent for four-year term that employment should terminate if city and county boards merged, must be deemed part of employment contract actually made with superintendent notwithstanding provision was not contained in contract, since resolution was foundation of contract and no liability continued for county board to assume on merger. Martin v. Board of Educ., 284 Ky. 818, 146 S.W.2d 12 (1940).

County board is impressed only with legal liabilities of districts joining in merger, and hence where city board, at time of merging with county board, had relieved itself of liability to employ superintendent for four years, county board was not under liability to superintendent. Martin v. Board of Educ., 284 Ky. 818, 146 S.W.2d 12 (1940).

Contract for four-year term between city board and superintendent was not liability of county board, where city and county boards merged, and contract between boards was drawn by superintendent providing that county board was to employ superintendent and to perform contracts made by city board for one specified school year. Martin v. Board of Educ., 284 Ky. 818, 146 S.W.2d 12 (1940).

Employment by county board of superintendent for second one-year period following year for which he had been employed pursuant to contract of merger between city and county boards was not ratification of earlier contract for four-year term made by city board, but not assumed by county board on merger. Martin v. Board of Educ., 284 Ky. 818, 146 S.W.2d 12 (1940).

On merger of city independent school district with county school district by agreement the property owners of former city district become liable for voted indebtedness of county district and referendum on increase in rate within city is unnecessary. Board of Educ. v. Harville, 416 S.W.2d 730 (Ky. 1967).

9. —Ouster of Superintendent.

Superintendent could not be ousted by four to three vote of board of education which had consisted of ten members following merger under this section but had fallen to seven by reason of expiration of some of the terms since KRS 160.350 providing for ouster by four members of a board of education contemplated a board of five members as provided by KRS 160.160 or 80% of the board. Wesley v. Board of Educ., 403 S.W.2d 28 (Ky. 1966).

10. Consummation of Original Plan of Financing Building.

When an independent district attempts to provide a build-

ing pursuant to KRS 162.120, a subsequent merger with the county district does not prevent consummation of the original plan of financing. Piggott v. Kasey, 271 Ky. 651, 113 S.W.2d 5 (1938).

11. Discretion of Boards.

School boards have a liberal discretion in merging districts. Board of Educ. v. Stevens, 261 Ky. 475, 88 S.W.2d 3 (1935).

The burden of proving an abuse of discretion is on the accuser. Board of Educ. v. Stevens, 261 Ky. 475, 88 S.W.2d 3 (1935).

12. Delegation of Board Authority.

Since matters affecting the schools and their management were vested in the local board of education and the State Department of Education, a school board could not delegate or shift its responsibilities to a fiscal court or the electorate by requesting that the fiscal court place on ballot the question of whether the voters favored the consolidation or merger of certain county schools. Hickman County Fiscal Court v. Workman, 528 S.W.2d 730 (Ky. 1975).

Collateral References. 68 Am. Jur. 2d, Schools, § 36.

78 C.J.S., Schools and School Districts, §§ 18-65.

Discretion of administrative officers as to consolidation of school districts. 65 A.L.R. 1533; 135 A.L.R. 1096.

160.041. Merger of independent district with county district.

(1) When a board of education of an independent school district desires to have its district become a part of the county school district, it shall by motion so record its desire in the minutes of the board. The board, or its executive officer, shall convey this request to the county board of education. At its next regular meeting, or at a special meeting held prior thereto, the county board of education shall pass upon this request.

(2) If the county board of education refuses, or the two (2) boards of education cannot agree upon such a proposition of merger of the independent district with the county district, the question of merger shall be submitted to the qualified voters of the two (2) districts at the next regular election if the question is filed with the county clerk not later than the second Tuesday in August preceding the regular election.

(a) If a majority of those voting on the question favor merger, the school boards of the two (2) school districts shall jointly develop a plan for adoption of the merger.

(b) If the two (2) school boards cannot agree to the terms of merger within sixty (60) days following the date of the regular election, the chief state school officer shall develop the terms of the adoption of merger.

(c) Notwithstanding subsection (2)(a) of this section, if the independent school district cannot meet its current operating expenses from projected revenue and if the two (2) school boards cannot agree to the terms of a merger, the proposition of merger shall be submitted to the Kentucky Board of Education, and the Kentucky Board of Education shall determine whether the two (2) districts should be merged and if merged the terms thereto.

(d) Upon completion of the plan for adoption of the merger, whether prepared by the school boards or the superintendent, it shall become effective and the independent district shall become a part of the county school district as set out in the plan.

(Enact. Acts 1948, ch. 238; 1976, ch. 212, § 1; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 225, effective July 13, 1990; 1996, ch. 195, § 56, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996.)

Cross-References. Merger of independent and county school districts, 702 KAR 1:100.

Kentucky Law Journal. Lewis, Kostas, Carnes, Consolidation — Complete or Functional — of City and County Governments in Kentucky, 42 Ky. L.J. 295 (1954).

Opinions of Attorney General. Where, under the provisions of KRS 160.040 and this section there is a merger of a city and a county school district each of which has special voted taxes applicable to it: (1) The school city would continue to be subject to its special voted taxes unless the merger agreement provided otherwise. (2) The city board of education could decline to have levied the special voted tax if it deemed the tax unnecessary or unwise; however, the county board of education both as originally constituted and as a joint board following merger must concur and cooperate in an agreement to this end. The city board will cease to exist on merger; hence it will have nothing to say about the special voted tax of the county school district. Acting ex parte the city board may not, prior to merger, adopt the county district's voted levy. (3) The property owners in the city district will be subject to the county district's special voted tax when the merger is completed. This will occur automatically upon merger without referendum. (4) The merger should be drawn so as to coincide merger with applicable tax and school years to avoid any question about the tax levied for a current school year based upon an assessment that pre-dated merger. OAG 67-315.

This section grants the right to initiate merger proceedings to an independent school district; however, no such authority is granted to a county school district. OAG 72-252., 3 N.Y. St. L.F. 108 (1975).

Where a merger or the terms of a merger cannot be agreed upon this section allows the independent board of education to appeal to the superintendent of public instruction and ask that the matter be submitted to the State Board of Education for final settlement. OAG 72-252., 3 N.Y. St. L.F. 108 (1975).

Where the voters have cast their ballots in favor of the merger of two school districts, but where the two school boards have not agreed on the terms of the plan for adoption of the merger, the terms of adoption developed by the Superintendent of Public Instruction to resolve the dispute are not required to be approved by the State Board of Education. OAG 76-341.

Following the merger of an independent school district with a county school district the resultant district is the county district. OAG 83-325.

Upon a merger of a county school district and an independent school district, the utility gross receipts license tax of three percent in effect in the county school district would become effective as to the entire merged district. OAG 83-325.

NOTES TO DECISIONS

Analysis

1. Application.
2. Two alternative methods.
3. Merger.
4. —Terms or conditions.
5. —Grounds for effectuating.
6. —Desegregation.

1. Application.

Where parties assented to merger of city and county school districts the provisions of KRS 160.041 are inapplicable because there was no failure or refusal to agree on terms. Board of Educ. v. Harville, 416 S.W.2d 730 (Ky. 1967).

2. Two Alternative Methods.

This section provides for two alternatives: (1) merger by agreement or (2) merger by compulsion of the state board. LaFollette v. Ovesen, 314 Ky. 535, 236 S.W.2d 457 (1951).

3. Merger.

4. —Terms or Conditions.

In the case of merger by compulsion the state board is to fix the terms, but in the case of merger by agreement no directions are given as to the terms or conditions of the merger. LaFollette v. Ovesen, 314 Ky. 535, 236 S.W.2d 457 (1951).

5. —Grounds for Effectuating.

This section does not specify any grounds which must be established to lawfully effectuate a merger. Hopkins County Bd. of Educ. v. Hopkins County, 242 S.W.2d 742 (Ky. 1951).

6. —Desegregation.

If the District Court should find that a formal consolidation or merger of districts was required to effectuate an effective desegregation plan for the county as a whole, administrative problems would to a large extent be obviated since the merger or consolidation could be effectuated under this section, which authorizes the reconsolidation of school districts within a single county even without the consent of the county school board. Newburg Area Council, Inc. v. Board of Educ., 510 F.2d 1358 (6th Cir. 1974), cert. denied, 421 U.S. 931, 95 S. Ct. 1658, 44 L. Ed. 2d 88 (1975), cert. denied, 429 U.S. 1074, 97 S. Ct. 812, 50 L. Ed. 2d 792 (1977).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 64, 65.

Discretion of administrative officers as to consolidation of school districts. 65 A.L.R. 1533; 135 A.L.R. 1096.

160.042. Election of members — Present terms to continue, exception.

(1) Upon a merger under the provisions of KRS 160.040 and 160.041 of an independent school district in a city of the first class with a county school district in counties containing a city of the first class, the members of the county board of education of the merged county school district, shall be elected pursuant to KRS 160.200 and 160.210.

(2) Each member of the respective boards of education at the time of the merger of the districts, may continue to hold office until the expiration of his or her term of office, except as provided in KRS 160.200(4); but any vacancy occurring among such members for any reason shall not be filled.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 419, effective July 13, 1990.)

Compiler's Notes. Former KRS 160.042 (Acts 1952, ch. 90, §§ 1, 2) and former KRS 160.043 (Acts 1952, ch. 90, § 2) were repealed and reenacted as KRS 160.042 by Acts 1958, ch. 126, § 17.

KRS 160.042 (Repealed and reenacted Acts 1958, ch. 126, § 17; 1974, ch. 224, § 1) was repealed and reenacted as KRS 160.042 by Acts 1990, ch. 476, Pt. V, § 419, effective July 13, 1990.

NOTES TO DECISIONS

1. Continuation of Two Boards.

Provision for city school board members to continue serving with county school board upon merger of school district of first-class city with county school district does not constitute "local or special legislation" forbidden by state Constitution where there is a justifiable need for the experience of city board members as to problems arising from urbanization. Board of Educ. v. Board of Educ., 522 S.W.2d 854 (Ky. 1975).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 18-20, 67.

160.043. Terms of board members unaffected by merger — Vacancies not to be filled. [Repealed and Reenacted.]

Compiler's Notes. This section (Acts 1952, ch. 90, § 2) and former KRS 160.042 (Acts 1952, ch. 90, §§ 1, 2) were repealed and reenacted as KRS 160.042 by Acts 1958, ch. 126, § 17.

160.044. Time of election and terms of merged district board members.

(1) At the regular November election during the first even-numbered year nearest to the time of the merger of the districts, as above set out, two (2) members of the county board of education shall be elected from the county at large for a term of four (4) years, and two (2) years after such first election, three (3) members of the county board of education shall be elected for a term of four (4) years, and in each even-numbered year thereafter an election shall be held from the county at large to fill the membership of the county board of education for the term that will expire on the first Monday in January following, and the regularly elected members shall hold office for four (4) years, and until their successors are elected and qualified.

(2) Any vacancy occurring in the membership of the county board after members have been elected from the county at large shall be filled as now provided by KRS 160.190.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 420, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1952, ch. 90, §§ 3, 4, effective June 19, 1952) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 420, effective July 13, 1990.

Cross-References. Transfer of annexed property; hearing, 702 KAR 1:080.

NOTES TO DECISIONS

1. Elections from Districts.

In merger situations, KRS 160.210 mandates that elections of school board members shall be from districts, not the county-at-large. In re Muhlenberg County Bd. of Educ., 714 S.W.2d 168 (Ky. Ct. App. 1986).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 18-20, 67, 117, 128.

160.045. Transfer of adjacent territory to school district other than that in which it is located.

(1) If seventy-five percent (75%) of either the registered voters or property owners in an area adjacent

to either a county or independent school district petition the respective school boards for a transfer of property to the school board district other than that in which it is located, or if either board initiates an action, the school boards may effect the transfer by agreement, duly spread upon the minutes of their respective boards.

(2) If the boards fail to agree within ninety (90) days from the filing of petitions for the transfer, either board may petition the chief state school officer for approval or disapproval of the transfer of the property involved. In his consideration for giving approval or disapproval, he shall be governed by any policies and rules and regulations of the Kentucky Board of Education which may be affected by the transfer of the property and shall give due consideration to the following: the ratio of the wealth of the territory involved in its relation to the total wealth of the district from which the territory will be annexed; the effect of the proposed territorial loss or gain on the educational programs of the respective districts; extent of and effect on the physical plant, facilities, and equipment available in each of the affected districts; the indebtedness and bonded or rental obligations of the respective districts; any contemplated indebtedness or obligation arising out of the proposed transfer; and other factors as may have a bearing upon the determination of the desirability of the proposed annexation from the vantage point of all interested persons.

(3) In those instances where the requested transfer will result in a surplus of physical plant, facilities, or equipment in the transferring school district, the chief state school officer shall determine an equitable plan for the transfer of any surplus to the annexing district as his plan may determine will be needed. His plan shall be based on the fair value of the property on a replacement basis, taking into consideration its age and condition. In any considerations and suggestions which he may propose for the settlement of the differences between the boards of education, he shall be bound by any agreements outstanding between the boards of education of the school districts on July 15, 1982.

(4) If the chief state school officer is unable to arrive at a satisfactory agreement with the two (2) boards of education concerning the transfer of the involved property within one hundred twenty (120) days from the time it is presented to him, either board may request that he bring the matter before the Kentucky Board of Education at its next regularly scheduled meeting. The state board shall grant and schedule an administrative hearing, and the hearing shall be conducted in accordance with KRS Chapter 13B. In that event, he shall file with the Kentucky Board of Education all the facts which he has gathered, the recommendation he has made, and the basis for his recommendation, for their consideration. In those instances where, after giving consideration to the factors set forth in subsection (2) of this section, the chief state school officer determines that a transfer of only a portion of the territory in question is in the best interest of the respective districts, he may recommend to the Kentucky Board of Education a modified plan of transfer of territory.

(Enact. Acts 1946, ch. 140; 1948, ch. 90; 1956, ch. 240, § 1; 1974, ch. 315, § 17; 1978, ch. 155, § 82, effective June 17, 1978; 1980, ch. 114, § 24, effective July 15, 1980; 1982, ch. 32, § 1, effective July 15, 1982; 1990, ch. 476, Pt. IV, § 226, effective July 13, 1990; 1996, ch. 318, § 51, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996.)

Cross-References. Transfer of annexed property; hearing, 702 KAR 1:080.

Kentucky Law Journal. Lewis, Kostas, Carnes, Consolidation — Complete or Functional — of City and County Governments in Kentucky, 42 Ky. L.J. 295 (1954).

Opinions of Attorney General. The term "adjacent" as used in this section means "adjoining" rather than "nearby" and property may not be transferred from one school district to another if it does not adjoin the school district to which it is to be transferred. OAG 62-54.

A county tax commissioner has no authority to transfer property from one school district to another in the county without the approval of either the voters, property owners, or school boards of the districts involved. OAG 67-429.

The methods prescribed by this section are the exclusive methods by which boundary lines between adjacent school districts may be changed, and an erroneous report of a boundary line made pursuant to KRS 136.190 neither established nor altered the boundary line even though it remained unchallenged for a period of 12 years. OAG 70-393.

The phrase "next regularly scheduled meeting" in subsection (4) does not include a specially called meeting. OAG 74-463.

The responsibility of determining the boundaries of two school districts within the same county rests with the boards of education of the two districts. OAG 80-621.

Those citizens living in an annexed area of a city are not entitled to vote in the city school board race unless and until the area annexed is also annexed by the city school district, pursuant to this section; such persons must vote in the county school district in which they presently live, irrespective of any agreement between the two school districts regarding in which district the children of residents of the annexed area will be allowed to attend school. OAG 84-372.

Cited: Turner v. City Bd. of Educ., 313 Ky. 383, 231 S.W.2d 27 (1950); Board of Educ. v. Board of Educ., 293 S.W.2d 568 (Ky. 1956); Board of Educ. v. Board of Educ., 472 S.W.2d 496 (Ky. 1971).

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Purpose.
3. Application.
4. Annexed territory.
5. Property owners.

1. Constitutionality.

This section does not violate Const., § 59 as being special legislation. Board of Educ. v. Mescher, 310 Ky. 453, 220 S.W.2d 1016 (1949).

This section does not violate Const., §§ 2, 19, 52 or 183. Board of Educ. v. Board of Educ., 250 S.W.2d 1017 (Ky. 1952).

2. Purpose.

The object of this section was to encourage the making of the city school district boundaries coextensive with those of the city. Howell v. Collier, 282 S.W.2d 327 (Ky. 1955).

3. Application.

This section provides the exclusive procedures by which an independent school district may annex county school district territory. Thomas v. Spragens, 308 Ky. 97, 213 S.W.2d 452 (1948).

This section authorizes only the incorporation of such areas annexed to a city as are coextensive with an area designated, defined or described as a separate territory in the annexation proceedings by the city. Howell v. Collier, 282 S.W.2d 327 (Ky. 1955).

4. Annexed Territory.

Property in county school district annexed by city does not, by operation of KRS 160.020, automatically become part of the city independent school district. Thomas v. Spragens, 308 Ky. 97, 213 S.W.2d 452 (1948).

The annexed territory must be treated as an indivisible unit. Howell v. Collier, 282 S.W.2d 327 (Ky. 1955).

County board had no power to prevent transfer of territory annexed to a city to city school district where 75 percent of owners of real property in the territory petitioned to be taken into city school district and city school board approved the petition. Board of Educ. v. Board of Educ., 250 S.W.2d 1017 (Ky. 1952).

5. Property Owners.

Both the husband and wife in estates known as tenancy by the entirety are owners of property and their interest is sufficient to make them "owners of real property" within the meaning of this section. Campbell County Bd. of Educ. v. Boulevard Enters., Inc., 360 S.W.2d 744 (Ky. 1962).

The term "owners" was meant to designate all people who owned any interest in property which would permit them to be concerned with community school affairs. Campbell County Bd. of Educ. v. Boulevard Enters., Inc., 360 S.W.2d 744 (Ky. 1962).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 18-62.

Discretion of administrative officers as to consolidation of school districts. 65 A.L.R. 1533; 135 A.L.R. 1096.

160.047. Application of KRS 160.045. [Repealed.]

Compiler's Notes. This section which, was declared unconstitutional in Board of Educ. v. Board of Educ., 472 S.W.2d 496 (Ky Ct. App. 1971). (Enact. Acts 1970, ch. 189, § 1) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

160.048. Transfer of area containing school outside district.

(1) The General Assembly hereby finds that from time to time various school boards, in the exercise of their administrative discretion, have determined that their school districts would be most efficiently administered if one (1) or more of the district's schools were constructed and operated on land located outside the school districts' boundaries. The General Assembly further finds that this has been desirable and in furtherance of an efficient system of common schools. As urbanization increases, and school districts throughout the Commonwealth become more densely populated, available school sites within such districts will proportionately diminish, and it will with increasing frequency be necessary to construct schools on land not within the district of the school board constructing such schools. When a school is so located, it is more efficient for the school district constructing the school, but it is less efficient for the statewide system of common schools and for the children residing in the immediate neighborhood of the new school, who reside in a different school district, and therefore must be transported to other, more distant schools. This situation results in an inefficient utilization of state and local school funds and school facilities, and is a result of the artificially-drawn school district boundary lines. The General Assembly further finds that the discretionary method of transfer presently provided by KRS 160.045 is not adequate to assure an efficient operation of the common schools, and that it is desirable to provide for mandatory transfer of such areas. Pursuant to section 183 of the Kentucky Constitution, the General Assembly declares that such situations are special situations and require special treatment. It is the intent of the General Assembly to provide by this statute a special method whereby such areas may be transferred to the school district operating the school or schools.

(2) If seventy-five percent (75%) of either the registered voters or property owners in an area adjacent to a school district other than the district in which such area is located and in which area there is located a school owned and operated by such adjacent school district petition the school board of the school district which owns and operates such school and the school board of the school district in which such area is located for the transfer of such area from the school district in which it is located to the school district which owns and operates such school, then such area shall be so transferred.

(3) The effective date of such transfer shall be sixty (60) days after the date on which the petition is filed with the two (2) school boards; personal delivery of said petition to any member of the school board or to the superintendent of the school district shall constitute "filing" for purposes of this section. Provided, that if such effective date falls during a term of the school district in which such area is located, the two (2) school boards involved may, by agreement, defer the effective date of such transfer until the end of said term.

(4) The terms and conditions of such transfer shall be determined in the manner provided for the determination of the terms and conditions of transfer under KRS 160.045, except that the chief state school officer, the Kentucky Board of Education, and the respective reviewing courts shall have no power to disapprove such transfer.

(5) Upon such transfer, the recipient district shall assume a portion of the bonded indebtedness of the losing district, as provided in KRS 160.065; such bonds shall remain the obligation of the issuing agency, and shall not be affected in any way by such transfer, except that each year the recipient district shall pay to the losing district a sum of money sufficient to make the payments on the portion of such indebtedness assumed by the recipient district, and such annual payments shall continue until all of the bonded indebtedness outstanding at the time of the transfer is paid in full.

(6) The method of transfer provided in this section shall be an alternative method to that set forth in KRS 160.045, and this section shall have no effect whatsoever on KRS 160.045.

(Enact. Acts 1972, ch. 349, § 1; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 227, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

Opinions of Attorney General. This section is not indefinite as to its determination of an area, is not ineffective as lacking authority to determine the sufficiency or composition of an area, provides the necessary procedural stress to effect a transfer and is not unconstitutional or ineffective because of vagueness. OAG 72-254.

Cited: Newburg Area Council, Inc. v. Board of Educ., 510 F.2d 1358 (6th Cir. 1974).

160.049. Transfer of adjacent territory between school districts in county containing first-class city. [Repealed.]

Compiler's Notes. This section (Acts 1970, ch. 189, §§ 2, 3) was repealed by Acts 1978, ch. 34, § 1, effective June 17, 1978.

160.050. Annexation of adjacent part of county school district by independent district — Approval — Vote. [Repealed.]

Compiler's Notes. This section (4399-4b) was repealed by Acts 1956, ch. 240, § 2.

160.060. Annexation of part of independent district by county district. [Repealed.]

Compiler's Notes. This section (4399-4b) was repealed by Acts 1956, ch. 240, § 3.

160.065. Liability for indebtedness in case of annexation.

When any property assessable for school purposes in one school district is annexed by or transferred to another school district, the recipient district shall assume a part of the indebtedness, if any, of the other school district incurred for school buildings and grounds in the proportion the assessed valuation of property taxable for school purposes transferred bears to the total assessed valuation of property taxable for school purposes in the district losing the territory.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 421, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1942, ch. 197) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 421, effective July 13, 1993.

Cross-References. Title to school property in transferred territory, KRS 162.020.

Cited: Board of Educ. v. Mescher, 310 Ky. 453, 220 S.W.2d 1016 (1949).

NOTES TO DECISIONS

1. Revenue Bonds.

Revenue bonds do not constitute an indebtedness of the issuing school district and city school district, to which territory was transferred from county school district after voters of county district had authorized special school building tax to pay rentals for school buildings to be financed by issuance of revenue bonds, was not liable for any part of the bonds under this section. Board of Educ. v. Board of Educ., 250 S.W.2d 1017 (Ky. 1952).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 18-20, 69.

160.070. Subdistricts — County board of education may change — Exceptions — Boundaries of districts. [Repealed.]

Compiler's Notes. This section (4399-6, 4399-14) was repealed by Acts 1956, ch. 237, § 7.

160.080. Subdistricts in two or more counties. [Repealed.]

Compiler's Notes. This section (4399-15) was repealed by Acts 1956, ch. 237, § 7.

160.090. Trustee of subdistrict — Qualifications — Term. [Repealed.]

Compiler's Notes. This section (4399-7, 4399-8, 4399-10) was repealed by Acts 1956, ch. 237, § 7.

160.100. Election of subdistrict trustee — Notice of candidacy — Qualifications of voters — Ballots. [Repealed.]

Compiler's Notes. This section (4399-8) was repealed by Acts 1956, ch. 237, § 7.

160.105. Fire and extended insurance coverage.

The Kentucky Board of Education shall by regulation require each school district to provide for fire and extended insurance coverage on each building owned by the board which is not surplus to its needs as shown by the approved facilities plan. The requirement for such coverage shall not exceed replacement cost and shall allow for the features of coinsurance and deductibles.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 422, effective July 13, 1990; amend. 1996, ch. 362, § 6, effective July 15, 1996.)

Compiler's Notes. This section (Enact. Acts 1982, ch. 93, § 1, effective July 15, 1982) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 422, effective July 13, 1990.

Cross-References. Insurance requirements, 702 KAR 3:030.

160.110. Time, place and method of conducting election. [Repealed.]

Compiler's Notes. This section (4399-8) was repealed by Acts 1956, ch. 237, § 7.

160.120. Duties of subdistrict trustee generally. [Repealed.]

Compiler's Notes. This section (4399-11) was repealed by Acts 1956, ch. 237, § 7.

160.130. Nomination of teachers in subdistricts. [Repealed.]

Compiler's Notes. This section (4399-9) was repealed by Acts 1956, ch. 237, § 7.

160.140. Vacancy in office of subdistrict trustee — How filled. [Repealed.]

Compiler's Notes. This section (4399-10) was repealed by Acts 1956, ch. 237, § 7.

160.150. Tax levies in subdistricts — Limitation and election on. [Repealed.]

Compiler's Notes. This section (4399-6, 4399-12, 4399-12a) was repealed by Acts 1946, ch. 36, § 3.

160.151. Criminal background check on certified employees and student teachers in private, parochial, and church schools — Fingerprinting — Disclosure — Employment of offenders by nonpublic schools.

(1) (a) Beginning with the 2002-2003 school year, a private, parochial, or church school that has voluntarily been certified by the Kentucky Board of Education in accordance with the provisions of KRS 156.160(3) may require a national and state criminal background check on all new certified hires in the school and student teachers assigned to the school. Certified individuals who were employed in another certified position in a Kentucky school within six (6) months of the date of the hire and who had previously submitted to a national and state criminal background check for previous employment may be excluded from further national or state criminal background checks.

(b) The national criminal history background check shall be conducted by the Federal Bureau of Investigation. The state criminal history background check shall be conducted by the Kentucky State Police or the Administrative Office of the Courts.

(c) All fingerprints requested under this section shall be on an applicant fingerprint card provided by the Kentucky State Police. The fingerprint cards shall be forwarded to the Federal Bureau of Investigation by the Kentucky State Police after a state criminal background check has been conducted. Any fee charged by the Kentucky State Police, the Administrative Office of the Courts, or the Federal Bureau of Investigation shall be an amount no greater than the actual cost of processing the request and conducting the search.

(2) If a school requires a criminal background check for a new hire, the school shall conspicuously include the following disclosure statement on each application or renewal form provided by the employer to an applicant for a certified position: "STATE LAW AUTHORIZES THIS SCHOOL TO REQUIRE A CRIMINAL HISTORY BACKGROUND CHECK AS A CONDITION OF EMPLOYMENT FOR THIS TYPE OF POSITION."

(3) (a) A nonpublic school voluntarily implementing the provisions of this chapter may choose not to employ any person who is a violent offender as defined by KRS 17.165(2), has been convicted of a sex crime which is classified as a felony as defined by KRS 17.165(1), or has committed a violent crime as defined in KRS 17.165(3). A nonpublic school may employ, at its discretion, persons convicted of sex crimes classified as a misdemeanor.

(b) If a school term has begun and a certified position remains unfilled or if a vacancy occurs during a school term, a nonpublic school implementing the provisions of this chapter may employ an individual who will have supervisory or disciplinary authority over minors on probationary status pending receipt of a criminal history background check.

(c) Employment at a nonpublic school implementing the provisions of this chapter may be contingent on the receipt of a criminal history background check documenting a record as a violent offender, of a sex crime, or of a violent crime as defined in KRS 17.165.

(d) Nonpublic schools implementing the provisions of this chapter may terminate probationary employment under this section upon receipt of a criminal history background check documenting a record as a violent offender, of a sex crime, or of a violent crime as defined in KRS 17.165.

(Enact. Acts 2002, ch. 285, § 1, effective July 15, 2002.)

Community Schools

160.155. Definitions for KRS 160.157.

As used in KRS 160.157, unless the context otherwise requires:

(1) "Board" means the board of education of a local school district;

(2) "Community school" means a school that makes its facilities available for citizen use, coordinates activities of local citizens in identifying program needs and establishing priorities, identifies and utilizes available program resources, and assists in the initiation of programs to improve the cultural, social, recreational, and educational opportunities available in a community;

(3) "Community education program" means a program in which a public building, including a public elementary or secondary school, is used as a community center operated by a local education agency in cooperation with other groups in the community, community organizations, and local governmental agencies to provide educational, recreational, cultural, health care, and other related community services in accordance with the needs, interests, and concerns of the community;

(4) "Community education director" means an employee of a local school district who is responsible for a systemwide program of community education in a school district;

(5) "Community education coordinator" means an employee of a local school district who is responsible for the coordination of a specific program or other component of a total community education program within a local school district or community.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 423, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1983, ch. 107, § 107, effective July 15, 1982) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 423, effective July 13, 1990.

160.156. State plan for community education — Grant program.

(1) The Kentucky Board of Education shall develop a state plan for community education which sets forth the goals and objectives of the program and establishes a system of priorities for targeting available resources on the areas with the greatest need.

(2) The Kentucky Board of Education shall administer a grant program pursuant to KRS 160.155 and 160.157 to provide money to local school districts to:

(a) Support staff to plan and manage programs and services for community education;

(b) Support programs that are targeted to the greatest educational needs in the community; and

(c) Encourage cooperation among all local school districts in a county.

(3) Funds appropriated for this purpose shall be distributed by the Kentucky Board of Education through a grant process. Districts shall provide a twenty-five percent (25%) cash match in order to receive state community education funding.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 424, effective July 13, 1990; amend. 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 428, § 2, effective July 15, 1998.)

Compiler's Notes. This section (Enact. Acts 1985 (1st Ex. Sess.), ch. 10, § 25, effective October 18, 1985) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 424, effective July 13, 1990.

160.157. Funding of community schools.

(1) A public school district may receive funding for a community school program if it meets all of the following criteria:

(a) Submits an application for approval by the Kentucky Board of Education in the manner and form prescribed by the Department of Education;

(b) Submits a plan, approved by the local board, which outlines the proposed community education program, including procedures for obtaining the involvement and cooperation of other agencies and groups in identifying and recommending programs for meeting locally determined needs;

(c) Establishes a council with the power to make district-wide decisions of policy to assist in conducting community needs assessments and recommending program priorities;

(d) Employs at least one (1) full-time community education director.

(2) Two (2) or more school districts may combine for purposes of qualifying for state funds if the local districts identify a district of record for purposes of receiving state community education funds, maintaining records, and filing reports. Two (2) or more districts in the same county that wish to apply for state funds shall submit a joint proposal.

(3) Each grantee receiving state funds for a community education program shall submit an annual report to the State Department of Education. The report shall include an evaluation of the program and a financial statement. Failure to submit the report shall result in the loss of state funding.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 425, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 428, § 3, effective July 15, 1998.)

Compiler's Notes. This section (Enact. Acts 1982, ch. 107, § 2, effective July 15, 1982) was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 425, effective July 13, 1990.

160.158. Council for Community Education — Membership — Bylaws — Officers — Meetings — Reimbursement of expenses.

(1) A state Council for Community Education shall be established for the purpose of advising the commissioner of education and the Department of Education on issues relating to community education programs and making recommendations for the funding of local community education programs.

(2) The council shall have a membership of fifteen (15) persons, appointed by the Governor. Membership may include, but not be limited to, representatives of the following groups:

(a) Civic organizations;

(b) Community-based organizations;

(c) Community education organizations;

(d) Local government;

(e) Local school district administrators;

(f) Parent organizations;

(g) Postsecondary education;

(h) School boards; and

(i) Teachers.

(3) The commissioner of education or the commissioner's designee shall convene the first meeting of the council for the purpose of establishing the bylaws of the council and electing officers to include: chairman, vice chairman, and secretary.

(4) The council shall not meet more than four (4) times annually. Members may be reimbursed for expenses but shall not receive a per diem allowance.

(Enact. Acts 1998, ch. 428, § 1, effective July 15, 1998.)

BOARDS OF EDUCATION

160.160. Boards of education — Powers and procedures — Approval of Department of Education required for mortgages, leases — Rental payments under lease.

(1) Each school district shall be under the management and control of a board of education consisting of five (5) members, except in counties containing a city of the first class wherein a merger pursuant to KRS 160.041 shall have been accomplished which shall have seven (7) members elected from the divisions and in the manner prescribed by KRS 160.210(5), to be known as the "Board of Education of...., Kentucky." Each board of education shall be a body politic and corporate with perpetual succession. It may sue and be sued; make contracts; expend funds necessary for liability insurance premiums and for the defense of any civil action brought against an individual board member in his official or individual capacity, or both, on account of an act made in the scope and course of his performance of legal duties as a board member; purchase, receive, hold, and sell property; issue its bonds to build and construct improvements; and do all things necessary to accomplish the purposes for which it is created. Each board of education shall elect a chairman and vice chairman from its membership in a manner and for a term prescribed by the board not to exceed two (2) years.

(2) No board of education shall participate in any financing of school buildings, school improvements, appurtenances thereto, or furnishing and equipment, including education technology equipment without:

(a) First establishing the cost of the project in advance of financing, based on the receipt of advertised, public, and competitive bids for such project, in accordance with KRS Chapter 424; and

(b) Establishing the cost of financing in advance of the sale of any bonds, certificates of participation in any leases, or other evidences of financial commitments issued by or on behalf of such board. Any bonds, leases, participations, or other financial arrangements shall not involve a final commitment of the board until the purchaser or lender involved shall have been determined by public advertising in accordance with KRS Chapter 424.

(3) No board of education shall make a mortgage, lien, or other encumbrance upon any school building owned by the board, or transfer title to any such school building as part of any financing arrangement, without the specific approval of the Department of Education, and without the transaction being entered into pursuant to a detailed plan or procedure specifically authorized by Kentucky statute.

(4) Without the approval of the Department of Education, no board may lease, as lessee, a building or public facility that has been or is to be financed at the request of the board or on its behalf through the issuance of bonds by another public body or by a nonprofit corporation serving as an agency and instrumentality of the board, or by a leasing corporation. Any lease, participation, or other financial arrangement shall not involve a final commitment of the board unless and until the purchaser or lender involved in same shall have been determined by public advertising in accordance with KRS Chapter 424. No transaction shall be entered into by the board except upon the basis of public advertising and competitive bidding in accordance with KRS Chapter 424.

(5) Rental payments due by a board under a lease approved by the Department of Education in accordance with subsection (4) of this section shall be due and payable not less than ten (10) days prior to the interest due date for the bonds, notes, or other debt obligations issued to finance the building or public facility. If a board fails to make a rental payment when due under a lease, upon notification to the Department of Education by the paying agent, bond registrar, or trustee for the bonds not less than three (3) days prior to the interest due date, the Department of Education shall withhold or intercept any funds then due the board to the extent of the amount of the required payment on the bonds and remit the amount to the paying agent, bond registrar, or trustee as appropriate. Thereafter, the Department of Education shall resolve the matter with the board and adjust remittances to the board to the extent of the amount paid by the Department of Education on the board's behalf.

(6) Bonds, notes or leases negotiated to provide education technology shall not be sold for longer than seven (7) years or the useful life of the equipment as established by the state technology master plan, whichever is less.

(4399-17, 4399-18: amend. Acts 1974, ch. 224, § 2; 1978, ch. 11, § 1, effective February 24, 1978; 1982, ch. 59, § 1, effective July 15, 1982; 1988, ch. 421, § 1, effective July 15, 1988; 1990, ch. 476, Pt. II, § 88, effective July 13, 1990; 1992, ch. 195, § 7, effective April 3, 1992; 1994, ch. 288, § 1, effective July 15, 1994.)

Cross-References. Bond issue approval, 702 KAR 3:020.

Use of local monies to reduce unmet technology need, 701 KAR 5:110.

Kentucky Bench & Bar. Whalen, The Kentucky Education Reform Act of 1990 and Local Boards of Education, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 11.

Prather, Establishing Schools, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 19.

Kentucky Law Journal. Kentucky Law Survey, Hanley and Schwemm, Education: Teacher's Rights, 67 Ky. L.J. 721 (1978-1979).

Opinions of Attorney General. In the exercise of reasonable discretion, a board of education may decide that it is in the best interests of the school district to participate in the student teacher-training program. OAG 63-269.

A commission, agency, or city has the power to condemn property of a school board for the general purpose for which each was created. OAG 65-330.

A school board may sell property directly to a city or its agency or commission without the necessity of a public offer-

ing, and it may also negotiate for a settlement out of court at any point during a condemnation proceeding. OAG 65-330.

As a school district is a municipal corporation and stands on the same constitutional grounds as a county as to levying taxes and as the statutes are now written the school districts set the tax rate and the function of the fiscal court in levying school taxes is merely perfunctory, there should be no reason why the statutes could not be amended to make the school district the tax levying authority for school taxes. OAG 73-704.

A board of education has the authority to bring an action in its own name for the recovery of funds improperly paid and the fact that the Attorney General also has this authority does not delimit the authority of the board of education but provides another means of bringing such an action when a local board for some reason fails to do so and nothing in KRS 156.138 indicates that an action by the Attorney General shall be the exclusive recourse. OAG 73-867.

The school board has broad discretion under this section and KRS 160.290 in the selection of school sites and the establishment of schools so that even if the county is the legal owner of the property and is leasing it to the school board under KRS 162.140 as the school district holds equitable title, the fiscal court has no rights relative to a high school building which the board of education plans to tear down and replace with a new building unless the county could negotiate to purchase the property from the school board. OAG 74-221.

The board of education may purchase land from a boosters club under the same authority that it purchases land from any person. OAG 75-1.

Being married is not a legal reason for a regulation forbidding a student to go on a class trip. OAG 75-163.

A local school board has the implied authority to employ an attorney to represent the board in its corporate capacity in litigation with the State Board of Education and to pay resulting legal fees from the general fund. OAG 75-552.

Where a legal action contesting the election of certain board members was brought against individual board members and not the board of education, the payment by the county board of education of legal fees and stenographic costs would be an illegal expenditure of public common school funds. OAG 77-580.

In the sale of surplus school property by a school district, only a cash transaction would be satisfactory. OAG 77-771.

The provision of this section allowing the school board to appropriate funds for the disposal of civil actions brought against school board members due to an act in the scope and course of the performance of their duties does not extend to the defense of a suit brought in quo warranto against a board member for an allegedly disqualifying act under KRS 160.180(4). OAG 78-648.

Since a local board is a "body politic and corporate" which may only transact business at a properly held meeting, by majority vote, a single member is powerless to cause an audit to be conducted of a school's financial records. OAG 79-321.

There is no legal basis that would require a local board of education to determine "cause" existed before a new chairperson could be chosen. OAG 80-48.

Two members of a five-member board of education have no authority to act for the board as a body, thus where two board members offered to remove a written reprimand by the board from a high school coach's record in consideration of a resignation by the coach, such an offer was without legal significance. OAG 80-119.

A local county board of education is sufficiently representative of the geographic area that it serves to qualify as an agency with which a community action agency could contract, and therefore, as long as the subject matter of the contract related to the purpose of promoting public education, a county board of education could enter into a contract with a community action agency pursuant to this section and KRS 160.290. OAG 82-387.

Under the broad powers of a school board, pursuant to this section and KRS 160.290, it could employ a security guard to look after its properties; such security guard, to be effective, should be a special local peace officer commissioned according to KRS 61.360. OAG 84-107.

A local board of education may open or close a school without the recommendation of the local superintendent. OAG 85-98.

Where one or more school districts initiate a suit to enforce state equalization of school funding within the Commonwealth, interested school districts may contribute reasonable amounts of money from school funds to meet the costs of the suit, including reasonable attorney's fees; such expenditure would, however, have to be made in accordance with appropriate budget considerations. OAG 85-100.

Although this section and KRS 160.290(1) do not provide a specific statutory pronouncement upon what a local board of education may expend, school funds may be expended for those purposes authorized either expressly or by necessary implication by the statutes. OAG 85-100.

A local school district may contract to allow funds held for the local district by the Kentucky Department of Education to be transferred as directed, assuming all statutory and constitutional requirements relative to the use of those funds, if any, have been met. OAG 87-22.

The local board has responsibility for control and management of the school district as a whole, and has the authority to make contracts and agreements; the board has management and control of school funds, and fixes the compensation of the employees. OAG 92-29.

A reward, offered by the local school board, for the purpose of apprehending the vandals who damaged school property constitutes a proper educational purpose within the meaning of Sections 180, 184 and 186 of the Kentucky Constitution; the act also falls within the parameters of this section as being necessary in order that the board may accomplish the purposes for which it was created as the resources of each school system are limited, and must be protected. OAG 92-63.

School board approval is required when the superintendent decides to move the central business office to a new location requiring substantial expenditure of school funds because the movement of the office is not, primarily, a personnel decision, but one involving the management of business affairs; while the superintendent has responsibility for the management of business affairs, that responsibility is subject to the control of the board of education and moreover, the school board has control and management of all school funds, public school property and school facilities; depending on the steps taken, approval of the Department of Education may also be required. OAG 92-65.

Cited: Hunter v. Board of Educ., 265 Ky. 162, 96 S.W.2d 265 (1936); Gearhart v. Kentucky State Bd. of Educ., 355 S.W.2d 667 (Ky. 1962); Wesley v. Board of Educ., 403 S.W.2d 28 (Ky. 1966); Cunningham v. Grayson, 541 F.2d 538 (6th Cir. 1976), cert. denied, 429 U.S. 1074, 97 S. Ct. 812, 50 L. Ed. 2d 792 (1977); Blackburn v. Floyd County Bd. of Educ., 749 F. Supp. 159 (E.D. Ky. 1990).

NOTES TO DECISIONS

Analysis

1. Nature of board.
2. Members.
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1. Nature of Board.

A city school board is a municipal corporation. Smith v. Board of Educ., 23 F. Supp. 328 (E.D. Ky. 1938), aff'd, 111 F.2d 573 (6th Cir. 1940).

A board of education is a taxing district or municipality. Lee v. Board of Educ., 261 Ky. 379, 87 S.W.2d 961 (1935); Smith v. Board of Educ., 23 F. Supp. 328 (E.D. Ky. 1938), aff'd, 111 F.2d 573 (6th Cir. 1940). But see Farson v. County Bd. of Educ., 100 F.2d 974 (6th Cir. 1939).

A county board of education is a "quasi municipal corporation" governed by rules applicable to strict municipalities. Board of Educ. v. Talbott, 286 Ky. 543, 151 S.W.2d 42 (1941); Board of Educ. v. Society of Alumni of Louisville Male High Sch., Inc., 239 S.W.2d 931 (Ky. 1951).

Since a county school board is neither the state nor its alter ego, U.S. Const., amend. XI, does not bar recovery of attorney's fees against a county board of education in a suit challenging county school desegregation plans. Cunningham v. Grayson, 541 F.2d 538 (6th Cir. 1976), cert. denied, 429 U.S. 1074, 97 S. Ct. 812, 50 L. Ed. 2d 792 (1977).

County board of education is a political body with a corporate structure and is entitled to the protection of Const., § 2. Reis v. Campbell County Bd. of Educ., 938 S.W.2d 880 (Ky. 1996).

The local school boards, pursuant to KRS 160.160, as well as the Kentucky Board of Education, pursuant to KRS 156.070, have been established as state agencies through which the General Assembly implements its constitutional mandate to oversee public schools. Yanero v. Davis, 65 S.W.3d 510 (Ky. 2001).

2. Members.

A member of a board of education is a state officer. Polley v. Fortenberry, 268 Ky. 369, 105 S.W.2d 143 (1937); Norton v. Letton, 271 Ky. 353, 111 S.W.2d 1053 (1937); Ward v. Siler, 272 Ky. 424, 114 S.W.2d 516 (1938).

On merger by agreement of independent school district with county school district it is proper to read KRS 160.041 in the light of KRS 160.040 and to look to the latter for the powers of the two districts in making a merger agreement to fix the terms of such merger and the two boards of education have the authority to agree that members of the independent school district board will serve temporarily on the board of the newly enlarged district. LaFollette v. Ovesen, 314 Ky. 535, 236 S.W.2d 457 (1951).

3. Powers and Authority.

School property is held in trust by the board of education for the use and benefit of the school as a "state institution." City of Louisville v. Manning, 309 Ky. 789, 219 S.W.2d 13 (Ct. App. 1949).

This section vests boards of education with broad powers in the conduct and management of their affairs and the term "school purposes" is a broad and comprehensive one which might well include facilities for the housing of all school activities, including shops and home economics buildings, as well as living quarters for teachers and custodial employees where conditions warrant. Ford v. Pike County Bd. of Educ., 310 Ky. 177, 220 S.W.2d 389 (1949).

County boards have broad discretion under this section and KRS 160.290 in the selection of school sites and when the board has obtained the approval of the Superintendent of Public Instruction on its plan for a new building, it is not for the court to say whether the board has acted wisely or unwisely in determining where the school should be located and the only question for the court's determination is whether the board is exceeding its authority or is acting arbitrarily. Perry County Bd. of Educ. v. Deaton, 311 Ky. 227, 223 S.W.2d 882 (1949).

Local school board could institute co-education in high school where provision in a deed to the land on which the school was located stipulated the property could be used only for white male pupils since there was an invalid delegation of governmental powers in that the covenant restricted the school board's discretionary powers. Board of Educ. v. Society of Alumni of Louisville Male High Sch., Inc., 239 S.W.2d 931 (Ky. 1951).

The board has the implied powers to employ and pay an accountant to make general audit of the school records. Lewis v. Morgan, 252 S.W.2d 691 (Ky. 1952).

Under the broad authority of this section and KRS 160.290 the county board of education has power to adopt appropriate and reasonable regulations whereby indigent high school pupils may be furnished transportation without charge. Japs v. Board of Educ., 291 S.W.2d 825 (Ky. 1956).

Even though there was no specific statutory authority for school board to employ an attorney, members of county board of education had implied authority to employ attorneys to represent them in actions and had implied power to expend school funds for attorney's fees and court costs in defending the actions where such employment was necessary for their protection and the accomplishment of the purposes for which they were created. Hogan v. Glasscock, 324 S.W.2d 815 (Ky. 1959).

Since the school board was a body politic and corporate, a government agency, and a public corporation, it was authorized to enter into a lease or contract with another governmental agency. City of Bowling Green v. Board of Educ., 443 S.W.2d 243 (Ky. 1969).

A lawsuit to declare an education system unconstitutional falls within the authority, if not the duty, of local school boards to fulfill their statutory responsibilities, no matter who the defendants are. Rose v. Council for Better Educ., Inc., 790 S.W.2d 186 (Ky. 1989).

4. —To Sue and Be Sued.

Words "to sue and to be sued" do not authorize an action for negligence committed by officers or agents of the board in performing public duty but have reference to suits respecting matters within the scope of the duties of the board. Wallace v. Laurel County Bd. of Educ., 287 Ky. 454, 153 S.W.2d 915 (1941).

The legislature created boards of education as bodies corporate with power to sue and be sued in their corporate name. Howell v. Haney, 330 S.W.2d 941 (Ky. 1959).

A county board of education is "a body politic and corporate" which may sue and be sued. Moore v. Babb, 343 S.W.2d 373 (Ky. 1960).

5. ——Actions by Board.

A board of education has authority to maintain an action in its own name, against delinquent taxpayers, to recover judgment for delinquent school taxes and to enforce the tax lien, and is not required to await the ordinary process of distraint and sale by the tax collector as the statute makes the tax a debt of the delinquent taxpayer in favor of the particular taxing authority. Board of Educ. v. Ballard, 299 Ky. 370, 185 S.W.2d 538 (1945).

This section and KRS 160.290 place upon the boards of education, not taxpayers, the initial responsibility of maintaining legal actions on behalf of the school districts and an individual has no standing to institute an action for alleged unlawful expenditures of school funds until he has demanded the board to bring the action and the board has refused to comply unless he clearly shows that a demand would have been futile although some members of the board were members at the time of alleged unlawful expenditures. Farler v. Perry County Bd. of Educ., 355 S.W.2d 659 (Ky. 1961).

6. ——Actions Against Board Members.

Teacher's action against members of the board as individuals for a specific order requiring the board to assign her to a school for the year 1959-60 was not maintainable. Moore v. Babb, 343 S.W.2d 373 (Ky. 1960).

Members of board of education are not liable individually for injuries to student caused by employes of board. Wood v. Board of Educ., 412 S.W.2d 877 (Ky. 1967).

7. ——Actions Against Board.

A superintendent of schools of city of fourth class who was wrongfully discharged by board of education before the end of his term was not barred from recovering salary by statute of frauds as minutes of board appointing him was a sufficient writing. Smith v. Board of Educ., 23 F. Supp. 328 (E.D. Ky. 1938).

Fact that there is no fund available to pay judgment against county board of education for refund of illegal taxes does not invalidate judgment, since county board of education may sue and be sued, and sufficient funds may be lawfully raised by taxation and used to pay the judgment. Board of Educ. v. Louisville & N.R.R., 280 Ky. 650, 134 S.W.2d 219 (1939).

A taxpayer may not bring suit in a matter concerning public funds until he has first requested the authorized school board, county or other public body to institute such action and the official body has refused to comply. Reeves v. Jefferson County, 245 S.W.2d 606 (Ky. 1951).

County board of education as well as the county are necessary parties in a suit for recount of the ballots and to contest the legality of election under KRS 122.140 (repealed) and the petition cannot be amended to add a new party or parties after the time for filing the petition has expired. Howell v. Haney, 330 S.W.2d 941 (Ky. 1959).

The county board of education is a public corporation which can act only as a body and not by individual members acting separately and it must be made a party in an action alleging unlawful discharge of superintendent of schools rather than three of five board members. Johnson v. King, 349 S.W.2d 845 (Ky. 1961).

8. —Interest on Judgment.

The fact that this section makes a board of education a body politic and subject to suit, does not divest the board of immunity regarding interest, absent a statutory provision. Since a state can be sued only with its consent, a statute waiving immunity must be strictly construed and cannot be read to encompass the allowance of interest unless so specified. Powell v. Board of Educ., 829 S.W.2d 940 (Ky. Ct. App. 1991).

9. —Sale and Conveyance of School Property.

Boards of education are authorized to convey school property. Bellamy v. Board of Educ., 255 Ky. 447, 74 S.W.2d 920 (1934).

Though the board of education has the right to sell and convey school property it cannot sell and convey all of such property in the county at one time and for a grossly inadequate price. Weaks v. Board of Educ., 282 Ky. 241, 137 S.W.2d 1094 (1940).

A county board of education had no authority to execute a plan by which board was to convey to a nonprofit corporation 20 percent of school property in county, but not site on which school building was to be erected, and corporation was to erect building and execute lease-option contract to board by which, after payment of rental for period of years, board was to become owner of all property conveyed to corporation. Weaks v. Board of Educ., 282 Ky. 241, 137 S.W.2d 1094 (1940).

Although there is no statutory limitation on the action of boards of education in selling and conveying school property, their action in so doing must be consonant with their duty to maintain an adequate school system within the limits of their finances; and any action by a board which imperils the entire school system of a county, or a portion thereof, may be called in question by the courts. Weaks v. Board of Educ., 282 Ky. 241, 137 S.W.2d 1094 (1940).

10. —Selection of School Sites.

Subject to the approval of the State Superintendent of Public Instruction, county boards of education are given broad discretion in the selection of sites for schools. Once the approval of the State Superintendent has been obtained, the courts will not interfere with the selection of the site unless there is positive proof of fraud, collusion, or a clear abuse of discretion. Justice v. Clemons, 308 Ky. 820, 215 S.W.2d 992 (1948).

Courts may not interfere with proposed plan of county board of education for location of school unless there is shown a clear abuse of discretion vested in the board by this section and KRS 160.290. Goins v. Jones, 258 S.W.2d 723 (Ky. 1953).

In taxpayer suit to enjoin county board of education since evidence did not show that the board was without serious consideration and lacked a reasonable discretion and was arbitrary in locating a proposed new elementary school near the western boundary of the county instead of the geographical center, the court was without authority or power to interfere. Goins v. Jones, 258 S.W.2d 723 (Ky. 1953).

A school board is vested with the power to select public school sites, subject only to the limitation that it cannot act arbitrarily or beyond the pale of sound discretion and has authority to condemn land for future school needs. Pike County Bd. of Educ. v. Ford, 279 S.W.2d 245 (Ky. 1955).

11. —Conducting of School System.

Regulation which required students upon marriage to withdraw from school and to remain out of school for one year and then to be readmitted only on permission of principal was arbitrary and unreasonable and therefore invalid. Board of Educ. v. Bentley, 383 S.W.2d 677 (Ky. 1964).

The conduct of a public school system is committed to the discretion of the school board. Earle v. Harrison County Bd. of Educ., 404 S.W.2d 455 (Ky. 1966).

Where student population fell below minimum required for state aid a reasonable basis was afforded for school board to order the school closed. Earle v. Harrison County Bd. of Educ., 404 S.W.2d 455 (Ky. 1966).

The Kentucky General Assembly clearly has given local school boards the power and authority to close schools and consolidate schools within a local system. Coppage v. Ohio County Bd. of Educ., 860 S.W.2d 779 (Ky. Ct. App. 1992).

12. —Punishment of Students.

The statute governing the suspension of students for the violation of regulations of the school system preempts the right of the school officials to impose additional punishment for conduct resulting in suspension. Dorsey v. Bale, 521 S.W.2d 76 (Ky. 1975).

13. —Merger of Districts.

Provision for seven board members rather than five upon merger of the school district of a city of the first class with the county school district does not constitute "local or special legislation" forbidden by state Constitution where a seven-man board is justified by the larger size of student population, greater amount of property to manage, more extensive financing requirements, and the presence of minority group enclaves. Board of Educ. v. Board of Educ., 522 S.W.2d 854 (Ky. 1975).

14. Removal.

Sufficient evidence was presented to support a judgment of removal of school board members for misconduct. State Bd. for Elementary & Secondary Educ. v. Ball, 847 S.W.2d 743 (Ky. 1993).

DECISIONS UNDER PRIOR LAW

1. Nature of Board.

A board, being a continuing body, cannot, following a change of members, rescind a prior sale on the mere ground that it was a bad bargain. Trustees of Congregational Church v. Board of Trustees, 230 Ky. 94, 18 S.W.2d 887 (1929).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 117, 129, 142-149, 153, 154, 156, 157.

160.170. Oath of board members.

Every person elected to a board of education shall, before assuming the duties of his office, take the following oath, in addition to the constitutional oath:

"State of Kentucky,

"County of .....

".....", being duly sworn, says that he is eligible under the law to serve as a member of the board of education, and that he will not, while serving as a member of such board, become interested, directly or indirectly, in any contract with or claim against the board, and that he will not in any way influence the hiring or appointment of district employees, except the hiring of the superintendent of schools or school board attorney.

".....

"Subscribed and sworn to before me this ..... day of .....

"....."

The oath shall be kept on record by the board.

(4399-23: amend. Acts 1990, ch. 476, Pt. II, § 72, effective July 13, 1990.)

Cross-References. Constitutional oath, Const., § 228.

Kentucky Bench & Bar. Whalen, The Kentucky Education Reform Act of 1990 and Local Boards of Education, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 11.

Opinions of Attorney General. Where five months after taking office school board members had not yet taken the statutory oath of office the board members forfeited their office for failure to qualify within a reasonable time after their election. OAG 61-485.

Where five months after taking office school board members had not yet taken the statutory oath, the State Board of Education was required to fill the resulting vacancies pursuant to KRS 160.190. OAG 61-485.

It is permissible for a successful candidate for the school board to take the statutory oath of office at a school board meeting to be held the second Monday in January. OAG 65-4.

Where a person who was elected a member of the county board of education and who had received a certificate of election refused to take the oath of office, such office became vacant 30 days after the beginning of the term or 30 days after receipt by the person elected of the certificate of election, whichever event was later and the other members of the board should thereafter immediately make an appointment to fill the vacancy under the duty imposed on them by KRS 160.190. OAG 69-60.

Persons who are ineligible to serve on school board should resign; however, unless a private citizen is claiming the office for himself, there is no proceeding short of an Attorney General ouster complaint which could prevent such individuals from taking the oath of office. OAG 92-160.

Cited: Hunter v. Board of Educ., 265 Ky. 162, 96 S.W.2d 265 (1936); Commonwealth ex rel. Vincent v. Withers, 266 Ky. 29, 98 S.W.2d 24 (1936); Broyles v. Commonwealth, 309 Ky. 837, 219 S.W.2d 52 (1949).

NOTES TO DECISIONS

ANALYSIS

1. Constitutionality.
2. Taking oath and filing of record.

1. Constitutionality.

Because this section and KRS 160.180(3) clearly prohibit school board members from engaging in nepotism or favoritism, conduct in which the Commonwealth has a significant interest, and their wording, as their meaning, is simple and unequivocal and not susceptible to arbitrary or discriminatory enforcement, the statutes are not unconstitutionally vague or overbroad. Craig v. Kentucky State Bd. for Elementary & Secondary Educ., 902 S.W.2d 264 (Ky. Ct. App. 1995).

2. Taking Oath and Filing of Record.

Member elected to board of education qualified by taking oath of office and filing same at first meeting of board at which his term began, and his office could not be declared vacant because he failed to file documentary evidence of his educational qualification as required by bylaws of board. Oakes v. Remines, 273 Ky. 750, 117 S.W.2d 948 (1938).

Members did not forfeit office and were not subject to removal where they had taken constitutional oath but had failed through inadvertence to take the additional statutory oath until five months after entering office at which time they discovered the omission and took the oath in writing and entered it in the school board records. Commonwealth ex rel. Breckinridge v. Marshall, 361 S.W.2d 103 (Ky. 1962).

Research References. Caldwell's Kentucky Form Book, Prac. & Proc. Forms, 4th Ed., Schools, Form 142.1.

Collateral References. 78 C.J.S., Schools and School Districts, § 114.

160.180. Eligibility requirements.

(1) As used in this section, "relative" means father, mother, brother, sister, husband, wife, son, daughter, aunt, uncle, son-in-law, and daughter-in-law.

(2) No person shall be eligible to membership on a board of education:

(a) Unless he has attained the age of twenty-four (24) years; and

(b) Unless he has been a citizen of Kentucky for at least three (3) years preceding his election and is a voter of the district for which he is elected; and

(c) Unless he has completed at least the twelfth grade or has been issued a GED certificate or has received a high school diploma through participation in the external diploma program and he is elected after July 13, 1990; and

(d) An affidavit signed under penalty of perjury certifying completion of the twelfth grade or the equivalent as determined by passage of the twelfth grade equivalency examination held under regulations adopted by the Kentucky Board of Education has been filed with the nominating petition required by KRS 118.315; or

(e) Who holds a state office requiring the constitutional oath or is a member of the General Assembly; or

(f) Who holds or discharges the duties of any civil or political office, deputyship, or agency under the city or county of his residence; or

(g) Who, at the time of his election, is directly or indirectly interested in the sale to the board of

books, stationery, or any other property, materials, supplies, equipment, or services for which school funds are expended; or

(h) Who has been removed from membership on a board of education for cause; or

(i) Who has a relative as defined in subsection (1) of this section employed by the school district and is elected after July 13, 1990. However, this shall not apply to a board member holding office on July 13, 1990, whose relative was not initially hired by the district during the tenure of the board member.

(3) If, after the election of any member of the board, he becomes interested in any contract with or claims against the board, of the kind mentioned in paragraph (g) of subsection (2) of this section, or if he moves his residence from the district for which he was chosen, or if he attempts to influence the hiring of any school employee, except the superintendent of schools or school board attorney, or if he does anything that would render him ineligible for reelection, he shall be subject to removal from office pursuant to KRS 415.050 and 415.060.

(4) A board member shall be eligible for reelection unless he becomes disqualified.

(5) The annual in-service training requirements for all school board members shall be as follows:

(a) Twelve (12) hours for school board members with zero to three (3) years of experience;

(b) Eight (8) hours for school board members with four (4) to seven (7) years of experience; and

(c) Four (4) hours for school board members with eight (8) or more years of experience.

The Kentucky Board of Education shall identify the criteria for fulfilling this requirement.

(4399-22: amend. Acts 1978, ch. 155, § 82, effective June 17, 1978; 1978, ch. 272, § 1, effective June 17, 1978; 1980, ch. 43, § 1, effective July 15, 1980; 1984, ch. 376, § 1, effective July 13, 1984; 1986, ch. 417, § 1, effective July 15, 1986; 1990, ch. 214, § 1, effective July 13, 1990; 1990, ch. 476, Pt. II, § 71, effective July 13, 1990; 1996, ch. 145, § 5, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 416, § 1, effective July 15, 1998.)

Legislative Research Commission Note. (7/13/90). This section was amended by two 1990 Acts. Where those Acts are not in conflict, they have been compiled together. Where a conflict exists, the Act which was last enacted by the General Assembly prevails.

Cross-References. Incompatible offices, Const., §§ 165, 237; KRS 61.080.

Removal of board members, KRS 156.132 to 156.142.

Removal of officers generally, KRS 415.030 and 415.060.

Annual in-service training of district board members, 702 KAR 1:115.

Kentucky Bench & Bar. Whalen, The Kentucky Education Reform Act of 1990 and Local Boards of Education, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 11.

Young, Who's the Boss?, Vol. 59, No. 4, Fall 1995, Ky. Bench & Bar 10.

Kentucky Law Journal. Russo, School-Based Decision Making in Kentucky: Dawn of a New Era or Nothing New Under the Sun?, 83 Ky. L.J. 123 (1994-95).

Opinions of Attorney General. Under this section membership on the school board is politically incompatible with holding a local county office, and a member of the school board who becomes a candidate for county office automatically vacates his position on the school board. OAG 60-341.

Under this section, the question of educational qualification for membership on a board of education is a fact to be determined by the evidence, and an uncontroverted affidavit from a former teacher would be sufficient to establish eligibility. OAG 60-590.

This section which establishes the qualifications for members of local boards of education does not contain any requirements concerning religion, and a person of the Catholic faith, if he meets the statutory qualifications, may be a member of a local board. OAG 60-917.

A person who at the time of his election to the board of education, is a partner in a construction company, which in the current month has been awarded a school contract with the board of education of which he is a member, is ineligible for membership on the board. OAG 60-947.

This section does not prohibit a board of education from transacting business with the son-in-law of one of its members, but the related member must not vote on the proposal. OAG 60-957.

If a board member moves his residence within the district but from the division in which he was chosen, he is no longer eligible for office, but the move does not automatically create a vacancy. OAG 60-1028.

A person is not made ineligible for membership on a board of education because at the time of his election to the board, he had a claim for services rendered pending before the board, when the work on which the claim was based had been completed. OAG 60-1029.

This section does not establish physical health as a qualification of membership on a school board and a person who is given a 100 percent disability rating by the Veteran's Administration and is under the care of a nurse, is not precluded from serving as a member on a local board of education. OAG 60-1034.

A woman whose husband sells insurance to a board of education has an indirect interest in the insurance and is prohibited by this section from serving on the board. OAG 62-712.

Under this section, an owner and operator of a school bus who is under contract with county school district to transport pupils for the school year, since he cannot unilaterally dissolve his contract, is ineligible to serve as a member of the board of education during the term of the contract. OAG 62-956.

Actions taken as a school board member after filing for nomination for the office of sheriff and thus disqualifying himself would be valid until the school board member resigned or was removed from office. OAG 65-211.

No constitutional or statutory incompatibility exists between membership on the school board and membership on the municipal housing commission. OAG 66-673.

A vote by a member of a board of education for approval of payment to a validly employed kinsman of the board member for services rendered is not proscribed by subsection (4) (now (3)) of this section. OAG 67-47.

A school board member is prohibited from contracting with the board of which he is a member despite the fact that the contract is let pursuant to sealed bids. OAG 67-212.

A board member who receives a subcontract to perform a substantial portion of the work under a prime contract awarded by a board of education thereby becomes "indirectly" interested in the contract in contravention of the statute. OAG 67-212.

If a school board member without previous arrangement or agreement and in the absence of inculpatory circumstances leases equipment to a contractor for use under a school contract, the board member does not thereby violate the statute. OAG 67-212.

The local manager of a public utility firm who has no proprietary interest in the firm, is not disqualified, either by the provisions of this section or at common law, from service on a local board of education by virtue of the fact that the board imposes a utilities gross receipts tax on the utility pursuant to KRS 160.613. OAG 67-274.

A physician is not disqualified by this section from service on a local board of education by reason of the fact that he renders professional services to school children and is compensated for some of these services by insurance which covers the children in incidents arising at or en route to or from school, since the premium for the insurance is paid by the parents and not from school funds. OAG 68-250.

Where a board of education purchases sporting goods equipment from a sporting goods store located in the county adjoining the school district, which store is owned by a brother of the chairman of the board of education, the existence of a conflict of interest on the part of the board member would depend upon the issues of fact in the case, namely whether the board member possesses a financial and/or proprietary interest in the sporting goods business, either directly or indirectly. OAG 68-303.

Since the position of county precinct chairman of a political party is neither a constitutional office, a statutory office, nor a form of public employment, the county precinct chairman is not disqualified by subsection (1)(d) (now (1)(f)) of this section from service on a local board of education. OAG 68-535.

The position of executive director or assistant executive director of a municipal housing commission is state employment and there is no incompatibility between these positions and the office of school board member. OAG 68-599.

A person employed as customer relations manager by the telephone company is not disqualified by this section from service on the local board of education because the school board might impose a utility gross receipts tax on his employer, nor would he be prevented from attending a meeting at which the subject was discussed, but he should refrain from participating in the discussion or voting on the proposal and should make his abstinence a matter of record. OAG 69-119.

If payments accepted by a board member of an independent district represent payment for services in any amount or to any degree, or if though purporting to be for actual and necessary expenses, are not for duties authorized by the board, acceptance of such would offend this section in rendering the member ineligible. OAG 69-292.

Where an eighth-grade equivalency test given locally was neither an examination approved by the Superintendent of Public Instruction or adopted by the state board, nor given under the direction of the state board or the State Superintendent, it would not suffice to qualify the candidate for the school board. OAG 70-463.

A member of the city commission running for membership on a board of education would not become ineligible for city council until he assumed the school board office. OAG 70-558.

A person can become a candidate for school board membership and at the same time continue to serve on the city commission. OAG 70-558.

There is no statutory or constitutional incompatibility between the position of director of the urban renewal agency and membership on the independent board of education. OAG 70-587.

An individual whose spouse, at the time of the individual's prospective election, or thereafter while a member of a school board, owns one-sixth of the capital stock of a dairy selling milk to the board could not properly be eligible for membership or serve on the board because the indirect financial interest would offend this section. OAG 70-613.

A person could serve on a county board of health and on the board of education at the same time without forfeiting the first office he held. OAG 70-632.

There is no constitutional or statutory provision that would prohibit a member of the county board of education from being appointed as a director or member of a water district. OAG 70-723.

If it could be demonstrated that the assistant cashier's connection with the depository bank for the school board was limited to the employer-employee relationship, there would be no disqualification from that person's serving on the school board. OAG 70-809.

If the assistant cashier of the depository bank for school board funds is in fact an officer, having been so designated by the bank's board of directors, he would be disqualified from serving on the school board. OAG 70-809.

A member of a board of education who is in the building material business may neither supply services nor materials to a prime contractor for use on a school building project which is being constructed with funds of the board of education of which he is a member. OAG 70-828.

Where a person elected to the school board was the majority stockholder in a corporation that sold soft drinks to school-controlled organizations, the continuation of such sales by the corporation would offend this section. OAG 71-33.

A school board member who was employed as truck sales manager and who made a motion and voted to purchase a truck from the firm which he represented forfeits his office immediately upon such a transaction, but if he does not resign, he will have to be removed by the court upon proof of the improper transaction. OAG 72-110.

A school board member who is the editor of a local newspaper is disqualified from serving on the board, where the editor's paper prints the high school paper, even though the high school paper is self-supporting and does not have its bills paid by the board of education. OAG 72-111.

There was no violation of this section where a member of the board of education voted to pay the salary of his great nephew employed as a teacher in the district as the relationship of great nephew is not proscribed by this section. OAG 72-303.

A school board member may not own stock in an institution where the board of education deposits its money at a prescribed rate of interest. OAG 72-327.

There is no conflict of interest where a superintendent of schools owns stock in an institution where the board of education deposits its money at a prescribed rate of interest. OAG 72-327.

A temporary absence from the state for three months to take a job in another state on a trial basis would not disqualify that person from being a candidate for the school board. OAG 72-499.

This section would not be violated where a school board member voted to award a contract to a company which employs his nephew. OAG 72-525.

A former resident of Kentucky who moved his residence for several years and returned to Kentucky on August 12, 1972, would not be an eligible candidate for membership on a county board of education in the November, 1972 election. OAG 72-670.

Where a member of the school board is a salesman for a plumbing supply hous but does not sell within the county of the school board on which he serves and has no interest in the firm for which he sells, he would not become disqualified to serve on the board when the board contemplates the purchase of equipment from such member's employer. OAG 72-691.

The term "has been removed" in subsection (1)(f) (now (2)(h)) of this section means that the person has been removed by a court judgment and does not include a voluntary resignation; therefore, a person who voluntarily resigns in a conflict of interest situation may save his eligibility to later serve on the board. OAG 72-777.

There is no conflict of interest where a member of a county board of education is an unpaid officer and director of a

nonprofit corporation which, as part of its service, provides water service to some of the county schools. OAG 72-840.

A board of education member is not disqualified for his office when the school board deposits money in an institution in which he is an officer, director, or stockholder as this is not the type of contract referred to in this section for which school board funds are expended. OAG 73-71.

A member of a district board of education may not be removed from office for being convicted on a charge of driving a motor vehicle while intoxicated as this offense is a misdemeanor and conviction therefor would not disqualify a person from office. OAG 73-113.

Unless a person has lost his voting franchise or has committee disqualifying acts in a prior term, alleged wrongdoing prior to his assumption of his office as a board member cannot be used to remove him from the board. OAG 73-128.

Where a member of a county board of education and her husband owned a weekly newspaper, the only newspaper in that county, this section would not in view of KRS 424.120 and KRS 424.220 prohibit the publishing of school financial statements and legal notice in such newspaper. OAG 73-438; OAG 74-516.

Employment of a school board member by a subcontractor on a school construction project is not sufficient direct or indirect interest in the contract so as to disqualify the board member for his office. OAG 73-455.

A member of the board of education who is also an insurance company representative could sell life insurance to teachers employed by the board, where the teachers employed the board in writing to withhold from the teachers' salary the amount of the premium, since the board member is dealing directly with individual teachers, and the money to be withheld from the individual salary of the teacher has vested in him and is no longer "school funds." OAG 73-503.

A member of a board of education may be removed only for cause and where two members of a school board have refused to approve payment of bills (there being a vacancy on the school board and this refusal therefore effectively blocking payment), it is doubtful if this action would be held sufficient to remove the board members and the apparent solution would be to fill the school board vacancy pursuant to the provisions of KRS 160.190. OAG 73-523.

A member of the board of directors of a southern states cooperative who serves without remuneration other than that received by any other customer of the cooperative is not disqualified from serving as a member of a board of education which makes purchases from the southern states cooperative. OAG 73-530.

Where a superintendent of schools recommended the employment of a high school principal, the employment was moved by the chairman of the board of education and seconded by a member of the board of education who was a first cousin of the candidate for the principal's position, the chairman of the board voted yes on the motion, the member seconding the motion abstained because of his relationship with the candidate and two other members of the board abstained, there was no illegality involved. The three members of the board abstaining are counted as acquiescing with the majority of those present voting and the vote of the single person voting, the chairman, was decisive in carrying the motion and approving the recommendation of the superintendent. OAG 73-531.

When a school board member moves his residence from the school district, this disqualifies him from membership on the board but his actions as a member of the school board would be legally effective until he either resigns or is removed by court order pursuant to ouster proceedings insitituted by and on behalf of the Attorney General under KRS 415.050. OAG 73-558.

Where member of board of education was a gasoline distributor who, solely as the result of federal mandatory fuel allocation regulations, was the supplier of gasoline for the school district, there was no violation of proscription against conflict of interest. OAG 74-132.

Where school board member purchased materials for cheerleader uniforms and was reimbursed by the school principal, such reimbursement was not forbidden as a conflict of interest under this section. OAG 74-293.

No conflict of interests would exist if the wife of a publisher of a paper that publishes legal advertisements for the county board of education is elected to the board of education. OAG 74-516.

When a school board member moves his residence from the district for which he was chosen he will continue as a de facto member of the board of education and all his acts as a board member shall be valid until he either resigns or is removed by judgment of a court upon an action brought in the name of the commonwealth upon relation of the Attorney General. OAG 74-613; OAG 76-612.

A teacher employed by a county board of education may legally be a candidate for the county board of education but if elected he would have to be released from his contract to teach before he would be eligible to serve. OAG 74-649.

A person may not be a school board member and hold a position on the planning and zoning commission at the same time, but until he either resigns or is ousted by a judgment of the court, he is de facto officer in both agencies and his actions as such are valid. OAG 75-123.

A dentist who is a member of a county board of education may perform dental services for school children under the auspices of the county health program since the funds involved are not school funds. OAG 75-358.

There is no conflict where a school board member's wife is a teacher in the same school system. OAG 75-416.

A formal agreement between a bank and the school board as to a special rate of interest to be paid on money deposited by the board and a special rate of interest to be charged on loans to the board constitutes a contract for services and therefore creates a conflict of interest as to board members who are stockholders of the bank. OAG 75-481; 75-553, modified by OAG 77-231 to the extent of conflict.

When a school board member commits a disqualifying act, he is subject to removal by a court in a quo warranto proceeding brought by the Attorney General when requested by interested citizens, but until the school board member either resigns or is declared removed by a court judgment, he may continue as a de facto member of the board. OAG 75-481, modified by OAG 77-231 to the extent of conflict.

If a bid is accepted, the contract is valid and enforceable even though the contract creates a conflict of interest. OAG 75-481, modified by OAG 77-231 to the extent of conflict.

A local board of education may accept a bid from a bank for the payment of interest on deposits and for the charging of interest on loans if a member of the board of education is not a stockholder in that bank but only an advisory member as he has no monetary interest in the transaction. OAG 75-481, modified by OAG 77-231 to the extent of conflict.

There is no conflict of interest when a school board member holds stock in a public utility or a company having a legally authorized monopoly and sells services or materials to the school board. OAG 75-553, modified by OAG 77-231 to the extent of conflict.

The courts must decide if a school board candidate meets the residency requirements and actually and legally lives in the district or district division which he seeks to represent. OAG 76-121.

It would not be a violation of this section for a board of education to award a contract for milk and dairy products to the companies submitting the low bid where one of the members of the board of education has a son who is employed as one of the 12 route salesmen by the firm submitting the low bid paid on the basis of salary and commission, and if the contract is awarded to his employer, he and the other route

salesmen will participate in the contract by furnishing the dairy products to the school system and where the member of the board of education has no interest in or association with the firm submitting the low bid and his son has no ownership in the company but is only an employee. OAG 76-372.

An employee of Kentucky Educational Television Authority under the state merit system who receives no profit from her work other than her regular salary may legally become a candidate for and serve, if elected, as a member of the local school board and at the same time retain her employment with Kentucky Authority for Educational Television. OAG 76-394.

A conflict of interest would exist where an employee of a department store from which material and supplies were purchased with school funds is elected to the school board and the board continues to purchase material and supplies from her employer. OAG 76-408; 77-519.

Since the Economic Development Council is an agency of the city, county and chamber of commerce and the administrator of the Council serves at the same time the city, county and chamber of commerce, the position of assistant administrator is of a so-called hybrid nature, that is neither a city or county position as contemplated in Const., § 165, KRS 61.080 and KRS 160.180 (1)(d) (now (2)(f)) and therefore no incompatibility would exist between the position of assistant administrator of the Economic Development Council and membership on a county school board. OAG 76-495.

Since there exists no statutory or state constitutional incompatibility by holding two state office positions, a Circuit Court Clerk or an employee of that office may legally qualify to be elected to membership on a local board of education. OAG 76-509.

A member of a board of education would not be prohibited by this section from doing business with a P.T.A. group. OAG 76-596.

A school board member who sells goods and services to the school sponsor of an eighth grade class within the school district violates the provisions of this section. OAG 76-596.

Where a member of a local school board for an indepedent school system moves his residency into another school district, he should resign his position on the board at the time of the permanent removal of his residence from the district and where a member of a local school board of an independent school system does not remove his residence from the city until after the election, his election would be valid but the board member should resign as soon as he moves from the city. OAG 76-612.

A member of a board of education which merges with another board of education to form a new board of education composed of the former two boards of education who is permitted to serve out his unexpired term can file for reelection to a vacant seat on the new school board and still retain his present position which he holds as a result of the merger. OAG 77-34.

A member of a county board of education would have to resign his position from the county school board prior to his becoming a candidate for sheriff in a May primary election. OAG 77-134.

Only those transactions with a board of education which cause the school board to expend school funds create the disqualifying act prohibited under this section for the individual who serves on a local board of education and who also is an officer, director or stockholder of a banking institution with which the school board does business. OAG 77-231; OAG 78-830, modifying OAG 75-481 and 75-553 to the extent of conflict.

Members of county board of education are state officers and at the same time the position of state ABC officer is one authorized pursuant to KRS 241.090 and such representatives have full police powers which may or may not place their position in the category of a state officer; and although subsection (1)(d) (now (1)(f)) of this section prohibits a school board member from holding and discharging the duties of any local office or agency under the city or county of his residence, it would not prohibit a school board member from holding employment or an appointive office with the state and of course a board member could not become a candidate for any public office, local or state; however, Const., § 165 and KRS 61.080 do not prohibit a person from holding two state offices or employment at the same time. OAG 77-245.

A county school board candidate who is a potato chip salesman could not continue to make sales to the county schools if he is elected to the school board. OAG 77-416.

The courts must decide on a case by case basis whether a conflict of interest exists under this section. OAG 77-519.

Although a member of a school board would be disqualified from holding that office at the time of his filing for the office of county judge (now county judge/executive), the board member does not vacate that office unless he either resigns or is removed by court action. OAG 77-588.

A board member confronted with a subsection (4) situation should have the board's minutes reflect that the school board member has disqualified himself or herself from voting and not merely abstained. OAG 78-159 (opinion prior to 1990 amendment).

Failing to meet the qualifications or doing that which is proscribed in this section constitutes cause for consideration for removal of a board of education member from office for usurpation of that office. OAG 78-159.

The voting on position assignment is a matter coming within the term "appointment" as used in this section. OAG 78-159.

This section is applicable to matters involving position assignments which are in effect appointments within the school system. OAG 78-159.

This section should be a clarion signal to board members that whenever matters are raised which relate to a relative they should consider disqualifying themselves from voting on the matter. OAG 78-159.

Where a member of the board of education sells from his business two locks to a contract bus driver's hired driver, where the board member did not receive money from claims or contracts of the board no disqualifying act was committed, for the board member did not sell an item of property to the board of education and he did not receive any school funds in payment for this property. OAG 78-274.

If the local board of education votes to approve payment for medical examinations required by school law or regulation and to adopt a policy to regulate such payment, the contracting with the physician/spouse of the chairperson of the local board of education to perform any examinations for which any school money is expended would create a disqualifying condition prohibited by this section. OAG 78-365.

The holding of the two state office positions of superintendent of schools and member of a local school board does not by itself present a statutory or constitutional incompatibility under KRS 61.080 and Const., § 165. OAG 78-413.

It does not constitute a conflict for a person serving an independent school district as a school principal to serve simultaneously as a school board member of the county school district in which the independent district is located. OAG 78-509.

There is no statutory incompatibility between the offices of assistant commissioners of the Kentucky High School Athletic Association and members of a county board of education. OAG 78-583.

Nothing in this section prevents one who has a brother who is a school principal from serving on the school board in the same system provided he does not participate in any vote concerning his brother. OAG 78-620.

If a person is employed as a vocational school coordinator by a county board of education, then he could become a candidate

for membership on the board but he could not serve on the board and at the same time continue to serve as an employee of a county school system. OAG 78-645.

A person could hold office on the county board of education and at the same time serve as a state conservation officer. OAG 78-773.

Subsection (1)(f) (now (2)(g)) of this section does not prohibit a candidate for board membership from having an interest in a contract or claim with the board for which school funds are expended so long as the contractual or claim relationship is terminated in all respects at the time of the election. OAG 78-830.

The best practice most assuredly would always be for an individual to end any contractual or claim relationship with a board of education prior to becoming a candidate for membership on the board. OAG 78-830.

The spouse of a school board member may not furnish professional services as team physician for the school system even if he receives reimbursement from the system's insurance carrier for treatment of injuries received by team members and not from the system directly nor would the physician's donation of said insurance payments to the school system's athletic fund remove any violation of this section. OAG 78-832.

The spouse of a school board member may not receive compensation from school funds for performing a physical examination required of school bus drivers even if he has been selected to perform said examination by the bus driver and not by the school system. OAG 78-832.

A person holding the position of membership on the Marshall County Board of Education cannot at the same time serve as city treasurer of Calvert City. OAG 79-1.

Since this section does not list "father-in-law," a board member may vote on a motion to employ or appoint his or her father-in-law in the school system. OAG 79-91.

The intent of this section is to exclude a board member who is related to an individual from casting a negative or affirmative vote regarding a matter of employment concerning the individual and is broad enough to cover any personnel action that particularly applies to the employment status of an individual related to a board member in a degree of kinship spelled out in the law; thus, a board member related to an employee was proper in disqualifying herself from casting a vote on the motion for termination of that employee. OAG 79-249.

Either a board member or his family is free to submit bids for purchase of surplus school property. OAG 79-269.

The key to whether action of a school board member would be in violation of this section is whether the school board member has an interest, directly or indirectly, in a claim or contract for which school moneys are expended, no matter how small. OAG 79-269.

Under this section, a realty firm which employs a board member, or the wife of a board member, may not be considered for use in connection with the sale of surplus school property. OAG 79-269.

Even a small stockholder interest in a bank by a school board member constitutes a disqualifying act when a local board of education borrows from that bank. OAG 79-555.

If the only transaction between a bank and the school board is the demand deposit of funds for the drawing of checks or the deposit of school moneys in time deposits on which interest is paid by the bank to the school, there is no violation of this section when an officer, director or stockholder of the subject bank is also a member of the school board. OAG 79-555.

While local school board members considering tax measures have a twofold interest which may not be always compatible, this kind of action fails to create a legal conflict of interest and does not amount to a situation "for which school funds are expended" and funds received by the local board members as is proscribed in this section. OAG 79-555.

The office of city school board member and that of county comptroller are incompatible. OAG 80-92.

No conflict of interest will arise where a county board of education member, who is also a dairy farmer, begins selling milk to a subsidiary of the company that has the contract to sell the entire school system milk, and he need not disqualify himself from voting as a board member on the milk contract, although he might do so to avoid even an appearance of impropriety. OAG 80-184.

A person is eligible to run for a county board of education from the district from which they normally reside even though he or she has been temporarily forced to live outside the district by virtue of a casualty loss and repairs to their normal domicile. OAG 80-274.

The provisions of subsection (1)(d) (now (2)(f)) of this section would prohibit an assistant Commonwealth Attorney from holding membership on the board of education while continuing to serve as assistant Commonwealth Attorney since the office of assistant Commonwealth's Attorney is a state office. OAG 80-476.

This section requires that a teacher who desires to be elected to a position on the board of education by which he or she is employed must not be performing teaching services on or after the date of the election. OAG 80-557.

A school board member is not placed in a disqualifying position under this section simply because the spouse of the board member is a salaried employee with the law firm which is to be retained to represent the school system and/or school board, since the spouse-employee is not in a position to control or have input into who the law firm does business with, is not an owner or an officeholder in the law firm and actually has no financial interest in the law firm, in that receiving a salary does not create a financial interest. OAG 81-67.

If a board member is in a position of not being able to vote on a matter involving a relative, the proper procedure is to disqualify himself from voting; a board member should not state he is abstaining on the motion since in Kentucky, by case law, an abstention vote is counted as acquiescing with the majority of those present and voting. OAG 81-351.

A resignation from office by a school board member prior to the initiation of an ouster proceeding will not purge the board member's disqualifying acts of misconduct so as to preclude the Attorney General from instituting a quo warranto or ouster action in the future should the board member, after resignation, be appointed to or gain a school board member position by election since reappointment or reelection to a school board member position does not stand as condonation of prior disqualifying acts of misconduct and such acts continue to provide legal cause to remove a school board member from membership. OAG 82-32, modifying OAG 72-777.

Even though it is alleged that a county board of education member does not meet the educational qualifications prescribed in subdivision (1)(c) (now (2)(c)) of this section, the Family Educational Rights and Privacy Act of 1974 (20 U.S.C., § 1232g) prohibits a school superintendent from providing to the office of Attorney General any information contained in the educational records of the former student who now is serving as the board member, unless there is in writing the prior written consent of the board member to do so. OAG 82-53 (opinion prior to the 1990 amendment).

Because the statutory language of subdivision (2)(i) of this section does not express any specific time requirement, the eligibility requirement in that provision takes effect at the time that the elected officer takes office. OAG 90-109.

"Eligible to membership on a board of education" relates not to the time when filing as a candidate, and not to the time of election, but to the time when the elected candidate takes the oath of office and assumes the office; the expression "eligible to membership" means qualified for office. OAG 90-109.

School board chairman who is running for re-election, may file despite the employment of his daughter by the school

district for the remainder of his current term; however, as soon as the current term of office has expired, the terms of this section will not permit him to be eligible for membership on the school board if he has relatives who are employed by the school district and who were hired by the school district after the board member took office. OAG 90-109.

The Kentucky Education Reform Act of 1990 clearly provides, in transitional sections, that incumbent members of school boards are eligible both to serve out the remainder of their terms, and to run for re-election, despite having relatives who were hired during their tenure employed by the school district; however, the elected candidate will not be eligible to take the oath of office and to serve as a board member unless the relatives first resign from employment. OAG 90-109.

Continuous employment is ended if the relationship between the employer and the employee is severed. OAG 90-126.

The phrase "initially hired", as used in subdivision (2)(i) of this section, contemplates the beginning of the relative's continuous employment by the school district, whether that employment is in a classified position or certified position, and whether that employment is part time, temporary, or full time. That employment, however, must be continuous. OAG 90-126.

The question of when an individual became a board member's relative has no impact on determining when the individual was "initially hired." The statutory exception applies to a board member whose current relatives were not initially hired by the school district during the board member's tenure. The statute offers no exception for a board member's current relative who was not a relative at the time of being "initially hired." OAG 90-126.

Where a substitute teacher continued to teach from 1982 through 1986, when the teacher's brother became a board member, and on to the present without interruption, the teacher would be found to have been initially hired prior to the time that the brother became a member of the board. OAG 90-126.

A teacher employed by a school board of a district where the teacher does not reside is not prohibited from simultaneously serving as a member of a school board of a different district where the teacher *does* reside. OAG 90-127.

A member of the county board of education may sell insurance to school employees on an individual basis. OAG 90-138.

Any board member in office on July 13, 1990, who is re-elected after that date, will not be eligible to take office and to serve on the board of education if a relative (as defined in this section) who was hired after the incumbent's earlier election, remains employed by the district. OAG 90-141.

Any new candidate who was elected after July 13, 1990, who has relatives (as defined in this section) employed by the school district, will not be eligible to take office and to serve on the board of education. OAG 90-141.

Eligibility criteria for membership on a board of education are mandatory; therefore, unless the elected candidate meets all of the statutory criteria, that individual is ineligible to serve on the board of education. OAG 90-141.

Only the person entitled to the office or the Attorney General (on behalf of the Commonwealth) may institute and prosecute an action to prevent usurpation of office; neither the superintendent of schools nor a private citizen may do so, nor may the county board of education declare the office of one of its members vacant because of forfeiture on account of violation of this section. OAG 90-141.

A conflict of interest exists where the Board of Education is expending school funds to a bank for the handling of bonds for the school district and a member of the Board of Education is married to a member of the Board of Directors of the bank. OAG 91-16.

The superintendent of schools has no liability should an ineligible board member take office and attempt to serve; however, this office has asked superintendents and boards of education to advise the Attorney General office of such circumstances so that the situation may be evaluated and appropriate action may be taken. OAG 91-16.

There is no conflict of interest statute prohibiting school board members from voting on general salary increases that affect teachers who are related to those board members and who work in the school system. OAG 91-60.

An individual who withdrew from high school with 14 credits and entered the Armed Forces on November 4, 1952, honorably completed his military obligations, entered an accredited college in September 1956 and earned 46½ credit hours, has been a board member for 16 years and is presently chairman, is not eligible to run for re-election unless that individual completes the twelfth grade or obtains his GED, and he also must file an affidavit as required under subdivision (2)(d) of this section certifying completion of the twelfth grade or its equivalent. OAG 91-76.

A potential conflict of interest exists between the requirements of subsection (3) of this section for members of boards of education concerning influence in hiring school employees, and the duties authorized by KRS 160.345(2)(g) and (i) for members of site-based councils; subsection (3) of this section expressly prohibits a member of a board of education from having any influence on hiring of school personnel, while KRS 160.345(2)(g) and (i) give members of the council authority to recommend candidates to the principal to be hired. OAG 91-148.

Even if a board member, who was also a council member, were to disqualify himself, while serving on the council, from engaging in any consideration of applicants or from voting on recommended applicants for school district positions, thereby eliminating potential conflicts over hiring issues, other potential conflicts could develop since the board sets policies for the councils of the district on areas in which the interests of the board may differ from the interests of the councils. OAG 91-148.

If a school board member is elected to a site-based decision making council, the provisions of this section and KRS 160.345 create potential statutory conflicts of interest should that board member attempt to carry out the duties of both positions with regard to hiring decisions. OAG 91-148.

The express language of this section does not preclude a board member from seeking election as a parent representative on the school council. OAG 91-148.

The terms "brother" and "sister" include half-brother and half-sister, but not step-daughter or step-son. OAG 91-206.

Attorney General opined that no statutory conflict of interest exists under KRS 45A.340 and this section between the positions of member of the State Board for Elementary and Secondary Education and executive director of the Lincoln Foundation; but it was not possible for the Attorney General to provide a general ruling as to whether a potential conflict of interest may exist at common law. OAG 91-226.

Where county board of education incumbent candidate's aunt was initially employed in August 1975, after incumbent began serving on the school board, and incumbent's aunt was reemployed in August 1981, again, during incumbent's tenure as a board member, under the provisions of subdivision (2)(i) of this section incumbent was ineligible to run for reelection to the county school board. OAG 92-81.

A school board member who took the oath of office in January, 1991 and who has an aunt who is a blood relative working as a classified employee for the school system is ineligible to serve as a board member due to his aunt's employment with the school district and such member should immediately tender his resignation to the school board so that a board member may be appointed to fill his vacancy. OAG 92-160.

A school board member who was re-elected in November 1992 whose spouse is currently working for the school system and was hired after he became a board member is ineligible to serve as a board member due to his wife's employment with

the school district and such member should immediately tender his resignation to the school board so that a board member may be appointed to fill his vacancy. OAG 92-160.

A prospective school board member who was elected in November 1992 and has a father and a sister who are currently working as classified employees for the school system is ineligible to serve on the board due to the school district's employment of his father and sister and while he has not yet taken the oath of office he should decline to take the oath of office and immediately inform the school board of his intent not to take it. OAG 92-160.

Where school board members who are ineligible to serve on the board due to the employment of a relative by the school system and who refuse to resign, the Office of the Attorney General may instigate ouster proceedings against them. OAG 92-160.

An ineligible school board member who has taken the oath of office is a legal member of the board until he resigns or is ousted by an order of court; such member is considered a de facto officer and discharges his duties under color of title; thus any action taken by the board is legal notwithstanding the vote of the ineligible member. OAG 92-160.

This section expressly prohibits a member of a board of education from remaining on the board after becoming a candidate for any office which is incompatible with the office of school board member, and applies to both county school district boards and to independent schools district boards; therefore, a board member having become a candidate for a city commission while simultaneously serving as a member of that city's independent schools district board of education, was subject to removal. OAG 96-16.

Cited: Tolliver v. Harlan County Bd. of Educ., 887 F. Supp. 144 (E.D. Ky. 1995).

NOTES TO DECISIONS

ANALYSIS

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1. Constitutionality.

Subdivision (1)(d) (now (2)(d)) and subsection (2) (now (3)) of this section, a "resign-to-run" statute, do not deny school board members their rights of free speech or equal protection of the laws. Yonts v. Commonwealth ex rel. Armstrong, 700 S.W.2d 407 (Ky. 1985).

This section is not unconstitutional because of its failure to state the penalty for its violation; the title specifically tells that this statute lists the eligibility requirements necessary to hold office and anyone who cannot meet these requirements cannot hold the office of board member. Cross v. Commonwealth ex rel. Cowan, 795 S.W.2d 65 (Ky. Ct. App. 1990).

Subsection (2)(i) of this section does not violate the First Amendment, nor the equal protection clause of the Fourteenth Amendment of the United States Constitution. Chapman v. Gorman, 839 S.W.2d 232 (Ky. 1992).

Because KRS 160.170 and subsection (3) of this section clearly prohibit school board members from engaging in nepotism or favoritism, conduct in which the Commonwealth has a significant interest, and their wording, as their meaning, is simple and unequivocal and not susceptible to arbitrary or discriminatory enforcement, the statutes are not unconstitutionally vague or overbroad. Craig v. Kentucky State Bd. for Elementary & Secondary Educ., 902 S.W.2d 264 (Ky. Ct. App. 1995).

2. Construction.

These provisions are mandatory. Whittaker v. Commonwealth ex rel. Att'y Gen., 272 Ky. 794, 115 S.W.2d 355 (1938). See Commonwealth ex rel. Meredith v. Norfleet, 272 Ky. 800, 115 S.W.2d 353 (1938); Commonwealth ex rel. Meredith v. Moye, 273 Ky. 384, 116 S.W.2d 952 (1938); Commonwealth v. Mullins, 286 Ky. 242, 150 S.W.2d 668 (1941).

3. Application.

This section applied to all candidates, even though they had previously held office before the enactment of this section. Commonwealth v. Mullins, 286 Ky. 242, 150 S.W.2d 668 (1941) (Decision prior to 1998 amendment).

4. Voter of District for Which Elected.

This section requires a candidate to be a fully qualified legal voter. Moore v. Tiller, 409 S.W.2d 813 (Ky. 1966).

Person who moved into a residence outside of division of school district and lived therein for three years was not a resident of the division of the school district although he had always theretofore lived in division, was registered there and expressed an intention to retain his residence therein. Moore v. Tiller, 409 S.W.2d 813 (Ky. 1966).

A person may have many residences but in the absence of showing an intention of abandoning his Kentucky citizenship, his state of origin, he will be deemed a Kentucky citizen for the purpose of qualifying for office in that state; therefore, where a man was born and raised here, and his every act manifested his intent to remain a citizen of this state, not merely to return here, his temporary and involuntary absences from Kentucky did not serve to terminate his standing as a citizen. Dickey v. Bagby, 574 S.W.2d 922 (Ky. Ct. App. 1978).

5. Educational Requirements.

The legislature was authorized to require completion of the eighth grade. Commonwealth ex rel. Meredith v. Norfleet, 272 Ky. 800, 115 S.W.2d 353 (1938) (Decision prior to 1990 amendment).

Board of education has no authority to pass bylaw requiring board's members-elect, when attempting to qualify, to first present to the board legal evidence that they possess educational requirements of this section. Oakes v. Remines, 273 Ky. 750, 117 S.W.2d 948 (1938).

The taking of oath of office before the date the term of office of predecessor expired was merely anticipating and getting ready to assume duties at the appointed time and did not make person elected as member of the county board of education a usurper and no cause of action would lie including quo warranto or injunction on grounds he did not have an eighth grade education so was not qualified and the later assumption of the office and the amendment of the petition thereafter could not give life to the premature petition. Broyles v. Commonwealth, 309 Ky. 837, 219 S.W.2d 52 (1949) (Decision prior to 1990 amendment).

The requirement of subsection (1)(c) (now (2)(c)) of this section that no person shall be eligible to membership on a board of education unless he has completed at least the eighth grade in the common school, means that such requirement must be met before such member is elected to office. Common-

wealth ex rel. Buckman v. Preece, 257 S.W.2d 51 (Ky. 1953) (Decision prior to 1990 amendment).

Attorney General had the right to withdraw from proceeding at any time prior to judgment and trial court could not render judgment on merits when he had withdrawn from proceeding to oust board of education members on grounds they lacked educational requirements prior to entry of judgment. Choate v. Commonwealth ex rel. Ferguson, 347 S.W.2d 81 (Ky. 1961).

6. —Teacher's Affidavit.

A verified statement from the teacher under whom the eighth grade was completed is sufficient evidence of educational qualifications. Commonwealth v. Griffen, 268 Ky. 830, 105 S.W.2d 1063 (1937) (Decision prior to 1990 amendment).

An affidavit that applicant completed the sixth grade, which was then equivalent to the eighth grade, is insufficient. Commonwealth ex rel. Meredith v. Norfleet, 272 Ky. 800, 115 S.W.2d 353 (1938) (Decision prior to 1990 amendment).

An affidavit of a teacher which does not identify the grade completed is insufficient. Whittaker v. Commonwealth ex rel. Att'y Gen., 272 Ky. 794, 115 S.W.2d 355 (1938) (Decision prior to 1990 amendment).

Affidavit of teacher other than one under whom eighth grade was completed has no probative value. Chadwell v. Commonwealth ex rel. Meredith, 288 Ky. 644, 157 S.W.2d 280 (1941) (Decision prior to 1990 amendment).

In the absence of contradictory proof, teacher's affidavit is conclusive of qualification. The Commonwealth may introduce evidence contradicting affidavit but it is not required to plead against it. Commonwealth ex rel. Funk v. Sizemore, 243 S.W.2d 671 (Ky. 1951) (Decision prior to 1990 amendment).

Neither the failure to produce a certificate nor the fact that appellee enrolled in the seventh grade after having completed the eighth grade is sufficient to overcome the probative value of the statements contained in his teacher's affidavit that appellee successfully completed the eighth grade. Commonwealth ex rel. Breckinridge v. King, 343 S.W.2d 139 (Ky. 1961) (Decision prior to 1990 amendment).

A teacher's affidavit is the weakest kind of proof of a person's completion of the eighth grade and its probative effect may be overcome by contradictory evidence. Spurlock v. Commonwealth ex rel. Breckinridge, 350 S.W.2d 472 (Ky. 1961) (Decision prior to 1990 amendment).

7. —Schoolmate Affidavit.

Affidavits of former schoolmates do not supply the statutory requirement. Whittaker v. Commonwealth ex rel. Att'y Gen., 272 Ky. 794, 115 S.W.2d 355 (1938).

Educational qualification cannot be established by member or his schoolmates. Commonwealth ex rel. Funk v. Clark, 311 Ky. 710, 225 S.W.2d 118 (1949).

This section does not permit verbal testimony of the party or even his schoolmates to be considered. Commonwealth ex rel. Buckman v. Preece, 257 S.W.2d 51 (Ky. 1953).

8. —Mandatory.

Provisions of subsection (1)(c) (now (2)(c)) of this section are mandatory and applicant must prove qualification of eighth grade education by one of the methods provided. Commonwealth ex rel. Dummit v. Mullins, 307 Ky. 383, 211 S.W.2d 133 (1948) (Decision prior to 1990 amendment).

9. —Burden of Proof.

Proof of educational qualifications must substantially comply with this section. Affidavit of substitute teacher who taught for two or three weeks was insufficient, and testimony of fellow students and others could not be considered. Commonwealth ex rel. Meredith v. Moye, 273 Ky. 384, 116 S.W.2d 952 (1938).

The legislature intended to permit proof of eligibility in any of the specified methods, so a member may qualify by examination, even if he did not complete the eighth grade, or by affidavit without reference to school records, and a photostatic copy of one member's signature and samples of his handwriting could not be considered as lack of education. Commonwealth ex rel. Meredith v. Moye, 273 Ky. 384, 116 S.W.2d 952 (1938).

Member of county board of education did not possess statutory educational requirements where he admitted his lack in demurrer to petition for ouster. Commonwealth v. Wilson, 273 Ky. 745, 117 S.W.2d 935 (1938).

10. —Summary Judgment.

In action for ouster of county board of education member's failure to respond properly to request for admission under CR 36.01, that he had never completed the eighth grade constituted an admission and summary judgment should have been sustained and board of education member ousted. Commonwealth ex rel. Matthews v. Rice, 415 S.W.2d 618 (Ky. 1966) (Decision prior to 1990 amendment).

11. Holding Civil or Political Office.

This provision does not deal with offices, deputyships or agencies under the state. Polley v. Fortenberry, 268 Ky. 369, 105 S.W.2d 143 (1937).

Although concurrent membership on county board of education and county election board is not a violation of this section unless it is in law a local office as distinguished from state office it is inherently inconsistent or repugnant as their occupancy by one person is detrimental to public interest. Adams v. Commonwealth ex rel. Buckman, 268 S.W.2d 930 (Ky. Ct. App. 1954).

Where a member of a county board of education was an unsuccessful candidate for his party's nomination to the office of county tax commissioner for his county and an action was brought to oust him from membership on the board on the grounds that under the terms of this section his office was vacated when he became a candidate, the trial court erred in sustaining a motion to dismiss the complaint, even though the office of tax commissioner is a state office and is not specifically enumerated in subsection (1)(d) (now (2)(e)) of this section. Commonwealth ex rel. Buckman v. Miller, 272 S.W.2d 468 (Ky. 1954).

The county hospital board serves as an advisory body to the fiscal court agency or deputyship of the county as those terms are used in this section. Commonwealth ex rel. Hancock v. Bowling, 562 S.W.2d 310 (Ky. 1978).

12. Interest in Sale to Board.

In general, the disqualifying interest must be pecuniary or proprietary by which the member stands to gain or lose something. However, the interest is not sufficient to disqualify the officer if the opportunity for self-benefit is a mere possibility or is remote or collateral. Commonwealth ex rel. Vincent v. Withers, 266 Ky. 29, 98 S.W.2d 24 (1936).

The term "service" includes teaching, and one teaching under contract with the board for which he is a candidate is a disqualified candidate. Whittaker v. Commonwealth ex rel. Att'y Gen., 272 Ky. 794, 115 S.W.2d 355 (1938).

One under contract to teach school in county was disqualified to hold membership on board of education of that county, because of interest in the sale of services for which school funds are expended. Commonwealth v. Begley, 273 Ky. 636, 117 S.W.2d 599 (1938).

A board member is not guilty of violating this section where he has divested himself of all interest in the note in question prior to his election. Commonwealth ex rel. Meredith v. Hardin, 286 Ky. 404, 150 S.W.2d 477 (1941).

Where teacher applied for teaching position and county board of education notified him of employment, he was not eligible to be elected to membership on the board of education because at the time of his election he was interested in sale of services to the board. Commonwealth ex rel. Funk v. Robinson, 314 Ky. 344, 235 S.W.2d 780 (1951).

The office of member of board of education has been declared vacated where member was interested in sale of material or supplies to school even though member's motives were proper and the sales were nonprofit. Commonwealth ex rel. Breckinridge v. Collins, 379 S.W.2d 436 (Ky. 1964).

Member of board, who at time of his election had contract with board of education to transport students and continued to perform his contract for a period but ceased before taking office, and member who sold small amounts of supplies to a class in the school after becoming a member, were disqualified from holding office. Commonwealth ex rel. Matthews v. Coatney, 396 S.W.2d 72 (Ky. 1965).

No profit need be made on a sale of goods by a board member to a school board in order to violate this section, and it is immaterial whether the funds used to make the purchase were the result of an activity fund raised solely by the students. Commonwealth ex rel. Hancock v. Marshall, 559 S.W.2d 497 (Ky. Ct. App. 1977).

Where a board member is without knowledge of a sale to the board or is not in the position of having to approve a contract or sale to the board, the prohibition of this section is not contravened. Commonwealth ex rel. Hancock v. Marshall, 559 S.W.2d 497 (Ky. Ct. App. 1977).

One who is the president, employee and majority stockholder of a company selling merchandise to a school board comes within the purview of one "indirectly interested" as prohibited by this section. Commonwealth ex rel. Hancock v. Marshall, 559 S.W.2d 497 (Ky. Ct. App. 1977).

13. Interest in Contract or Claim.

Evidence justified trial court's refusal to declare member of county board a usurper in office because of interest in contracts for purchase of coal from schools where he prepared the bids for five bidders, four of whom received seven contracts out of 25 bids for and three of whom filled the contracts by purchasing the coal from coal mine in which the board member was a partner, in absence of evidence that he reached his object and accomplished his purpose of profiting by the contracts through the bidders as secret agencies or intermediaries or by sharing with them. Commonwealth ex rel. Vincent v. Withers, 266 Ky. 29, 98 S.W.2d 24 (1936).

The interest is not sufficient to disqualify the member if the opportunity for self-benefit is a mere possibility or is so remote or collateral, such as being only a debtor, that it cannot be reasonably calculated to affect his judgment or conduct in the making of the contract or in its performance. Commonwealth ex rel. Vincent v. Withers, 266 Ky. 29, 98 S.W.2d 24 (1936).

Mere fact that contractor with a municipal board, without previous arrangement or agreement, saw fit to buy material or supplies from a member of the board does not render the contract vicious or ordinarily subject the officer to merited criticism or a forfeiture of his office; the possibility of profit from a subsequent independent contract in the absence of inculpatory circumstances ought not to be regarded as having a corrupt influence upon the mind of the officer. Commonwealth ex rel. Vincent v. Withers, 266 Ky. 29, 98 S.W.2d 24 (1936).

Bare implication or inference that under the stimulus of expected contingent profit an officer acted wrongfully, in opposition to positive testimony and several contradicting circumstances, should not prevail or justify the court in applying the statute under which office shall without further action be vacant. Commonwealth ex rel. Vincent v. Withers, 266 Ky. 29, 98 S.W.2d 24 (1936).

The mere fact that a contractor with a school board, without previous arrangement or agreement, bought materials from a board member is not ground for forfeiture of office. Commonwealth ex rel. Vincent v. Withers, 266 Ky. 29, 98 S.W.2d 24 (1936).

If the conditions prohibited in subsection (2) of this section exist at the time of election, the candidate is disqualified and board member, who was teacher at time of election, but who resigned prior to qualification as board member, was disqualified. Whittaker v. Commonwealth ex rel. Att'y Gen., 272 Ky. 794, 115 S.W.2d 355 (1938).

The interest referred to herein must be a monetary interest moving directly or indirectly to the member, and not a mere emotional interest. Chadwell v. Commonwealth ex rel. Meredith, 288 Ky. 644, 157 S.W.2d 280 (1941).

Board member's testimony that his store had made sales to board but that it was in his wife's name "for internal revenue purposes" was a violation of this section as an indirect interest in sales to board. Brooks v. Commonwealth ex rel. Buckman, 286 S.W.2d 913 (Ky. 1956).

When county board of education member's term of office had expired during pendency of appeal, court would not decide whether he became disqualified by becoming directly or indirectly interested in sale to board of stationery and similar supplies since the circumstances had changed or events had occurred making the determination unnecessary and great public interest was not involved and a decision would not settle a concrete issue but would declare an academic question of law. Commonwealth ex rel. Breckinridge v. Woods, 342 S.W.2d 534 (Ky. 1961).

The facts that the amount involved was small and trivial and that full value was given to school by the school board member are immaterial on a charge under this section that he sold items totaling $64.85 through his hardware store to the school system. Stringer v. Commonwealth ex rel. Matthews, 428 S.W.2d 203 (Ky. 1968).

14. Ineligible for Reelection.

The fact that a member of the county board of education was re-elected to a new term after his violation of the acts complained of does not "whitewash" him or furnish a defense. Stringer v. Commonwealth ex rel. Matthews, 428 S.W.2d 203 (Ky. 1968).

A school board member who violates this section is ineligible for re-election. Commonwealth ex rel. Breckinridge v. Winstead, 430 S.W.2d 647 (Ky. 1968).

15. Employment of Relatives.

Board members have a discretion in voting on an applicant who is related to one of the board members, notwithstanding that the applicant is duly qualified and nominated. Hall v. Boyd County Bd. of Educ., 265 Ky. 500, 97 S.W.2d 38 (1936).

Evidence that lame duck members of school board, by agreement with other members and one newly-elected member, employed close relatives of newly-elected member, shortly before expiration of their terms, was insufficient to justify removal of newly-elected member as usurper. Richardson v. Commonwealth ex rel. Meredith, 275 Ky. 486, 122 S.W.2d 156 (1938).

Vote of board member to vest in superintendent authority to hire bus drivers without approval of the board, following which the superintendent employed the board member's son, was not a vote regarding employment of a relative. Chadwell v. Commonwealth ex rel. Meredith, 288 Ky. 644, 157 S.W.2d 280 (1941).

Where school board member voted for the employment of his sister he was disqualified as a member and his reelection and assumption of a new tern did not "whitewash" such misconduct. Letcher v. Commonwealth ex rel. Matthews, 414 S.W.2d 402 (Ky. 1967).

Where the defendant, as a member of the county board of education, seconded a motion to hire certain school bus drivers, one of whom was his cousin, but did not vote, there was no violation, for the statute forbids voting, not seconding a motion. Commonwealth ex rel. Matthews v. Combs, 426 S.W.2d 461 (Ky. 1968).

A board of education can speak only through its records and such records cannot be enlarged or restricted to enable a school board member, by parol testimony, to prove that he did

not vote for his wife's employment. Stringer v. Commonwealth ex rel. Matthews, 428 S.W.2d 203 (Ky. 1968).

Where the minutes of the school board showed that it had voted unanimously to employ the sister of one of the board members as manager of the school cafeteria, the chancellor's finding that the member did not vote in violation of the statute was in error. Commonwealth ex rel. Matthews v. Ford, 444 S.W.2d 908 (Ky. 1969).

Where the minutes of a local board of education showed that one of its members had voted for a sister and niece for employment with the board, but these had been amended to show he had not so voted, and the Commonwealth sought to introduce affidavits of witnesses that he had so voted, in opposition to his motion for summary judgment, it was error to grant summary judgment, since such evidence is admissible to show mistake or fraud in the minutes recording these votes. Commonwealth ex rel. Stephens v. Stephenson, 574 S.W.2d 328 (Ky. Ct. App. 1978).

16. Removal.

This section did not impliedly repeal law regarding usurpation of office in relation to school officers, and Attorney General may institute an action under such law to prevent usurpation of office of member of county board of education, on grounds of misconduct as well as lack of qualifications. Richardson v. Commonwealth ex rel. Meredith, 275 Ky. 486, 122 S.W.2d 156 (1938).

One violating this section may be proceeded against as a usurper by Attorney General or person claiming office. Chadwell v. Commonwealth ex rel. Meredith, 288 Ky. 644, 157 S.W.2d 280 (1941).

County board of education could not declare the office of one of its duly elected and qualified members vacant, on the ground he had moved from district; removal could be accomplished only by ouster proceedings under KRS 415.050. Salyers v. Lyons, 304 Ky. 320, 200 S.W.2d 749 (1947).

A county board cannot declare vacant the seat of a member of that board, who has been duly elected and qualified, on the ground that the member does not possess some qualification as for membership required by this section. Board of Educ. v. Cassell, 310 Ky. 274, 220 S.W.2d 552 (1949).

Resignation of member of county board of education who was interested in a contract which might disqualify him under this section prior to appointment of his successor was an abandonment of office and not a forfeiture and other members of board could bring a declaratory judgment action for determination of abandonment under KRS 418.045 where only the Commonwealth or a person entitled to the office could bring an action in nature or quo warranto to adjudge forfeiture. Hall v. Allen, 313 Ky. 441, 231 S.W.2d 702 (1950).

County board of education members cannot be ousted or enjoined from the performance of their duties except as the result of an action brought by the person who claims the office or in an action brought by the Attorney General of the Commonwealth. Griffey v. Board of Educ., 385 S.W.2d 319 (Ky. 1964).

A member of a county board of education does not vacate his office without any further action when he is guilty of conduct which violates this section but he must be removed by ouster proceedings and county residents and taxpayers cannot maintain class action for declaratory judgment to enjoin performance of certain official acts. Griffey v. Board of Educ., 385 S.W.2d 319 (Ky. 1964).

The State Board of Elementary and Secondary Education (now Board of Education), under the Kentucky Education Reform Act, has the authority to remove members from a county board of education for misconduct in office; there is no language in either KRS 156.132 or this section which suggests, let alone mandates, that the Attorney General has the exclusive power to remove district board members for violations of KRS 160.180. State Bd. for Elementary & Secondary Educ. v. Ball, 847 S.W.2d 743 (Ky. 1993).

Sufficient evidence was presented to support a judgment of removal of school board members for misconduct. State Bd. for Elementary & Secondary Educ. v. Ball, 847 S.W.2d 743 (Ky. 1993).

17. —De Facto Officer.

A school board member against whom ouster proceedings are commenced is a de facto officer until he is ousted and should be allowed to vote pending a trial and judgment on the merits. Commonwealth ex rel. Breckinridge v. Winstead, 430 S.W.2d 647 (Ky. 1968).

18. —Estoppel Against.

Courts should be slow to invoke estoppel against the state in its efforts to enforce a statute the purpose of which is to prevent "conflict of interest" situations and prevent self-interest in the deliberation of public servants. Stringer v. Commonwealth ex rel. Matthews, 428 S.W.2d 203 (Ky. 1968).

19. Lack of Qualifications.

The burden is upon the board member to establish his eligibility for the office. Commonwealth ex rel. Ferguson v. Coffee, 329 S.W.2d 203 (Ky. 1958). See Saylor v. Rockcastle County Bd. of Educ., 286 Ky. 63, 149 S.W.2d 770 (1941).

The burden of establishing eligibility is on the candidate. Commonwealth v. Mullins, 286 Ky. 242, 150 S.W.2d 668 (1941).

Lack of qualification may be proved by any evidence that would be competent under ordinary rules of evidence to establish the fact in issue. Lear v. Commonwealth ex rel. Ferguson, 317 S.W.2d 492 (1958).

20. Appeal.

Great regard must be had on appeal for the finding of fact by the trial court that board member had not committeed the prohibited act which would declare office vacant. Commonwealth ex rel. Vincent v. Withers, 266 Ky. 29, 98 S.W.2d 24 (1936).

21. Members of the Same Family.

A member of a county board of education was properly ousted for affirmatively voting to hire twenty-two individuals, one of whom was his first cousin. Cross v. Commonwealth ex rel. Cowan, 795 S.W.2d 65 (Ky. Ct. App. 1990).

Although school board member urges the court to carve another exception from the statute which would allow him to remain eligible for office, this cannot be done where the language of the anti-nepotism statute is clear and unambiguous; it is of no importance when his daughter-in-law became his relative, it is only important under the statute that she is his relative. Newby v. Commonwealth ex rel. Gorman, 911 S.W.2d 606 (Ky. 1995).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 111, 112.

160.190. Vacancies, how filled.

(1) Any vacancy in any board of education shall be filled by the chief state school officer within ninety (90) days after the vacancy occurs. The member so chosen shall meet the eligibility requirements as established by KRS 160.180 and shall hold office until his successor is elected and has qualified. The local board of education may make nominations and any person may nominate himself or another for the office.

(2) Any vacancy having an unexpired term of one (1) year or more at the next regular November election after the vacancy occurs shall be filled for the unexpired term by an election to be held at the next regular November election after the vacancy occurs. The elected member shall succeed the

member chosen by the chief state school officer to fill the vacancy.

(4399-30: amend. Acts 1974, ch. 57, § 1; 1978, ch. 155, § 82, effective June 17, 1978; 1984, ch. 376, § 2, effective July 13, 1984; 1990, ch. 476, Pt. II, § 70, effective July 13, 1990.)

Cross-References. Resignations, removals and vacancies, KRS Ch. 63.

Kentucky Bench & Bar. Kirby, School-Based Decision Making, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 15.

Opinions of Attorney General. Where five months after taking office school board members had not yet taken the statutory oath, the state board of education was required to fill the resulting vacancies pursuant to this section. OAG 61-485. (Decision prior to 1990 amendment).

Vacancies on school boards are not filled by election for the unexpired terms as is the case with respect to all other vacancies in elective offices. OAG 72-796.

Where a member of the board of education resigned in July 1975, and the board appointed another person to fill the vacancy which expired in January, 1977, since the unexpired term exceeds one year as of the November election, the newly appointed board member will only serve until his successor was elected in the November 1975 election to finish the unexpired term. OAG 75-540.

In view of KRS 63.010 and this section, the resignation of a board member is not effective, and there is no vacancy on the board, until the resignation is tendered in writing to and accepted by the board. OAG 75-635.

A vacancy occurring on a county board of education on September 30 could not be filled at the November election for that year but would have to be filled in the general election the following year. OAG 77-649.

Where a school board member, whose term was not to expire until December, 1982, resigned in August, 1980, the board will appoint someone to fill the vacancy until November, 1980, at which time someone will be elected to fill out the unexpired term to serve until December, 1982; where two natural four year vacancies on the board will also be filled at the November, 1980 general election, the candidates interested in running for the unexpired term should specify on the petition form that they are running for the unexpired term as this office is required to be listed as such on the ballot and separately from the offices to be filled for regular four year terms; in the event that no candidates file to fill the unexpired term, the county clerk is nevertheless required to place the office on the ballot for the unexpired term for "write-in" purposes since this section requires that the vacancy be filled which is not predicated on the filing of candidates for the vacancy. OAG 80-414.

Where a county board of education member resigned on March 2 after filing as a candidate for sheriff, lost the primary election for sheriff on May 26 and was reappointed to the board by the other board members on June 2, his reappointment was invalid, since the legal vacancy occurred when the member became a candidate for an incompatible office under subsection (2) of KRS 160.180, and because the board of education did not fill the vacancy within 90 days of the vacancy, as required by this section, the State Board of Education must fill the vacancy, because the power to fill the vacancy passes from the local to the State Board after the 90 days have elapsed, but the State Board's 30-day period to take action does not begin until it has received notice that the 90 days have passed. OAG 81-316.

Subsection (2) of this section applies to all district school board appointments whether under subsection (1) of this section or under KRS 160.210(1)(b), and it requires an election for the remainder of the term if one year or more of the term remains to be served; therefore, a district school board member appointed pursuant to KRS 160.210(1)(b) serves only until the next (November) regular election unless less than one year remains to be served at the time the position becomes vacant. OAG 90-135.

The legislature's intent is clear that appointees to a local board of education may serve no longer than one year until the next November election; to conclude that a person appointed at the beginning of the four year term under KRS 160.210(1)(b) could serve the entire four year term but a person appointed to complete a term in which less than four years but more than one year remains could only serve until the next November election would lead to an absurd result. OAG 90-135.

A school board member who took the oath of office in January, 1991 and who has an aunt who is a blood relative working as a classified employee for the school system is ineligible to serve as a board member due to his aunt's employment with the school district and such member should immediately tender his resignation to the school board so that a board member may be appointed to fill his vacancy. OAG 92-160.

A school board member who was re-elected in November 1992 whose spouse is currently working for the school system and was hired after he became a board member is ineligible to serve as a board member due to his wife's employment with the school district and such member should immediately tender his resignation to the school board so that a board member may be appointed to fill his vacancy. OAG 92-160.

A prospective school board member who was elected in November 1992 and has a father and a sister who are currently working as classified employees for the school system is ineligible to serve on the board due to the school district's employment of his father and sister and while he has not yet taken the oath of office he should decline to take the oath of office and immediately inform the school board of his intent not to take the oath. OAG 92-160.

Cited: Saylor v. Rockcastle County Bd. of Educ., 286 Ky. 63, 149 S.W.2d 770 (1941); Choate v. Commonwealth ex rel. Ferguson, 347 S.W.2d 81 (Ky. 1961).

NOTES TO DECISIONS

Analysis

1. Construction.
2. Manner of filling.
3. —Ninety day limitation.
4. Vacancy from date of judgment.
5. Abandonment of office.
6. Redistricting.
7. Temporary term during merger.

1. Construction.

This section and KRS 156.070 and 156.210 must be construed together and mean that the state board should have control over the common schools, with the power of removal of such board members who might be found guilty of specified charges. Gearhart v. Kentucky State Bd. of Educ., 355 S.W.2d 667 (Ky. 1962).

2. Manner of Filling.

State Board of Education had power to fill vacancies caused by judgments declaring two members of school board to be usurpers, where remaining members did not fill vacancies within 90-day period following entry of judgments. McClendon v. Hamilton, 277 Ky. 734, 127 S.W.2d 605 (1939) (Decision prior to 1990 amendment).

3. —Ninety Day Limitation.

This section makes no distinction between vacancies whether from death, resignation or other cause, and in every case the board's power to fill the vacancy is limited to the

period of 90 days after the vacancy occurs. Kash v. Day, 239 S.W.2d 959 (Ky. 1951).

4. Vacancy from Date of Judgment.

Where two members of school board were adjudged to be usurpers in quo warranto proceeding in Circuit Court, judgment was effective as of its date, notwithstanding appeal and execution of supersedeas bond, and where judgment was affirmed on appeal, their offices were vacant from the date of the original judgment, rather than the date the mandate was filed or judgment entered according to the mandate. McClendon v. Hamilton, 277 Ky. 734, 127 S.W.2d 605 (1939).

5. Abandonment of Office.

A vacancy may be created by abandonment of the office, and one who has done so is thereafter estopped from denying the vacancy. Horn v. Wells, 253 Ky. 494, 69 S.W.2d 1011 (1934).

6. Redistricting.

A school board member, sitting as a de facto officer, who casts a deciding vote in favor of a redistricting plan which moves his precinct from one district to another may run for the school board seat in his new district. Burkhart v. Blanton, 635 S.W.2d 328 (Ky. Ct. App. 1982).

7. Temporary Term During Merger.

The merger agreements, which provided that if, for any reason, any appointed member of the merged board could not complete his temporary term, the position was to be filled with an alternate, did not conflict with this section as the agreements merely provided temporary security for all school districts during the critical transition, and authority for the agreements was provided for by the general authority granted by virtue of the merger statute, KRS 160.040. In re Muhlenberg County Bd. of Educ., 714 S.W.2d 168 (Ky. Ct. App. 1986).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 138, 139.

160.200. Time of election of board members.

(1) All elections for members of boards of education shall be in even numbered years, for a term of four (4) years, except as provided in KRS 160.210(5). Except as provided in subsection (3) of this section, the elections shall be held at the regular November election.

(2) In each even numbered year, there shall be held an election in every county and independent district to fill the membership of the boards of education for the terms that will expire on the first Monday in January following, and the regularly elected members shall hold office for four (4) years and until their successors are elected and have qualified.

(3) Any independent school district embracing a city of the fifth class may, at the discretion of its board of education, hold its election of board members at its public school building on the first Saturday in May. The election shall be held by three (3) officers appointed by the board of education and the expenses of the election shall be paid from the treasury of the school district. In all other respects the provisions of this chapter relating to holding elections for board members shall apply.

(4) In counties containing a city of the first class, wherein a merger pursuant to KRS 160.041 shall have been accomplished, the terms of the members shall be as provided in KRS 160.210(5). Elected members of such boards, excepting those boards of education representing ten percent (10%) or less of the student population of the county serving at the effective date of such a merger shall continue to serve until their term expires, but no appointments shall be made to fill vacancies. The terms of office of members of boards of education representing ten percent (10%) or less of the student population of the county shall expire on the effective date of the merger.

(4399-24, 4399-27: amend. Acts 1974, ch. 224, § 3; 1982, ch. 59, § 2, effective July 15, 1982; 1990, ch. 476, Pt. IV, § 228, effective July 13, 1990.)

Opinions of Attorney General. Under subsection (2) of this section, if an apparently successful candidate for school board is restrained or enjoined by a court from taking office pending the outcome of an election contest, the incumbent member of the board will hold over until the controversy is resolved and since the incumbent is continuing his term and not commencing a new term, he need not take the oath of office. OAG 60-1265.

Under subsection (2) of this section an incumbent board member continues to serve until the new member is qualified or until a vacancy is declared to exist. OAG 60-1266.

It is permissible for a successful candidate for the school board to take the statutory oath of office at a school board meeting to be held the second Monday in January. OAG 65-4.

No recall of local school board members is provided for in this chapter. OAG 75-118.

Where, after a merger of school boards during the transitional period due to the procedure for election of members to the new school board provided for in subsection (3) of KRS 160.210, some divisions of the county would not be represented by any board member, the board should, by lot, determine a member to represent these unrepresented divisions until the election for the initial four year term is held for representatives from these sections. OAG 77-35.

Cited: Spurlock v. Spradlin, 266 Ky. 164, 98 S.W.2d 480 (1936); Brumleve v. Ruth, 302 Ky. 813, 195 S.W.2d 777 (1946); Broyles v. Commonwealth, 309 Ky. 837, 219 S.W.2d 52 (1949); Cawood v. Hensley, 247 S.W.2d 27 (Ky. 1952); Adams v. Commonwealth ex rel. Buckman, 268 S.W.2d 930 (Ky. Ct. App. 1954); Commonwealth ex rel. Buckman v. Miller, 272 S.W.2d 468 (Ky. 1954); Commonwealth ex rel. Breckinridge v. Woods, 342 S.W.2d 534 (Ky. 1961); Board of Educ. v. Board of Educ., 522 S.W.2d 854 (Ky. 1975).

NOTES TO DECISIONS

Analysis

1. Time of election.
2. —Designation of election day.
3. —Notice.
4. Local option election.
5. Election contest.

1. Time of Election.

A member of the county board of education is a state officer rather than a local officer and where term would not end at next succeeding annual election vacancy should be filled by election for the remainder of the term at November election along with members for the United States House of Representatives. Ward v. Siler, 272 Ky. 424, 114 S.W.2d 516 (1938).

2. —Designation of Election Day.

When a board designates the first Saturday in May as the regular election day, it remains so until changed. Norton v. Letton, 271 Ky. 353, 111 S.W.2d 1053 (1937).

3. —Notice.

The May elections are regular and general political elec-

tions, and no notice thereof is required. Norton v. Letton, 271 Ky. 353, 111 S.W.2d 1053 (1937).

4. Local Option Election.

A local option election cannot be held within 30 days of a school board election held in May. Norton v. Letton, 271 Ky. 353, 111 S.W.2d 1053 (1937).

5. Election Contest.

Appointment of county school superintendent prior to time when vacancy would occur, by board of which three members whose terms had expired purported to act for three duly elected and qualified members pending determination of election contest which was decided prior to occurrence of vacancy, was void. Maynard v. Gilbert, 283 Ky. 227, 140 S.W.2d 1064 (1940).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 117-128.

160.210. Election of board members — Change in boundary lines of divisions — Boards in counties containing city of first class.

(1) (a) In independent school districts, the members of the school board shall be elected from the district at large. In county school districts, members shall be elected from divisions.

(b) If no candidate files a petition of nomination for a local board of education opening pursuant to KRS 118.315 and 118.316, the chief state school officer shall fill the new term of office by appointing a member to the local board who meets the residency requirement and the qualifications for office provided in KRS 160.180. The local board of education may make nominations and any person may nominate himself or another for the office.

(2) The board of education of each county school district shall, not later than July 1, 1940, divide its district into five (5) divisions containing integral voting precincts and as equal in population insofar as is practicable. In first dividing the county district into divisions the board shall, if more than one (1) of its members reside in one (1) division, determine by lot which member from that division shall represent that division, and which members shall represent the divisions in which no member resides. The members so determined to represent divisions in which no member resides shall be considered the members from those divisions until their terms expire, and thereafter the members from those divisions shall be nominated and elected as provided in KRS 160.200 and 160.220 to 160.250.

(3) Any changes made in division boundary lines shall be to make divisions as equal in population and containing integral voting precincts insofar as is practical. No change may be made in division boundary lines less than five (5) years after the last change in any division lines, except in case of merger of districts, a change in territory due to annexation, or to allow compliance with KRS 117.055(2).

(4) (a) Notwithstanding the provisions of subsection (3) of this section, if one hundred (100) residents of a county school district division petition the Kentucky Board of Education stating that the school district divisions are not divided as nearly equal in population as can reasonably be expected, the chief state school officer shall cause an investigation to determine the validity of the petition, the investigation to be completed within thirty (30) days after receipt of the petition.

(b) If the investigation reveals the school district to be unequally divided according to population, the Kentucky Board of Education, upon the recommendation of the chief state school officer, shall order the local board of education to make changes in school district divisions as are necessary to equalize population within the five (5) school divisions.

(c) If any board fails to comply with the order of the Kentucky Board of Education within thirty (30) days or prior to August 1 in any year in which any members of the board are to be elected, members shall be elected from the district at large until the order of the Kentucky Board of Education has been complied with.

(d) No change shall be made in the boundary of any division under the provisions of this subsection after August 1 in the year in which a member of the school board is to be elected from any division.

(5) Notwithstanding the provisions of subsection (2) of this section, in counties containing a city of the first class wherein a merger pursuant to KRS 160.041 shall have been accomplished, there shall be seven (7) divisions as equal in population as is practicable, with members elected from divisions. To be eligible to be elected from a division, a candidate must reside in that division. The divisions, based upon 1970 United States Census Bureau Reports on total population by census tracts for Jefferson County, Kentucky shall be as follows: Division One shall include census tracts 1-28; Division Two shall include census tracts 29-35, 47-53, 57-74, 80-84, 93, 129, 130; Division Three shall include census tracts 75-79, 85-88, 98-106, 107.01, 108; Division Four shall include census tracts 121.01, 123-128; Division Five shall include census tracts 36-46, 56, 90, 120, 121.02, 122; Division Six shall include census tracts 54, 55, 91, 92, 94, 95, 110.02, 113, 114, 117.01, 117.02, 118, 119; Division Seven shall include census tracts 89, 96, 97, 107.02, 109, 110.01, 111, 112, 115, 116, 117.03, 131, 132. The terms of the members to be elected, KRS 160.044 notwithstanding, shall be four (4) years and the election for the initial four (4) year terms shall be as follows: The election of the members from Divisions Two, Four and Seven shall be held at the next regular November election following the effective date of the merger pursuant to KRS 160.041, and the election of the members from Divisions One, Three, Five and Six shall be held at the regular November election two (2) years thereafter.

(6) In counties containing cities of the first class, responsibility for the establishment or the chang-

ing of school board division boundaries shall be with the local board of education, subject to the review and approval of the county board of elections. Where division and census tract boundaries do not coincide with existing election precinct boundaries, school board divisions shall be redrawn to comply with precinct boundaries. In no instance shall precinct boundaries be redrawn nor shall a precinct be divided to accommodate the drawing of school board division lines. Precinct boundaries nearest existing school board division boundaries shall become the new division boundary. All changes under this statute shall be completed on or before January 1, 1979, and on or before January 1 in any succeeding year in which a member of the school board is to be elected from any division. A record of all changes in division lines shall be kept in the offices of the county board of education and the county board of elections. The board of education shall publish all changes pursuant to KRS Chapter 424. A copy of the newspaper in which the notice is published shall be filed with the chief state school officer within ten (10) days following its publication.

(4399-24: amend. Acts 1956 (1st Ex. Sess.), ch. 7, Art. II, § 6; 1966, ch. 239, § 146; 1968, ch. 48; 1974, ch. 224, § 4; 1978, ch. 155, § 82, effective June 17, 1978; 1978, ch. 380, § 1, effective June 17, 1978; 1982, ch. 59, § 3, effective July 15, 1982; 1982, ch. 227, § 1, effective July 15, 1982; 1990, ch. 476, Pt. II, § 69, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 243, § 13, effective April 1, 1998.)

Legislative Research Commission Note. (11/18/94). The reference to KRS 118.316 in subsection (1)(b) of this statute is erroneous; that section number has never been used. It appears that KRS 118.356 may have been intended.

Opinions of Attorney General. The statute simply requires that the school division boundaries be changed to coincide with the precinct lines when such is possible under the terms of this section. OAG 62-242.

The attempt of a board of education to redistrict the school boundary lines on January 6 of the year in which school board members were to be elected was invalid and of no effect. OAG 64-166.

If creating an unrepresented division is unavoidable in order to substantially comply with the statutory requirement regarding population, such change would be legal and the provisions of subsection (2) should be utilized. OAG 65-775.

There is nothing illegal where due to consolidation the election precinct boundaries are bisected by the school division boundary lines and the magisterial boundary lines, because they are controlled by separate statutes. OAG 68-141.

If a redivision of a school district made pursuant to subsection (4) of this section results in a division in which two members of the board reside and a division in which no member of the board resides, the provisions of subsection (2) of this section should be utilized and the board should determine by lot which of the two members residing in the same division shall represent the division in which no member resides. OAG 68-393.

The boundary lines of the divisions of the county school districts are finally determined by the local board of education so as to equalize population within the five school divisions. OAG 69-403.

The divisions of a school district for the purpose of electing members to the board of education should be made on the basis of population and the number of registered voters in the respective divisions has no bearing on the matter. OAG 73-862.

Where an attempt by a school district to comply with this statute leaves intact existing voting precinct boundaries but results in a disparity of 15 to 20 percent in population between the districts, the board of education has considerable latitude in trying to equalize population, and the voting precincts will not be disturbed unless the population is so unequal as to offend fourteenth amendment rights. OAG 74-17.

Where after merger of two school districts the boards of education of the districts divided the county into five divisions which did not contain strict integral voting precincts, but were divided by school district boundary lines, board of elections had no jurisdiction to require boards of education to redraw district lines so as not to split precinct boundary lines. OAG 74-197.

A person seeking election to a county school district board must live and reside in the division of the school district from which he seeks election. OAG 76-121.

It is the sole duty and obligation of the school board, pursuant to this section, to alter school division boundary lines as provided therein. OAG 76-367; OAG 76-417.

Where, after a merger of school boards during the transitional period due to the procedure for election of members to the new school board provided for in subsection (3) of this section, some divisions of the county would not be represented by any board member, the board should, by lot, determine a member to represent these unrepresented divisions until the election for the initial four year term is held for representatives from these sections. OAG 77-35.

Initial four-year terms to the new seven member board positions of the Board of Education of Jefferson County not an election of a successor to those going off the Board, is what is called for in subsection (3) of this section. OAG 77-35.

A local board of education may designate attendance areas and draw boundary lines under its general authority provided by KRS 160.290 and nothing in this section prevents this being done in an election year. OAG 78-366.

Subdivision (1)(b) of this section necessarily precludes write-in votes when no candidate has filed a nominating petition for that school board position within the statutory deadline, since no election is held in that event. OAG 90-105.

Write-in votes are authorized in a county school board division election only if at least one valid nominating petition has been filed for the school board position in that particular geographic division; otherwise, KRS Chapter 160 does not require an election in that particular division, and write-in votes for the school board position in that particular division are not authorized since subdivision (1)(b) of this section directs the "chief state school officer" to appoint the school board member representing that particular division. OAG 90-105.

KRS 160.190(2) applies to all district school board appointments whether under KRS 160.190(1) or under subdivision (1)(b) of this section and requires an election for the remainder of the term if one year or more of the term remains to be served; therefore, a district school board member appointed pursuant to subdivision (1)(b) of this section serves only until the next (November) regular election unless less than one year remains to be served at the time the position becomes vacant. OAG 90-135.

The legislature's intent is clear that appointees to a local board of education may serve no longer than one year until the next November election; to conclude that a person appointed at the beginning of the four year term under subdivision (1)(b) of this section could serve the entire four year term but a person appointed to complete a term in which less than four years but more than one year remains could only serve until the next November election would lead to an absurd result. OAG 90-135.

In the event of an annexation or merger, the school board may redraw the division lines through existing county voting precincts where it is impracticable to maintain voting precincts; however, splitting a precinct is a last resort to be used only when equalization cannot be obtained in any other way. OAG 93-6.

Subsection (3) of this section does not set a specific time frame that a school board must follow when drawing the redistricting lines; however, the school board should vote on a redistricting plan as expeditiously as possible. The restriction in subdivision (4)(d) of this section forbidding redrawing division lines after August 1 in a board election year would not apply in a redistricting resulting from an annexation or merger; the August 1 redistricting deadline would only apply when residents file a petition to redistrict with the State Board for Elementary and Secondary Education pursuant to subsection (4) of this section. OAG 93-6.

Subsection (6) of this section applies only to counties containing cities of the first class since this subsection may conflict with the redistricting requirements that apply to other counties. OAG 93-6.

Under subsection (3) of this section, a county board of education was required to redraw the divisions where the boundary lines of the county board of education decreased by 1,000 acres of property and caused unequal division of population in the school district. OAG 93-6.

Cited: Brumleve v. Ruth, 302 Ky. 813, 195 S.W.2d 777 (1946); Gearhart v. Kentucky State Bd. of Educ., 355 S.W.2d 667 (Ky. 1962).

NOTES TO DECISIONS

Analysis

1. Divisions or consolidation of schools.
2. "Reside" defined.
3. Contiguous territory.
4. Elections from districts.

1. Divisions or Consolidation of Schools.

Where there has been a merger of an independent school district with the county district, the county board should redivide its territory to take care of the increased constituency. Stull v. Webster County Bd. of Educ., 339 S.W.2d 189 (Ky. Ct. App. 1960).

The statutory power under this section is vested in the board of education and not in the Circuit Court and the court did not have the power to require the board to redivide its district within the five-year period after the board had adopted an order changing its division boundaries following a merger of an independent school district with the county district. Stull v. Webster County Bd. of Educ., 339 S.W.2d 189 (Ky. Ct. App. 1960).

Consolidation of schools by county board of education could not be collaterally attacked on basis that the five divisions of the county educational district from which members were elected did not comply with the provisions of this section that they be nearly equal in population and contain integral voting precincts. Stull v. Webster County Bd. of Educ., 339 S.W.2d 189 (Ky. Ct. App. 1960).

Creation of seven election districts by reference to census tracts to be used only upon the merger of the school district of a first-class city with the county school district for election of board members does not violate Const., § 59 since election districts laid out by the board of education would likely give less representation to various minority groups than the census tract districts. Board of Educ. v. Board of Educ., 522 S.W.2d 854 (Ky. 1975).

A school board member, sitting as a de facto officer, who casts a deciding vote in favor of a redistricting plan which moves his precinct from one district to another may run for the school board seat in his new district. Burkhart v. Blanton, 635 S.W.2d 328 (Ky. Ct. App. 1982).

2. "Reside" Defined.

To reside means to "live, dwell, abide, sojourn, stay, remain, lodge" and an individual who had physically resided for three years outside division of school district without other than a "floating" intention to return to his former residential area was not temporarily absent from the district and since he had lost his legal voter status in the district he was not qualified to serve the district as a member of the county board of education and his name should be removed from the ballot. Moore v. Tiller, 409 S.W.2d 813 (Ky. 1966).

3. Contiguous Territory.

It was not competent for county school district, under subsection (2) of this section, to divide county school district into election districts which were not composed of contiguous territory. Marshall v. White, 287 Ky. 290, 152 S.W.2d 945 (1941).

4. Elections from Districts.

In merger situations, this section mandates that elections of school board members shall be from districts, not the county-at-large. In re Muhlenberg County Bd. of Educ., 714 S.W.2d 168 (Ky. Ct. App. 1986).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 18-62, 117-128.

Discretion of administrative officers as to changing boundaries of school districts. 65 A.L.R. 1523; 135 A.L.R. 1096.

160.220. Secret votes — Nominating petitions.

All elections for members of boards of education shall be by secret vote. The county clerk shall cause to be prepared for presentation to the voters the names of legally eligible candidates who have filed a petition as provided in KRS 118.315.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 426, effective July 13, 1990.)

Compiler's Notes. This section (4399-25: amend. Acts 1964, ch. 83, § 1; 1966, ch. 255, § 151; 1952, ch. 188, § 65, effective December 1, 1972; 1978, ch. 384, §§ 46, 568, effective June 17, 1978; 1982, ch. 360, § 45, effective July 15, 1982) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 426, effective July 13, 1990.

NOTES TO DECISIONS

Analysis

1. Ballot.
2. Name on ballot.
3. Candidate entitled to office.
4. Contest of election.

1. Ballot.

Elections not conducted by secret ballot are illegal and will be set aside. Bowles v. Knight, 257 Ky. 640, 78 S.W.2d 913 (1935).

2. Name on Ballot.

Where court had decided name of candidate for member of county board of education was not properly on the ballot at the November election, therefore he was not elected a member and there was vacancy in the office, appeal from determination in quo warranto as to whether he was qualified was a moot question and was dismissed. Commonwealth ex rel. Meredith v. Bogie, 287 Ky. 103, 152 S.W.2d 286 (1941).

Where, through mistake of printer, ballots for election of school board members in one educational division erroneously carried names of candidates from another division, neither

election officers nor voters had right to strike out printed names and substitute written names of proper candidates, and all such ballots were void. Lakes v. Estridge, 294 Ky. 655, 172 S.W.2d 454 (1943).

Where ballots furnished to some of precincts in one educational division, in school board election, were void because they erroneously carried names of candidates from another division, and total number of registered voters in such precincts was more than 20 percent of the total for the educational division, the entire election was void although the votes actually cast in such precincts did not change the result of the election. Lakes v. Estridge, 294 Ky. 655, 172 S.W.2d 454 (1943). See Hillard v. Lakes, 294 Ky. 659, 172 S.W.2d 456 (1943).

3. Candidate Entitled to Office.

The candidate for an office who has not received a plurality of the legal votes cast is not entitled to the office although the candidate who received a plurality of the legal votes is, for any reason, ineligible except where a successful candidate has violated the corrupt practice act in a primary election. Bogie v. Hill, 286 Ky. 732, 151 S.W.2d 765 (1941).

4. Contest of Election.

Failure to sue to enjoin placing of opponent's name on ballot does not prevent candidate from thereafter contesting his opponent's election on that ground. Bogie v. Hill, 286 Ky. 732, 151 S.W.2d 765 (1941).

A candidate for office duly nominated in the manner prescribed may maintain an action to have the election vacated. Lakes v. Estridge, 294 Ky. 655, 172 S.W.2d 454 (1943).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 118-128.

160.230. Presentation of candidate names.

The candidate names shall be presented to the voters in the form prescribed by the general election law, except that no party emblem or distinguishing mark shall be used, save the words "School Candidates." The order in which the names of the candidates are to appear shall be determined by lot. As many additional spaces shall be left blank as there are members to be elected from the district or division as the case may be.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 427, effective July 13, 1990.)

Compiler's Notes. This section (4399-25: amend. Acts 1962, ch. 88, § 3; 1982, ch. 360, § 46, effective July 15, 1982) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 471, effective July 13, 1990.

Opinions of Attorney General. The provisions of this section which prohibit placing party emblems or distinguishing marks on school ballots qualify and supersede the provisions of KRS 118.080 (repealed) that require candidates to designate a party and device by which they are to be designated on the ballot and school candidates are not permitted to make such designations. OAG 64-666.

School elections are nonpartisan in the sense that the candidates are under what is designated as a school ballot without any party emblem or party designation and as a consequence would appear to fall within the exception to the Hatch Act. OAG 68-476.

Since school board candidates nominated by petition under KRS 118.315 may not, under this section, be represented by any political organization, the petitioners of such candidates may not fill vacancies occurring after the deadline for filing in the manner prescribed in KRS 118.325. OAG 75-612.

If at least one valid nominating petition is filed for election to an independent school board, an election must be held, and write-in votes may be made for all five school board positions. OAG 90-105.

Cited: Grauman v. Jefferson County Fiscal Court, 294 Ky. 149, 171 S.W.2d 36 (1943); Adams v. Commonwealth ex rel. Buckman, 268 S.W.2d 930 (Ky. Ct. App. 1954); Commonwealth ex rel. Buckman v. Miller, 272 S.W.2d 468 (Ky. 1954); Roberts v. Byrd, 344 S.W.2d 378 (Ky. 1961).

NOTES TO DECISIONS

Analysis

1. Voting machine act.
2. Right to have name on ballot.
3. Erroneous listing of candidates.

1. Voting Machine Act.

Provisions of this section in conflict with the Voting Machine Act (repealed) are repealed by the act wherever voting machines are used in elections for members of the board of education. Grauman v. Jefferson County Fiscal Court, 294 Ky. 149, 171 S.W.2d 36 (1943).

2. Right to Have Name on Ballot.

The right of a candidate to have his name printed on the ballot is a valuable right not to be lightly disregarded. Lakes v. Estridge, 294 Ky. 655, 172 S.W.2d 454 (1943).

3. Erroneous Listing of Candidates.

Where, through mistake of printer, ballots for election of school board members in one educational division erroneously carried names of candidates from another division, neither election officers nor voters had right to strike out printed names and substitute written names of proper candidates, and all such ballots were void. Lakes v. Estridge, 294 Ky. 655, 172 S.W.2d 454 (1943).

Where ballots furnished to some of precincts in one educational division, in school board election, were void because they erroneously carried names of candidates from another division, and total number of registered voters in such precincts was more than 20 percent of the total for the educational division, the entire election was void although the votes actually cast in such precincts did not change the result of the election. Lakes v. Estridge, 294 Ky. 655, 172 S.W.2d 454 (1943); Hillard v. Lakes, 294 Ky. 659, 172 S.W.2d 456 (1943).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 118-128.

160.240. General election laws apply — Expense.

(1) The general election laws shall apply to all elections of school board members.

(2) In school districts embracing cities of the first five (5) classes, the expense of the election shall be paid by the city from its general funds. In all other districts the expense shall be paid by the fiscal court out of its general funds.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 428, effective July 13, 1990.)

Compiler's Notes. This section (4399-25: amend. Acts 1978, ch. 30, § 1, effective June 17, 1978) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 428, effective July 13, 1990.

Opinions of Attorney General. KRS 160.210(1)(b) necessarily precludes write-in votes when no candidate has filed a nominating petition for that school board position within the statutory deadline since no election is held in that event. OAG 90-105.

Write-in votes are permitted if at least one candidate has filed a valid nominating petition for that school board position. OAG 90-105.

DECISIONS UNDER PRIOR LAW

ANALYSIS

1. Construction.
2. Residence of voter.

1. Construction.

The general election laws apply in school elections only in those instances where the school law is silent, and do not apply when the school law contains specific provisions concerning the same subject matter. Huff v. Black, 259 Ky. 550, 82 S.W.2d 473 (1935).

2. Residence of Voter.

In order to cast a legal vote, one must have lived in the state and county for the time required by Const., § 145, and must also have lived in the school district or voting precinct for 60 days before the election. Branham v. Branham, 276 Ky. 767, 125 S.W.2d 225 (1939).

Voter who left the district, married a nonresident, left him without getting a divorce, and returned to the district less than six months before election, was not eligible to vote in the district. Branham v. Branham, 276 Ky. 767, 125 S.W.2d 225 (1939).

Voter who owned realty and a few household goods and kept a garden in a district, but worked and spent most of her time in another district, was not entitled to vote in the first district. Branham v. Branham, 276 Ky. 767, 125 S.W.2d 225 (1939).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 118-128.

160.250. Politics of candidate not to be indicated — Definition of election booth.

(1) No election officer or other person within an election booth shall tell or indicate to a voter the political affiliation of any candidate.

(2) An election booth means an area in which a voter casts his vote which is designed in such a manner that the secrecy of the vote is insured.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 429, effective July 13, 1990.)

Compiler's Notes. This section (4399-25) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 429, effective July 13, 1990.

Cited: Adams v. Commonwealth ex rel. Buckman, 268 S.W.2d 930 (Ky. Ct. App. 1954).

160.260. Number of candidates to be voted for.

(1) The voting in county districts shall be by divisions. Each voter shall vote for only one (1) candidate. The legally eligible candidate receiving the highest number of votes cast in his division shall be declared elected.

(2) In independent school districts each voter may vote for as many candidates as there are members to be elected, and the number of board members to be elected shall be indicated. The candidates, in number equal to the number of members to be chosen, who have the highest number of votes shall be declared elected.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 614, effective July 13, 1990.)

Compiler's Notes. This section (4399-25: amend. Acts 1982, ch. 360, § 47, effective July 15, 1982) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 614, effective July 13, 1990.

Opinions of Attorney General. If at least one valid nominating petition is filed for election to an independent school board, an election must be held, and write-in votes may be made for all five school board positions. OAG 90-105.

Cited: Marshall v. White, 287 Ky. 290, 152 S.W.2d 945 (1941).

160.270. Regular and special meetings.

(1) Each board of education shall hold at least one (1) regular meeting each month, at a time and place fixed by the board. Special meetings may be called by the chairman. On request of three (3) members of the board the secretary shall call a special meeting. Each member of the board shall have timely notice of each meeting and the nature, object, and purpose for which it is called. Any board member failing to attend three (3) consecutive regular meetings, unless excused by the board for reason satisfactory to it, shall be removed from office pursuant to KRS 415.050 and 415.060. A majority of the board shall constitute a quorum for the transaction of business, but a concurring vote by a majority of the board, the number of board members in the quorum notwithstanding, shall be necessary to take any particular action unless otherwise specified by statute.

(2) The secretary shall be present at the meetings of the board except when his own tenure, salary, or the administration of his office is under consideration and shall record in a book provided for that purpose all its official proceedings, which shall be a public record open to inspection.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 430, effective July 13, 1990.)

Compiler's Notes. This section (4399-20, 4399-29: amend. Acts 1978, ch. 23, § 1, effective June 17, 1978; 1982, ch. 910, § 1, effective July 15, 1982) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 430, effective July 13, 1990.

Kentucky Bench & Bar. Whalen, The Kentucky Education Reform Act of 1990 and Local Boards of Education, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 11.

Opinions of Attorney General. When a member of a board of education fails to attend three regular meetings and is not excused by the board, a vacancy exists and, since a state office is involved, it is the duty of the Attorney General under KRS 415.050 to institute ouster proceedings. OAG 60-1137.

Unless a member of the board of education resigns upon his being called to active duty in the armed forces his position is suspended and no one can be appointed to fill it in his absence. OAG 61-847.

A member of a board of education does not abandon his office within the meaning of the statute by virtue of his being called for military service. OAG 61-847.

To act effectively in voting on a proposal a majority vote of the quorum present is necessary and an abstention is no longer counted as an acquiescence in order to obtain a majority. OAG 61-945, 62-422.

Neither an interested person nor his representative has the absolute right to take the original records of a district board of education into a private room without the secretary or the secretary's representative being present. OAG 68-291.

Neither the interested person nor his representative has the right to reproduce the records of a district board of education by any photostatic means whatsoever. OAG 68-291.

The right of inspection cannot override the public interest in safe and permanent maintenance of the records. OAG 68-291.

Where the necessary interest is present, the interested person or his representative is entitled to obtain a certified copy of the contract between the board of education and the secretary upon payment of such reasonable fee therefor as may be prescribed by regulation of the district board. OAG 68-291.

A school board may, in its discretion, meet in executive session and may, during such session, take a formal vote, but the matter voted on and the record of the vote taken must be recorded in the minutes. OAG 69-281.

Where five board members were present at a meeting and two voted yes on a motion and three did not vote, the motion did not pass. OAG 69-395, but see OAG 74-545.

Under the common law and the existing statutory law in this state, a school board has the sole discretion as to whether its meetings shall be open to the press and other members of the public. OAG 73-143.

The word "majority" in subsection (1) of this section means a majority of those present and voting; thus, where five board members were present at a meeting, a motion was carried when two members voted yes, one member voted no and two members abstained. OAG 74-545, but see OAG 69-395.

There was no statutory requirement for the president of the school board to provide school board members with an agenda of the matters to be taken up at a regular board meeting and the fact that a tentative agenda was sent to the members omitting any mention that a superintendent was to be appointed does not present any irregularity. OAG 75-488.

In absence of any statutory provision to the contrary, when a regular meeting of the local school board is once duly organized at the time and place appointed, the board possesses the incidental power to adjourn its regular meeting to a future time and such adjournment does not require any agenda to be prepared or for there to exist a special purpose for the adjournment; however, the time to which a meeting is adjourned should be specified and if any board members were not present at the regular meeting, they should be notified of the adjournment date and time; moreover there are no limiting provisions in the statutes as to the number of adjournments a regular meeting can in fact have. OAG 76-450.

There is no statutory requirement that an agenda be prepared for regular meetings of the school board but if an agenda is prepared it is a public record; an agenda is required for a special meeting of the school board and it is also a "public record"; such agendas are "public records" pursuant to KRS 61.872 and open for inspection by any person during the regular office hours of the public agency. OAG 77-221.

The minutes of a school board meeting may be amended at a subsequent meeting to conform them to the facts, but the minutes may not be changed to reflect a change in position on a question before the board or to show something other than what had actually occurred at the previous meeting. OAG 77-494.

If a motion for a special meeting is made and that motion passes by at least three members of the board, the subject matter of the motion would reflect what the agenda must cover and no other matter may be discussed at the meeting. OAG 77-496.

Where a lawsuit resulted from the action of a majority of a school board in rescinding the contract of the superintendent of schools, the board had implied power to expend school funds for attorney fees and court costs incurred in defending the board's actions. OAG 77-608.

The failure on the part of a board member to attend three successive regular meetings does not by itself create a vacancy in the board; the Attorney General's office must authorize an ouster proceeding. OAG 78-78.

A local board can hire a superintendent or do anything else in a specially called meeting which can be done at a regular meeting. OAG 78-274.

If the superintendent of schools is also the secretary of the board, he or she shall not meet with the board when the superintendent's tenure, salary or the administration of his office is under consideration, for while the two positions of superintendent and secretary may be separable, the body cannot be; in this situation a temporary secretary should be appointed to take the minutes of the board's proceedings. OAG 78-274.

In view of the language in KRS 61.825 (repealed), the "timely notice" requirement of this section is "at least 24 hours prior to the time of such meeting as specified in the notice." OAG 78-274.

The statutory language requiring the secretary of the board of education to call a special meeting and to see that properly detailed timely notice is given is mandatory and the secretary's refusal to act could be the basis for rescission of the secretary's contract; however, the failure to perform the functions of the secretary of the board could not constitute legal cause for removal from office as superintendent when the same person holds the two positions, for the two positions are separable. OAG 78-274.

A majority vote of the board is required to fill a vacancy on the board. OAG 78-819.

Since KRS 61.850 specifically provides that the provisions of KRS 61.805 to 61.850 should not be construed as repealing any other laws relating to meetings, but merely supplements them, and since this section is a piece of specific legislation dealing with school boards, in the event of a conflict between that section and KRS 61.825 (repealed), which requires a request by a majority of the members of a governing body, the provision of subsection (1) of this section allowing only three members to call a meeting should prevail. OAG 79-130.

Two members of a five-member board of education have no authority to act for the board as a body, thus where two board members offered to remove a written reprimand by the board from a high school coach's record in consideration of a resignation by the coach, such an offer was without legal significance. OAG 80-119.

When a closed session of a school board is held as authorized by KRS 61.810, minutes of the closed session should be made, but the board, in its discretion, may require the minutes to be sealed and withheld from public inspection and such minutes will not be part of the regular minutes of the meeting required by subsection (2) of this section. OAG 81-235.

For practical examples of the effect of possible votes with a five-member school board, see OAG 82-374.

The practical effect of the 1982 amendment to this section is that, for a typical five-member school board, three board members must agree in order for an action before the board to pass. OAG 82-374.

Under subsection (1) of this section, board members who abstain will be considered to have acquiesced with the majority of those present and voting. OAG 82-374.

A special meeting of a school board may deal only with matters which are stated in the call of the meeting of which each member of the board receives timely notice unless all of the members are present and unanimously agree to consider an additional subject which was not included in the call. OAG 83-71.

When all the members of the board of education are present, and all the members agree to take up an additional subject, the required advance notice of the subjects to be discussed in the meeting may be waived since the advance notice is for the benefit of the board members, not for the benefit of the news media or the public; the waiver must be by unanimous consent. OAG 83-71.

A school board member abstaining from voting for a board action in which he or she has a conflict of interest, in order to prevent the problematic circumstance caused by consideration of the abstention as a vote acquiescing with the majority, should be absent either from the entire meeting or from the

discussion and the vote on the issue in which he or she has the conflict. OAG 88-35.

The rule that abstaining voters are considered as acquiescing with the majority applies in instances where a required affirmative number of votes is not mandated by the controlling statute or ordinance. OAG 88-35.

The language of this section which is applicable to local boards of education and states that a concurring vote by a majority of the board, the number of board members in the quorum notwithstanding, shall be necessary to take any particular action unless otherwise specified by statute does not apply to KRS 161.120, which is applicable to the Education Professional Standards Board. OAG 91-107.

Subsection (1) of this section requires that a majority of the statutory board of education be present to constitute a quorum and that the majority must concur in their vote to take action; therefore, a minimum of three out of five members on a five member board, or four out of seven members on a seven member board, must be present in order to have a quorum present to transact business and when the bare minimum number of board members necessary to transact business are present, all must concur in their vote to take action. OAG 92-77.

While the school board violated the Open Meetings Act by its failure to file a written response to the complaint within the statutorily mandated time frame, its decision to not renew the superintendent's contract was not a violation of the Open Meetings Act as that action was within the agenda of activities set forth in the notice for that special meeting which stated that "The purpose of the meeting will be to discuss renewal/or action of the Superintendent's contract." OAG 97-OMD-43.

County board of education and superintendent of county schools violated the Open Meetings Act, specifically KRS 61.823(4)(a), by their failure to notify in writing all board members at least 24 hours prior to the commencement of those meetings even though the board had complied with the requirements of subsection (1) of this section. 97-OMD-90.

Cited: Saylor v. Rockcastle County Bd. of Educ., 286 Ky. 63, 149 S.W.2d 770 (1941); Board of Educ. v. Cassell, 310 Ky. 274, 220 S.W.2d 552 (1949); Johnson v. King, 349 S.W.2d 845 (Ky. 1961).

NOTES TO DECISIONS

Analysis

1. Regular place of meeting.
2. Called meeting.
3. Notice.
4. Unexcused absence.
5. Removal proceedings.
6. Changed meeting date.

1. Regular Place of Meeting.

In the absence of a formal designation of a regular place of meeting, such a regular place will be deemed established by the repeated holding of meetings at a particular place. Brown v. Turman, 264 Ky. 407, 94 S.W.2d 1010 (1936).

Notice of a meeting implies that it will be held at the regular place of meeting. Brown v. Turman, 264 Ky. 407, 94 S.W.2d 1010 (1936).

When notice of a meeting does not designate the place of meeting, and it is not held at the regular place of meeting, all steps taken at such meeting are invalid. Brown v. Turman, 264 Ky. 407, 94 S.W.2d 1010 (1936).

2. Called Meeting.

Where a called meeting was a continuation of a previous regular meeting, it was proper for the superintendent to recommend teachers at the called meeting, even though the continuation was for a different purpose. O'Daniel v. McDaniel, 290 Ky. 77, 160 S.W.2d 331 (1942).

3. Notice.

Notices of special meetings need not be written. They may be oral and may be delivered by the secretary. Board of Educ. v. Stevens, 261 Ky. 475, 88 S.W.2d 3 (1935).

When members failed to attend special meeting for lack of interest, the fact that notice was delivered only 15 minutes before the meeting is immaterial. Board of Educ. v. Stevens, 261 Ky. 475, 88 S.W.2d 3 (1935).

In absence of legal notice to all members of a special meeting, absence of a member renders invalid all steps taken at such meeting. Brown v. Turman, 264 Ky. 407, 94 S.W.2d 1010 (1936).

Member of school board was entitled to notice of meeting, although at time of meeting he was under injunction prohibiting him from acting as member or exercising any of the duties of his office, but where a second meeting was held, of which he was given notice, and at which the action taken at the former meeting was ratified, the defect was cured. McClendon v. Hamilton, 277 Ky. 734, 127 S.W.2d 605 (1939).

Where there has not been legal notice of a special meeting of the school board, the action taken at the special meeting is invalid if one of the members of the board is absent. Board of Educ. v. Nevels, 551 S.W.2d 15 (Ky. Ct. App. 1977).

When all the members of the board are present and have an opportunity to participate in all the actions taken at a special meeting, the validity of the action taken at the special meeting is not affected by the form of the notice. Board of Educ. v. Nevels, 551 S.W.2d 15 (Ky. Ct. App. 1977).

Where the records of the special meeting of the school board did not reflect that any objection was made to the notice of the special meeting or that any objection was made to any action taken at the meeting on the grounds that it was not included within the notice, the action taken at such meeting was not invalidated because of the form of the notice of the meeting. Board of Educ. v. Nevels, 551 S.W.2d 15 (Ky. Ct. App. 1977).

4. Unexcused Absence.

Unexcused absence for three consecutive regular meetings does not ipso facto vacate a board member's office. The board must take action thereon. Board of Educ. v. Stevens, 261 Ky. 475, 88 S.W.2d 3 (1935). See Spurlock v. Spradlin, 266 Ky. 164, 98 S.W.2d 480 (1936).

A change in the date of meeting during the absence of a member without notice to him and without his knowledge is a good excuse for absence. Baisden v. Floyd County Bd. of Educ., 270 Ky. 839, 110 S.W.2d 671 (1937).

This section contemplates that type of inaction revealing an intention to abandon the duties of the office. Commonwealth ex rel. Buckman v. Mason, 284 S.W.2d 825 (Ky. 1955).

5. Removal Proceedings.

On appeal of removal cases, the court can only consider whether the board acted arbitrarily, unlawfully, without authority, without evidence, or abused its discretion. Baisden v. Floyd County Bd. of Educ., 270 Ky. 839, 110 S.W.2d 671 (1937).

The motives of the board in removal proceedings are not open to inquiry. Baisden v. Floyd County Bd. of Educ., 270 Ky. 839, 110 S.W.2d 671 (1937).

6. Changed Meeting Date.

Where school board changed monthly meeting date in open meeting, where press release had been issued, where newspaper article appeared, and where citizens appeared at the meeting, there was no positive showing that the board had decided any matters regarding closing the school in closed session. Coppage v. Ohio County Bd. of Educ., 860 S.W.2d 779 (Ky. Ct. App. 1992).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 148, 149.

Minutes or record of meeting of school board, necessity, sufficiency, and effect of. 12 A.L.R. 235.

160.280. Per diem and expenses for board members — Eligibility for insurance plans.

(1) Members of boards of education shall receive no salaries, but members of boards of education may receive a per diem of seventy-five dollars ($75) in any calendar year, and their actual expenses for each regular or special meeting attended. Members shall receive this same per diem for training required by KRS 160.180. In no case shall the expenses incurred within the district or per diem of any member exceed two thousand dollars ($2,000) in any calendar year.

(2) Notwithstanding the provisions of subsection (1) of this section, members of boards of education in counties containing a city of the first class wherein a merger pursuant to KRS 160.041 shall have been accomplished and members elected from the divisions and in the manner prescribed by KRS 160.210(5) shall receive a per diem of seventy-five dollars ($75), and may be reimbursed for other actual and necessary expenditures incurred in the district in the performance of their duties authorized by the board. Members shall receive this same per diem for training required by KRS 160.180. In no case shall the expenses incurred within the district or per diem of any member exceed three thousand dollars ($3,000) per calendar year.

(3) Members of boards of education may be reimbursed for actual and necessary expenditures incurred outside the district in the performance of their duties authorized by the board.

(4) All claims shall be made out according to law and filed with the secretary of the board and shall be approved and paid as other claims against the board.

(5) Board members shall be eligible to participate in any group medical or dental insurance plan provided to employees of the district pursuant to KRS 161.158. Participating board members shall pay the full cost of any premium required for their participation in the plan.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 431, effective July 13, 1990; 1992, ch. 170, § 1, effective July 14, 1992; 2000, ch. 454, § 1, effective July 14, 2000.)

Compiler's Notes. This section (4399-32: amend. Acts 1954, ch. 220, § 1; 1962, ch. 57; 1976, ch. 256, § 1; 1976, ch. 278, § 1; 1978, ch. 31, § 1, effective June 17, 1978; 1982, ch. 59, § 4, effective July 15, 1982; 1982, ch. 227, § 2, effective July 15, 1982; 1986, ch. 82, § 1, effective July 15, 1986) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 431, effective July 13, 1990.

Kentucky Bench & Bar. Whalen, The Kentucky Education Reform Act of 1990 and Local Boards of Education, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 11.

Opinions of Attorney General. Although county school board members are elected on a nonpartisan basis, since they do receive a per diem and expenses, a merit system employee in a classified position would be disqualified from serving on the county school board. OAG 60-441.

A member of a county board of education is only entitled to receive the per diem allowance authorized by this section for meetings actually attended. OAG 60-1135.

Under this section a member of a board of education may receive a maximum of $200 for per diem payments per annum and also receive a maximum of $200 per annum for expenses actually incurred. OAG 61-313.

A member of a local board of education may not be reimbursed for expenses incurred outside his district in the performance of his duties except when he is attending a meeting or conference called by the Superintendent of Public Instruction pursuant to the provisions of KRS 156.190. OAG 61-1052.

The members of a board of education would be entitled to per diem payments for attending adjourned meetings held on a day or days after the regular monthly meeting date. OAG 64-157.

Expenditures under this section are authorized only to legal members of boards of education and a board member who has become ineligible to serve due to moving his permanent residence from within the district would not be entitled to payment for services rendered after that time. OAG 65-800.

If payments accepted by a board member of an independent district represent payment for services in any amount or to any degree, or if though purporting to be for actual and necessary expenses, are not for duties authorized by the board, acceptance of such would offend KRS 160.180 in rendering the member ineligible. OAG 69-292.

The per diem received by a county school board member under this section is synonymous with "salary" and imports the idea of compensation for personal services. OAG 74-385.

A classified state employee cannot seek membership on a county school board which is an elective office and whose members receive a per diem of $10.00 and expenses pursuant to this section. OAG 74-646.

A board of education may not pay a travel reimbursement claim of a board member unless that expense was authorized by the board before the expense is incurred, nor may the board authorize the incurring of out-of-district expenses by board members and then refuse to pay upon presentation to the board of a valid documented claim for the actual expenses incurred. OAG 76-329.

The local board of education cannot compensate a member for earnings lost due to attendance at an approved training session, as required by KRS 160.180(5), since subsection (1) of this section forbids school board members from receiving a salary. OAG 85-53.

Pursuant to subsection (3) of this section, a district board of education may legally pay the expenses of a member for attending an approved training program, as required by KRS 160.180(5). OAG 85-53.

Subsection (1) of this section allows a district to pay a board member $40 for each meeting actually attended up to a maximum per diem of $1,000 during any calendar year. Also, the board member may receive reimbursement, up to a maximum of $1,000, for actual expenses incurred within the district in any calendar year. OAG 92-136.

Cited: Schuerman v. State Bd. of Educ., 284 Ky. 556, 145 S.W.2d 42 (1940).

NOTES TO DECISIONS

1. Transportation Expense for Board Members.

The superintendent of schools of the county board of education was the executive agent and officer of the board and as such was in charge of the management and control of the school buses owned and operated by the board, with authority to direct the operator of the school bus to permit a member of the county board of education to ride upon the bus and thus save the board the expense of his transportation under this section and the board member was lawfully riding in the school bus within the liability policy issued for protection of any school child or other person from negligence of the bus driver. Standard Accident Ins. Co. v. Perry County Bd. of Educ., 72 F. Supp. 142 (E.D. Ky. 1947).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 140, 141.

160.290. General powers and duties of board.

(1) Each board of education shall have general control and management of the public schools in its district and may establish schools and provide for courses and other services as it deems necessary for the promotion of education and the general health and welfare of pupils, consistent with the administrative regulations of the Kentucky Board of Education. Each board shall have control and management of all school funds and all public school property of its district and may use its funds and property to promote public education. Each board shall exercise generally all powers prescribed by law in the administration of its public school system, appoint the superintendent of schools, and fix the compensation of employees.

(2) Each board shall make and adopt, and may amend or repeal, rules, regulations, and bylaws for its meetings and proceedings for the management of the schools and school property of the district, for the transaction of its business, and for the qualification and duties of employees and the conduct of pupils. The rules, regulations, and bylaws made by a board of education shall be consistent with the general school laws of the state and shall be binding on the board of education and parties dealing with it until amended or repealed by an affirmative vote of a majority of the members of the board. The rules, regulations, and bylaws shall be spread on the minutes of the board and be open to the public.

(3) Local boards of education electing to enter into agreements pursuant to the Interlocal Cooperation Act, KRS 65.210 to 65.300, with other local boards of education to establish consortia to provide services in accordance with the Kentucky Education Reform Act of 1990, 1990 Ky. Acts Ch. 476, may transfer real or personal property to the consortia without receiving fair market value compensation. The joint or cooperative action may employ employees transferred from employment of a local board of education, and the employees shall retain their eligibility for the Kentucky Teachers' Retirement System. The chief state school officer, under administrative regulations of the Kentucky Board of Education, may allot funding to an interlocal cooperative board created by two (2) or more local school districts pursuant to KRS 65.210 to 65.300 to provide educational services for the mutual advantage of the students in the representative districts. All statutes and administrative regulations that apply to the use of these funds in local school districts shall also apply to cooperative boards.

(4399-20, 4399-33: amend. Acts 1978, ch. 52, § 1, effective June 17, 1978; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. II, § 74, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

Cross-References. Conferences of public school officials, board to pay expenses of, KRS 156.190.

Flags to be supplied for display at schools, KRS 2.040.

School employees, provisions as to, KRS Ch. 161.

Teachers' retirement, board to make salary deductions and reports for, KRS 161.560.

Teachers' tenure law, KRS 161.720 to 161.810.

Child find, evaluation, and reevaluation, 707 KAR 1:300.

Children with disabilities enrolled in private schools, 707 KAR 1:370.

Comprehensive system of personnel development, 707 KAR 1:330.

Confidentiality of information, 707 KAR 1:360.

Definitions, 707 KAR 1:280.

Determination of eligibility, 707 KAR 1:310.

District director, 702 KAR 6:020.

Free appropriate public education, 707 KAR 1:290.

Individual education program, 707 KAR 1:320.

Monitoring and recovery of funds, 707 KAR 1:380.

Placement decisions, 707 KAR 1:350.

Procedural safeguards and state complaint procedures, 707 KAR 1:340.

Recreational facilities; school and community, 702 KAR 4:005.

Required program of studies, 704 KAR 3:303.

Kentucky Bench & Bar. Whalen, The Kentucky Education Reform Act of 1990 and Local Boards of Education, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 11.

Kirby, School-Based Decision Making, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 15.

Prather, Establishing Schools, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 19.

Kentucky Law Journal. Taylor, With Temperate Rod: Maintaining Academic Order in Secondary Schools, 58 Ky. L.J. 616 (1970).

Hays, Constitutional Law — School Dress Codes — A Student's Right to Choose His Hair Style and Length, 59 Ky. L.J. 238 (1970).

Comments, Constitutional Limitations on Mandatory Teacher Retirement, 67 Ky. L.J. 253 (1978-1979).

Kentucky Law Survey, Hanley and Schwemm, Education: Teacher's Rights, 67 Ky. L.J. 721 (1978-1979).

Russo, School-Based Decision Making in Kentucky: Dawn of a New Era or Nothing New Under the Sun?, 83 Ky. L.J. 123 (1994-95).

Opinions of Attorney General. Under this section, a local board of education has the authority to charge a reasonable incidental fee for prescribed courses of study, such as a science course, and also collect a reasonable incidental fee for general school supplies, but may not withhold a pupil's grades or credits for failure to pay such fees. OAG 60-1017.

A local board of education may not lease school property for the purpose of constructing a swimming pool which would permanently impair the future use of the property for school purposes. OAG 60-1018.

Under this section a local board of education may, by regulation, adopt its own policy regarding the employment of pregnant teachers. OAG 61-13.

Under subsection (2) of this section a local board of education may pass a resolution requiring that all of its high school principals hold a master's degree as a prerequisite to their employment but such resolution could not be made applicable to persons serving as principals at the time the resolution was adopted until their present contract as principal has expired. OAG 61-413.

In the exercise of reasonable discretion, a board of education may decide that it is in the best interests of the school district to participate in the student teacher-training program. OAG 63-269.

A board of education may prohibit any student who operates his automobile on the way to or from school in a reckless or wanton manner from driving said motor vehicle to or from school. OAG 63-486.

A board of education may provide and maintain an automobile for the benefit of the school superintendent while discharging the duties attendant to his office. OAG 64-130.

A county board of education regulation, which required that the marriage of any pupil within a school year would be sufficient cause to drop him from school attendance, would probably not be enforceable due to the fact that it did not allow any discretion upon the board's part and applied blanketly without regard to the circumstances of each case. OAG 64-877.

A commission, agency, or city has the power to condemn property of a school board for the general purpose for which each was created. OAG 65-330.

A school board may sell property directly to a city or its agency or commission without the necessity of a public offering, and it may also negotiate for a settlement out of court at any point during a condemnation proceeding. OAG 65-330.

The superintendent of schools may not enter into a binding Kentucky work experience and training program contract on behalf of the district unless authorized to do so by proper action of the school board. OAG 65-411.

A board of education has adequate authority to adopt regulations which would require teachers to submit to periodic physical examinations, if it appears that they are physically unable to discharge their duties as a teacher. OAG 65-560.

Without a showing that the circumstances differ, the exemption of certain nonresidents without the exemption of all would be arbitrary and illegal. OAG 67-48.

Neither an interested person nor his representative has the absolute right to take the original records of a district board of education into a private room without the secretary or the secretary's representative being present. OAG 68-291.

Neither the interested person nor his representative has the right to reproduce the records of a district board of education by any photostatic means whatsoever the person chooses. OAG 68-291.

The right of inspection cannot override the public interest in safe and permanent maintenance of the records. OAG 68-291.

Where the necessary interest is present, the interested person or his representative is entitled to obtain a certified copy of the contract between the board of education and the secretary upon payment of such reasonable fee therefor as may be prescribed by regulation of the district board. OAG 68-291.

Purchases of athletic equipment of over $1,000 by a district school board would have to be made by the bidding procedure even though the purchase money was derived from admissions to athletic exhibitions. OAG 69-327.

The test of whether a regulation is arbitrary, capricious, unreasonable or discriminatory is whether the conduct, style of dress, hairstyle, beard or mustache may reasonably be forecast to cause substantial disruption or material interference with school activities, or whether it could reasonably be forecast to have a material adverse effect on the health, discipline or decorum of the institution. OAG 69-423.

Under subsection (1) of this section a board of education, consistent with the rules and regulations of the State Board of Education, may expend money for the installation of gifts received pursuant to KRS 160.580. OAG 69-431.

Under subsection (2) of this section, a school board may make regulations designed to protect the general welfare and safety of students and in doing so may take into account specific standards of moral conduct, so that school dances could be eliminated as an approved school function by the board unless such ban were imposed for religious reasons, in which case it would violate Const., § 5 and United States Const., Amend. 1. OAG 70-167.

KRS 161.770 is to be regarded as exclusive and takes precedence over this section. OAG 70-771.

School districts have no authority to promulgate regulations which create speed limits which are more stringent than the speed limits allowed by state statute. OAG 71-207.

A board of education may validly enact legislation whereby a teacher shall lose one-fourth of a day's pay if his tardiness during a given month exceeds 15 minutes. OAG 72-362.

Any regulation promulgated by a local board must bear a reasonable relationship to some valid objective within the purview of the local board. OAG 72-498.

A provision in bylaws adopted by a county board of education specifying that the bylaws could not be repealed or abolished except by majority vote of the people of the county was void. OAG 73-5.

A school board may adopt regulations pertaining to hair and dress as long as said regulations are reasonable and have a connection with student conduct, but an individual classroom teacher, athletic coach, band director or other school personnel has no authority to impose his own taste in such matters. OAG 73-233.

Although title to school property is technically vested in the Commonwealth, control of school property is placed in the hands of the district board of education who has the power to convey an interest in the real estate by an easement and, if giving the easement causes any diminution in property value, the school board would be entitled to be compensated for the easement. OAG 73-276.

The authority to make regulations pertaining to hair styles resides in the board of education and cannot be delegated to individuals as the board of education is the policy-making agent of the Commonwealth and the school superintendent and principals are the administrators of the board's policy and are to see that teachers and other school personnel carry out that policy. OAG 73-284.

The board of education may enact a hair style code for boys, but it may enact only one and it must apply to the entire district alike and to all boys of the district alike and such code should have a reasonable relationship to student conduct and to furthering the educational process. OAG 73-284.

As the board of education of the school district is given general authority over the business affairs of the district and the control of school property, there would be nothing wrong with school districts leasing the school buses for a fair remuneration if, in the board's discretion, said leasing would cause no interference with the operation of the school system and it would receive a fair return for the use of its property. OAG 73-306.

A board of education has the power to make general regulations pertaining to its employees becoming candidates for elective office. OAG 73-322.

A school board has the authority to require a teacher or principal to take a leave of absence if he announces as a candidate for public office whether the teacher or principal desires the leave or not; however, the board is under no legal obligation to grant such a leave and may grant or refuse a request therefor. OAG 73-322.

As the superintendent is the executive agent of the board of education and has the responsibility to carry out the lawful orders of the board, the order of the board eliminating the position of deputy superintendent for the year 1973-74 and to so notify the incumbent is a lawful order but the incumbent must be notified by May 15 that his salary for the next year will be reduced or he will be entitled to at least the same salary he received during the present year. OAG 73-378.

When a board of education officially decides to eliminate a position or not to fill a position for the coming year and to employ the person filling the eliminated position in a position of reduced responsibility and salary, it is necessary that the employee be notified that his position and salary will be reduced for the coming year before May 15 and the superintendent and the board will then have until July 1 to decide on the new position for said employee. OAG 73-378; 76-360.

The announcement over a school speaker system or the distribution of notices to children on school property of meetings of an organization of parents to promote a constitutional

amendment which would forbid busing of school pupils for the purpose of achieving racial balance in the public schools constitutes an illegal use of school property and improperly interjects political questions into the operation of the public school. OAG 74-118.

The school board has broad discretion under KRS 160.160 and this section in the selection of school sites and the establishment of schools so that even if the county is the legal owner of the property and is leasing it to the school board under KRS 162.140 as the school district holds equitable title, the fiscal court has no rights relative to a high school building which the board of education plans to tear down and replace with a new building unless the county could negotiate the purchase of the property from the school board. OAG 74-221.

A school board may enact a reasonable regulation that a pupil may not be absent on more than a limited number of days and still receive credit for his courses. OAG 74-312.

A school board may not bind the school district to an employment agreement for any set duration. OAG 74-367.

This section empowers a local school board to pay a termination payment of three months' pay to a superintendent of schools who resigns before his contract has expired. OAG 74-708.

A board of education may reasonably regulate the use of school property by charging $5.00 for a permit allowing students who drive to school to park on school grounds. OAG 74-734.

Whether a board of education may allow a period of sick leave and leave of absence for maternity confinement to run in immediate succession is a matter within the sole discretion of the board. OAG 74-745.

As an agency of the state a school district enjoys sovereign immunity from liability and may not legally expend school funds for premises liability insurance without an enabling statute. OAG 74-746.

In the absence of statute or regulation governing emergency or sick leave for regular part-time employees of the county board of education, the board may enact such policy as it deems proper. OAG 74-770.

This section is not authorization for boards of education to regulate students' use of cars as a means of transportation to and from school nor could the boards be held liable in tort for injury to students on or off school grounds, due to the school boards' sovereign immunity. OAG 74-783.

A board of education may not legally expend public funds to purchase insurance to protect board members from personal liability arising from claims against them for errors and omissions committed by them in the performance of their official duties. OAG 75-81.

A school board regulation providing that a student fails a course after nine absences is invalid since it in effect considers the student to be automatically expelled after the nine absences but does not afford him a hearing and an opportunity to be heard and gives no consideration to the cause of the absences. OAG 75-124.

There is no obligation on a school board's part to negotiate with its employees as the internal management of common schools and teachers is vested in the local board of education and through KRS 161.140, 161.170, 160.290 and 160.370 the board has vested control over the compensation, duties, working conditions and related items concerning teachers. OAG 75-126.

Being married is not a legal reason for forbidding a student to go on a class trip. OAG 75-163.

KRS Chapter 387 pertaining to guardians makes no provision for a guardian "for school purposes only" and therefore the appointment of such a guardian through trial commissioner's order is a nullity and the school board is not legally bound to recognize such an order. OAG 75-170.

Where a board of education has adopted different time schedules for the city and the rural schools within its district, rural teachers who are required to work a reasonably longer day than city teachers in the same district are not entitled to extra compensation solely on the basis of a longer working day. OAG 75-297.

Within the statutory limits of from six to nine hours (KRS 158.060), each school district may adopt its own schedule of classes and professional duties of its teachers and it is not required that the working day of all teachers in the same district be exactly the same length of time. OAG 75-297.

Although KRS 160.560 requires each board of education to elect a treasurer but is silent as to compensation for the treasurer, under this section, the board may fix a reasonable compensation for the treasurer. OAG 75-461.

A local civil defense unit has no authority to demand the use of school property and, while the school district may not donate the use of its property for nonschool purposes, it may lease the property for fair remuneration. OAG 75-466.

A local school board has the implied authority to employ an attorney to represent it in its corporate capacity in litigation with the State Board of Education and to pay resulting legal fees from the general fund. OAG 75-552.

A board of education may adopt a uniform policy relative to sick leave which would permit granting a teacher credit for accumulated sick leave at the time of previous termination of employment but a board should not grant sick leave credit on only a case by case basis. OAG 75-587.

The boards of education of high school districts within a county may adopt a policy requiring that students transferring to another school without changing residence complete that school year in the school transferred to without further transferring. OAG 75-602.

Boards of education under their general powers may establish reasonable policies for the retention, demotion and promotion of pupils, including requiring that pupils passed by their teachers move on to the next higher grade. OAG 75-603.

In view of sections 180, 184 and 186 of the Constitution public school funds may not be expended to employ persons to control vehicular and pedestrian traffic on public streets or roads in or around school premises. OAG 75-614.

There have been no decisions by the Court of Appeals involving the liability of boards of education or their members for personal injuries or property damage resulting from the boards' authorized use of student safety patrols to control vehicular and pedestrian traffic on public streets in or around school premises, but the general principle is that school board members will not be held personally liable for a loss or injury resulting from an act within the scope of their authority and within their jurisdiction in the absence of negligence. OAG 75-614.

A board of education may establish student safety patrols for street traffic instructional purposes inside the limits of school property but may not make or enforce traffic regulation on roads or driveways within or outside the limits of school property. OAG 75-614.

There is no constitutional or legislative requirement that the cost of education to public school pupils must be free and a board of education may require that pupils be charged a reasonable fee for school supplies. OAG 75-619.

An off-duty constable employed as a school security guard is an employee of the school board which may compensate him for his services. OAG 75-631.

Where a school board provides a fixed source of money to be used in purchasing fringe benefits for each of its teachers, it may afford the teachers the option to receive the fringe benefits or an equivalent fixed sum in cash. OAG 75-646.

Although the board of education, under this section, has the power to adopt rules for the operation of schools, the General Assembly did not intend to impose upon local boards the duty to make and enforce rules which reach into each classroom. OAG 75-656.

The broad powers given to boards of education allow enactment by them of a regulation governing whether a school absence not authorized by statute will be considered excused or unexcused, subject only to the restriction that the regulation be reasonable and not arbitrary. OAG 75-694.

A board of education, pursuant to the powers granted in subsection (2) of this section, may adopt a uniform policy of sick leave for teachers which would permit a teacher to transfer all or a specific number of accumulated sick leave days from another school district, whether in state or out. OAG 75-697.

The local board of education, not the child, has the right to determine which school the child shall attend. OAG 76-55.

The board of education, in its discretion, determines the number of administrative and teaching positions it deems necessary and proper for the school system. OAG 76-118.

The requirement of the State Department of Education that a child participate in a health and physical education course does not impose a significant constitutional burden upon the freedom to exercise religious beliefs, and therefore the state's interest in establishing a sound curriculum format for graduation must prevail over patchwork exceptions to course requirements. OAG 76-225.

A teacher would not be bound by a local board of education policy restricting the number of semester hours of college or university study that can be taken by its certified employees during a school year, for such a policy would pose an unreasonable burden on teachers who by mandatory law must complete additional college or university study within a specified period of time in order to continue their professional work. OAG 76-311.

A board of education may adopt rules and regulations governing out-of-district travel for its members. OAG 76-329.

A board of education cannot lawfully contract away amendatory obligation of approval given it by the statutes and, therefore, any contractual provisions of a superintendent's contract in derogation of the expressed statutory outline of powers and duties of a superintendent of a public common school system and a local board of education would be void. OAG 76-360.

A local board of education has the power to adopt reasonable policies over and above, but not in conflict with, the State Board of Education regulations concerning the selection of children from those eligible to attend kindergarten classes, therefore a local board of education does not have to permit a six (6) year old child in its kindergarten program. OAG 76-412.

While there is no law prohibiting the operation of motorcycles and minibikes upon the parking lot and grounds of a school, such activity may be regulated by the local board of education and the local board of education could adopt such rules and regulations as it deemed necessary regarding these activities; however, it would be illegal for the local board of education to spend public school moneys to support this activity on school property. OAG 77-11.

A local board of education may enact a personal leave policy for its noncertified employees as it deems proper. OAG 77-115.

A county board of education has the power and authority to grant a permanent easement over school grounds to a property owner for purposes of ingress and egress to his property by pedestrians and vehicles. OAG 77-298.

A local board of education would be without legislative authority to lease to a private corporation six outdoor tennis courts and adjacent parking area to be used for private gain during the winter months. OAG 77-342.

Local school boards may not establish policies or regulations which serve to discriminate against married students. OAG 77-361.

A board of education policy denying automatically a married student the right to participate in extracurricular activities associated with the school would interfere with the married student's civil liberties. OAG 77-361.

Although a board of education has authority to establish a fee for extracurricular activities, the board could not compel the payment of the fee nor could the board withhold the recording of grades of a student who has failed to pay the fee. OAG 77-574.

A local board of education may adopt a blanket policy of retirement of noncertified employees at age 65. OAG 77-595.

It is within the discretionary power of the board of education of a county school system to adopt an enrollment policy which would permit the parents of students residing in the county to enroll their children in schools outside the usual attendance area. OAG 77-736.

A local school board may elect to purchase liability insurance for its employees and pay all or a portion of the premium from board of education funds. OAG 78-21.

A local board of education can appoint a committee, the function of which would be advisory in nature with respect to the search for qualified individuals to fill the position of chief deputy superintendent inasmuch as a local board of education may appoint a committee concerning any matter that relates to a proper subject of inquiry by it. OAG 78-41.

The local board of education has authority over the control and management of the school and the duty to adopt rules and regulations governing various aspects of the schools in the school district. OAG 78-204.

A local school board may, but is not required to, pay from school funds costs of contracting with local physicians for the performing of physical examinations required by school law or regulation. OAG 78-365.

A local board of education may designate attendance areas and draw boundary lines under its general authority provided by this section and nothing in KRS 160.210 prevents this being done in an election year. OAG 78-366.

A school system has the right to suspend a child from the school bus for misconduct. OAG 78-392.

A local school board has the discretionary power and authority to structure course offerings so as to require attendance in a school district for eight school semesters before graduation. OAG 78-606.

When the board of education opened a new school which was to enroll all of the students in certain grades who formerly were enrolled in several schools, it was permissible, under this section, to transfer proportionate amounts of school activities account moneys from the accounts of the old schools and set up a new account with them for the new school since this section gives school boards control over internal account funds as well as general account moneys. OAG 78-644.

The fixing of the salary for an assistant superintendent position is left as a sole responsibility of a local board. OAG 79-88.

Teachers and administrators and other school officials are responsible for the public education and are charged with the responsibility of implementing the rules and regulations of the Commonwealth for the control and management of the common schools and local board rules and regulations for schools in a school district. OAG 79-168.

A local board of education may not permit the use of any school facilities that interferes with school activities. OAG 79-321.

The use of school facilities is subject to the determination of a local board of education and it is paramount that the board adopt rules and regulations regarding the permitting of the use of school property so that such use does not in any way interfere with the conducting of any school program, curricular or co-curricular. OAG 79-321.

It is impermissible for a teacher incorporating classroom participation as part of the overall academic grade to give a student a lower grade in a course than he earned while in class for failure to participate in class on days when he was absent under a legitimate excused absence. OAG 79-539.

A local board of education may prescribe the manner and duration of the selection of a board chairperson. OAG 80-48.

There is no legal basis that would require a local board of education to determine "cause" existed before a new chairperson could be chosen. OAG 80-48.

A local board of education has the lawful authority and duty to prescribe the manner in which school buildings and facilities may be used by groups during nonschool hours. OAG 80-78.

A local board of education, pursuant to its broad authority under this section, may require additional credit requirements over those minimally established by regulation of the State Board for Elementary and Secondary Education (now State Board of Education), pursuant to KRS 156.160(2). OAG 80-118.

While there is no statutory language in the state school laws providing for written reprimands, under a board of education's broad authority granted to it by this section, a written reprimand is permissible. OAG 80-119.

A school district may not advance money to its employees for travel or other necessary expenses prior to the expense actually being incurred since the applicable statutes contemplate reimbursement, not an advancement of money. OAG 80-395.

KRS 438.050, as it is written, proscribes only the smoking of tobacco products; however, the board of education may regulate, under the authority of this section and KRS 160.340, the use of tobacco products such as snuff or chewing tobacco in ways other than smoking, by its employees, other adults or students. OAG 81-295.

Subsection (2) of this section does not permit an attempt by a school board to establish residential requirements for school employees, particularly in light of the fact that there are no other teacher qualification statutes requiring residence in the district where employed. OAG 82-59.

A local county board of education is sufficiently representative of the geographic area that it serves to qualify as an agency with which a community action agency could contract, and therefore, as long as the subject matter of the contract related to the purpose of promoting public education, a county board of education could enter into a contract with a community action agency pursuant to KRS 160.160 and this section. OAG 82-387.

Retention and promotion of pupils is entirely a matter of local board of education policy and not a matter for control by parents. Parents do not have a right to demand that a child be retained at a particular grade level for any reason, and especially not for athletic purposes. OAG 82-473.

Although school boards must see that their policies and regulations are reasonable and nonarbitrary, both on their face and as applied, this responsibility does not require the exact identical result in all situations. OAG 82-623.

Pursuant to KRS 158.150, a school board may adopt a policy establishing, as a separate legal cause for suspension or expulsion, those practices prohibited by KRS 218A.350 concerning substances that simulate controlled substances. OAG 82-633.

Even though local boards of education are to promote "the general health and welfare of pupils," as a matter of prudence teachers probably should not dispense drug store health remedies such as aspirin to school children, whether of elementary or secondary school age. OAG 83-115.

It is within the legal prerogative of the local board to fairly establish the nature of professional activities for which it will be willing to incur expenses. OAG 83-228.

While there is a legal basis for the expenditure of school moneys for professional activities, a school board is not mandated to approve the incurring of these expenses and costs for reimbursement from school funds. OAG 83-228.

Within reason, school boards are permitted to bear the direct and indirect expenses incurred by teachers and administrators who attend, after prior approval by the board, professional activities and functions; however, school boards are not wholly unfettered in exercising their discretion in approving attendance at sundry professional activities since Const., §§ 180 and 184 require that school funds may be used only for school purposes, the test being whether the expenditure is for an educational purpose rather than whether an activity might be beneficial to education. OAG 83-228.

It is legal for a board of education to pay salaries and/or expenses, including travel, lodging, and meals for school administrators to attend business sessions of their respective professional organizations, training and professional improvement meetings conducted by their professional organization and accreditation associations to which their schools or districts belong and/or lobbying activities conducted by their professional associations. OAG 83-228.

It is legal for a board of education to pay salaries and/or expenses, including travel, lodging, meals, and substitute teachers, for teachers to attend business sessions of their respective professional organizations, training and professional improvement meetings conducted by their professional organization, and/or lobbying activities conducted by their organization. OAG 83-228.

A school board may, by regulation, establish reasonable rules and policies affecting the use of motor vehicles by students and school employees on school grounds and in school-related activities; however, there has been no authority delegated by the General Assembly to school boards under which such boards may create and punish public offenses either in the area of traffic regulation or parking. OAG 84-107.

Under the broad powers of a school board, pursuant to KRS 160.160 and this section, it could employ a security guard to look after its properties; such security guard, to be effective, should be a special local peace officer commissioned according to KRS 61.360. OAG 84-107.

A local board of education may open or close a school without the recommendation of the local superintendent. OAG 85-98.

Where one or more school districts initiate a suit to enforce state equalization of school funding within the Commonwealth, interested school districts may contribute reasonable amounts of money from school funds to meet the costs of the suit, including reasonable attorney's fees; such expenditure would, however, have to be made in accordance with appropriate budget considerations. OAG 85-100.

Although KRS 160.160 and subsection (1) of this section do not provide a specific statutory pronouncement upon what a local board of education may expend, school funds may be expended for those purposes authorized either expressly or by necessary implication by the statutes. OAG 85-100.

A local school district may contract to allow funds held for the local district by the Kentucky Department of Education to be transferred as directed, assuming all statutory and constitutional requirements relative to the use of those funds, if any, have been met. OAG 87-22.

With limited exceptions, as provided for open meetings of public agencies, a local school board may prohibit nonstudents from entering upon school property, irrespective of the nature of activities being conducted upon the property. OAG 90-11.

Based on the language of subsection (2) it does appear that the board may, in general, prescribe qualifications and duties with regard to categories of employees while the superintendent prescribes with more specificity, the duties of individual positions. OAG 91-10.

The board of education continues to have responsibility for "general control and management of the public schools in its district" including "control and management of all school funds," and including setting "compensation of employees," but the board alone continues to have the power to create and abolish positions and it is the responsibility of the superintendent to make decisions regarding how and when to fill positions. OAG 91-10.

There is no conflict of interest statute prohibiting school board members from voting on general salary increases that affect teachers who are related to those board members and who work in the school system. OAG 91-60.

An expenditure of common school funds or a donation of school property for a public purpose other than for the benefit of public education is not permissible under Const., §§ 180, 184 and 186; therefore, under Const., §§ 180, 184, and 186, any transfer of surplus school buildings to community service organizations must be based on the fair market value of the property. OAG 91-85.

The board of education, as part of its responsibility for the management of the district public schools as a whole, manages all school funds (which includes setting compensation of employees); creates and abolishes positions of employment in the school system; and has the authority to adopt rules and regulations concerning the qualifications and duties of employees by categories. OAG 91-122.

The school council does not have authority, unilaterally, to create and abolish positions or to set compensation for the school as a whole. Once the school council learns of available funding and the number of positions available for the school from the board, then the council may determine the number of individuals to be employed in each job class. It remains the responsibility of the local board of education, to establish the overall number of positions and to set the compensation of employees. If this were not the case, staffing and salaries from school to school could lack consistency with drastic effects on the district budget. OAG 91-122.

Authority concerning the use of all tobacco products by employees, students and visitors in school buildings, on school grounds or on field trips rests with the local board of education, not with superintendents and principals, unless that authority is delegated to them by the board. OAG 91-137.

KRS 438.050 does not grant authority to superintendents or principals beyond that authority granted to those officials by the Board; and, as currently written, does not forbid smoking of tobacco products at outdoor athletic events, depending on what smoking areas are to be designated in the schools. OAG 91-137.

The local board has responsibility for control and management of the school district as a whole, and has the authority to make contracts and agreements; the board has management and control of school funds, and fixes the compensation of the employees. OAG 92-29.

While the superintendent is responsible for personnel actions including, among other things, hiring and assignments, to the extent that the local board is responsible for control and management of school funds, the board may determine the amount of extended employment and compensation for personnel employed beyond the 185 day period; any reduction in salary to a teacher (which includes most administrators for purposes of the teachers tenure law), must be accompanied by appropriate notice. OAG 92-29.

School board approval is required when the superintendent decides to move the central business office to a new location requiring substantial expenditure of school funds because the movement of the office is not, primarily, a personnel decision, but one involving the management of business affairs; while the superintendent has responsibility for the management of business affairs, that responsibility is subject to the control of the board of education and moreover, the school board has control and management of all school funds, public school property and school facilities; depending on the steps taken, approval of the Department of Education may also be required. OAG 92-65.

The superintendent has the responsibility to make individual personnel decisions and to define the duties of particular employee positions. However, the local board has the responsibility to manage the entire district, control school funds, set compensation, create and abolish positions of employment and adopt regulations for qualifications and duties of classes of employees. OAG 92-133.

If a local board in a single-school district elects to implement SBDM this decision controls over the vote of the school staff. OAG 93-31.

The decision of the local board of education in a single-school district not to implement SBDM controls over the school's desires to enter SBDM. OAG 93-31.

The local board may reject a school council's policy on corporal punishment if the local school board has a policy banning corporal punishment based on concerns for liability or concerns for health and safety. OAG 93-31.

A school board may not require principals to be residents of the school district. OAG 01-7.

Cited: Ex parte County Bd. of Educ., 260 Ky. 246, 84 S.W.2d 59 (1935); Board of Educ. v. Williams, 256 S.W.2d 29 (Ky. 1953); Commonwealth ex rel. Breckinridge v. Collins, 379 S.W.2d 436 (Ky. 1964); Cunningham v. Grayson, 541 F.2d 538 (6th Cir. 1976); Belcher v. Gish, 555 S.W.2d 264 (Ky. 1977); Board of Educ. v. Garner, 556 S.W.2d 453 (Ky. Ct. App. 1977); Hines v. Board of Educ., 492 F. Supp. 469 (E.D. Ky. 1980); Blackburn v. Floyd County Bd. of Educ., 749 F. Supp. 159 (E.D. Ky. 1990).

NOTES TO DECISIONS

Analysis

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1. Constitutionality.

This section did not delegate legislative power to the county board in violation of the Constitution. County Bd. of Educ. v. Goodpaster, 260 Ky. 198, 84 S.W.2d 55 (1935).

2. Limitation.

The authority of county boards of education is strictly statutory, and they must closely follow the statute prescribing the manner and form of the performance of their duties. Knott County Bd. of Educ. v. Martin, 256 Ky. 515, 76 S.W.2d 601 (1934).

These powers are not arbitrary, and the reasonable discretion of the board must not be abused. Ex parte County Bd. of Educ., 260 Ky. 246, 84 S.W.2d 59 (1935).

A board can exercise no power not expressly or by necessary implication granted to it; nor can it by its own actions deprive itself of the powers given it, nor enlarge or diminish them. Smith v. Board of Educ., 264 Ky. 150, 94 S.W.2d 321 (1936).

Discretion vested in boards of education to expend school moneys is subject to constitutional restriction that such expenditures must be for purposes of common school education. Schuerman v. State Bd. of Educ., 284 Ky. 556, 145 S.W.2d 42 (1940).

School boards have no powers except those relating to operation and management of public schools and they are vested with broad governmental powers in the management of public schools under their jurisdiction. Board of Educ. v. Society of Alumni of Louisville Male High Sch., Inc., 239 S.W.2d 931 (Ky. 1951).

Since matters affecting the schools and their management were vested in the local board of education and the State Department of Education, a school board could not delegate or shift its responsibilities to a fiscal court or the electorate by requesting that the fiscal court place on ballot the question of whether the voters favored the consolidation or merger of certain county schools. Hickman County Fiscal Court v. Workman, 528 S.W.2d 730 (Ky. 1975).

3. Under KERA of 1990.

Each participating group in the common school system had been delegated its own independent sphere of responsibility and the Kentucky Education Reform Act (Enact. Acts 1990, ch. 476) did not delegate to local boards of education the authority to require board approval of school council actions. Board of Educ. v. Bushee, 889 S.W.2d 809 (Ky. 1994).

The waiver requirement of KRS 160.345 enables a school council to ask for a deviation from district policy, if it determines that the needs of an individual school would best be met in a manner different than that devised by the local board. The waiver provision is present to enable flexibility, not to indicate approval authority by the board over council policy development. Board of Educ. v. Bushee, 889 S.W.2d 809 (Ky. 1994).

4. Control of State Board of Education.

The administrative control of the board exercised under this section must be consistent with the rules and regulations of the State Board of Education. Gearhart v. Kentucky State Bd. of Educ., 355 S.W.2d 667 (Ky. 1962). See Earle v. Harrison County Bd. of Educ., 404 S.W.2d 455 (Ky. 1966).

Where members of county board disagreed with and refused to follow state board recommendations for consolidation and construction of school buildings the members of the county board could not be suspended from office for neglect of duty or misconduct. Kentucky State Bd. of Educ. v. Isenberg, 421 S.W.2d 81 (Ky. 1967).

5. Determining School Attendance.

The school board has the right to determine which school within the district a pupil shall attend. Hines v. Pulaski County Bd. of Educ., 292 Ky. 100, 166 S.W.2d 37 (1942).

6. Transportation.

The general powers of the board of education under KRS 158.110, 160.160, 160.330 and this section are broad enough to encompass the operation of a transportation system under which high school pupils are charged a fee. Japs v. Board of Educ., 291 S.W.2d 825 (Ky. 1956).

Under the broad authority of KRS 160.160 and this section the county board of education has power to adopt appropriate and reasonable regulations whereby indigent high school pupils may be furnished transportation without charge. Japs v. Board of Educ., 291 S.W.2d 825 (Ky. 1956).

7. Suspension or Expulsion of Pupils.

Regulation of school board that a student who marries must immediately withdraw from school and cannot be readmitted for one full year, and then only as a special student with permission of the principal is invalid as it is arbitrary and unreasonable. There is the complete absence of any standard or guideline for the principal concerning readmission and the fatal vice of the regulation lies in its sweeping, advance determination that every married student, regardless of the circumstances, must lose at least a year's schooling. Board of Educ. v. Bentley, 383 S.W.2d 677 (Ky. 1964).

The school board is empowered to suspend or expel pupils for violations of lawful regulations of the school. Board of Educ. v. Bentley, 383 S.W.2d 677 (Ky. 1964).

The school board is vested with the duty and power to control and manage high school and is authorized to enforce reasonable regulations, including disciplinary rules. Board of Educ. v. Bentley, 383 S.W.2d 677 (Ky. 1964).

This statute is directed to the rules and regulations for the conduct of students and not to the disciplinary measures taken for the breach of those rules and regulations. Dorsey v. Bale, 521 S.W.2d 76 (Ky. 1975).

8. Courses of Instruction.

Under this section a school board is vested with general control and management of the public schools in its district, and may provide such courses of instruction and other services as it deems necessary for the promotion of education and the general health and welfare of its pupils, consistent with the rules and regulations of the State Board of Education. Board of Educ. v. Society of Alumni of Louisville Male High Sch., Inc., 239 S.W.2d 931 (Ky. 1951).

9. Employment of Accountant and Attorney.

The board has the implied power to employ and pay an accountant to make a general audit of the school records. Lewis v. Morgan, 252 S.W.2d 691 (Ky. 1952).

Even though there was no specific statutory authority for school board to employ attorney, members of county board of education had implied authority to employ attorneys to represent them in actions and had implied power to expend school funds for attorneys' fees and court costs in defending the actions where such employment was necessary for their protection and the accomplishment for the purposes for which they were created and for the promotion of public education. Hogan v. Glasscock, 324 S.W.2d 815 (Ky. 1959).

10. Teachers.

Boards may establish reasonable qualifications for teachers higher than the minimum provided by statute. Board of Educ. v. Messer, 257 Ky. 836, 79 S.W.2d 224 (1935).

The board has discretion to determine the number of teachers necessary to properly conduct each of its schools. Simpson County Bd. of Educ. v. Strickler, 268 Ky. 72, 103 S.W.2d 705 (1937).

11. —Mandatory Leave.

Policy G25.000 of the Jefferson County school board mandating a one-month leave of absence, without pay, from October 15 to November 15, for employees who were candidates for part-time political offices violated such candidates rights to free speech and free political association, and denied those candidates the equal protection of the law, in violation of both federal and Commonwealth constitutions. Allen v. Board of Educ., 584 S.W.2d 408 (Ky. Ct. App. 1979).

12. Membership Dues.

This section and KRS 165.270 (now repealed) vesting boards of education with control of school funds with right to use same to promote public education in such ways as they may deem necessary and proper, is sufficiently broad to authorize payment by county and city board of education, out of public school fund, of annual membership dues in Kentucky school boards association. Schuerman v. State Bd. of Educ., 284 Ky. 556, 145 S.W.2d 42 (1940).

13. Ratification of Contract.

A board may ratify a defective contract if it had authority to make it originally, provided that the method of ratification conforms to the procedure necessary for its original execution.

Knott County Bd. of Educ. v. Martin, 256 Ky. 515, 76 S.W.2d 601 (1934).

Architect could not recover on quantum meruit, where his alleged contract with school superintendent was void because not ratified, by order in writing, by board of education at a regular meeting. Oberwarth v. McCreary County Bd. of Educ., 275 Ky. 319, 121 S.W.2d 716 (1938).

14. Establishing Schools.

A fiscal court cannot exercise its judgment in opposition to the judgment of the county board of education as to the need to enlarge and improve the school system for the county unless expenditures or illegal computation is unlawfully arrived at or bad faith appears. Fyfe v. Hardin County Bd. of Educ., 305 Ky. 589, 205 S.W.2d 165 (1947).

Where school board accepted gift from alumni society to purchase land for school building and had covenant in deed that school was for white male students the covenant was void as it ceded away the board's governmental powers and restricted its discretion and was against public policy. Board of Educ. v. Society of Alumni of Louisville Male High Sch., Inc., 239 S.W.2d 931 (Ky. 1951).

A school board is vested with the power to select public school sites, subject only to the limitation that it cannot act arbitrarily or beyond the pale of sound discretion and has authority to condemn land for future school needs. Pike County Bd. of Educ. v. Ford, 279 S.W.2d 245 (Ky. 1955).

15. —Financing.

School boards have broad powers in financing their property. Scott County Bd. of Educ. v. McMillen, 270 Ky. 483, 109 S.W.2d 1201 (1937).

Where population of county was approximately 8,617, estimated assessment of property for taxation in county was $6,425,000, county had existing bonded debt of $225,000 and county board of education approximately $100,000 and the 150 high school pupils of the system were taken care of at the headquarters building in the extreme western part of the county along with the elementary grade pupils, an additional bonded debt of $250,000 to erect a new high school building to be paid by rents received annually from board of education as provided by KRS 162.140 was not arbitrary action or abuse of the discretion of the board that would justify judicial review. Carter v. Taylor, 313 Ky. 445, 231 S.W.2d 601 (1950).

Whether county board of education was financially able to erect high school building and whether its erection jeopardized future program of county educational system were matters strictly for administrative decision of the board. Carter v. Taylor, 313 Ky. 445, 231 S.W.2d 601 (1950).

16. —Location.

Subject to the approval of the State Superintendent of Public Instruction, county boards of education are given broad discretion in the selection of sites for schools. Once the approval of the State Superintendent has been obtained, the courts will not interfere with the selection of the site unless there is positive proof of fraud, collusion, or a clear abuse of discretion. Justice v. Clemons, 308 Ky. 820, 215 S.W.2d 992 (1948).

Courts may not interfere with proposed plan of county board of education for location of school unless there is shown a clear abuse of discretion vested in the board by this section and KRS 160.160. Goins v. Jones, 258 S.W.2d 723 (Ky. 1953).

In taxpayer suit to enjoin county board of education evidence did not show that the board was without serious consideration and lacking a reasonable discretion and was arbitrary in locating a proposed new elementary school near the western boundary of the county instead of the geographical center and the court was without authority or power to interfere. Goins v. Jones, 258 S.W.2d 723 (Ky. 1953).

Establishment of a central high school by board was not arbitrary or unreasonable under the circumstances. Wigginton v. Nelson County Bd. of Educ., 408 S.W.2d 647 (Ky. 1966).

17. Closing Schools.

A board of education must act in good faith upon a sound, just and reasonable basis, and have due regard for the public interests and consequences of its actions upon the children affected and it must not act arbitrarily in discontinuing a school. Wells v. Board of Educ., 289 S.W.2d 492 (Ky. 1956).

Where student population fell below minimum required for state aid a reasonable basis was afforded for school board to order the school closed. Earle v. Harrison County Bd. of Educ., 404 S.W.2d 455 (Ky. 1966).

The Kentucky General Assembly clearly has given local school boards the power and authority to close schools and consolidate schools within a local system. Coppage v. Ohio County Bd. of Educ., 860 S.W.2d 779 (Ky. Ct. App. 1992).

18. Recreation Center.

Purchase by a school district, acting alone, of land in another county for the establishment of a recreation center for the joint benefit of school children and 4-H club members was an arbitrary administration of public funds and, thus, illegal. Wilson v. Graves County Bd. of Educ., 307 Ky. 203, 210 S.W.2d 350 (1948).

19. Donation to Board.

The jurisdiction conferred by this section relates to school property arising from public funds and necessarily does not apply to specific charitable trust donations made to a particular type of school district for its exclusive benefit, which is controlled by KRS 160.580. Board of Educ. v. Todd County Bd. of Educ., 289 Ky. 803, 160 S.W.2d 170 (1942).

The county board of education in taking out insurance policy on district school building built by specific charitable trust donation was only a naked trustee of the property, while pupils of district school were the real beneficiaries and thus entered to proceeds of the insurance. Board of Educ. v. Todd County Bd. of Educ., 289 Ky. 803, 160 S.W.2d 170 (1942).

20. Sale and Conveyance of School Property.

A county board of education had no authority to execute a plan by which board was to convey to a nonprofit corporation 20 percent of school property in county, but not site on which school building was to be erected, and corporation was to erect building and execute lease-option contract to board by which, after payment of rental for period of years, board was to become owner of all property conveyed to corporation. Weaks v. Board of Educ., 282 Ky. 241, 137 S.W.2d 1094 (1940).

Although there is no statutory limitation on the action of boards of education in selling and conveying school property, their action in so doing must be consonant with their duty to maintain an adequate school system within the limits of their finances; and any action by a board which imperils the entire school system of a county, or a portion thereof, may be called in question by the courts. Weaks v. Board of Educ., 282 Ky. 241, 137 S.W.2d 1094 (1940).

Though the board of education has the right to sell and convey school property it cannot sell and convey all of such property in the county at one time and for a grossly inadequate price. Weaks v. Board of Educ., 282 Ky. 241, 137 S.W.2d 1094 (1940).

21. Adoption of Grievance Procedure.

The adoption of a grievance procedure is clearly within the authority granted a school board by this section. International Bhd. of Firemen & Oilers, Local 320 v. Board of Educ., 393 S.W.2d 793 (Ky. 1965).

Denial of third-party representation in grievances before a school board is not arbitrary. International Bhd. of Firemen & Oilers, Local 320 v. Board of Educ., 393 S.W.2d 793 (Ky. 1965).

22. Maintaining Legal Actions.

A board of education has authority to maintain an action in

its own name, against delinquent taxpayers, to recover judgment for delinquent school taxes and to enforce the tax lien, and is not required to await the ordinary process of distraint and sale by the tax collector as the statute makes the tax a debt of the delinquent taxpayer in favor of the particular taxing authority. Board of Educ. v. Ballard, 299 Ky. 370, 185 S.W.2d 538 (1945).

Boards of education and not the taxpayers have the initial responsibility of maintaining legal actions on behalf of the school districts and a taxpayer may not bring suit in a matter concerning public funds until he has first requested the authorized school board to institute suit and it has failed to comply. Reeves v. Jefferson County, 245 S.W.2d 606 (Ky. 1951).

This section and KRS 160.160 place upon the boards of education, not taxpayers, the initial responsibility of maintaining legal actions on behalf of the school districts and an individual has no standing to institute an action for alleged unlawful expenditures of school funds until he has demanded the board to bring the action and the board has refused to comply unless he clearly shows that a demand would have been futile although some members of the board were members at the time of alleged unlawful expenditures. Farler v. Perry County Bd. of Educ., 355 S.W.2d 659 (Ky. 1962).

A lawsuit to declare an education system unconstitutional falls within the authority, if not the duty, of local school boards to fulfill their statutory responsibilities, no matter who the defendants are. Rose v. Council for Better Educ., Inc., 790 S.W.2d 186 (Ky. 1989).

23. Intent of Kentucky Educational Reform Act of 1990.

The essential strategic point of the Kentucky Educational Reform Act (Enact. Acts 1990, ch. 476) is the decentralization of decision making authority so as to involve all participants in the school system, not limited to, but including school councils and local school boards; affording each the opportunity to contribute actively to the educational process and the provisions set out the structural framework by which this decentralization of decision making authority is to occur. Board of Educ. v. Bushee, 889 S.W.2d 809 (Ky. 1994).

24. Liability of Individual Board Members.

The individual members of a board of education cannot be subjected to individual liability for failing to perform a general duty owed the public in the administration of a good school program, but where the members fail to perform some definite and specific ministerial act they may be held liable individually. Bronaugh v. Murray, 294 Ky. 715, 172 S.W.2d 591 (1943).

25. Appeal.

The only question for the court's determination is whether the board is exceeding its authority or is acting arbitrarily. Perry County Bd. of Educ. v. Deaton, 311 Ky. 227, 223 S.W.2d 882 (1949).

Where the county board in the exercise of its statutory discretion had promulgated a plan and the highest educational administrative body, the state board, had approved it, the court will not substitute its own judgment for such quasi-legislative and quasi-executive action unless clearly exceeded statutory or constitutional limitations of power. Carter v. Taylor, 313 Ky. 445, 231 S.W.2d 601 (1950).

The government and conduct of public schools, in general, is committed to the discretion of the school board and courts will not interfere with the board's exercise of such discretion unless it appears the board has acted arbitrarily or maliciously. Board of Educ. v. Bentley, 383 S.W.2d 677 (Ky. 1964).

DECISIONS UNDER PRIOR LAW

ANALYSIS

1. Establishment of schools.
2. Sale of school property.

1. Establishment of Schools.

A school board must maintain a 12-grade service, but need not do so in each school it maintains. It may maintain schools (1) in which only the elementary grades are taught, (2) in which only the four higher grades are taught, (3) in which all 12 grades are taught, (4) in which the first six grades are taught, (5) junior high schools (seventh, eighth and ninth grades), (6) senior high schools (tenth, eleventh and twelfth grades), or (7) any combination of same, provided it does not act arbitrarily or abuse its discretion. Wilson v. Alsip, 256 Ky. 466, 76 S.W.2d 288 (1934).

2. Sale of School Property.

A board, being a continuing body, cannot, following a change of members rescind a prior sale on the mere ground that it was a bad bargain. Trustees of Congregational Church v. Board of Trustees, 230 Ky. 94, 18 S.W.2d 887 (1929).

Boards of education were authorized to convey school property. Bellamy v. Board of Educ., 255 Ky. 447, 74 S.W.2d 920 (1934).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 142-149, 153, 154, 156, 157.

160.291. Manner of payment of salaries to school employees — Pay for extra duties or services — Fringe benefits program.

(1) All school employees working on a continuing, regular basis, shall be paid regularly, on dates determined by the employing board of education, during the school year or during the fiscal year for twelve (12) month employees, the provisions of KRS 337.020 notwithstanding. The gross salary received on each pay date will be an amount equal to the school employee's annual salary divided by the number of pay dates, except a local board of education shall pay an employee any remaining salary owed prior to the end of the fiscal year upon completion of the employee's responsibilities or duties if so notified by the employee.

(2) Salary amounts shall be paid on the prescribed pay dates without deduction for days on which schools were closed; provided, however, any time not worked for which pay is received must be made up prior to the end of that current school year, or pay so received shall be withheld from the final salary payment of that school year.

(3) Gross Salary payments under subsection (1) of this section need not, but may, include pay for extra duties or services. Payment for extra duties or services must be paid pursuant to a payment plan adopted by the board of education prior to the beginning of the school year. The board of education may also adopt a plan for providing a program of fringe benefits to its employees.

(4) All payments made for salaries, extra duties, and fringe benefits by the board of education under the authority of this section are deemed to be for services rendered and for the benefit of the common schools; the payments do not affect the eligibility of any school system to participate in the public school fund as established in KRS Chapter 157. Nor shall any individual board member or administrator be held liable where additional payments for such service become necessary. Provided, however, that nothing in this section authorizes or

requires the payment of salaries to personnel when schools are closed as a result of a strike or other work stoppage or when schools are open and personnel fail to render services. No part of this section shall be law if any part is declared unconstitutional.

(5) Subsection (2) of this section does not apply to those employed on a twelve (12) month basis.

(Enact. Acts 1978, ch. 49, § 1, effective March 28, 1978; 1980, ch. 341, § 1, effective June 15, 1980; 1982, ch. 86, § 1, effective July 15, 1982; 1990, ch. 476, Pt. IV, § 229, effective July 13, 1990; 1994, ch. 174, § 1, effective July 15, 1994; 1998, ch. 177, § 1, effective March 27, 1998.)

Cross-References. Procedure for payment of employees, 702 KAR 3:060.

Opinions of Attorney General. This section is limited to certified personnel. OAG 79-337.

As classified employees usually will not have performed any services for so-called snowbank days, these employees would be ineligible to be paid for these days. If classified employees have been already paid for such snowbank days, they would have to have deducted from their pay at the end of the school year an amount equal to the snowbank days pay received. OAG 82-132.

School boards do not have an option on whether to pay classified employees for snow days; all regular, full-time employees (except those employed on a 12-month basis) are to continue to receive their regular pay even though school is closed. OAG 82-132.

There is no improper discrimination between classified employees and certified employees of a school district based upon an ability of teachers to participate in an extended school day plan (snowbank) days and an inability of classified employees to do the same, as there are two distinct classifications of school employees. It is only the arbitrary classification and treatment of individuals that runs afoul of Const., § 2 and U.S. Const., Amend. 14. OAG 82-132.

This section applies to all school employees, certified and classified, who work on a continuing, regular basis excluding those employed on a 12-month basis. OAG 82-132.

This section calls for all of the full-time, regular employees of a school district to be treated in parity. Thus, while school employees are to continue to receive their pay checks even though not actually working, it is the school district's obligation under this section and Const., § 3 to see that before the school year has ended, teachers and classified employees alike have only been paid for school days actually worked. OAG 82-132.

This section must be viewed as applying to classified employees even though they may not be paid a "salary" in the sense that term is usually thought of, because to interpret it otherwise would be to continue to limit the statute to only school teachers and that, obviously, is not what was intended by the General Assembly by its 1980 amendment. OAG 82-132.

One time payments to teachers to induce retirement are constitutional under Const., § 3 as such payments are in consideration of public service. The key fact that makes these payments constitutional is the voluntary retirement of the teacher; such an act is a "present" service for which an emolument is paid, not a past service for which a gratuity is given. OAG 96-23.

160.293. Development of school property recreational facilities for school and community purposes.

Any statute to the contrary notwithstanding, upon the recommendation of the chief state school officer, the Kentucky Board of Education may adopt administrative regulations authorizing a local board of education to enter into an agreement with a public agency for the purpose of developing and maintaining on school property recreational facilities for school and community purposes in accordance with the following standards:

(1) The property must be used in such a manner and at such times so that there will be no interference with school activities.

(2) The control and management of this property shall be in accordance with administrative regulations adopted hereunder by the Kentucky Board of Education.

(3) All agreements must have the prior approval of the chief state school officer and the Attorney General.

(4) Any agreement executed herein shall not be considered an indebtedness within the meaning of Sections 157 and 158 of the State Constitution of Kentucky.

(Enact. Acts 1974, ch. 348, § 1; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 230, effective July 13, 1990; 1996, ch.362, § 6, effective July 10, 1996.)

Cross-References. Recreational facilities; school and community, 702 KAR 4:005.

Opinions of Attorney General. A city may lease land from a school board over a long term, and may install recreational facilities thereon, when those facilities will be beneficial to the school district. OAG 78-472.

An expenditure of common school funds or a donation of school property for a public purpose other than for the benefit of public education is not permissible under Const., §§ 180, 184 and 186; therefore, under Const., §§ 180, 184, and 186, any transfer of surplus school buildings to community service organizations must be based on the fair market value of the property. OAG 91-85.

160.294. Recycling requirement for local school districts — Exemptions.

(1) Each local board of education shall adopt a plan and procedures for recycling white paper and cardboard in all board-owned and operated facilities.

(2) A local board of education shall be exempt from the requirement to establish a recycling program as described in this section if:

(a) There is no recycling facility within the county or within a reasonable distance in an adjoining geographic area; or

(b) The district cannot locate a recycling vendor to service the school district, without incurring a negative fiscal impact.

(3) The board may delegate to each school or school council the responsibility for designing its own procedures; however, the superintendent or the superintendent's designee shall periodically review the operating procedures to assure that recycling is being carried out.

(Enact. Acts 1998, ch. 558, § 1, effective July 15, 1998.)

160.295. Procedure for promulgation of code of student rights and responsibilities for secondary schools — Prohibited student activities.

(1) The board of education of each public school district in the Commonwealth may adopt and promul-

gate a code of student rights and responsibilities for secondary schools from recommendations of a committee composed of students, faculty, parents, and school district administrative personnel.

(2) Such committee shall consist of two (2) students, two (2) parents of students, two (2) faculty members, two (2) representatives from administrative personnel of the district, and one (1) member of the local school board.

(3) The student and faculty members of such committee shall be elected by their peers in the local school district; the administrative personnel shall be appointed by the school district superintendent, and the parents selected by the faculty and student body. Members of such committee shall serve for a term of one (1) year and may be reelected or reappointed in following years. Initial composition of the elected members of such committee shall be by the following:

(a) The district superintendent shall notify each school within the district, each school principal or head teacher, the students of the district, and the parents of students within the district as to the method for receiving nominations for membership on the committee and of the methods by which the election of members shall take place. Such notification shall take place on or before the first day of school for each school term.

(b) Nominations for the student, faculty, and parent members of the committee shall be received in writing by the district superintendent within thirty (30) days following the commencement of each school term.

(c) The election of student, faculty, and parent members of the committee shall be held within fourteen (14) days following the closing of nominations under the supervision of the district superintendent.

(d) The initial meeting of the elected and appointed members shall be no later than fourteen (14) days following the election.

(4) Each committee member shall be entitled to a single vote and any code of student rights and responsibilities adopted by a majority of the committee membership shall be submitted to the district board of education which may cause such code, in whole or in part, to be implemented in the public schools of the district.

(5) All meetings of the committee shall be open to the public and the committee shall hold at least one (1) public hearing on the proposed code before it is adopted and submitted to the district board of education for implementation.

(6) The code of student rights and responsibilities adopted by the committee may define rights and responsibilities regarding, but not limited to, the following:

(a) Right of expression, including, but not limited to, appearance, assembly, association, and circulation of petitions and literature;

(b) Right to participate in decision-making procedures directly affecting students;

(c) Right to procedural due process concerning major disciplinary action, as defined by the code;

(d) Right to receive academic grades based only upon academic performance;

(e) Right to freedom from abuse and threat of abuse by members of school faculties and administration personnel; and

(f) Right of access by a student to his or her own records and guarantee of the confidentiality of a student's academic records outside of the school system, except upon written authorization of the student or his or her parents or guardians.

(7) Students shall refrain from activity which materially or substantially disrupts the educational process or presents a clear and present danger to the health and safety of persons or property, or infringes on the rights of others.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 432, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1974, ch. 249, § 1) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 432, effective July 13, 1990.

Opinions of Attorney General. Policies regarding discipline of conduct of pupils should be promulgated to the students through the permissive statute outlining the adoption and promulgation of a code of student rights and responsibilities. OAG 78-673.

This section merely outlines one suggested plan for enacting a code of student rights and responsibilities, and a different committee structure is permissible where all elements of the community are represented and the board of education has final determination of such a code. OAG 79-322.

160.297. Military recruiters' access to public high school campuses and student directory information. [Renumbered].

Compiler's Notes. This section was amended by Acts 1994, ch. 98, § 6 and renumbered as KRS 160.725 by the Revisor of Statutes pursuant to KRS 7.136.

160.300. Investigations by board — Power to summon witnesses.

(1) A board of education may, in any investigation or proceeding before it, concerning a matter that may be a proper subject of inquiry by it, summon witnesses by subpoena, enforce their attendance, and require that they testify under properly administered oath.

(2) No person so summoned shall refuse to attend or to produce a written statement to be used as legal evidence in the investigation or proceeding, or, if present, refuse to testify concerning any matter that may be a proper subject of inquiry.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 434, effective July 13, 1990.)

Compiler's Notes. This section (4399-55) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 434, effective July 13, 1990.

Opinions of Attorney General. Under the provisions of this section, a local board of education may not conduct an investigation of one of its own members for alleged improper official acts. OAG 76-491.

A person appointed under this section to receive testimony regarding the conduct of the schools would have no authority to issue subpoenas requiring the attendance and testimony of persons who are not employees of the school district. OAG 77-365.

NOTES TO DECISIONS

1. Discovery and Amendment.

In an action under KRS 161.790 the school board had the right to inquire into teacher's official actions and to expect frank answers and was entitled to the benefit of discovery and amendment although it would have been better practice for the board to have taken his deposition or direct his appearance before it at some time prior to the hearing which it had the right to do under this section. Board of Educ. v. Chattin, 376 S.W.2d 693 (Ky. 1964), overruled on other grounds, Osborne v. Bullitt County Bd. of Educ., 415 S.W.2d 607 (Ky. 1967).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 142, 143.

160.305. Contracts for use of school buses to transport persons eligible for transportation services.

(1) The Cabinet for Families and Children may enter into a contract with the local board of education of any school district in the Commonwealth for the use of school buses to transport persons eligible for transportation services at times when the buses are not needed to transport students to or from school or school events. Persons eligible for these transportation services shall be:
   (a) Sixty-two (62) years of age or older;
   (b) Those with physical or mental disabilities; or
   (c) Any other person designated by the Cabinet for Families and Children as appropriate for these transportation services.

(2) Before this contract is entered into, the Cabinet for Families and Children shall formulate a plan for the use of school buses for these purposes and shall submit it to the local board of education for its approval or disapproval. The plan for the use of school buses for these transportation purposes shall include routes, schedules, cost, and any other matters deemed necessary by both parties.

(3) The cost of transporting persons eligible under the provisions of subsection (1) of this section shall be borne by the Cabinet for Families and Children.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 435, effective July 13, 1990; 1994, ch. 405, § 28, effective July 15, 1994; 1998, ch. 426, § 117, effective July 15, 1998.)

Compiler's Notes. This section (Enact. Acts 1974, ch. 322, § 1) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 435, effective July 13, 1990.

Kentucky Law Journal. Russo, School-Based Decision Making in Kentucky: Dawn of a New Era or Nothing New Under the Sun?, 83 Ky. L.J. 123 (1994-95).

160.306. Implementation of KRS 160.305 — Pilot projects. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1976, ch. 251, § 1) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

160.310. Board to provide insurance for school buses.

Each board of education may set aside funds to provide for liability and indemnity insurance against the negligence of the drivers or operators of school buses, other motor vehicles, and mobile equipment owned or operated by the board. If the transportation of pupils is let out under contract, the contract shall require the contractor to carry indemnity or liability insurance against negligence in such amount as the board designates. In either case, the indemnity bond or insurance policy shall be issued by some surety or insurance company authorized to transact business in this state, and shall bind the company to pay any final judgment, not to exceed the limits of the policy, rendered against the insured for loss or damage to property of any school child or death or injury of any school child or other person.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 436, effective July 13, 1990.)

Compiler's Notes. This section (4399-20a, 4399-20b: amend. Acts 1960, ch. 97, effective June 16, 1960) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 436, effective July 13, 1994.

Cross-References. Bus drivers' commercial driver's license required, KRS 189.540.

Regulations as to school buses, KRS 189.540.

Transportation of school children, KRS 158.110, 158.115.

Liability insurance for buses, 702 KAR 5:070.

Kentucky Law Journal. Comments, The Employee Defense Act: Wearing Down Sovereign Immunity, 66 Ky. L.J. 150 (1977-78).

Cited: Thacker v. Pike County Bd. of Educ., 301 Ky. 781, 193 S.W.2d 409 (1946); Chambers v. Ideal Pure Milk Co., 245 S.W.2d 589 (Ky. 1952); Pike County Bd. of Educ. v. Varney, 253 S.W.2d 253 (Ky. 1952); Roland v. Catholic Archdiocese, 301 S.W.2d 574 (Ky. 1957); Upchurch v. Clinton County, 330 S.W.2d 428 (Ky. 1959); Dunlap v. University of Ky. Student Health Servs. Clinic, 716 S.W.2d 219 (Ky. 1986).

NOTES TO DECISIONS

ANALYSIS

1. Constitutionality.
2. Coverage mandatory.
3. Liability of county school superintendent.
4. Liability of board.
5. Judgment against board.

1. Constitutionality.

The carrying of liability insurance on school buses is an expense incident to a rational program of school transportation, and the requirement of this section that such insurance be carried does not violate Const., § 184. Bronaugh v. Murray, 294 Ky. 715, 172 S.W.2d 591 (1943).

2. Coverage Mandatory.

Provision of this section that coverage of policy shall include "any school child or other person" who suffers injury or death as the result of the negligence of a driver of a school bus owned or operated by the board of education is mandatory and constitutes a part of the policy as fully and effectively as if written in the policy and provisions of policy to restrict liability within narrower limits are void. Standard Accident Ins. Co. v. Perry County Bd. of Educ., 72 F. Supp. 142 (E.D. Ky. 1947).

3. Liability of County School Superintendent.

County school superintendent is not individually liable for

failing to see that board requires liability insurance of bus contractors. Bronaugh v. Murray, 294 Ky. 715, 172 S.W.2d 591 (1943).

4. Liability of Board.

Fact that this section allows board to carry liability insurance against negligence of drivers of school buses owned by board or operated under contract by it, does not make board liable for tort of its agents or employees. Wallace v. Laurel County Bd. of Educ., 287 Ky. 454, 153 S.W.2d 915 (1941).

Members of school board who fail to require bus contractors to carry liability insurance are individually liable in damages to person injured through negligent operation of bus. Bronaugh v. Murray, 294 Ky. 715, 172 S.W.2d 591 (1943).

Failure to carry pupil transportation insurance as provided in this section may result in individual liability of board members. Gilbert v. Harlan County Bd. of Educ., 309 S.W.2d 771 (Ky. 1958).

5. Judgment Against Board.

When a board of education has secured an insurance policy, under this section, insuring against liability (rather than loss) arising from the operation of its school buses, the board may not interpose the defense, in an action for damages arising from negligent operation of a school bus, that the operation of school buses is a governmental function. Taylor v. Knox County Bd. of Educ., 292 Ky. 767, 167 S.W.2d 700, 145 A.L.R. 1333 (1942).

If judgment is entered in such a case, it cannot be collected out of school funds, but will furnish the basis for suit against the insurer. Taylor v. Knox County Bd. of Educ., 292 Ky. 767, 167 S.W.2d 700, 145 A.L.R. 1333 (1942).

This section permits the board to be sued and a judgment against it to measure the liability of the insurance carrier to the injured party. Brooks v. Clark County, 297 Ky. 549, 180 S.W.2d 300 (1944).

Collateral References. 78, 79 C.J.S., Schools and School Districts, §§ 142, 143, 474-477, 758-765, 777.

160.320. Roads or passways to school buildings for pupils.

Any board of education may make provision for roads or passways to its school buildings to accommodate all pupils who are entitled to attend school, and may apply to the county judge/executive or the governing authority of the city having jurisdiction to open the same as other roads and passways are opened for public necessity and convenience. If there is no road or passway from the residence of any pupil to the school building which he attends it shall be lawful for such pupil, in attending school, to walk over the property of any person between the residence of the pupil and the school building.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 437, effective July 13, 1990.)

Compiler's Notes. This section (4399-61: amend. Acts 1978, ch. 384, § 292, effective June 17, 1978) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 437, effective July 13, 1990.

Cited: Madison County Bd. of Educ. v. Skinner, 299 Ky. 707, 187 S.W.2d 268 (1945).

160.330. Board may furnish necessary school supplies free of charge — Free textbooks for indigent children — Waiver of fees.

(1) Each board of education may furnish necessary school supplies free of charge to indigent children in its school district or to such other children as it deems advisable, under such rules and regulations as it may adopt, except that free textbooks must be provided to indigent children as provided in KRS 157.110.

(2) Local school districts shall establish, pursuant to Kentucky Board of Education administrative regulations, a process by which to waive fees for pupils who qualify for free and reduced priced lunches, including a process by which such students shall be informed of the fee waiver provisions.

(4363-12, 4434-11: amend. Acts 1956 (4th Ex. Sess.), ch. 2; 1978, ch. 53, § 1, effective June 17, 1978; 1986, ch. 462, § 3, effective July 15, 1986; 1990, ch. 476, Pt. II, § 77, effective July 13, 1990; 1996, ch. 362, § 6, effective July 10, 1996.)

Cross-References. Director of pupil personnel to report needs of indigent children to superintendent, KRS 159.140.

Free textbooks furnished by state, KRS Ch. 157.

Penalty for failure of superintendent to report, KRS 159.990.

Guidelines for waiver of school fees, 702 KAR 3:220.

Opinions of Attorney General. A fiscal court, subject to available funds in the budget, may provide an appropriation from county funds for the purpose of providing textbooks and school supplies needed by the indigent schoolchildren of the district through proper budgetary action as prescribed in KRS Ch. 68. OAG 70-548.

The "tax levying authority" mentioned in this section refers to the school board of a district rather than the fiscal court. OAG 70-548.

This section contains no authority for a county to furnish books and school supplies to indigent children, but KRS 67.080(8) authorized a fiscal court to furnish such free books and supplies out of county funds. OAG 70-548 (opinion prior to 1978 amendment of KRS 67.080).

This section provides that the school superintendent must report to the school board of the district the number and cost of textbooks and school supplies needed by the indigent schoolchildren of the district and the school board shall then allocate from school funds a sum of money sufficient to cover such needs. OAG 70-548.

There is no constitutional or legislative requirement that the cost of education to public school pupils must be free and a board of education may require that pupils be charged a reasonable fee for school supplies. OAG 75-619.

KRS 159.140 (7) and this section may be read in complete harmony with KRS 158.108. OAG 82-359.

Cited: Japs v. Board of Educ., 291 S.W.2d 825 (Ky. 1956).

Collateral References. 79 C.J.S, Schools and School Districts, § 787.

160.340. Reports by boards to Kentucky Board of Education — Filing of policies on specified matters.

(1) Each board of education shall, on the forms prepared by the chief state school officer and approved by the Kentucky Board of Education, prepare and submit to the Kentucky Board of Education reports on all phases of its school service. Each board may prepare and publish for the information of the public a report on the progress of its schools.

(2) Each board of education shall file in the board's office its policies relating to the following matters:

(a) Transportation of pupils;

(b) Discipline and conduct of pupils;

(c) Limitations or restrictions on use of school facilities;
(d) Conduct of meetings of the board of education, including policies on the calling of executive sessions;
(e) Personnel policies that apply to certified employees, including fringe benefits, salary schedules, nonclassroom duties, in-service training, teacher-student ratio, hiring, assignment, transfer, dismissal, suspension, reinstatement, promotion, and demotion;
(f) Evaluation of certified employees;
(g) Selection of textbooks and instructional materials;
(h) Expenditure and accounting for school funds, including all special funds; and
(i) Policies dealing with school-based decision making.

(3) (a) The local board of education may adopt a policy requiring that each school council, or if none exists, the principal, make an annual report at a public meeting of the board describing the school's progress in meeting the educational goals set forth in KRS 158.6451 and district goals established by the board.
(b) Biennially, the local board shall review in a public meeting the portion of each school's consolidated plan that sets forth the activities and schedule to reduce the achievement gaps among the various groups of students as required in KRS 158.649. If a district has more than twenty (20) schools, the district may review the achievement gap data of each school in a comprehensive district report at a regularly scheduled meeting of the board. The report shall include the schools' and district's plans to reduce any identified gaps in student achievement.

(4) It is intended that these policies shall cover matters within the authority and discretion of the district board of education and not matters otherwise required by law or regulation. Such policies shall be filed in the board's office by August 15, 1974, shall be kept up to date by filing annual amendments thereto each August 15 and shall be public records.

(4399-54: amend. Acts 1974, ch. 186, § 1; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 231, effective July 13, 1990; 1992, ch. 376, § 2, effective July 14, 1992; 1996, ch. 146, § 2, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 2002, ch. 302, § 4, effective July 15, 2002.)

Cross-References. Revenue Cabinet, reports to, KRS 131.030, 131.130, 131.140, 134.140.

Financial matters, reports to State Board of Education with respect to, KRS 157.060.

Superintendent of Public Instruction to supervise accounts and reports of local boards, KRS 156.160, 156.200.

Teachers' retirement, records for to be kept, KRS 161.560.

Audit exceptions and corrections, 702 KAR 3:150.

Kentucky Bench & Bar. Whalen, The Kentucky Education Reform Act of 1990 and Local Boards of Education, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 11.

Kirby, School-Based Decision Making, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 15.

Kentucky Law Journal. Russo, School-Based Decision Making in Kentucky: Dawn of a New Era or Nothing New Under the Sun?, 83 Ky. L.J. 123 (1994-95).

Opinions of Attorney General. A local board of education is not obligated to pay for medical examinations and if the board is going to approve such payment it should be done based upon a local school board policy directed specifically at the matter, since this section requires a local board of education to have on file in its office policies relating to "expenditure and accounting for school funds." OAG 78-365.

A school system has the right to suspend a child from the school bus for misconduct. OAG 78-392.

Policies regarding discipline of conduct of pupils should be promulgated to the students through the permissive statute outlining the adoption and promulgation of a code of student rights and responsibilities. OAG 78-673.

KRS 438.050, as it is written, proscribes only the smoking of tobacco products; however, the board of education may regulate, under the authority of KRS 160.290 and this section, the use of tobacco products such as snuff or chewing tobacco in ways other than smoking, by its employees, other adults or students. OAG 81-295.

School board approval is required when the superintendent decides to move the central business office to a new location requiring substantial expenditure of school funds because the movement of the office is not, primarily, a personnel decision, but one involving the management of business affairs; while the superintendent has responsibility for the management of business affairs, that responsibility is subject to the control of the board of education and moreover, the school board has control and management of all school funds, public school property and school facilities; depending on the steps taken, approval of the Department of Education may also be required. OAG 92-65.

Cited: Buntin v. Breathitt County Bd. of Educ., 134 F.3d 796, 1998 Fed. App. 25 (6th Cir. 1997).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 142, 143.

160.345. Required adoption of school councils for school-based decision making — Composition — Responsibilities — Professional development — Exemption — Formula for allocation of school district funds — Intentionally engaging in conduct detrimental to school-based decision making by board member, superintendent, district employee, or school council member — Complaint procedure — Disciplinary action.

(1) For the purpose of this section:
(a) "Minority" means American Indian; Alaskan native; African-American; Hispanic, including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin; Pacific islander; or other ethnic group underrepresented in the school;
(b) "School" means an elementary or secondary educational institution that is under the administrative control of a principal or head teacher and is not a program or part of another school. The term "school" does not include district-operated schools that are:

1. Exclusively vocational-technical, special education, or preschool programs;
2. Instructional programs operated in institutions or schools outside of the district; or
3. Alternative schools designed to provide services to at-risk populations with unique needs;

(c) "Teacher" means any person for whom certification is required as a basis of employment in the public schools of the state with the exception of principals, assistant principals, and head teachers; and

(d) "Parent" means:
1. A parent, stepparent, or foster parent of a student; or
2. A person who has legal custody of a student pursuant to a court order and with whom the student resides.

(2) Each local board of education shall adopt a policy for implementing school-based decision making in the district which shall include, but not be limited to, a description of how the district's policies, including those developed pursuant to KRS 160.340, have been amended to allow the professional staff members of a school to be involved in the decision making process as they work to meet educational goals established in KRS 158.645 and 158.6451. The policy may include a requirement that each school council make an annual report at a public meeting of the board describing the school's progress in meeting the educational goals set forth in KRS 158.6451 and district goals established by the board. The policy shall also address and comply with the following:

(a) Except as provided in paragraph (b)2. of this subsection, each participating school shall form a school council composed of two (2) parents, three (3) teachers, and the principal or administrator. The membership of the council may be increased, but it may only be increased proportionately. A parent representative on the council shall not be an employee or a relative of an employee of the school in which that parent serves, nor shall the parent representative be an employee or a relative of an employee in the district administrative offices. A parent representative shall not be a local board member or a board member's spouse. None of the members shall have a conflict of interest pursuant to KRS Chapter 45A, except the salary paid to district employees;

(b) 1. The teacher representatives shall be elected for one (1) year terms by a majority of the teachers. A teacher elected to a school council shall not be involuntarily transferred during his or her term of office. The parent representatives shall be elected for one (1) year terms. The parent members shall be elected by the parents of students preregistered to attend the school during the term of office in an election conducted by the parent and teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. A school council, once elected, may adopt a policy setting different terms of office for parent and teacher members subsequently elected. The principal or head teacher shall be the chair of the school council.

2. School councils in schools having eight percent (8%) or more minority students enrolled, as determined by the enrollment on the preceding October 1, shall have at least one (1) minority member. If the council formed under paragraph (a) of this subsection does not have a minority member, the principal, in a timely manner, shall be responsible for carrying out the following:

a. Organizing a special election to elect an additional member. The principal shall call for nominations and shall notify the parents of the students of the date, time, and location of the election to elect a minority parent to the council by ballot; and

b. Allowing the teachers in the building to select one (1) minority teacher to serve as a teacher member on the council. If there are no minority teachers who are members of the faculty, an additional teacher member shall be elected by a majority of all teachers. Term limitations shall not apply for a minority teacher member who is the only minority on faculty;

(c) 1. The school council shall have the responsibility to set school policy consistent with district board policy which shall provide an environment to enhance the students' achievement and help the school meet the goals established by KRS 158.645 and 158.6451. The principal or head teacher shall be the primary administrator and the instructional leader of the school, and with the assistance of the total school staff shall administer the policies established by the school council and the local board.

2. If a school council establishes committees, it shall adopt a policy to facilitate the participation of interested persons, including, but not limited to, classified employees and parents. The policy shall include the number of committees, their jurisdiction, composition, and the process for membership selection;

(d) The school council and each of its committees shall determine the frequency of and agenda for their meetings. Matters relating to formation of school councils that are not provided for by this section shall be addressed by local board policy;

(e) The meetings of the school council shall be open to the public and all interested persons may attend. However, the exceptions to open meetings provided in KRS 61.810 shall apply;

(f) After receiving notification of the funds available for the school from the local board, the

school council shall determine, within the parameters of the total available funds, the number of persons to be employed in each job classification at the school. The council may make personnel decisions on vacancies occurring after the school council is formed but shall not have the authority to recommend transfers or dismissals;

(g) The school council shall determine which textbooks, instructional materials, and student support services shall be provided in the school. Subject to available resources, the local board shall allocate an appropriation to each school that is adequate to meet the school's needs related to instructional materials and school-based student support services, as determined by the school council. The school council shall consult with the school media librarian on the maintenance of the school library media center, including the purchase of instructional materials, information technology, and equipment;

(h) From a list of applicants submitted by the local superintendent, the principal at the participating school shall select personnel to fill vacancies, after consultation with the school council, consistent with subsection (2)(i)10. of this section. The superintendent may forward to the school council the names of qualified applicants who have pending certification from the Education Professional Standards Board based on recent completion of preparation requirements, out-of-state preparation, or alternative routes to certification pursuant to KRS 161.028 and 161.048. Requests for transfer shall conform to any employer-employee bargained contract which is in effect. If the vacancy to be filled is the position of principal, the school council shall select the new principal from among those persons recommended by the local superintendent. When a vacancy in the school principalship occurs, the school council shall receive training in recruitment and interviewing techniques prior to carrying out the process of selecting a principal. The council shall select the trainer to deliver the training. Personnel decisions made at the school level under the authority of this subsection shall be binding on the superintendent who completes the hiring process. Applicants subsequently employed shall provide evidence that they are certified prior to assuming the duties of a position in accordance with KRS 161.020. The superintendent shall provide additional applicants upon request when qualified applicants are available;

(i) The school council shall adopt a policy to be implemented by the principal in the following additional areas:

1. Determination of curriculum, including needs assessment and curriculum development;
2. Assignment of all instructional and noninstructional staff time;
3. Assignment of students to classes and programs within the school;
4. Determination of the schedule of the school day and week, subject to the beginning and ending times of the school day and school calendar year as established by the local board;
5. Determination of use of school space during the school day;
6. Planning and resolution of issues regarding instructional practices;
7. Selection and implementation of discipline and classroom management techniques as a part of a comprehensive school safety plan, including responsibilities of the student, parent, teacher, counselor, and principal;
8. Selection of extracurricular programs and determination of policies relating to student participation based on academic qualifications and attendance requirements, program evaluation, and supervision;
9. Procedures, consistent with local school board policy, for determining alignment with state standards, technology utilization, and program appraisal; and
10. Procedures to assist the council with consultation in the selection of personnel by the principal, including, but not limited to, meetings, timelines, interviews, review of written applications, and review of references. Procedures shall address situations in which members of the council are not available for consultation; and

(j) Each school council shall annually review data on its students' performance as shown by the Commonwealth Accountability Testing System. The data shall include, but not be limited to, information on performance levels of all students tested, and information on the performance of students disaggregated by race, gender, disability, and participation in the federal free and reduced price lunch program. After completing the review of data, each school council, with the involvement of parents, faculty, and staff, shall develop and adopt a plan to ensure that each student makes progress toward meeting the goals set forth in KRS 158.645 and 158.6451(1)(b) by April 1 of each year and submit the plan to the superintendent and local board of education for review as described in KRS 160.340. The Kentucky Department of Education shall provide each school council the data needed to complete the review required by this paragraph no later than November 1 of each year. If a school does not have a council, the review shall be completed by the principal with the involvement of parents, faculty, and staff.

(3) The policy adopted by the local board to implement school-based decision making shall also address the following:

(a) School budget and administration, including: discretionary funds; activity and other school

funds; funds for maintenance, supplies, and equipment; and procedures for authorizing reimbursement for training and other expenses;

(b) Assessment of individual student progress, including testing and reporting of student progress to students, parents, the school district, the community, and the state;

(c) School improvement plans, including the form and function of strategic planning and its relationship to district planning, as well as the school safety plan and requests for funding from the Center for School Safety under KRS 158.446;

(d) Professional development plans developed pursuant to KRS 156.095;

(e) Parent, citizen, and community participation including the relationship of the council with other groups;

(f) Cooperation and collaboration within the district, with other districts, and with other public and private agencies;

(g) Requirements for waiver of district policies;

(h) Requirements for record keeping by the school council; and

(i) A process for appealing a decision made by a school council.

(4) In addition to the authority granted to the school council in this section, the local board may grant to the school council any other authority permitted by law. The board shall make available liability insurance coverage for the protection of all members of the school council from liability arising in the course of pursuing their duties as members of the council.

(5) After July 13, 1990, any school in which two-thirds (⅔) of the faculty vote to implement school-based decision making shall do so. All schools shall implement school-based decision making by July 1, 1996, in accordance with this section and with the policy adopted by the local board pursuant to this section. Upon favorable vote of a majority of the faculty at the school and a majority of at least twenty-five (25) voting parents of students enrolled in the school, a school meeting its goal as determined by the Department of Education pursuant to KRS 158.6455 may apply to the Kentucky Board of Education for exemption from the requirement to implement school-based decision making, and the state board shall grant the exemption. The voting by the parents on the matter of exemption from implementing school-based decision making shall be in an election conducted by the parent and teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. Notwithstanding the provisions of this section, a local school district shall not be required to implement school-based decision making if the local school district contains only one (1) school.

(6) The Department of Education shall provide professional development activities to assist schools in implementing school-based decision making. School council members elected for the first time shall complete a minimum of six (6) clock hours of training in the process of school-based decision making, no later than thirty (30) days after the beginning of the service year for which they are elected to serve. School council members who have served on a school council at least one (1) year shall complete a minimum of three (3) clock hours of training in the process of school-based decision making no later than one hundred twenty (120) days after the beginning of the service year for which they are elected to serve. School council training required under this subsection shall be conducted by trainers endorsed by the Department of Education, and school council members shall complete the required training no later than thirty (30) days after the beginning of the service year for which they are elected to serve. By November 1 of each year, the principal through the local superintendent shall forward to the Department of Education the names and addresses of each council member and verify that the required training has been completed. School council members elected to fill a vacancy shall complete the applicable training within thirty (30) days of their election.

(7) A school that chooses to have school-based decision making but would like to be exempt from the administrative structure set forth by this section may develop a model for implementing school-based decision making, including but not limited to a description of the membership, organization, duties, and responsibilities of a school council. The school shall submit the model through the local board of education to the commissioner of education and the Kentucky Board of Education, which shall have final authority for approval. The application for approval of the model shall show evidence that it has been developed by representatives of the parents, students, certified personnel, and the administrators of the school and that two-thirds (⅔) of the faculty have agreed to the model.

(8) The Kentucky Board of Education, upon recommendation of the commissioner of education, shall adopt by administrative regulation a formula by which school district funds shall be allocated to each school council. Included in the school council formula shall be an allocation for professional development that is at least sixty-five percent (65%) of the district's per pupil state allocation for professional development for each student in average daily attendance in the school. The school council shall plan professional development in compliance with requirements specified in KRS 156.095, except as provided in KRS 158.649. School councils of small schools shall be encouraged to work with other school councils to maximize professional development opportunities.

(9) (a) No board member, superintendent of schools, district employee, or member of a school council shall intentionally engage in a pattern of practice which is detrimental to the successful implementation of or circumvents the intent of school-based decision making to allow the professional staff members of a school and parents to be involved in the decision making process in working toward meeting the educa-

tional goals established in KRS 158.645 and 158.6451 or to make decisions in areas of policy assigned to a school council pursuant to paragraph (i) of subsection (2) of this section.

(b) An affected party who believes a violation of this subsection has occurred may file a written complaint with the Office of Education Accountability. The office shall investigate the complaint and resolve the conflict, if possible, or forward the matter to the Kentucky Board of Education.

(c) The Kentucky Board of Education shall conduct a hearing in accordance with KRS Chapter 13B for complaints referred by the Office of Education Accountability.

(d) If the state board determines a violation has occurred, the party shall be subject to reprimand. A second violation of this subsection may be grounds for removing a superintendent, a member of a school council, or school board member from office or grounds for dismissal of an employee for misconduct in office or willful neglect of duty.

(Enact. Acts 1990, ch. 476, Pt. I, § 14, effective July 13, 1990; 1992, ch. 376, § 3, effective July 14, 1992; 1992, ch. 393, § 3, effective July 14, 1992; 1994, ch. 103, § 3, effective July 15, 1994; 1994, ch. 187, § 1, effective July 15, 1994; 1994, ch. 247, § 1, effective July 15, 1994; 1994, ch. 411, § 1, effective July 15, 1994; 1994, ch. 484, § 1, effective July 15, 1994; 1996, ch. 34, § 1, effective July 15, 1996; 1996, ch. 74, § 1, effective July 15, 1996; 1996, ch. 146, § 1, effective July 15, 1996; 1996, ch. 318, § 52, effective July 15, 1996; 1996, ch. 362, §§ 1 and 6, effective July 15, 1996; 1998, ch. 493, § 14, effective April 10, 1998; 1998, ch. 609, § 3, effective July 15, 1998; 2000, ch. 212, § 1, effective July 14, 2000; 2000, ch. 339, § 2, effective July 14, 2000; 2000, ch. 418, § 1, effective July 14, 2000; 2000, ch. 527, § 14, effective July 14, 2000; 2002, ch. 152, § 1, effective July 15, 2002; 2002, ch. 302, § 5, effective July 15, 2002.)

Legislative Research Commission Note. (7/15/96). This section was amended by 1996 Ky. Acts chs. 34, 74, 146, 318, and 362. Where these Acts are not in conflict, they have been codified together. A conflict exists between Acts chs. 34 and 362. Under KRS 446.250, Acts ch. 362, which was last enacted by the General Assembly, prevails.

(7/15/2002). This section was amended by 2002 Ky. Acts chs. 152 and 302, which do not appear to be in conflict and have been codified together.

Cross-References. Application for approval of alternative school-based decision making model, 701 KAR 5:080.

Guidelines for alternative models for school-based decision making, 701 KAR 5:100.

Instructional material and textbook adoption process, 704 KAR 3:455.

School council allocation formula: KETS District Administrative System Chart of Accounts, 702 KAR 3:246.

Kentucky Bench & Bar. Whalen, The Kentucky Education Reform Act of 1990 and Local Boards of Education, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 11.

Kirby, School-Based Decision Making, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 15.

Young, Who's the Boss?, Vol. 59, No. 4, Fall 1995, Ky. Bench & Bar 10.

Kentucky Law Journal. Russo, School-Based Decision Making in Kentucky: Dawn of a New Era or Nothing New Under the Sun?, 83 Ky. L.J. 123 (1994-95).

Opinions of Attorney General. "Relative" as used in this section should have the same definition as "relative" in KRS 160.380(1)(a), as meaning "father, mother, brother, sister, husband, wife, son, daughter, aunt, uncle, son-in-law, and daughter-in-law." OAG 90-102.

Administrative opposition to the implementation of School Based Decision Making (SBDM) decisions should be easily circumvented since each SBDM council will include the school's lead administrator who will have the same input that the faculty members and parents have on the council and therefore, any administrative opposition that exists will be a part of the council's decision-making process and any decision the council reaches should represent a concensus of the entire school community. OAG 91-24.

If there is school board opposition to school based decision making (SBDM) the SBDM council could seek assistance from the Office of Education Accountability and if they cannot assist the council, then legal action should be considered to force the school board to comply with this section. OAG 91-24.

It was proper for faculty to vote to enter School Based Decision Making (SBDM) before the 1-1-91 date by which the school board must have in place a policy implementing SBDM, for the SBDM statute specifically allows early entry into school-based decision making. OAG 91-24.

Since subdivision (2)(g) (now (2)(f)) of this section expressly prohibits the council from having authority to recommend transfers or dismissals, that responsibility remains part of the principal's duties and according to subdivision (2)(i) (now (2)(h)) of this section, those decisions are binding on the superintendent. Therefore in a school where there are two physical education teachers, and one will suffice, it is the principal (not the council) who has the authority to move a teacher to a classroom teacher position, as needed, assuming that the physical education teacher is certified for the other position and in the same manner, the principal, not the council, who may transfer one of two librarians, as needed, to another position within the same school so long as the librarian is certified for that position. OAG 91-115.

"Transfer" as used in this section encompasses both movement from one position to another within a school as well as movement from a position in one school to a position in another school. OAG 91-115.

Assuming that a school council exists, KRS 160.380(2)(a), which gives the authority and responsibility for all appointments and promotions of teachers and other public school employees to the superintendent, is qualified by subsection (2)(g) and (i) (now (2)(f) and (2)(h)) of this section to the extent that the superintendent recommends applicants to a particular school and the principal fills the vacancies after consultation with the school council. Therefore, when an initial assignment or the filling of a vacancy is involved, the principal and council make personnel decisions upon receiving the list of recommended applicants from the superintendent. OAG 91-122.

In case of requests for transfer, subdivision (2)(g) (now (2)(f)) of this section clearly specifies that the school council has no authority to make recommendations to either the principal or superintendent in such matters. OAG 91-122.

The school council does not have authority, unilaterally, to create and abolish positions or to set compensation for the school as a whole. Once the school council learns of available funding and the number of positions available for the school from the board, then the council may determine the number of individuals to be employed in each job class. It remains the responsibility of the local board of education, to establish the overall number of positions and to set the compensation of employees. If this were not the case, staffing and salaries from school to school could lack consistency with drastic effects on the district budget. OAG 91-122.

Authority concerning the use of all tobacco products by employees, students and visitors in school buildings, on school

grounds or on field trips rests with the local board of education, not with superintendents and principals, unless that authority is delegated to them by the board. OAG 91-137.

KRS 438.050 does not grant authority to superintendents or principals beyond that authority granted to those officials by the Board; and, as currently written, does not forbid smoking of tobacco products at outdoor athletic events, depending on what smoking areas are to be designated in the schools. OAG 91-137.

A potential conflict of interest exists between the requirements of KRS 160.180(3) for members of boards of education concerning influence in hiring school employees, and the duties authorized by subsections (2)(g) and (i) of this section for members of site-based councils; KRS 160.180(3) expressly prohibits a member of a board of education from having any influence on hiring of school personnel, while subsections (2)(g) and (i) of this section give members of the council authority to recommend candidates to the principal to be hired. OAG 91-148.

Even if a board member, who was also a council member, were to disqualify himself, while serving on the council, from engaging in any consideration of applicants or from voting on recommended applicants for school district positions, thereby eliminating potential conflicts over hiring issues, other potential conflicts could develop since the board sets policies for the councils of the district on areas in which the interests of the board may differ from the interests of the councils. OAG 91-148.

If a school board member is elected to a site-based decision making council, the provisions of KRS 160.180 and this section create potential statutory conflicts of interest should that board member attempt to carry out the duties of both positions with regard to hiring decisions. OAG 91-148.

Members of school councils are not entitled to receive compensation for their services to the school at this time because funds have not been appropriated by the General Assembly. OAG 91-192.

Subsections (2)(c) and (2)(j)5 (now (2)(i)(5)) of this section do not authorize a school council to create a parking lot on their school campus through private funding because the local school board has the responsibility to initiate construction. OAG 91-215.

Within broad parameters set by the local school board on school property, subsection (2)(j)5 of this section provides the council with the authority to set policies on the use of school property outside of the school as well as inside of the school during the school day; therefore, a school council may set limits concerning use of a school parking lot where staff members park their vehicles, and where school children are dropped off, e.g., to ensure the safety of children. OAG 91-215.

Whether parents may participate on school-based decision making council committees is a matter to be addressed by local school board policy. OAG 92-57.

A superintendent may not transfer a principal from school A to school B without school council approval, when both schools are operating under the governance of a council; under this section, the superintendent makes recommendations to school B when the principal retires and once that position is filled by the council, and finalized by the superintendent, if another vacancy exists for a principal in school A, then the superintendent repeats the process. OAG 92-78.

As of July 14, 1992, parent representatives who are elected after the effective date of House Bill 182 (Acts 1992, ch. 376) shall be eligible to serve on a school council so long as they are neither employed by the school district, nor related to employees of the school district; parent representatives who are elected prior to the effective date of the act must meet the requirements in effect at the time that they begin to serve. OAG 92-88.

The office of the Attorney General opined that House Bill 182 (Acts 1992, ch. 376) operates prospectively to require that parent representatives who are elected after the act becomes effective (July 14, 1992), shall comply with the eligibility criteria imposed by House Bill 182; therefore, parent representatives who are elected prior to July 14, 1992, need not resign due to the change in eligibility criteria. OAG 92-88.

Consultation, as used in this section, has only that meaning applied through customary usage, i.e., to seek, advice. Therefore, the principal retains final hiring authority. OAG 92-131.

In view of the fact that the statute clearly gives to the superintendent the power to make recommendations to the principal for his consideration, upon consultation of the principal with the council, the council has a right to see applications and accompanying materials on applicants who have been recommended, but not on applicants who have not been recommended by the superintendent. OAG 92-131.

It is impermissible for the council to interview applicants who have not been recommended by the superintendent. Whether the council may interview recommended applicants is a matter to be negotiated between the council and the principal. OAG 92-131.

The spouse of a tenured certified employee who is on leave from the County School System may not serve as a parent member of a School Based Decision Making Council in the County School System school. OAG 92-157.

The school council anti-nepotism clause in subsection (2)(a) of this section is an attempt by the General Assembly to rid Kentucky schools of conflicts of interests and favoritism. OAG 92-157.

A local school district or a school would be ill-advised to adopt a policy determining that parent members of a committee formed pursuant to subdivision (2)(d) of this section are "school officials" and entitled to access of confidential student records. The danger in enacting so broad a policy interpreting "school officials" is that the intent of the Family Educational Rights and Privacy Act (FERPA) will be disregarded. Additionally, a school could lose its federal funding if a violation of FERPA has occurred. OAG 93-5.

Because of the risk in allowing unauthorized persons to review confidential student records, the best policy is to strictly interpret the "school officials" exception to the Federal Education Records Privacy Act (FERPA) and not include parent members of school councils in the definition of "school officials" for purposes of 20 U.S.C. § 1232g(b)(1)(A). OAG 93-35.

Before any confidential student's records may be released to the members of the school council, the local school district or school must adopt a policy as required by Family Educational Rights and Privacy Act (FERPA) finding that the administrator or principal, teacher and parent members of a school-based decision making council are "school officials" pursuant to 20 U.S.C. § 1232g(b)(1)(A). The policy must also define the "legitimate educational interests" of the school council members. 34 CFR 99.6(a)(4). OAG 93-5.

In order to achieve the educational goals envisioned by the Kentucky Education Reform Act (KERA) the school council must be intricately aware of the grades, test scores and special needs of the students attending the school; therefore, in order to carry out their statutory duties, all of the members of a school based decision making council may be considered "school officials" for purposes of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g. OAG 93-5.

Any board policy relating to the initial vote to enter SBDM must offer the faculty a reasonable opportunity to vote. OAG 93-31.

If a local board in a single-school district elects to implement SBDM this decision controls over the vote of the school staff. OAG 93-31.

If a school's staff votes to enter SBDM in October, but board policy states that school council terms run from July to June, the school does not need to wait nine months to implement SBDM. Rather, the school should be given a brief time to

permit elections and training before allowing the school council to begin its tenure. This delay should not exceed a couple of months. OAG 93-31.

It is consistent with the goals of KERA for a superintendent to receive input from a council-elect prior to selecting a principal for its school in the event there is a vacancy in the spring before council members' terms officially begin. However, the final decision will remain with the superintendent. OAG 93-31.

The decision of the local board of education in a single-school district not to implement SBDM controls over the school's desires to enter SBDM. OAG 93-31.

The exemption in subsection (5) of this section for single-school districts from SBDM will continue to apply until the statute is amended or repealed. OAG 93-31.

The local board may reject a school council's policy on corporal punishment if the local school board has a policy banning corporal punishment based on concerns for liability or concerns for health and safety. OAG 93-31.

A teacher may cast a vote for the teacher representatives at his or her school and also cast a vote for the parent representatives at another school where his or her child is enrolled. Additionally, if the teacher has been assigned to the same school where his or her child is enrolled then the teacher may vote for the teacher representatives and the parent representatives. OAG 93-49.

Although there is no statutory nepotism prohibition in Kentucky Education Reform Act (KERA) prohibiting a School Based Decision Making Council member from participating in the selection of the principal when the member's son has applied for the principal position, allowing a school council member to cast a vote to select her son as principal violates the spirit of KERA and has the appearance of impropriety. OAG 93-50.

Pursuant to subsection (7) of this section, a school may apply to be exempt from the school-based decision making (SBDM) administrative structure to allow the SBDM council to elect any member as a chair by submitting an administrative model through the appropriate channels to the Chief State School Officer and the State Board for Elementary and Secondary Education. OAG 93-52.

The correct interpretation of subdivision (2)(j) (now (2)(i)) of this section is that school councils have authority to set policy regarding the assignment of all instructional and non-instructional staff time and the principal is authorized to administer the policy and to make assignments as to individual staff members. OAG 93-55.

A local school board does not have the authority to to adopt a policy requiring school councils to have committees; however, individual school councils have the discretion to form committees. OAG 94-8.

While a local school board may not require a school council to form committees, if committees are formed at the discretion of the council, this section authorizes the local school board to adopt policies requiring parental representation on school council committees. OAG 94-8.

While local school boards cannot require school councils to have committees, if councils at their discretion have committees, the school board had the statutory authority to enact a policy requiring the school council to allow parents to serve on committees; however, a school board could not enact a policy precluding any parents from serving on school council committees. OAG 94-8.

School council committees are advisory bodies created by Kentucky Education Reform Act, therefore, school council committees must be formed consistent with KRS 156.500, which requires reasonable minority representation on the committees. OAG 94-8.

This section authorizes a local school board to require that proposed SBDM policies be timely reviewed by legal counsel and a Central Office Adminstrator prior to implementation for consistency with state or federal law, concerns for health and safety, concerns for liability, available financial resources or contractual obligations. OAG 94-29.

When the amendment to this section by 1994, Ch. 484, § 1 became effective on July 15, 1994, any schools having eight percent or more minority students enrolled and having school councils which did not have minority members on that date, were required to immediately have a special election to elect a minority parent and a minority teacher to the school council, even if the first regular election after July 15, 1994 was not until some time later. OAG 94-41.

Although schools are not required to implement school-based decision making (SBDM) until 1996, once the decision to implement SBDM is made then the schools or school district is bound by the dictates of this section. Accordingly, the school district must follow the statutory method of opting out of SBDM as allowed pursuant to subsection (5) of this section and may not enact a policy allowing for repeal of SBDM in a method not contemplated by statute. OAG 94-51.

Proposed school council plan to allow all parents, and not just the parents of minority students, to participate in special minority representative election did not comply with subdivision (2)(b) of this section. OAG 94-60.

School council plan to hold a special minority election, if necessary, on the same night as and immediately following the regular election did not comply with subdivision (2)(b) of this section since the election would not be held in a "timely manner" and proper notice would not be given to all minority parents and parents of minority students regarding the special election. OAG 94-60.

Subdivision (2)(b) of this section which limits participation in the election of the minority representative to minority parents only (rather than permitting all parents — minority and non-minority) to vote is not unconstitutional. OAG 94-60.

"Qualified applicants" referred to in subsection (2) of this section means all persons who meet all qualifications set forth by statute, regulations, and school board policies. OAG 95-10.

Under this section, if a school seeking to fill personnel vacancies continues to request more names of qualified applicants from the superintendent, then it must be provided with all available applications which conform to minimum statutory, regulatory and board policy requirements and the superintendent is not allowed to withhold applicants from consideration by the school based on his or her subjective considerations; which does not mean that the superintendent is denied the opportunity to render subjective comments and recommendations, but that the superintendent must eventually give the school all applications which meet the minimum legal qualifications and comply with legitimate school board policies. OAG 95-10.

School council has the authority to determine the school curriculum and to make corresponding decisions as to the number of personnel in each job classification necessary to implement its policies. While this may result in the transfer of an employee, it is not the recommendation of such by the council, and thus is not a violation of the statutory prohibition against a school council recommending transfers or dismissals. Such recommendations and decisions, which have a district-wide impact, are still in the purview of the local school board and superintendent. OAG 96-38.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Intent of Kentucky Educational Reform Act of 1990.
3. Authority of local boards under KERA of 1990.
4. Hiring in local schools.

1. Constitutionality.

Since the General Assembly has made a strong showing of

intent to eradicate nepotism within the school districts of the Commonwealth, this legislation enjoys a strong presumption of constitutionality. Kentucky Dep't of Educ. v. Risner, 913 S.W.2d 327 (Ky. 1996).

Since the school based council is an authoritative body within the local school district, and the restriction in subdivision (2)(a) of this section prohibiting school district employees or their spouses from serving as parent members on the school based councils directly addresses the appearance of nepotism within that body and is clearly related to the goals of the legislature to eradicate nepotism within the school districts of the Commonwealth, they are not unconstitutional as a violation of the equal protection clause of the Fourteenth Amendment. Kentucky Dep't of Educ. v. Risner, 913 S.W.2d 327 (Ky. 1996).

2. Intent of Kentucky Educational Reform Act of 1990.

The essential strategic point of the Kentucky Educational Reform Act (Enact. Acts of 1990, ch. 476) is the decentralization of decision making authority so as to involve all participants in the school system, not limited to, but including school councils and local school boards; affording each the opportunity to contribute actively to the educational process and the provisions set out the structural framework by which this decentralization of decision making authority is to occur. Board of Educ. v. Bushee, 889 S.W.2d 809 (Ky. 1994).

3. Authority of Local Boards Under KERA of 1990.

Each participating group in the common school system had been delegated its own independent sphere of responsibility and the Kentucky Education Reform Act (Enact. Acts 1990, ch. 476) did not delegate to local boards of education the authority to require board approval of council actions. Board of Educ. v. Bushee, 889 S.W.2d 809 (Ky. 1994).

The waiver requirement of KRS 160.345 enables a school council to ask for a deviation from district policy, if it determines that the needs of an individual school would best be met in a manner different than that devised by the local board. The waiver provision is present to enable flexibility, not to indicate approval authority by the board over council policy development. Board of Educ. v. Bushee, 889 S.W.2d 809 (Ky. 1994).

4. Hiring in Local Schools.

Since passage of the Kentucky Education Reform Act the local school has stopped its direct involvement in hiring school personnel, the school principal has the responsibility, after consulting with the school council, of hiring school personnel from a list of applicants submitted by the superintendent. Yanero v. Davis, 65 S.W.3d 510 (Ky. 2001).

160.347. Removal of school council member.

A member of a school council may be removed from the council for cause, after an opportunity for hearing before the local board, by a vote of four-fifths (4/5) of the membership of a board of education after the recommendation of the chief state school officer pursuant to KRS 156.132. Written notices setting out the charges for removal shall be spread on the minutes of the board and given to the member of the school council.

(Enact. Acts 1994, ch. 103, § 2, effective July 15, 1994.)

160.348. Advanced placement, International Baccalaureate, dual enrollment, and dual credit courses.

(1) Beginning with the 2003-2004 school year and thereafter, each secondary school-based decision making council shall offer a core curriculum of advanced placement, International Baccalaureate, dual enrollment, or dual credit courses, using either or both on-site instruction or electronic instruction through the Kentucky Virtual High School or other on-line alternatives. In addition, each school-based decision making council shall comply with any additional requirements for advanced placement, International Baccalaureate, dual enrollment, and dual credit courses that may be established cooperatively by the Kentucky Department of Education, the Education Professional Standards Board, and the Council on Postsecondary Education in accordance with the definitions in KRS 158.007.

(2) Each secondary school-based decision making council shall establish a policy on the recruitment and assignment of students to advanced placement, International Baccalaureate, dual enrollment, and dual credit courses that recognizes that all students have the right to be academically challenged and should be encouraged to participate in these courses.

(Enact. Acts 2002, ch. 97, § 3, effective July 15, 2002.)

District Officers and Employees

160.350. Superintendent of schools — Appointment — Term — Vacancy — Qualifications — Removal — Contract extension.

(1) After considering the recommendations of a screening committee, as provided in KRS 160.352, each board of education shall appoint a superintendent of schools whose term of office shall begin on July 1, following his appointment. The appointment may be for a term of no more than four (4) years. In the event a vacancy occurs in the office of superintendent prior to the expiration of the term set by the board, the term shall expire on the date the vacancy occurs. Therefore, the board may appoint a superintendent for a new term as provided in this subsection, which shall begin on the date of the superintendent's appointment, except when the vacancy occurs after a school board election and before the newly elected members take office. When a vacancy occurs during this period, the position shall not be filled until the new members take office, but the board may appoint an acting superintendent to serve a term not to exceed six (6) months. This appointment may be renewed once for a period not to exceed three (3) months. If a vacancy occurs, a local board may also appoint an acting superintendent during the period the screening committee pursuant to KRS 160.352 conducts its business and prior to the actual appointment of the new superintendent. No superintendent shall resign his term and accept a new term from the same board of education prior to the expiration date of his present term. In the case of a vacancy in the office for an unexpired term, the board of education shall make the appointment so that the term will end on June 30. The board shall set the salary of the superintendent to be paid in regular installments.

(2) Before any superintendent assumes his duties, he shall present to the board of education that appointed him a statement signed by the chief state

school officer that the superintendent has been duly issued a certificate of administration and supervision issued in accordance with the provisions of law and which qualifies him to hold the position to which he has been appointed, and he shall hold such certificate throughout the period of his employment. A superintendent candidate who is to begin his duties after June 30, 1994, shall successfully complete the training program and assessment center process within one (1) year of assuming his duties as superintendent. A superintendent shall not serve as director or officer of a bank, trust company, or savings or loan association which has his school district funds on deposit. Following appointment, the superintendent shall establish residency in Kentucky.

(3) A superintendent of schools may be removed for cause by a vote of four-fifths (4/5) of the membership of a board of education and upon approval by the chief state school officer. However, if the dismissal of the superintendent has been recommended by a highly skilled certified educator pursuant to KRS 158.6455 and the action is approved by the chief state school officer, the board shall terminate the superintendent's contract. Written notice setting out the charges for removal shall be spread on the minutes of the board and given to the superintendent. The board shall seek approval by the chief state school officer for removing the superintendent. The chief state school officer shall investigate the accuracy of the charges made, evaluate the superintendent's overall performance during his appointment, and consider the educational performance of the students in the district. Within thirty (30) days of notification, he shall either approve or reject the board's request.

(4) After the completion of a superintendent's first contract or after four (4) years, whichever comes last, the board of education may, no later than June 30, extend the contract of the superintendent for one (1) additional year beyond the current term of employment.

(4399-34: amend. Acts 1942, ch. 113, § 13; 1966, ch. 89, § 9; 1984, ch. 246, § 1, effective July 13, 1984; 1988, ch. 34, § 3, effective July 15, 1988; 1990, ch. 476, § 75, effective July 13, 1990; 1992, ch. 170, § 3, effective July 14, 1992; 1994, ch. 14, § 2, effective Feburary 17, 1994; 1996, ch. 349, § 2, effective July 15, 1996; 1998, ch. 77, § 1, effective July 15, 1998; 1998, ch. 598, § 18, effective April 14, 1998; 2000, ch. 470, § 1, effective July 14, 2000.)

Cross-References. Certification of school employees, KRS Ch. 161.

Leave of absence, KRS 161.770.

Reinstatement of former superintendent returning from Armed Forces, KRS 161.740.

Resignations, removals and vacancies, KRS Ch. 63.

Superintendent eligible for continuing contract status under teachers' tenure law, KRS 161.721.

Termination of contract, KRS 161.780.

Superintendent training program and assessment process, 704 KAR 3:406.

Kentucky Bench & Bar. Whalen, The Kentucky Education Reform Act of 1990 and Local Boards of Education, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 11.

Prather, Establishing Schools, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 19.

Opinions of Attorney General. This section, which establishes the qualifications for superintendents does not contain any requirements concerning religion, and a person of the Catholic faith, if he meets the statutory qualifications, may be superintendent. OAG 60-917.

A board of education that approved the employment of a superintendent for a period of two years could amend the order to read four years and extend the length of employment prior to the time the superintendent took office. OAG 61-548.

Where a superintendent whose term was to expire on June 30 planned to resign prior to January 1 and three board members were to be elected at the preceding November election, an appointment by the old board could be made only until the expiration of the resigning superintendent's term. OAG 64-592.

In June, 1964, a board, some of whose members had terms which expired in January, 1965, did not have authority to issue to its superintendent a contract to begin July 1, 1965, since the terms of some of its members did not extend beyond the date when the new term of office was to begin. OAG 65-96.

In the event of a vacancy created by resignation this section authorizes the appointment of a successor for the unexpired portion of the term only, and the board is without power to make an appointment for a term that would commence prior to the expiration of any other term. OAG 67-213.

After school board decided to employ an individual as superintendent for a one-year term, the board had authority to adopt another resolution 12 days later hiring the same individual as superintendent and secretary to the board for a two-year term. OAG 72-74.

There is no obligation to contract with one man to serve the entire unexpired term of a school superintendent as long as said part of term expires on June 30 and there is no splicing together of partial terms of office but only a fragmenting of a four-year term which was established by the board of education and as long as the appointment is made by the same authority that is authorized to act when the vacancy actually occurs. OAG 73-743.

There is no conflict between this section and KRS 161.721 as, irrespective of when a superintendent becomes eligible for continuing contract status in the district, such status is not as to the position of superintendent but just to employment in the school district. OAG 76-82.

A local board of education has the authority and discretion under the circumstances to establish the salary of a superintendent but is under no obligation to negotiate the superintendent's salary and the superintendent is without power to compel a board of education to contract to pay him more than the board, in its judgment, deems appropriate. OAG 76-360.

The statutory language requiring the secretary of the board of education to call a special meeting and to see that properly detailed timely notice is given is mandatory and the secretary's refusal to act could be the basis for rescission of the secretary's contract; however, the failure to perform the functions of the secretary of the board could not constitute legal cause for removal from office as superintendent when the same person holds the two positions, for the two positions are separable. OAG 78-274.

Under this section a board of education may agree to enter into a contract with an individual for the position of superintendent before the existing contract of the superintendent has expired so long as the term of no board member will expire in the interim between the making of a contract and its effective date. OAG 78-274.

The holding of the two state officer positions of superintendent of schools and member of a local school board does not by itself present a statutory or constitutional incompatibility, under KRS 61.080 and Const., § 165. OAG 78-413.

By provisions of this section the board is to fix the salary of the superintendent and only that board which entered into the contract to take effect on July 1 of this year had or ever could have had any right to set its terms; since that board in office in July at the commencement of the contract could have increased the salary of the superintendent starting on July 1, it may now increase the salary to a figure mutually agreeable to the superintendent and the board of education. OAG 78-819.

The position of local superintendent of schools is a state office. OAG 79-149.

A local board of education may give a superintendent who is over 65 a contract for more than one year. OAG 79-213.

An individual may serve as a superintendent under contract pursuant to this section until the end of the school year in which the age of 70 is reached. OAG 79-213.

Although the duration of an existing contract's terms may not be changed, a board of education membership that will be in office at the time a new contract term is to be established may agree in advance to enter into a contract with an individual to be the superintendent. OAG 79-321.

While a superintendent may acquire tenure in the same manner as for teachers pursuant to KRS 161.721, that does not make an appointment as a superintendent under this section, which is under an entirely different contractual basis and which may be for one, two, three or four years, employment where "teacher tenure" may be transferred to the position pursuant to KRS 161.740; thus, where a teacher attains tenure in one school system and then accepts the position of superintendent of schools in another school district, the superintendent would be required to attain tenure in the new school system by following KRS 161.721. OAG 80-147.

A local board of education can direct the superintendent to make a recommendation relative to a teacher's contract since a recommendation is required by law and may be a part of appropriately adopted local board policies; the refusal by a superintendent to make a recommendation could be considered legal cause for the superintendent's removal. OAG 80-205.

A local board of education, after having once fixed the term of a superintendent's office cannot then change the number of years of the term. OAG 84-283.

If for any reason a superintendent-elect did not want the one year contract offered by the local board of education and resigned, the person taking his place would be limited to the one year contract. OAG 84-283.

Cited: Commonwealth v. Howard, 379 S.W.2d 475 (Ky. 1964); Wicker v. Board of Educ., 826 F.2d 442 (6th Cir. 1987); Craig v. Kentucky State Bd. for Elementary & Secondary Educ., 902 S.W.2d 264 (Ky. Ct. App. 1995).

NOTES TO DECISIONS

Analysis

1. Compatibility of offices.
2. Nature of office.
3. Time of appointment.
4. Rescission of appointment.
5. Term.
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7. Qualifications.
8. Removal.
9. —Cause.
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12. —Evidence.
13. Procedure on appeal.
14. Validity of appointment.

1. Compatibility of Offices.

One cannot at the same time be superintendent and teacher. Knuckles v. Board of Educ., 272 Ky. 431, 114 S.W.2d 511 (1938).

Position of assistant superintendent of county schools is an administrative position and is incompatible with the position of teacher and by holding the incompatible position of teacher one appointed assistant superintendent failed to enter upon his duties as such barring him from recovering compensation as assistant superintendent. Richardson v. Bell County Bd. of Educ., 296 Ky. 520, 177 S.W.2d 871 (1944).

2. Nature of Office.

The office of superintendent is one of trust. Hunter v. Board of Educ., 265 Ky. 162, 96 S.W.2d 265 (1936).

A school superintendent is a public officer. Whitley County Bd. of Educ. v. Rose, 267 Ky. 283, 102 S.W.2d 28 (1937). See Smith v. Board of Educ., 23 F. Supp. 328 (E.D. Ky. 1938), aff'd, 111 F.2d 573 (6th Cir. 1940).

3. Time of Appointment.

A county superintendent of schools may be appointed prior to the first day of April in the year in which his term begins, provided that the terms of the members of the board in office at the time the appointment is made must extend beyond the date when the term of the superintendent begins. Maynard v. Allen, 276 Ky. 485, 124 S.W.2d 765 (1939).

A second contract for office of superintendent was enforceable although the second contract was entered into one year prior to the expiration of the first contract, where it was ratified by the board of education after the expiration of the first contract. Farley v. Board of Educ., 424 S.W.2d 124 (Ky. 1968).

Since there is nothing in this section authorizing the appointment of the school superintendent which would justify limiting the power of the school board to appoint a school superintendent prior to the first day of January, the board of education could appoint a school superintendent at a December 5 meeting. Board of Educ. v. Nevels, 551 S.W.2d 15 (Ky. Ct. App. 1977).

4. Rescission of Appointment.

Where person was appointed superintendent by resolution duly adopted, and four-year contract was executed and approved by proper resolution, following which the board adopted a resolution rescinding its former action and appointed another person as superintendent, person first appointed was entitled, before commencement of term for which appointment was made, to bring declaratory judgment action to establish his right to office. Chestnut v. Reynolds, 291 Ky. 231, 163 S.W.2d 456 (1942).

In declaratory judgment proceeding to establish right of appointee to office of superintendent, it was proper for court to set matter for early hearing. Chestnut v. Reynolds, 291 Ky. 231, 163 S.W.2d 456 (1942).

Alleged duress by State Board of Education consisting of threats by State Board to prosecute county board members for school law violations unless certain person was appointed as superintendent did not authorize county board to rescind order of appointment, where appointee did not participate in alleged duress. Chestnut v. Reynolds, 291 Ky. 231, 163 S.W.2d 456 (1942).

Alleged immoral conduct of appointee to office of superintendent would not justify rescission of resolution of appointment; in such case board must resort to power of removal. Chestnut v. Reynolds, 291 Ky. 231, 163 S.W.2d 456 (1942).

The appointment of a superintendent does not result from a contract negotiated between the board and the appointee, but from a formal election prescribed by statute, and once made in the manner prescribed cannot be rescinded. Chestnut v. Reynolds, 291 Ky. 231, 163 S.W.2d 456 (1942).

Fact that appointee to office of superintendent in Laurel County held appointment to same office in Jackson County, covering same term, was not ground for rescinding appoint-

ment, since appointee could resign appointment in Jackson County before commencement of term in Laurel County, and in any event acceptance of Laurel County office would vacate Jackson County office. Chestnut v. Reynolds, 291 Ky. 231, 163 S.W.2d 456 (1942).

5. Term.

The fact that the board adopted an order fixing the term of the superintendent did not prevent it from subsequently employing a superintendent for a term of four years. Smith v. Board of Educ., 264 Ky. 150, 94 S.W.2d 321 (1936).

Once the length of term has been fixed the board loses control over the term thus created. Board of Educ. v. Gulick, 398 S.W.2d 483 (Ky. 1966).

Where the board employed a superintendent for a four-year term it could not create a new term until the expiration of the four-year period. Consequently the reemployment of the superintendent for a four-year term three years after his first four-year term had begun was invalid. Board of Educ. v. Gulick, 398 S.W.2d 483 (Ky. 1966).

Where a school superintendent resigned after serving only ten days of his four-year term and there remained a vacancy of three years and 355 days, the board could not shorten that term and appoint one man for one year and another man for the remaining three years of the vacancy as the vacancy exists in the term of office rather than in the office itself and the contract with the first appointee, by operation of law, was for the remainder of the term. Childers v. Pruitt, 511 S.W.2d 233 (Ky. 1974).

Until the superintendent's term is finally established (either by formal acceptance of the board of education's offer or by commencement of service of the term), the board retains complete control over the process and has authority to increase the length of the term. Stagnolia v. Board of Educ., 714 S.W.2d 486 (Ky. Ct. App. 1986).

Where the superintendent refused to accept the one-year term, the county board of education could change the term of the superintendent to four years prior to the commencement of that term. Stagnolia v. Board of Educ., 714 S.W.2d 486 (Ky. Ct. App. 1986).

6. Salary.

The salary of a superintendent cannot be changed during the term of office. Whitley County Bd. of Educ. v. Rose, 267 Ky. 283, 102 S.W.2d 28 (1937). (But see Board of Educ. v. DeWeese, 343 S.W.2d 598 (Ky. 1960).

Superintendent of schools is not an "officer" within Const., §§ 161, 235 and 246 prohibiting change in compensation of officers during term. Board of Educ. v. DeWeese, 343 S.W.2d 598 (Ky. 1960).

7. Qualifications.

In an action to compel county board of education to employ him for a specific school at a specific salary, a school principal was bound by stipulation of facts as to qualifications of school superintendent in the absence of fraud or mistake in entering into the stipulation. Board of Educ. v. Hogge, 239 S.W.2d 459 (Ky. 1951).

8. Removal.

A superintendent wrongfully ousted is entitled to his full salary until his successor is appointed, and thereafter he is entitled to any part of his salary not being paid to his successor. Smith v. Board of Educ., 23 F. Supp. 328 (E.D. Ky. 1938), aff'd, 111 F.2d 573 (6th Cir. 1940).

On appeal of removal cases, the court can only consider whether the board acted arbitrarily, unlawfully, without authority, without sufficient legal evidence, or abused its discretion. Meade County Bd. of Educ. v. Powell, 254 Ky. 352, 71 S.W.2d 638 (1934); Hunter v. Board of Educ., 265 Ky. 162, 96 S.W.2d 265 (1936); Starns v. Board of Educ., 280 Ky. 747, 134 S.W.2d 643 (1939).

The motive for initiation of removal proceedings is immaterial. Meade County Bd. of Educ. v. Powell, 254 Ky. 352, 71 S.W.2d 638 (1934); Hunter v. Board of Educ., 265 Ky. 162, 96 S.W.2d 265 (1936).

The findings of fact of the board in removal proceedings are conclusive, in the absence of abuse of discretion. Thompson v. Pendleton County Bd. of Educ., 258 Ky. 843, 81 S.W.2d 863 (1935); Hunter v. Board of Educ., 265 Ky. 162, 96 S.W.2d 265 (1936).

Hostile or prejudiced attitude of board does not disqualify them to try a removal proceeding. Thompson v. Pendleton County Bd. of Educ., 258 Ky. 843, 81 S.W.2d 863 (1935).

School boards have a wide discretion in removing teachers and employees. Smith v. Board of Educ., 264 Ky. 150, 94 S.W.2d 321 (1936).

In the absence of an affirmative showing to the contrary, 15 days is a sufficient period for the presentation of evidence. Hunter v. Board of Educ., 265 Ky. 162, 96 S.W.2d 265 (1936).

Where after merger of a county and independent district the board consisted of seven members, a vote of four members was insufficient to oust the superintendent of schools. Since this section requires 80 percent of a five member board to oust the superintendent 80 percent of a seven member board should likewise be required. Wesley v. Board of Educ., 403 S.W.2d 28 (Ky. 1966).

The object of the statutory requirements imposed on the school board is to create a record on which its action may be tested for arbitrariness. Bell v. Board of Educ., 450 S.W.2d 229 (Ky. 1970).

9. —Cause.

"Cause" means legal cause. Smith v. Board of Educ., 264 Ky. 150, 94 S.W.2d 321 (1936).

Fact that superintendent filed charges against board members is not legal cause for removal, when he acted in good faith. Smith v. Board of Educ., 264 Ky. 150, 94 S.W.2d 321 (1936).

Political activity is ground for removal. Hunter v. Board of Educ., 265 Ky. 162, 96 S.W.2d 265 (1936).

Charge, sufficiently supported by evidence, that superintendent had signed contract with director of pupil personnel and sent contract to State Board of Education, without notifying county board and with knowledge that county board had not approved appointment of director of pupil personnel, and that two actions were pending in court involving appointment of director of pupil personnel constituted legal cause for removal of superintendent. Starns v. Board of Educ., 280 Ky. 747, 134 S.W.2d 643 (1939).

The word "cause" means legal cause and not any cause which board authorized to make such removal may deem sufficient and it is implied that removal cannot be at mere will of those vested with power of removal or without any cause but it must be a cause relating to and affecting the administration of the office and must be restricted to something of a substantial nature directly affecting the rights and interests of the public and evidence did not show "good cause or legal cause" which must be the basis of removal of superintendent of schools by county board of education. Bourbon County Bd. of Educ. v. Darnaby, 314 Ky. 419, 235 S.W.2d 66 (1950).

The word "cause" means legal cause and not any cause which the board authorized to make such removal may deem sufficient. Hoskins v. Keen, 350 S.W.2d 467 (Ky. 1961).

Failure to perform duties prescribed by law is cause for removal. Hoskins v. Keen, 350 S.W.2d 467 (Ky. 1961).

The sufficiency of the cause is a question of law for the courts. Bell v. Board of Educ., 450 S.W.2d 229 (Ky. 1970).

The word "cause," as used in this section, means a "legal" cause. Bell v. Board of Educ., 450 S.W.2d 229 (Ky. 1970).

10. —Charges.

It is not the duty of the person filing charges to record them

on the board's minutes. Hunter v. Board of Educ., 265 Ky. 162, 96 S.W.2d 265 (1936).

The board cannot be deprived of its power to hear charges because of the failure of the secretary to record the charges in the minutes. Hunter v. Board of Educ., 265 Ky. 162, 96 S.W.2d 265 (1936).

Written notice served on superintendent setting out charges for removal need not be signed, sworn to or verified. Starns v. Board of Educ., 280 Ky. 747, 134 S.W.2d 643 (1939).

The specified charges must be definite enough to give the accused a fair opportunity to defend himself. Bell v. Board of Educ., 450 S.W.2d 229 (Ky. 1970).

When the board conducted a hearing, the production of its evidence in support of the charges served the purpose of making specific that which might otherwise have been considered too general from the charges alone. Bell v. Board of Educ., 450 S.W.2d 229 (Ky. 1970).

11. —Hearing.

Since, under this section, a hearing is not necessary in the first place, the absence of order and fairness in its conduct cannot be prejudicial. Bell v. Board of Educ., 450 S.W.2d 229 (Ky. 1970).

12. —Evidence.

Although it was a primary responsibility of the school principals to carry out fire drills, their uniform failure to have fire drills over a long period of time sustained the charge that the defendant failed to see that fire drills were carried out. Bell v. Board of Educ., 450 S.W.2d 229 (Ky. 1970).

Where a witness gave direct testimony sufficient to convict on the allegation that the defendant used or sought to use the distribution of federal relief money to get votes for his candidates, that alone was sufficient to support the board's case. Bell v. Board of Educ., 450 S.W.2d 229 (Ky. 1970).

13. Procedure on Appeal.

Where the transcript of the proceedings before the board was used in lieu of the introduction of original proof, the dismissed superintendent was free to subject the school board members to interrogation under the Rules of Civil Procedure at any time after his suit was filed. Bell v. Board of Educ., 450 S.W.2d 229 (Ky. 1970).

14. Validity of Appointment.

Where five-member board of education voted to grand superintendent a new four-year contract but due to an election contest one of the members was a de facto officer whose vote could not be counted in determining whether the superintendent was validly appointed to a new term, the superintendent's appointment was valid where two members voted in favor of the contract, one member voted against and one member abstained, for the vote of the member who abstained will be taken as being in favor of the appointment. Board of Educ. v. Nevels, 551 S.W.2d 15 (Ky. Ct. App. 1977).

Decisions Under Prior Law

1. Nature of Office.

A superintendent was a state officer. Commonwealth ex rel. Baxter v. Burnett, 237 Ky. 473, 35 S.W.2d 857 (1931).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 204-208, 221-225, 228-235, 255, 257, 258.

160.352. Screening committee — Minority representation — Recommendations for superintendent.

(1) For purposes of this section the term "minority" means American Indian; Alaskan native; African-American; Hispanic, including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin; Pacific islander; or other ethnic group underrepresented in a local school district.

(2) Each board of education shall appoint a superintendent of schools after receiving the recommendations of a screening committee. A screening committee shall be established within thirty (30) days of a determination by a board of education that a vacancy has occurred or will occur in the office of superintendent, except that when the board determines a vacancy will not occur before six (6) months from the date of determination, the board shall establish a screening committee at least ninety (90) days before the first date on which the position may be filled.

(3) A screening committee shall be composed of:

(a) Two (2) teachers, elected by the teachers in the district;

(b) One (1) board of education member, appointed by the board chairman;

(c) One (1) principal, elected by the principals in the district;

(d) One (1) parent, elected by the presidents of the parent-teacher organizations of the schools in the district;

(e) One (1) classified employee, elected by the classified employees in the district; and

(f) If a minority member is not elected or appointed to a screening committee in districts with a minority population of eight percent (8%) or more, as determined by the enrollment on the preceding October 1, the committee membership shall be increased to include one (1) minority parent. This minority parent member shall be elected by the parents in an election conducted by the local school board. Parents in the district shall be given adequate notice of the date, time, place, and purpose of the election.

(4) Prior to appointing a superintendent of schools, the board of education shall consider the recommendations of the screening committee, but the board shall not be required to appoint a superintendent from the committee's recommendations.

(Enact. Acts 1990, ch. 476, Pt. II, § 76, effective July 13, 1990; 1994, ch. 159, § 1, effective April 1, 1994; 1994, ch. 255, § 1, effective July 15, 1994; 1994, ch. 400, § 1, effective April 11, 1994; 1996, ch. 362, § 2, effective July 15, 1996; 1998, ch. 257, § 2, effective July 15, 1998.)

Kentucky Bench & Bar. Whalen, The Kentucky Education Reform Act of 1990 and Local Boards of Education, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 11.

Opinions of Attorney General. A screening committee may be composed only of those individuals expressly mentioned in this section and to appoint additional members by unilateral action on the part of the board or pursuant to a regulation passed by the Board of Education would be in violation of KRS 13A.120 and KRS 13A.130. OAG 91-3.

While the Board of Education receives recommendations from the screening committee concerning the appointment of a superintendent, the board is not required to appoint a superintendent from the committee's recommendations; the Board of Education has the discretion to consult with and to receive recommendations from sources other than the committee in

order to insure consideration of qualified applicants and to enable the board to honor its commitment to Affirmative Action. OAG 91-3.

160.360. Assistant superintendents. [Repealed.]

Compiler's Notes. This section (4399-34: amend. Acts 1942, ch. 113, § 13) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

160.370. Superintendent as executive agent of board — Duties.

The superintendent shall be the executive agent of the board that appoints him and shall meet with the board, except when his own tenure, salary, or the administration of his office is under consideration. As executive officer of the board, the superintendent shall see that the laws relating to the schools, the bylaws, rules, and regulations of the Kentucky Board of Education, and the regulations and policies of the district board of education are carried into effect. He may administer the oath required by the board of education to any teacher or other person. He shall be the professional adviser of the board in all matters. He shall prepare, under the direction of the board, all rules, regulations, bylaws, and statements of policy for approval and adoption by the board. He shall have general supervision, subject to the control of the board of education, of the general conduct of the schools, the course of instruction, the discipline of pupils, and the management of business affairs. He shall be responsible for the hiring and dismissal of all personnel in the district.
(4399-34: amend. Acts 1966, ch. 89, § 10; 1990, ch. 476, Pt. II, § 89, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

Cross-References. Boundaries of district, superintendent to furnish to railroad or bridge company, KRS 136.190, 136.990.

Conferences of public school officials, superintendent to attend, KRS 156.190.

Reports of financial matters to state board of education, KRS 157.060.

Kentucky Bench & Bar. Whalen, The Kentucky Education Reform Act of 1990 and Local Boards of Education, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 11.

Opinions of Attorney General. A county board of education regulation, which required that the marriage of any pupil within a school year would be sufficient cause to drop him from school attendance, would probably not be enforceable due to the fact that it did not allow any discretion upon the board's part and applies blanketly without regard to the circumstances of each case. OAG 64-877.

The superintendent of schools may not enter into a binding Kentucky work experience and training program contract on behalf of the district unless authorized to do so by proper action of the school board. OAG 65-411.

A board of education has adequate authority to adopt regulations which would require teachers to submit to periodic physical examinations, if it appears that they are physically unable to discharge their duties as a teacher. OAG 65-560.

Where the superintendent in the proper exercise of discretion does not recommend a particular certified teacher for a certain vacancy, it is not legally possible to employ that teacher in that district and for the purposes of KRS 161.100, no qualified teacher is available. OAG 69-389.

The superintendent's professional function in providing recommendations of personnel inherently vests him with the authority and responsibility of exercising sound discretion in determining whether a particular applicant can be recommended based upon the superintendent's professional knowledge and judgment and includes the responsibility and authority to recommend unfavorably and/or withhold recommendations. OAG 69-389.

There is no obligation on a school board's part to negotiate with its employees as the internal management of schools and teachers is vested in the local board of education and through KRS 161.140 (repealed), 161.170, 160.290 and 160.370 the school board has vast control over the compensation, duties, working conditions and related items concerning teachers. OAG 75-126.

An administrative employment policy which was adopted at the same county school board meeting at which it was first presented without an opportunity for the superintendent to make comment or recommendation would be void. OAG 77-336.

A board of education cannot lawfully contract away amendatory obligation of approval given it by the statutes and, therefore, any contractual provisions of a superintendent's contract in derogation of the expressed statutory outline of powers and duties of a superintendent of a public common school system and a local board of education would be void. OAG 76-360.

Where, at the regular June meeting of the board of education, the board ordered the superintendent of schools to advertise for bids for insurance and, at the July regular meeting of the board, the superintendent asked the board to rescind so much of its order to advertise for bids of insurance because negotiations for a contract for insurance were in the making and a motion for the requested recession was passed by a three-two vote, the board voted in essence to ratify the actions of the superintendent by rescinding so much of the order to bid relating to insurance and, since the board of education may ratify any action it could have legally taken in the first place, it was legal for the board not to bid on insurance contracts. OAG 77-518.

If the superintendent of schools is also the secretary of the board, he or she shall not meet with the board when the superintendent's tenure, salary or the administration of his office is under consideration, for while the two positions of superintendent and secretary may be separable, the body cannot be; in this situation a temporary secretary should be appointed to take the minutes of the board's proceedings. OAG 78-274.

Since the language in this section, to the effect that the superintendent shall meet with the board except when his own tenure, salary or administration of his office is considered, is merely directory, a local board of education may, by a concurring vote of a majority of the board, waive its statutory prerogative of meeting out of the presence of the superintendent when the superintendent's tenure, salary or the administration of his office will be considered. OAG 82-604.

A local board of education may open or close a school without the recommendation of the local superintendent. OAG 85-98.

When the legislature provided the superintendent with discretion to recommend a candidate to the board for appointment, the legislature did not choose to restrict the superintendent to one individual; beyond consideration of minimum requirements, set by law, the exercise of discretion necessitates freedom to choose, and where a qualified candidate is related to a board member, the superintendent is not precluded from recommending that candidate, despite the relationship, nor is the board precluded from approving that candidate if it so chooses. OAG 89-58.

There is no authority for a Board of Education to retain some right to hear charges concerning classified employees, to

make a decision, and later to direct the superintendent on whether or not to dismiss an employee. OAG 90-129.

School board approval is required when the superintendent decides to move the central business office to a new location requiring substantial expenditure of school funds because the movement of the office is not, primarily, a personnel decision, but one involving the management of business affairs; while the superintendent has responsibility for the management of business affairs, that responsibility is subject to the control of the board of education and moreover, the school board has control and management of all school funds, public school property and school facilities; depending on the steps taken, approval of the Department of Education may also be required. OAG 92-65.

Enacting a seniority policy for classified employees exceeds the legal authority of the board and circumvents the superintendent's role in personnel matters. It ties the hands of the superintendent in making personnel decision and may be an attempt by the local board to influence the hiring or appointment of district employees in violation of KRS 160.170. OAG 92-133.

The Kentucky Education Reform Act removed personnel duties from the local board and placed the responsibility in the hands of the superintendent. OAG 92-133.

The superintendent has the responsibility to make individual personnel decisions and to define the duties of particular employee positions. However, the local board has the responsibility to manage the entire district, control school funds, set compensation, create and abolish positions of employment and adopt regulations for qualifications and duties of classes of employees. OAG 92-133.

The opinion in OAG 92-133 is overruled since the 1994 General Assembly enacted House Bill 50 (Enact. Acts 1994, ch. 25) which provides local school boards with the authority to adopt a seniority policy for classified employees. OAG 94-37.

Cited: Hunter v. Board of Educ., 265 Ky. 162, 96 S.W.2d 265 (1936); Taylor v. Hampton, 271 S.W.2d 887 (Ky. 1954); Board of Educ. v. Bentley, 383 S.W.2d 677 (Ky. 1964); Craig v. Kentucky State Bd. for Elementary & Secondary Educ., 902 S.W.2d 264 (Ky. Ct. App. 1995).

NOTES TO DECISIONS

Analysis

1. Public officer.
2. Management and control of school buses.
3. Liability.
4. Discretion of assistant superintendent.

1. Public Officer.

Superintendent of schools is not an "officer" within Const., §§ 161, 235 and 246 prohibiting change in compensation of officers during term. Board of Educ. v. DeWeese, 343 S.W.2d 598 (Ky. 1960).

2. Management and Control of School Buses.

The superintendent of schools of the county board of education was the executive agent and officer of the board and as such was in charge of the management and control of the school buses owned and operated by the board, with authority to direct the operator of the school bus to permit a member of the county board of education to ride upon the bus and thus save the board the expense of transportation under KRS 160.280 and the board member was lawfully riding in the school bus within the liability policy issued for protection of any school child or other person from negligence of the bus driver. Standard Accident Ins. Co. v. Perry County Bd. of Educ., 72 F. Supp. 142 (E.D. Ky. 1947).

Where memorandum containing guidelines for public school bus drivers was issued by director for transportation services rather than by superintendent of schools, court held that guidelines issued were not tantamount to regulations and that the superintendent had an oversight role and duty of preparation, but not necessarily a duty to write the memorandum at issue. Cornette v. Commonwealth, 899 S.W.2d 502 (Ky. Ct. App. 1995).

3. Liability.

School superintendent is not liable individually for failing to see that board require school bus contractors to carry liability insurance as required by KRS 160.310. Bronaugh v. Murray, 294 Ky. 715, 172 S.W.2d 591 (1943).

A county board of education could not be held accountable for the failure of its superintendents to properly apply KRS 161.155. Ramsey v. Board of Educ., 789 S.W.2d 784 (Ky. Ct. App. 1990).

4. Discretion of Assistant Superintendent.

The assistant superintendent was allowed no discretion in enforcing a school board policy which required a high school student to maintain a 2.0 grade point average in five of six classes to remain eligible to participate in extracurricular activities. Thompson v. Fayette County Pub. Sch., 786 S.W.2d 879 (Ky. Ct. App. 1990).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 351, 352.

160.380. School employees — Restrictions on appointment of relatives, violent offenders, and persons convicted of sex crimes — National and state criminal history background checks on applicants.

(1) As used in this section:

(a) "Relative" shall mean father, mother, brother, sister, husband, wife, son, daughter, aunt, uncle, son-in-law, and daughter-in-law.

(b) "Vacancy" shall mean any certified position opening created by the resignation, dismissal, nonrenewal of contract, transfer, or death of a certified staff member of a local school district, or a new position created in a local school district for which certification is required. However, if an employer-employee bargained contract contains procedures for filling certified position openings created by the resignation, dismissal, nonrenewal of contract, transfer, or death of a certified staff member, or creation of a new position for which certification is required, a vacancy shall not exist, unless certified positions remain open after compliance with those procedures.

(2) (a) All appointments, promotions, and transfers of principals, supervisors, teachers, and other public school employees shall be made only by the superintendent of schools, who shall notify the board of the action taken. All employees of the local district shall have the qualifications prescribed by law and by the administrative regulations of the Kentucky Board of Education and of the employing board. Supervisors, principals, teachers, and other employees may be appointed by the superintendent for any school year at any time after February 1 preceding the beginning of the school year. No superintendent of schools shall appoint or transfer himself to another position within the school district.

(b) When a vacancy occurs in a local school district, the superintendent shall notify the chief state school officer thirty (30) days before the position shall be filled. The chief state school officer shall keep a registry of local district vacancies which shall be made available to the public. The local school district shall post position openings in the local board office for public viewing.

(c) When a vacancy needs to be filled in less than thirty (30) days' time to prevent disruption of necessary instructional or support services of the school district, the superintendent may seek a waiver from the chief state school officer. If the waiver is approved, the appointment shall not be made until the person recommended for the position has been approved by the chief state school officer. The chief state school officer shall respond to a district's request for waiver or for approval of an appointment within two (2) working days.

(d) When a vacancy occurs in a local district, the superintendent shall conduct a search to locate minority teachers to be considered for the position. The superintendent shall, pursuant to administrative regulations of the Kentucky Board of Education, report annually the district's recruitment process and the activities used to increase the percentage of minority teachers in the district.

(e) No relative of a superintendent of schools shall be an employee of thee school district. However, this shall not apply to a relative who is a classified or certified employee of the school district for at least thirty-six (36) months prior to the superintendent assuming office, or prior to marrying a relative of the superintendent, and who is qualified for the position the employee holds. A superintendent's spouse who has at least twenty (20) years of service in school systems may be an employee of the school district. A superintendent's spouse who is employed under this provision shall not hold a position in which the spouse supervises certified or classified employees. A superintendent's spouse may supervise teacher aides and student teachers. However, the superintendent shall not promote a relative who continues employment under an exception of this subsection.

(f) No superintendent shall employ a relative of a school board member of the district, unless on July 13, 1990, the board member's relative is an employee of the district, the board member is holding office, and the relative was not initially hired by the district during the tenure of the board member. A relative employed in 1989-90 and initially hired during the tenure of a board member serving on July 13, 1990, may continue to be employed during the remainder of the board member's term. However, the superintendent shall not promote any relative of a school board member who continues employment under the exception of this subsection.

(g) 1. No principal's relative shall be employed in the principal's school, except a relative who is not the principal's spouse and who was employed in the principal's school during the 1989-90 school year.

2. No spouse of a principal shall be employed in the principal's school, except:

a. A principal's spouse who was employed in the principal's school during the 1989-90 school year for whom there is no position for which the spouse is certified to fill in another school operated in the district; or

b. A principal's spouse who was employed in the 1989-90 school year and is in a school district containing no more than one (1) elementary school, one (1) middle school, and one (1) high school.

3. A principal's spouse who is employed in the principal's school shall be evaluated by a school administrator other than the principal.

4. The provisions of KRS 161.760 shall not apply to any transfer made in order to comply with the provisions of this paragraph.

(3) No superintendent shall employ in any position in the district any person who is a violent offender or has been convicted of a sex crime as defined by KRS 17.165 which is classified as a felony. The superintendent may employ, at his discretion, persons convicted of sex crimes classified as a misdemeanor.

(4) (a) Beginning January 1, 1999, a superintendent shall require a national and state criminal background check on all new certified hires in the school district and student teachers assigned within the district. Excluded are certified individuals who were employed in another certified position in a Kentucky school district within six (6) months of the date of hire and who had previously submitted to a national and state criminal background check for the previous employment.

(b) The superintendent shall require that each new certified hire and student teacher, as set forth in paragraph (a) of this subsection, submit to a national and state criminal history background check by the Kentucky State Police and the Federal Bureau of Investigation.

(c) All fingerprints requested under this section shall be on an applicant fingerprint card provided by Kentucky State Police. The fingerprint cards shall be forwarded to the Federal Bureau of Investigation from the Kentucky State Police after a state criminal background check is conducted. The results of the state and federal criminal background check shall be sent to the hiring superintendent. Any fee charged by the Kentucky State Police and the Federal Bureau of Investigation shall be an amount no greater than the actual cost of processing the request and conducting the search.

(d) The Education Professional Standards Board may promulgate administrative regulations to impose additional qualifications to meet the requirements of Public Law 92-544.

(5) A superintendent shall require a state criminal background check on all classified initial hires.

(a) The superintendent shall require that each classified initial hire submit to a state criminal history background check by the Kentucky State Police.

(b) Any request for records under this section shall be on an applicant fingerprint card provided by Kentucky State Police. The results of the state criminal background check shall be sent to the hiring superintendent. Any fee charged by the Kentucky State Police shall be an amount no greater than the actual cost of processing the request and conducting the search.

(6) (a) If a school term has begun and a certified or classified position remains unfilled or if a vacancy occurs during a school term, a superintendent may employ an individual, who will have supervisory or disciplinary authority over minors, on probationary status pending receipt of the criminal history background check. Application for the criminal record of a probationary employee shall be made no later than the date probationary employment begins.

(b) Employment shall be contingent on the receipt of the criminal history background check documenting that the probationary employee has no record of a sex crime nor as a violent offender as defined in KRS 17.165.

(c) Notwithstanding KRS 161.720 to 161.800 or any other statute to the contrary, probationary employment under this section shall terminate on receipt by the school district of a criminal history background check documenting a record of a sex crime or as a violent offender as defined in KRS 17.165 and no further procedures shall be required.

(d) The provisions of KRS 161.790 shall apply to terminate employment of a certified employee on the basis of a criminal record other than a record of a sex crime or as a violent offender as defined in KRS 17.165.

(7) (a) Each application or renewal form, provided by the employer to an applicant for a classified position, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A STATE CRIMINAL HISTORY BACKGROUND CHECK AS A CONDITION OF EMPLOYMENT."

(b) Each application or renewal form, provided by the employer to an applicant for a certified position, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A NATIONAL AND STATE CRIMINAL HISTORY BACKGROUND CHECK AS A CONDITION OF EMPLOYMENT."

(8) The provisions of subsections (4), (5), (6), and (7) of this section shall apply to a nonfaculty coach or nonfaculty assistant as defined under KRS 161.185.

(4399-34: amend. Acts 1942, ch. 113, § 13; 1958, ch. 126, § 18; 1966, ch. 89, § 11; 1974, ch. 88, § 1; 1978, ch. 155, § 82, effective June 17, 1978; 1988, ch. 345, § 4, effective July 15, 1988; 1990, ch. 476, Pt. II, § 78, effective July 13, 1990; 1990, ch. 518, § 7, effective July 13, 1990; 1992, ch. 401, § 1, effective July 14, 1992; 1994, ch. 192, § 1, effective July 15, 1994; 1994, ch. 483, § 1, effective July 15, 1994; 1996, ch. 349, § 1, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 178, § 2, effective July 15, 1998; 1998, ch. 362, § 1, effective July 15, 1998; 1998, ch. 467, § 1, effective July 15, 1998; 1998, ch. 489, § 1, effective July 15, 1998; 2001, ch. 60, § 3, effective June 21, 2001.)

Compiler's Notes. P.L. 92-544, referred to in subsection (4)(d) of this section, is compiled as 28 U.S.C § 534 note.

Cross-References. Deduction from salaries for teachers' retirement fund, KRS 161.560.

School employees, provisions as to, KRS Ch. 161.

Teachers' tenure law, KRS 161.720 to 161.810.

District director, 702 KAR 6:020.

Emergency certification and out-of-field teaching, 704 KAR 20:120.

Lunch and breakfast requirements, 702 KAR 6:050.

Minority teacher recruitment, 704 KAR 7:130.

Personnel; policies and procedures, 702 KAR 6:040.

Procedures for certificate revocation, suspension, voluntary surrender, reinstatement and reissuance, and application denial, 704 KAR 20:585.

Kentucky Bench & Bar. Kirby, School-Based Decision Making, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 15.

Young, Who's the Boss?, Vol. 59, No. 4, Fall 1995, Ky. Bench & Bar 10.

Kentucky Law Journal. Kentucky Law Survey, Bratt, Education, 64 Ky. L.J. 293 (1975-76).

Northern Kentucky Law Review. Notes, School Law — Nonrenewal of Nontenured Teacher's Contract — Procedural Due Process — Wells v. Board of Regents, 545 F.2d 15 (6th Cir. 1976) and Plummer v. Board of Regents, 552 F.2d 716 (6th Cir. 1977), 5 Northern Ky. L. Rev. 141 (1978).

Opinions of Attorney General. While there are no express provisions which would prohibit an outgoing superintendent from recommending himself for a position as principal, an outgoing superintendent is prohibited from taking official action on his own employment. OAG 60-451.

The phrase "and other public school employe" as used in this section, includes the position of director of pupil personnel, and the board of education must accept the recommendation of an outgoing superintendent unless the nominee is found to be morally unfit or educationally unqualified. OAG 60-451.

A board of education is not required to advertise for bids in the selection of school bus drivers. OAG 61-634.

The employment of school bus drivers is not within the purview of either former law identical to present KRS 162.070 or 424.260. OAG 61-634.

An attorney engaged by a county board of education is not a "public school employee" within the meaning of this section and may be engaged without the recommendation of the school superintendent. OAG 67-84.

Where the superintendent in the proper exercise of discretion does not recommend a particular certified teacher for a certain vacancy, it is not legally possible to employ that teacher in that district and for the purposes of KRS 161.100, no qualified teacher is available. OAG 69-389.

The failure of the board to review and approve the transfers of two teachers from one school to another would not of itself

invalidate the transfers unless it could be shown that the teachers were improperly transferred to a position to which they were not qualified, or that the transfers were made arbitrarily or solely for political or improper purposes. OAG 71-431.

The movement of two teachers from one school to another in the same school district would constitute a transfer as referred to in this section. OAG 71-431.

When the superintendent and the majority of the board of education are stalemated to the extent that the board will not approve any recommendation for a certain position made by the superintendent, the matter may be submitted to State Board of Education pursuant to this section. OAG 73-333.

A board of education would be acting at its peril, both as a board and as individual members, if it dismissed any employee without the superintendent's recommendation and without being able to show sufficient cause although this section leaves open the question of whether the dismissal of a nontenured employee must be recommended by the superintendent. Const., § 2 has been frequently interpreted to forbid a public body from exercising arbitrary power. OAG 73-366.

As the superintendent is the executive agent of the board of education and has the responsibility to carry out the lawful orders of the board, the order of the board eliminating the position of deputy superintendent for the year 1973-74 and to so notify the incumbent is a lawful order but the incumbent must be notified by May 15 that his salary for the next year will be reduced or he will be entitled to at least the same salary he received during the present year. OAG 73-378.

When a board of education officially decides to eliminate a position or not to fill a position for the coming year and to employ the person filling the eliminated position in a position of reduced responsibility and salary, it is necessary that the employee be notified that his position and salary will be reduced for the coming year before May 15 and the superintendent and the board will then have until July 1 to decide on the new position for said employee. OAG 73-378; 76-360.

While a board of education may act only upon the recommendations of the superintendent as to the placement of teachers and other certificated personnel in specific positions in specific schools, it is the board ultimately which must approve such assignments and must give notice to the teachers and other personnel as to their assignment and a superintendent may not place teachers and other certificated personnel in specific jobs in specific schools without the approval of the board of education. OAG 73-523.

While noncertificated employees of the school district may be employed only upon the recommendation of the superintendent, the superintendent may not employ an individual he has recommended without the approval of the board of education. If the board rejects the superintendent's recommendation, the superintendent may recommend another person for the said position. The board of education may continue to reject the superintendent's recommendations but may not employ a person for the said position that the superintendent has not recommended. It is only when the superintendent and the majority of the board of education are stalemated to the extent that the board will not approve any recommendations for a certain position made by the superintendent that the matter may be submitted to the State Board of Education for resolution. OAG 73-523.

Before a teacher acquires tenure, the school administration need not make a finding as to the moral fitness of a teacher in order to elect that the teacher shall not be reemployed but may base their decision upon fitness to teach. OAG 74-575.

If a teacher can make a case of arbitrary action against him by the local school board or by the State Board of Education, he may obtain relief in court despite the provision that the decision of the State Board shall be final. OAG 74-575.

The State Board of Education sits as an administrative body not as a judicial body and the hearing is not designed to satisfy the requirements of due process of law. OAG 74-575.

The board's failure to act decisively on the superintendent's recommendation before May 15 will result in the reemployment of a currently employed teacher for the ensuing school year. OAG 74-661.

If an outgoing superintendent has recommended the appointments of noncertified personnel and the board desires to approve these recommendations, there is nothing that may be done by the new superintendent, but the superintendent has the power to remove clerks at pleasure. OAG 76-290.

Unless a recommended position reassignment for a certified employee is made and approved by the board of education before July 15, these positions would stand unchanged for the next school year. OAG 76-360.

A board of education cannot lawfully contract away amendatory obligation of approval given it by the statutes and, therefore, any contractual provisions of a superintendent's contract in derogation of the expressed statutory outline of powers and duties of a superintendent of a public common school system and a local board of education would be void. OAG 76-360.

A local board of education may create and dispose of administrative positions without a recommendation of the superintendent; however, when an administrative position is created, it is the responsibility of the superintendent to recommend an individual to that position. OAG 77-114.

While an advisory search committee may be established by the board of education to assist the superintendent in seeking out qualified individuals for a position in the school system, in the end it is the superintendent alone who decides who will be recommended to the board to fill a position. OAG 78-41.

A board of education may reject a recommendation or nomination by the local superintendent, whether it is of a certified or classified employee, only for a legal cause of substantial nature relating to and affecting the carrying out of the position for which the individual was recommended. OAG 79-78.

A local board of education may not reject a superintendent's recommendation regarding personnel employment or appointment for just any reason it chooses, and the reasons for such rejection must be based in good faith on legal causes in order for the rejection to have legal justification. OAG 79-78.

In situations where the board has in good faith, based upon legal causes, rejected the recommendations of a superintendent, it behooves the local board to take the matter to the state board for review. OAG 79-78.

A local board of education can direct the superintendent to make a recommendation relative to a teacher's contract since a recommendation is required by law and may be a part of appropriately adopted local board policies; the refusal by a superintendent to make a recommendation could be considered legal cause for the superintendent's removal. OAG 80-205.

Although a superintendent could refuse to make a recommendation to the board of education regarding the renewal or not of a teacher's contract, such refusal would be a neglect of a lawfully imposed duty. OAG 80-205.

Being a jailer and a school bus driver at the same time involves no statutory incompatibility. However, it is possible that such dual roles will, in a particular county, present a common law incompatibility in that the jailer may not be able to execute both functions in the manner required by law. OAG 82-452.

A board of education cannot discuss the "hiring, firing, promotion or discipline" of individual employees without first receiving a recommendation from the superintendent. OAG 83-379.

The superintendent must make an unequivocal recommendation on personnel matters before the board goes into closed session to discuss specific individuals, and the superintendent's list of teachers to be employed or not employed is not to

be composed in conference between the superintendent and the board. OAG 83-379.

When the legislature provided the superintendent with discretion to recommend a candidate to the board for appointment, the legislature did not choose to restrict the superintendent to one individual; beyond consideration of minimum requirements, set by law, the exercise of discretion necessitates freedom to choose, and where a qualified candidate is related to a board member, the superintendent is not precluded from recommending that candidate, despite the relationship, nor is the board precluded from approving that candidate if it so chooses. OAG 89-58.

Relationships by marriage must be expressly included in a statute to fall within the statutory requirements. OAG 90-68.

The term "aunt" does not include aunts by marriage, particularly where a statute has expressly prohibited certain relationships by marriage. OAG 90-68.

If a superintendent who received his contract from the local board of education in July, 1989 were to remain superintendent on July 1, 1991, the spouse who has been a classified employee for five years will not be eligible to retain employment under the exception of this section pertaining, generally, to relatives; however, if the spouse has 20 or more years of service in school systems, then that spouse would be eligible to retain employment so long as she would not be supervising other classified employees. OAG 90-94.

Spouses are eligible for the first exception set forth pertaining to relatives in subsection (2)(e) of this section; that is, spouses, along with other qualified relative who are employees of the district prior to July 13, 1990 and who are certified employees, may retain their positions so long as their spouse, the superintendent, holds office on July 1, 1991, and any spouse of a superintendent who is unable to retain employment under the exception pertaining, generally, to relatives, may be eligible to retain employment under the second exception which pertains to both certified and classified employees by having 20 or more years of service in school systems. OAG 90-94.

The Kentucky Education Reform Act of 1990 clearly provides, in transitional sections, that incumbent members of school boards are eligible both to serve out the remainder of their terms, and to run for re-election, despite having relatives who were hired during their tenure employed by the school district; however, the elected candidate will not be eligible to take the oath of office and to serve as a board member unless the relatives first resign from employment. OAG 90-109.

If superintendent's wife's employment by the school district does not qualify under one of the two exemptions contained within subdivision (2)(e) of this section, the school board would be required to terminate superintendent's employment or spouse's employment effective July 1, 1991. OAG 90-130.

Where a board member has served continuously as a member of the local Board of Education from 1955 up to present and ran for re-election in the fall of 1990, and where his spouse worked for the Board of Education as a teacher in 1948-49, before the two were married and the spouse returned to work as a teacher from 1956-1985 and returned in 1986 and is currently employed as a teacher, the spouse's "initial employment" would be when the spouse most recently came on board and remained continuously employed, that being the school year of 1986-87, and, as the board member became a member of the board in 1955, and the spouse subsequently became employed, the spouse could continue to be employed only for the remainder of the board member's current term which ended December 31, 1990. OAG 91-10.

The term "principal's spouse" does not include spouses of an assistant principal, particularly where this section has expressly prohibited certain relationships; had the legislature wished to include spouses of assistant principals the legislature would have done so. OAG 91-13.

Because a classified school employee who is a principal's spouse is not included in the statutory exception, there are no conditions under which a classified spouse of a principal may work in his or her spouse's school, but a certified school employee who is the principal's spouse may work in his or her spouse's school if: (1) the certified spouse was employed in the principal's school during the 1989-90 school year; and (2) there is no position for which the certified spouse is certified to fill in another school operated in the district. OAG 91-28.

The requirements of subsection (2)(g) apply to all school employees, whether the employees are certified or classified. OAG 91-28.

The use of the word "certified" in the language of the exception in subsection (2)(g) limits the application of this exception to certified employees, therefore, the phrase, "for which the spouse is certified to fill," indicates that the spouse must be certified to fill some position in the school district for this exception to apply to the spouse. OAG 91-28.

The application of the exception under subdivision (2)(g) of this section depends only on whether a position exists in another school, not on whether a vacancy exists in another school and if an appropriate position exists in another school in the district, then the certified spouse must be transferred to that position; an individual occupying the position that is needed for the principal's spouse must also be transferred to accommodate the transfer of the principal's spouse. OAG 91-28.

Where the spouse of a superintendent, assuming such spouse had been employed for 20 years or more in the school system, was employed by a school system on July 1, 1990, as a food service director and assuming such position was not supervisory but rather a liaison role, the school board would be able to continue to employ her as food service director after July 1, 1991, without violating subdivision (2)(e) of this section, but if the facts of spouse's employment are contrary to either of these assumptions, then her continued employment after July 1, 1991, could violate subdivision (2)(e) of this section. OAG 91-64.

Assuming that a school council exists, subdivision (2)(a) of this section, which gives the authority and responsibility for all appointments and promotions of teachers and other public school employees to the superintendent, is qualified by KRS 160.345(2)(g) and (i) to the extent that the superintendent recommends applicants to a particular school and the principal fills the vacancies after consultation with the school council. Therefore, when an initial assignment or the filling of a vacancy is involved, the principal and council make personnel decisions upon receiving the list of recommended applicants from the superintendent. OAG 91-122.

A superintendent may change assignments of personnel prior to July 16 without creating "vacancies" as defined by subsection (1)(b) of this section, but after July 15, when positions are occupied by personnel as assigned by the superintendent, and when certified position openings occur due to resignation, dismissal, transfer, death, nonrenewal of contract, or creation of new positions, those openings constitute "vacancies" under subsection (1)(b) of this section. OAG 91-149.

Coaches' positions must be handled the same as other extra-duty or extra-curricular assignments in that the distinction to be made is whether the extra duties are added to a new or vacant full-time position or to a separate position as opposed to whether the extra duties are merely assigned to the incumbent of a full-time position. OAG 91-149.

Employment of teachers is deemed to be employment in the district, not in a particular position or school, consequently, assignments of position and school, under certain conditions, do not constitute transfers when those assignments are different from previous assignments of position and school. OAG 91-149.

Generally, paid extra-duty or extra-curricular assignments do not have to be posted in accordance with this section. OAG 91-149.

The superintendent may post extra-duty or extra-curricular assignments which are to be assigned to the incumbent of a full-time position to ensure that anyone who is interested in being considered for the assignments may apply. OAG 91-149.

To the extent that a separate position is created for the purpose of hiring an individual to provide duties which cannot be carried out by a full-time member of the faculty, then the extra-duty or extra-curricular assignments would be posted as part of that position. OAG 91-149.

When extra duties are merely additional assignments, posting of those assignments is not required under the provisions of subsections (2)(a) through (c) of this section, however, when a full-time position is created or becomes vacant, to the extent that extra-duty or extra-curricular assignments are considered to be attached to the full-time new or vacant position, then the extra-duty or extra-curricular assignments would be posted as part of the new or vacant full-time position. OAG 91-149.

Where a superintendent contemplates filling an opening created by resignation by transferring another teacher into that position; filling the second opening by transferring another teacher into the second position, and contemplates advertising the third opening for which he has no specific hiring plan, it is necessary to post each vacancy as it occurs after July 15 of each school year. OAG 91-149.

Where an interim superintendent's spouse does not have 20 years' service in school districts, the spouse is not required to resign, so long as the interim superintendent is not a candidate for permanent appointment, and serves only for the brief period necessary to appoint a permanent superintendent, not to exceed 6 months. OAG 91-179.

The terms "brother" and "sister" include half-brother and half-sister, but not step-daughter or step-son. OAG 91-206.

A teacher and athletic director in a junior high school who accepts a position in a new high school as teacher and athletic director has not necessarily experienced a promotion; the change may simply be a transfer. OAG 92-1.

Extra-service positions involve payment for additional tasks that a teacher assumes, such as coach or yearbook sponsor, and to conclude that any assumption of special tasks within the school would constitute promotion, when the level of duties may not change in a material way, and when the compensation is small, would appear to be unduly burdensome; therefore, whether assumption of an extra-service position constitutes a promotion will require analysis of the level of duties and responsibilities and of the level of compensation, as well, perhaps, of the manner in which such positions are assumed; without facts to indicate a material and permanent change in duties, extra-service positions would not constitute promotions. OAG 92-1.

The assumption of teaching duties in a full-time position by a former substitute teacher does not necessarily constitute a promotion, as substitute teaching may include part-time or full-time duties, similar in nature to the duties assumed in a regular full-time position; the determination of whether or not a promotion has occurred will depend on the facts of the individual case in question. OAG 92-1.

Under subsection (2)(e) of this section, as of July 1, 1991, a superintendent has been prohibited from employing a relative in the school district. The prohibition does not apply to a superintendent's spouse who has 20 years of service in school systems so long as the superintendent's spouse does not supervise anyone other than teacher aides and student teachers. OAG 92-45.

Subsection (2)(e) of this section prohibits supervisory responsibility that is regular and permanent, and not to encompass the occasional episodes that may occur when one acts, temporarily, in the place of the principal. OAG 92-45.

A superintendent can transfer a principal from site based school A to site based school B upon the retirement of the current principal in school B, without council approval, making a vacancy in site based school A, if schools A and B are not school-based decision making schools. OAG 92-78.

The superintendent has ultimate authority over personnel decisions affecting non-certified or classified staff in the school district. Nevertheless, principals and school councils share responsibility over certain personnel decisions, related to classified employees. OAG 92-135.

It is consistent with the goals of KERA for a superintendent to receive input from a council-elect prior to selecting a principal for its school in the event there is a vacancy in the spring before council members' terms officially begin. However, the final decision will remain with the superintendent. OAG 93-31.

A school superintendent cannot promote his son to assistant principal in the same school district; changing from the position of teacher to assistant principal constitutes a promotion, regardless of whether there is a corresponding salary increase, and a superintendent is prohibited by subsection (2)(e) from promoting a relative. OAG 99-6.

Cited: Bernard v. Humble, 298 Ky. 74, 182 S.W.2d 24 (1944); Taylor v. Hampton, 271 S.W.2d 887 (Ky. 1954); Hogan v. Kentucky State Bd. of Educ., 329 S.W.2d 563 (Ky. 1959); Miller v. Board of Educ., 54 F.R.D. 393 (W.D. Ky. 1971); Craig v. Kentucky State Bd. for Elementary & Secondary Educ., 902 S.W.2d 264 (Ky. Ct. App. 1995); Bailey v. Floyd County Bd. of Educ., 106 F.3d 135, 1997 Fed. App. 39 (6th Cir. 1997).

NOTES TO DECISIONS

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1. Constitutionality.

Subdivision (2)(f) of this section does not violate the First Amendment, nor the equal protection clause of the Fourteenth Amendment of the United States Constitution. Chapman v. Gorman, 839 S.W.2d 232 (Ky. 1992).

Since the General Assembly has made a strong showing of intent to eradicate nepotism within the school districts of the Commonwealth, this legislation enjoys a strong presumption of constitutionality. Kentucky Dep't of Educ. v. Risner, 913 S.W.2d 327 (Ky. 1996).

2. Application.

This section does not apply to the employment of school bus drivers, since the board has the privilege of either contracting with a person who provides his own vehicle or hiring drivers for vehicles owned by the board. Smith v. Rose, 293 Ky. 583, 169 S.W.2d 609 (1943).

Janitors, bus drivers, and mechanics are public employees within the meaning of this section. Reed v. Greene, 243 S.W.2d 892 (Ky. 1951).

Certified public accountant hired by board to audit records is independent contractor and not employee requiring recommendation of superintendent. Lewis v. Morgan, 252 S.W.2d 691 (Ky. 1952).

An attorney employed by the board in an attorney-client relationship is an independent contractor and not a "public school employee" within the meaning of this section. Hobson v. Howard, 367 S.W.2d 249 (Ky. 1963).

3. State Employees.

A principal is a state employee. Board of Trustees v. Renfroe, 259 Ky. 644, 83 S.W.2d 27 (1935).

Teachers in the common schools are state employees. Board of Educ. v. Talbott, 261 Ky. 66, 86 S.W.2d 1059 (1935).

4. Recommendations.

A verbal recommendation is sufficient if made in person by the superintendent. Amburgey v. Draughn, 288 Ky. 128, 155 S.W.2d 740 (1941).

This section contemplates that the superintendent of schools shall nominate teachers for the next school year at some time between April 1 and the beginning of the next school year on July 1, though the particular school may not open until a later date. Beckham v. Kimbell, 282 Ky. 648, 139 S.W.2d 747 (1940).

Where superintendent attempted to recommend teachers at three separate meetings, and at the first meeting the board refused to consider recommendations because two members of board were absent, although a quorum was present, at second meeting board claimed that recommendations could not be considered because it was a special meeting, and at third meeting board adjourned when superintendent offered recommendations, conduct of board indicated a fixed determination to thwart recommendations, which amounted to an unjustified rejection. O'Daniel v. McDaniel, 290 Ky. 77, 160 S.W.2d 331 (1942).

Where list containing recommendations was filed with minutes, and was later used by board in making some appointments, the fact that the board expunged at a later meeting so much of minutes as recited that superintendent had offered list to board did not make recommendations ineffective. O'Daniel v. McDaniel, 290 Ky. 77, 160 S.W.2d 331 (1942).

The fact that the list containing recommendations was not specific in one instance in designating position for which teacher was recommended did not make this recommendation ineffective, where evidence was that board understood what position was intended. O'Daniel v. McDaniel, 290 Ky. 77, 160 S.W.2d 331 (1942).

The recommendation of teachers may be written or oral. O'Daniel v. McDaniel, 290 Ky. 77, 160 S.W.2d 331 (1942).

Teachers may be employed by the local board of education only upon the recommendation of the local superintendent of schools, and any employment without that recommendation is void. Gaines v. Board of Educ., 554 S.W.2d 394 (Ky. Ct. App. 1977).

5. —Appointments.

Failure of superintendent to object to appointment by county board of education without her recommendation did not estop her from objecting where the appointment was being used to perpetuate appointee in office. Beverly v. Highfield, 307 Ky. 179, 209 S.W.2d 739 (1948).

An appointment or election of a school principal by the county board of education without the recommendation of the county superintendent is void and the principal cannot use it as a foundation upon which to rest his claim that because of it the board is compelled to continue his employment. Beverly v. Highfield, 307 Ky. 179, 209 S.W.2d 739 (1948).

6. —Time for Approval.

Since school year begins July 1, teachers must be chosen by that date, and school board cannot refuse to act on recommendations before that date or postpone action until after that date. Cottongim v. Stewart, 277 Ky. 706, 127 S.W.2d 149 (1939).

The board of education cannot divest a nominated teacher of his rights by postponing its approval of his nomination until after July 1 without legal cause. Beckham v. Kimbell, 282 Ky. 648, 139 S.W.2d 747 (1940).

It is the duty of the superintendent to nominate teachers for the ensuing year, and the duty of the board to accept the nominations, in the absence of cause for rejection, before the beginning of the school year. Duff v. Chaney, 291 Ky. 308, 164 S.W.2d 483 (1942).

A teacher recommended by the superintendent has a vested right to have her nomination recognized by the board before the school year begins. Duff v. Chaney, 291 Ky. 308, 164 S.W.2d 483 (1942).

7. —Approval.

It is ordinarily the duty of the board to employ persons nominated by the superintendent, provided said nominees possess the necessary moral and educational qualifications. Hall v. Boyd County Bd. of Educ., 265 Ky. 500, 97 S.W.2d 38 (1936).

Board members have a discretion in voting on an applicant who is related to one of the board members, notwithstanding the applicant is duly qualified and nominated. Hall v. Boyd County Bd. of Educ., 265 Ky. 500, 97 S.W.2d 38 (1936).

It is the duty of the board to approve appointment of those recommended, except in instances where substantial cause is shown. Amburgey v. Draughn, 288 Ky. 128, 155 S.W.2d 740 (1941).

School board was entitled to reject a recommendation for a continuing contract for a teacher without a finding of cause. Dorr v. Fitzer, 525 S.W.2d 462 (Ky. 1975).

KRS 161.740 providing that "if the teacher is employed by the board" a continuing contract shall be issued, when construed in regard to its relation with this section, means that the board has an open choice whether or not to make the employment that will result in a continuation contract. Dorr v. Fitzer, 525 S.W.2d 462 (Ky. 1975).

8. —Rejection.

Action by teacher whose recommendation for employment had been rejected without cause was primarily against school board, and it was only necessary to join teacher who, through customary mode of appointment, was put in her place, and not teacher who had been given her place by subsequent shifting of teachers. Cottongim v. Stewart, 277 Ky. 706, 127 S.W.2d 149 (1939).

Arbitrary action of school board members in rejecting nominations of teachers by superintendent would be grounds for removal, and would perhaps subject them to liability for loss to school fund by payments to teachers wrongfully employed. Cottongim v. Stewart, 277 Ky. 706, 127 S.W.2d 149 (1939).

Where nominations were presented by superintendent at board meeting, and motion to accept recommendation and employ teachers was lost, the action of the board was a rejection, and later resolutions changing the minutes to show otherwise were ineffective. Cottongim v. Stewart, 277 Ky. 706, 127 S.W.2d 149 (1939).

Where a county has been made one district by the consolidation and abolition of subdistricts, the county superintendent has the authority to nominate teachers, and his recommendations can be rejected only for cause. Cottongim v. Stewart, 277 Ky. 706, 127 S.W.2d 149 (1939).

Nomination under this section of a teacher possessing the requisite qualifications gives him the prima facie right of approval, and the burden of showing legal disqualification

rests upon the board of education. Beckham v. Kimbell, 282 Ky. 648, 139 S.W.2d 747 (1940).

The power of the board of education to disapprove prospective teachers nominated by the superintendent of schools must not be exercised arbitrarily; the board must show some legal cause for disapproving the persons nominated. Beckham v. Kimbell, 282 Ky. 648, 139 S.W.2d 747 (1940).

General conclusions by board of education that certain certified persons nominated as teachers were not "fit" or "suitable" did not show sufficient legal cause for rejection of nominations. Beckham v. Kimbell, 282 Ky. 648, 139 S.W.2d 747 (1940).

Although teacher whose recommendation for position of principal was unlawfully rejected had not suffered any monetary loss because she was employed as ordinary teacher at same salary as principal, and although term for which recommendation was made had expired at time of appeal to court of appeals, teacher was nevertheless entitled to judgment holding that board acted beyond its legal duty in rejecting recommendation, and should have granted her a contract as principal. O'Daniel v. McDaniel, 290 Ky. 77, 160 S.W.2d 331 (1942).

It is mandatory duty of a board of education to elect a recommendee of its superintendent, if such recommendee possesses the necessary moral and educational qualifications, and in passing on any recommendations made by its superintendent, no board has the right to arbitrarily reject a recommendee, but it is limited in its right of rejection, in the exercise of sound discretion, to determine whether the recommendee is morally fit or educationally qualified for the position to which he is recommended. Smith v. Beverly, 314 Ky. 651, 236 S.W.2d 914 (1951).

9. Transfers.

Even though teachers' tenure law provides that upon recommendation of the superintendent a teacher eligible for continuing service status shall be reemployed, it did not mean that he must be employed to teach in the same school in which he taught the preceding year and where the county is in one district by virtue of consolidation and abolition of districts superintendent has the authority by this section to transfer teachers, subject to the approval of the board, and a teacher eligible for continuing service status may be assigned to any school in the district. Ritchie v. Dunn, 297 Ky. 410, 180 S.W.2d 284 (1944).

This section does not contain any direction, or even any suggestion, as to the time at which a transfer must or may be made. Board of Educ. v. Hogge, 239 S.W.2d 459 (Ky. 1951).

The board of education has the right at any time during the school year, upon recommendation of the superintendent, to transfer a principal from one school to another. Board of Educ. v. Hogge, 239 S.W.2d 459 (Ky. 1951).

A principal holding a continuing contract could be transferred to a teaching position in another school, but his teaching salary could not be reduced. Board of Educ. v. Hogge, 239 S.W.2d 459 (Ky. 1951).

The county board of education had the right to transfer school principal from one position to another and where board agreed to keep him as teacher but he declined and obtained employment elsewhere he could not recover for breach of contract. Welch v. Board of Educ., 247 S.W.2d 536 (Ky. 1952).

Where a contract stated that if a teacher was transferred to a less convenient school, facts as to the cause of the transfer must be shown but that the superintendent had the final say, showing of cause was for the information of the teacher, not as a condition of the validity of the transfer. Snapp v. Deskins, 450 S.W.2d 246 (Ky. 1970).

Where, in an action to enjoin the school board from transferring school employees, the evidence would authorize a finding of arbitrariness, the case was remanded for a decision as to whether each individual case was arbitrary. Snapp v. Deskins, 450 S.W.2d 246 (Ky. 1970).

Where school board minutes did not indicate that transfer of principal was on recommendation of superintendent, evidence outside the minutes of the board could not be utilized to prove that the transfer was with the recommendation of the superintendent as required by this section, and the Circuit Court erred in failing to hold the transfer void. Stafford v. Board of Educ., 642 S.W.2d 596 (Ky. Ct. App. 1982).

Under the language of this section, the board is under an obligation to act on the superintendent's recommendation regarding the transfer of teachers, either affirmatively or negatively; failure to so act, whether by postponement or by a deadlocked vote, renders any attempted transfer invalid. Burkhart v. Board of Educ., 649 S.W.2d 855 (Ky. Ct. App. 1983).

This section requires that the transfer of any teacher be made only upon the recommendation of the superintendent, subject to the approval of the board; accordingly, where the superintendent recommended the transfer of two teachers but the board failed to approve the transfer because of a deadlocked vote such deadlock did not constitute approval under the terms of this section, and consequently, the attempted transfer was invalid. Burkhart v. Board of Educ., 649 S.W.2d 855 (Ky. Ct. App. 1983).

10. —Arbitrariness.

A mere showing by school employees that the school board gave no legitimate reasons for the transfers would not be enough, in the absence of a showing of circumstances attending the transfer such as would raise an inference of arbitrariness. Snapp v. Deskins, 450 S.W.2d 246 (Ky. 1970).

The strength of the inferences of arbitrariness is to be measured in the light of the very broad discretionary authority necessarily vested in the superintendent and board of education in the administration of the schools. Snapp v. Deskins, 450 S.W.2d 246 (Ky. 1970).

11. —Justification.

The burden is not on the board, initially, to justify the transfers of employees, and the burden will shift to the board only when the complaining employees have made an affirmative showing of nonjustification. Snapp v. Deskins, 450 S.W.2d 246 (Ky. 1970).

12. Time for Appointments.

A county superintendent of schools may be appointed prior to the first day of April in the year in which his term begins provided the appointment is made by the same board that is authorized to act when the vacancy actually occurs but this does not mean that the personnel of the board must remain the same but that members in office at the time the appointment is made must extend beyond the date when the term of the appointed officer begins. Maynard v. Allen, 276 Ky. 485, 124 S.W.2d 765 (1939).

13. Rights of Employee.

When approval of nominations is arbitrarily refused, the law will imply a contract which may be specifically enforced, and for breach of which damages may be allowed against the board members individually to the extent to which damage could not be minimized by the nominee, the burden of proving an effort to minimize damages being on the nominee. Amburgey v. Draughn, 288 Ky. 128, 155 S.W.2d 740 (1941).

Teacher whose nomination has been wrongfully rejected or ignored has no cause of action against members of board individually until they have caused payments to be made to another teacher employed for the same position. Duff v. Chaney, 291 Ky. 308, 164 S.W.2d 483 (1942).

Superintendent who recommends teacher in place of one whose nomination by former superintendent was wrongfully rejected is personally liable in damages. Duff v. Chaney, 291 Ky. 308, 164 S.W.2d 483 (1942).

A teacher whose nomination has been wrongfully rejected or ignored by the board has the right, before the board has

employed and paid another teacher in her place, to compel the board by suit for specific performance to accept her recommendation; if she waits until after the board has employed and paid the other teacher she has no cause of action against the board as such, but has a cause of action for damages against members of the board individually, and against the superintendent who recommended the substitute, and her failure to bring suit for specific performance before employment of the substitute does not constitute laches. Duff v. Chaney, 291 Ky. 308, 164 S.W.2d 483 (1942).

Teacher, who was not employed by the school board under a continuing contract although she had taught in the system for four years and her name appeared on the superintendent's list as eligible for a continuing contract, was not deprived of a vested right to a teaching position without notice and a hearing since the provisions of this section did not apply. Dorr v. Fitzer, 525 S.W.2d 462 (Ky. 1975).

14. Review by State.

The provision of this section for review of the refusal by a board of education to approve teachers nominated by the superintendent is for the purpose of settling bona fide differences of opinion between the superintendent and the board of education; where the board has refused its approval without legal cause, the rejected nominee may bring an action of mandamus. Beckham v. Kimbell, 282 Ky. 648, 139 S.W.2d 747 (1940).

Where a local board refuses approval of superintendent's recommendations without legal justification and the party aggrieved has resorted to the courts for relief, jurisdiction attaches and the provision for appeal to the State Board of Education is no longer applicable. Board of Educ. v. Miller, 299 S.W.2d 626 (Ky. 1957).

15. Teaching Credentials.

A school board may employ a nurse and teacher of health and physical education, and such person need not have teaching credentials. Board of Educ. v. Simmons, 245 Ky. 493, 53 S.W.2d 940 (1932).

16. Necessity for Contract.

A person legally qualified and properly nominated, whose name has not been withdrawn, has a vested right to perform the duties of the position and receive the emoluments thereof, whether or not a contract has been executed and approved by the board. Amburgey v. Draughn, 288 Ky. 128, 155 S.W.2d 740 (1941).

17. Removal of Superintendent.

A charge that county superintendent as secretary of the board of education sent to the State Board of Education a statement in writing that the board had elected a director of pupil personnel when the board had not only failed to do so but had refused to do so constituted sufficient charges for removal of the county superintendent by the county board of education. Starns v. Board of Educ., 280 Ky. 747, 134 S.W.2d 643 (1939).

Former superintendent, despite contract provision calling for her return to her previous position of assistant superintendent upon termination for any reason, was not entitled to position of assistant superintendent because the formalities concerning her initial appointment were not fulfilled and school board was incapable of ratifying such appointment as it had no power of appointment. Tolliver v. Harlan County Bd. of Educ., 887 F. Supp. 144 (E.D. Ky. 1995).

18. Erroneous Designation of Position.

The fact that an employee was designated erroneously as superintendent instead of principal is immaterial. Sugg v. Board of Trustees, 255 Ky. 356, 74 S.W.2d 198 (1934).

19. Liability for Removal.

Superintendent was not held to have acted as a "final policymaker" in removing plaintiff from her position as secretary to the high school principal and refusing to recommend her for any other position. Therefore, his actions were not those of the county board of education and board could not be held liable in plaintiff's § 1983 action. Adkins v. Board of Educ., 982 F.2d 952 (6th Cir. 1993).

20. Liability of Local Boards of Education.

Even after passage of the Kentucky Education Reform Act on July 13, 1990, which expanded state control of local boards of education, the Kentucky local boards of education are not arms of the state and, thus, they are not entitled to Eleventh Amendment immunity. Tolliver v. Harlan County Bd. of Educ., 887 F. Supp. 144 (E.D. Ky. 1995).

DECISIONS UNDER PRIOR LAW

ANALYSIS

1. Recommendations.
2. —Approval.
3. —Withdrawal.

1. Recommendations.

It is not necessary that the recommendations be made in writing; a verbal recommendation is sufficient if it is made in person by the superintendent. Hudson v. Ohio County Bd. of Educ., 253 Ky. 709, 70 S.W.2d 375 (1934).

The county superintendent may nominate teachers in all county schools except in subdistrict schools, where only the elementary grades, that is, up to or through the eighth grade, are taught. Hudson v. Ohio County Bd. of Educ., 253 Ky. 709, 70 S.W.2d 375 (1934). See Wilson v. Alsip, 256 Ky. 466, 76 S.W.2d 288 (1934).

2. —Approval.

If a nominee possesses the necessary educational and moral qualifications it is the duty of the board to approve of his recommendation. Stith v. Powell, 251 Ky. 155, 64 S.W.2d 491 (1933).

3. —Withdrawal.

A superintendent may withdraw a nomination at the meeting at which it is considered. Stith v. Powell, 251 Ky. 155, 64 S.W.2d 491 (1933).

Upon rejection of a nominee by the board, the superintendent may withdraw said nomination, and nominate another. Hale v. Board of Educ., 254 Ky. 96, 70 S.W.2d 975 (1934).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 177, 351, 352.

160.390. General duties as to condition of schools — Responsibilities — Reports.

(1) The superintendent shall devote himself exclusively to his duties. He shall exercise general supervision of the schools of his district, examine their condition and progress, and keep himself informed of the progress in other districts. He shall prepare or have prepared all budgets, salary schedules, and reports required of his board by the Kentucky Board of Education. He shall advise himself of the need of extension of the school system of the district, shall receive and examine reports from teachers and other school officers, and shall make reports from time to time as required by the rules of his board or as directed by the board. He shall be responsible to the board for the general condition of the schools. He shall be responsible for all personnel actions including hiring, assignments, transfer, dismissal, suspension, rein-

statement, promotion, and demotion and reporting the actions to the local board.

(2) All personnel actions by the superintendent as described in subsection (1) shall be recorded in the minutes of the local board of education at the next meeting after the action is taken and shall not be effective prior to receipt of written notice of the personnel action by the affected employee from the superintendent.

(4399-34: amend. Acts 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. II, § 90, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

Cross-References. Reports of financial matters to State Board of Education, KRS 157.060.

Superintendent of Public Instruction to supervise financial reports, KRS 156.160, 156.200.

Kentucky Bench & Bar. Kirby, School-Based Decision Making, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 15.

Opinions of Attorney General. If an outgoing superintendent had recommended the appointments of noncertified personnel and the board desires to approve these recommendations, there is nothing that may be done by the new superintendent, but the superintendent has the power to remove clerks at pleasure. OAG 76-290.

This section cannot be construed to prohibit or even necessarily curtail the nonschool related activities of a local superintendent of schools. OAG 79-149.

There is no authority for a Board of Education to retain some right to hear charges concerning classified employees, to make a decision, and later to direct the superintendent on whether or not to dismiss an employee; the only involvement of the board after July 13, 1990 is to receive notice of the action taken by the superintendent. OAG 90-129.

As an employee of the local board of education, the superintendent is bound to carry out the duties and responsibilities assigned by the board so long as those duties are permissible under the law; the superintendent is to prepare all budgets, salary schedules, and reports required by the local board of education and by the state board of elementary and secondary education. OAG 92-29.

School board approval is required when the superintendent decides to move the central business office to a new location requiring substantial expenditure of school funds because the movement of the office is not, primarily, a personnel decision, but one involving the management of business affairs; while the superintendent has responsibility for the management of business affairs, that responsibility is subject to the control of the board of education and moreover, the school board has control and management of all school funds, public school property and school facilities; depending on the steps taken, approval of the Department of Education may also be required. OAG 92-65.

Members of the board of education may only inspect the nonexempt records contained in the personnel files of certified and classified employees. Since the board of education no longer plays any role in personnel actions, it does not enjoy any greater right of access to the files and board's right to inspect the personnel files of certified and classified employees of the school system is therefore the same as the right of inspection enjoyed by any citizen under this section. OAG 92-141.

Cited: Hunter v. Board of Educ., 265 Ky. 162, 96 S.W.2d 265 (1936); Hoskins v. Keen, 350 S.W.2d 467 (Ky. 1961); Tolliver v. Harlan County Bd. of Educ., 887 F. Supp. 144 (E.D. Ky. 1995); Bailey v. Floyd County Bd. of Educ., 106 F.3d 135, 1997 Fed. App. 39 (6th Cir. 1997).

NOTES TO DECISIONS

ANALYSIS

1. Administrative duties.
2. Application.

1. Administrative Duties.

This section requires the superintendent and, necessarily, the assistant superintendent, to devote themselves exclusively to their duties, which are administrative in nature and do not include teaching, and the holding of the incompatible position of teacher operates to prevent a duly appointed assistant superintendent from being entitled to compensation as assistant superintendent. Richardson v. Bell County Bd. of Educ., 296 Ky. 520, 177 S.W.2d 871 (1944).

2. Application.

Since superintendent's action in demoting school administrator was effective when administrator received notice of demotion from superintendent, while KRS 161.765 admittedly provides administrators with enhanced procedural protections, it does nothing to change the effective date of a demotion, and it is that effective date that controls for the purpose of the May 15 deadline set forth in KRS 161.760 and the fact that an administrator might contest the demotion, and thus the action might not become final for some time is of no consequence under subsection (2) of the section. Estreicher v. Board of Educ., 950 S.W.2d 839 (Ky. 1997).

KRS 161.760(2) does not require finality to effect a reduction in salary and by its very terms subsection (2) of this section makes the superintendent's personnel action effective upon receipt of the written notice by the affected employee; therefore, where administrator received notice of demotion on April 26 followed by a specific statement of reasons for the demotion on May 9, the requirements of KRS 161.760(3) have been met. Estreicher v. Board of Educ., 950 S.W.2d 839 (Ky. 1997).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 351, 352.

160.400. Duties of outgoing superintendent.

An outgoing superintendent shall, before his last month's salary is paid, make all reports required by law to date of his retirement and shall have information assembled to date of his retirement for any reports to be made by the incoming superintendent.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 438, effective July 13, 1990.)

Compiler's Notes. This section (4399-34) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 438, effective July 13, 1994.

Opinions of Attorney General. If the superintendent of schools is also the secretary of the board, he or she shall not meet with the board when the superintendent's tenure, salary or the administration of his office is under consideration, for while the two positions of superintendent and secretary may be separable, the body cannot be; in this situation a temporary secretary should be appointed to take the minutes of the board's proceedings. OAG 78-274.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 351, 352.

160.410. Expenses of superintendent and employees.

A board of education may pay the necessary expenses of its superintendent and other employees when such expenses are incurred on order of the board.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 439, effective July 13, 1990.)

Compiler's Notes. This section (4399-35) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 439, effective July 13, 1990.

Opinions of Attorney General. Where the use of the superintendent of school's personal car on school business was not considered and approved by the board of education prior to the use, the board could not legally pay the superintendent's claim for reimbursement. OAG 77-331.

A school district may not advance money to its employes for travel or other necessary expenses prior to the expense actually being incurred since the applicable statutes contemplate reimbursement, not an advancement of money. OAG 80-395.

It is within the legal prerogative of the local board to fairly establish the nature of professional activities for which it will be willing to incur expenses. OAG 83-228.

While there is a legal basis for the expenditure of school moneys for professional activities, a school board is not mandated to approve the incurring of these expenses and costs for reimbursement from school funds. OAG 83-228.

Within reason, school boards are permitted to bear the direct and indirect expenses incurred by teachers and administrators who attend, after prior approval by the board, professional activities and functions; however, school boards are not wholly unfettered in exercising their discretion in approving attendance at sundry professional activities since Const., §§ 180 and 184 require that school funds may be used only for school purposes, the test being whether the expenditure is for an educational purpose rather than whether an activity might be beneficial to education. OAG 83-228.

It is legal for a board of education to pay salaries and/or expenses, including travel, lodging, and meals for school administrators to attend business sessions of their respective professional organizations, training and professional improvement meetings conducted by their professional organization and accreditation associations to which their schools or districts belong and/or lobbying activities conducted by their professional associations. OAG 83-228.

It is legal for a board of education to pay salaries and/or expenses, including travel, lodging, meals, and substitute teachers, for teachers to attend business sessions of their respective professional organizations, training and professional improvement meetings conducted by their professional organization, and/or lobbying activities conducted by their organization. OAG 83-228.

160.420. Interest in teacher's claim prohibited. [Repealed.]

Compiler's Notes. This section (4399-36) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

160.430. Business directors in cities of first two classes. [Repealed.]

Compiler's Notes. This section (4399-37) was repealed by Acts 1966, ch. 89, § 16.

160.431. School finance officer — Continuing education.

(1) The local district superintendent shall appoint a finance officer who shall be responsible for the cash, investment, and financial management of the school district.

(2) The school finance officer shall be required to complete forty-two (42) hours of continuing education every two (2) years from a provider approved by the Department of Education.

(Enact. Acts 2000, ch. 389, § 1, effective July 14, 2000.)

160.440. Secretary of board of education.

Each board of education shall appoint a secretary for a term of one (1), two (2), three (3), or four (4) years. The secretary shall not be a member of the board of education. The board of education of any district may appoint its superintendent as secretary. However, a superintendent who serves as secretary to the board shall not receive compensation in addition to that which he receives for serving as superintendent. The board may fix a reasonable salary for the secretary. The secretary shall keep the records of the board and perform other duties imposed upon him by the board. All orders of the board must be signed by the secretary and countersigned by the chairman of the board. The secretary shall be custodian of all securities, documents, title papers, and other papers of the board under such conditions as the board may direct. The secretary, when other than the superintendent, shall make all records of the board available to the superintendent and the board of education at any time and shall furnish the superintendent of schools and the board of education such information as is revealed by the records at any time upon the request of the superintendent or the board of education.

(4399-38: amend. Acts 1978, ch. 6, § 1, effective June 17, 1978; 1982, ch. 14, § 1, effective July 15, 1982; 1990, ch. 476, Pt. II, § 91, effective July 13, 1990.)

Opinions of Attorney General. The secretary to the board of education is not a public officer within the meaning of Const., § 235 and consequently, subject to the general principles of contract law, the salary of the secretary may be changed during his term. OAG 60-480.

The secretary of a board of education is an employee and not an officer and, by mutual agreement, his contract may be renegotiated both as to salary and to length of term of office. OAG 61-509.

Serving as a legal assistant is not a legitimate duty to be imposed upon the secretary to the local board of education. OAG 78-274.

The amendment of this section by Acts 1990, ch. 176, pt. II, § 91, which provided that a superintendent may not be paid for secretarial duties performed for the board of education, terminates a contract between a superintendent and a school board that allows the superintendent to be paid for serving as secretary to the board; however, compensation already paid to a superintendent for performance of a pre-existing contract since adoption of the Kentucky Education Reform Act need not be refunded since no legal recovery can be had a subsequent illegal performance. OAG 91-63.

NOTES TO DECISIONS

Analysis

1. Superintendent as secretary.
2. Notice of special meetings.
3. Custodian of records.
4. Recordation of charges upon minutes.

1. Superintendent as Secretary.

The statutory limit imposed by KRS 64.620 (now repealed) on officers and employees of local governmental units does not apply to officers and employees of school districts as they are deemed officers and employees of the state under KRS 64.600 (now repealed) and the addition of $3,000 secretarial salary to the $7,000 salary and $600 expense account of a superintendent when he served in both capacities was within the authority of the school board and there was no basis to support contention that the $3,000 compensation of the superintendent for acting as secretary of the board exceeded a reasonable

amount as authorized by this section. Board of Educ. v. DeWeese, 343 S.W.2d 598 (Ky. 1960).

Where all five members of the board of education were present at meeting where superintendent was appointed secretary of the board, but due to the fact that the vote of one member should have been disregarded since her election had been declared invalid by the court, the vote on the motion to appoint superintendent as secretary would have been a tie vote, the appointment of the superintendent as secretary was an invalid appointment. Board of Educ. v. Nevels, 551 S.W.2d 15 (Ky. Ct. App. 1977).

2. Notice of Special Meetings.

Notices of special meetings may be delivered by the secretary. Board of Educ. v. Stevens, 261 Ky. 475, 88 S.W.2d 3 (1935).

3. Custodian of Records.

The secretary is custodian of the records of the board, and acts under the supervision of the superintendent. Hunter v. Board of Educ., 265 Ky. 162, 96 S.W.2d 265 (1936).

4. Recordation of Charges upon Minutes.

Failure of the secretary to record charges upon the minutes does not deprive the board of its right to hear and try the charges against an employee. Hunter v. Board of Educ., 265 Ky. 162, 96 S.W.2d 265 (1936).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 140, 141, 153, 154.

District Finances

160.450. Fiscal year of school districts.

The fiscal year of all school districts shall begin on July 1 and end on June 30.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 440, effective July 13, 1990.)

Compiler's Notes. This section (4399-39: amend. Acts 1964, ch. 100; 1978, ch. 7, § 1, effective June 17, 1978) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 440, effective July 13, 1994.

Cross-References. Fiscal year, Const., § 169.

School year, KRS 158.050.

Procedure for payment of employees, 702 KAR 3:060.

Opinions of Attorney General. School boards and cities are covered by Const., § 169, except where otherwise provided by statute. OAG 85-65.

Cited: White v. Board of Educ., 263 Ky. 91, 91 S.W.2d 539 (1936).

160.455. Definition of tax-levying authority.

As used in KRS 160.460 to 160.597, unless the context requires otherwise:

"Tax-levying authority" shall mean boards of education of county school districts and independent school districts.

(Enact. Acts 1976, ch. 127, § 1; 1990, ch. 476, Pt. V, § 232, effective July 13, 1990.)

160.460. Levy of school taxes — Procedures.

(1) All school taxes shall be levied by the board of education of each school district. The tax-levying authority shall levy an ad valorem tax within the limits prescribed in KRS 160.470, which will obtain for the school district the amount of money needed as shown in the district's general school budget submitted under the provisions of KRS 160.470.

(2) The tax-levying authority shall make an annual school levy not later than July 1. The school levy shall not be made until the general school budget has been received and approved by the Kentucky Board of Education. The failure of the authority to make the levy by the date prescribed shall not invalidate any levy made thereafter.

(3) All school taxes shall be levied on all property subject to local taxation in the jurisdiction of the tax-levying authority. If the school levy is to be made upon the city assessment, which is hereby authorized for independent school districts embraced by cities of the first four (4) classes, the clerk of the city shall furnish to the school district or districts which the city embraces, the assessed valuation of property subject to local taxation in the school district, as determined by its tax assessor. If the school levy is to be made upon the county assessment the county clerk shall furnish to the proper school district or districts the assessed valuation of property subject to local taxation in the district or districts, as certified by the Kentucky Revenue Cabinet. No later than July 1, 1994, all real property located in the state and subject to local taxation shall be assessed at one hundred percent (100%) of fair cash value.

(4399-40: amend. Acts 1949 (Ex. Sess.), ch. 7, § 1; 1950, ch. 71; 1976, ch. 127, § 2; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. V, § 104, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

Cross-References. Bank franchise and local deposit tax, KRS 136.500 to 136.575.

Boundaries of school district to be furnished to railroad or bridge company to enable it to determine tax due, KRS 136.190, 136.990.

Revenue Cabinet to certify to county clerk the portion of corporate franchises or tangible property subject to local taxation, KRS 136.180.

Foundation program fund, distribution of, Const., § 186; KRS Ch. 157.

Lien for taxes, KRS 132.990, 134.420.

Municipal electric plant to pay sum equivalent to tax based on book value, KRS 96.820.

Municipal light, water or gas plant may pay tax equivalent to school district, KRS 96.536.

Property of dissolved religious society to go to county seminary, KRS 273.130.

Property subject to local taxation, KRS 132.030, 132.050, 132.150, 132.190, 132.200, 136.030, 136.180, 136.200, 136.300.

Superintendent of schools may recommend assessment changes, KRS 133.120.

Tax rate not to be fixed until assessment is certified by tax commission to county clerk, KRS 133.185.

Kentucky Law Journal. Stephenson, Property Assessment Remedies for the Kentucky Taxpayer, 60 Ky. L.J. 84 (1971).

Turner, Property Tax Assessment Administration in Kentucky, 60 Ky. L.J. 141 (1971).

Russo, School-Based Decision Making in Kentucky: Dawn of a New Era or Nothing New Under the Sun?, 83 Ky. L.J. 123 (1994-95).

Opinions of Attorney General. When a portion of an independent school district lies outside of the city limits, the

school district is not "embraced" by the city within the meaning of subsection (1) (now (3)) of this section and the fiscal court is the levying authority for school taxes and the governmental unit which approves the school budget. OAG 61-414.

There is no deadline in terms of a calendar date by which a city board of education must submit its tax rate to the city. OAG 64.380.

An independent school district in the city could not share part of the expense incurred by the city in reassessing property located within the city. OAG 67-1.

Where an independent school district is composed of different cities, the tax levying authority is the governing body of each city in the district. OAG 68-594.

Where not all of the residents of three cities included in an independent school district lived inside the school district and one city had its own tax assessor while two other cities were assessed by the county assessor, the proper tax levying authority for the district was the county fiscal court and the election expense should be borne by the fiscal court. OAG 69-2.

School taxes shall be levied by the fiscal court in each county, except in independent school districts embraced by cities of the first four classes. OAG 74-187.

Local boards of education must assume all administrative responsibility concerning bond issues for school sites and buildings; however, since school financing is done almost exclusively through school building revenue bonds pursuant to KRS 162.210 to 162.300 and KRS 58.010 to 58.120 inclusive, there is no authority for any change in the preexisting procedure used for school revenue bonds and the fiscal courts and county treasurers must continue to perform the customary functions heretofore served by them in that regard. OAG 76-711.

Pursuant to this section and KRS 132.280, independent school districts embraced in cities of the first four classes may use the city assessment or the county assessment. OAG 77-497.

Cited: Fyfe v. Hardin County Bd. of Educ., 305 Ky. 589, 205 S.W.2d 165 (1947); Folks v. Barren County, 313 Ky. 515, 232 S.W.2d 1010 (1950); Cunningham v. Grayson, 541 F.2d 538 (6th Cir. 1976).

NOTES TO DECISIONS

Analysis

1. All school taxes state taxes.
2. Levy.
3. —Time of making.
4. —Refusal.
5. —Amount.
6. Surplus revenue.
7. Taxing district.
8. Collection of delinquent taxes.
9. Decisions by local school board.

1. All School Taxes State Taxes.

A local school tax is a state tax. Board of Educ. v. City of Louisville, 288 Ky. 656, 157 S.W.2d 337 (1941).

2. Levy.

Where boundary lines of independent school district were not coterminous with those of the city, the fiscal court of the county was the tax levying authority for the district. Howard v. Board of Educ., 311 Ky. 130, 223 S.W.2d 721 (1949).

3. —Time of Making.

Tax levy made on June 21 was valid, in view of provision of this section that failure to make levy in April should not invalidate a levy thereafter made. Harlan-Wallins Coal Corp. v. Cawood, 303 Ky. 544, 198 S.W.2d 218 (1946) (Decision prior to 1949 amendment).

4. —Refusal.

When the council relies on bad faith or corruption as ground for refusal to make the levy desired by the school board, the bad faith or corruption must be clearly charged. White v. Board of Educ., 263 Ky. 91, 91 S.W.2d 539 (1936).

Inaccuracies in estimated items in county school budget submitted by board of education, due to subsequent developments, did not justify fiscal court's refusal to levy taxes required by budget, in absence of showing board had acted illegally or in bad faith. Stokley v. Fleming County Bd. of Educ., 305 Ky. 602, 205 S.W.2d 168 (1947).

5. —Amount.

The board of education of a city of the second class has the exclusive right to determine within lawful limits the amount of money necessary to be expended and the items for which it shall be expended in the operation of the schools, and, unless the board of commissioners of the city can show an illegal expenditure, or a computation unlawfully arrived at, or bad faith on the part of the school board, it must levy a tax within the limits prescribed by the Constitution and statutes sufficient to raise the revenue required under the provisions of the budget filed with it by the board of education. The board of commissioners has no legal right to question the advisability of the expenditure of the items contained in the budget submitted. City of Paducah v. Board of Educ., 289 Ky. 284, 158 S.W.2d 615 (1942).

Since the legislature has provided for penalties to offset any deficiency which might be incurred by failure to pay taxes when due, commissioners were within legal rights in deciding that a $1.00 levy requested by the school board was based on a computation unlawfully arrived at, as it appeared 89 cents would produce sufficient revenue if fully collected. City of Paducah v. Board of Educ., 289 Ky. 284, 158 S.W.2d 615 (1942).

The board of commissioners of a second-class city performs its whole duty when it levies upon the taxable property of the city a tax which, when collected, will produce the sum requested by the board and it is not required to levy a higher tax on the theory that some of the taxpayers will fail to pay during the year for which the tax is levied. City of Paducah v. Board of Educ., 289 Ky. 284, 158 S.W.2d 615 (1942).

The fiscal court must levy the ad valorem tax and the poll tax at the rate specified by the board of education; it has no discretion in the matter. Fiscal Court v. Board of Educ., 294 Ky. 758, 172 S.W.2d 624 (1943).

Where board of education undertook to have two levies simultaneously made upon bank shares, namely, 40¢ for general purposes and 50¢ for special purposes the trial court reasonably apportioned the 40¢ maximum between the general and special purpose in the proportion that the resolution of the board of education called to be levied on all other property, namely, $1.50 for general school purposes and 50¢ for "special school building" purpose. Board of Educ. v. Citizens Fid. Bank & Trust Co., 263 S.W.2d 112 (Ky. 1953).

Where a proposed general budget for fiscal year was submitted to the fiscal court and to the State Board of Education for approval by county board of education as provided by KRS 160.470 requesting it to impose a general school tax of $1.50 per $100 valuation of property subject to local tax and Superintendent of Public Instruction certified to the board that the tax rate necessary to produce the required "local tax effort" to participate in the "public school foundation program fund" would be $1.57 per $100 of assessed valuation which was in effect a disapproval of the budget and required an amended tax levy, the fiscal court should have levied and imposed a tax rate of $1.57 for general school purposes. Holmes v. Walden, 394 S.W.2d 458 (Ky. 1965).

6. Surplus Revenue.

The mere fact that an expenditure will absorb that portion of anticipated revenue which would otherwise have been surplus does not preclude the school board from making necessary expenditures upon discovery that the funds are

available for that purpose. City of Paducah v. Board of Educ., 289 Ky. 284, 158 S.W.2d 615 (1942).

7. Taxing District.

A board of education is a taxing district or municipality. Lee v. Board of Educ., 261 Ky. 379, 87 S.W.2d 961 (1935).

8. Collection of Delinquent Taxes.

In independent districts embracing cities of the first four classes, it is the duty of the city, and not of the school board, to cause delinquent taxes to be collected and to allow credits thereon. McKinney's Adm'x v. Commonwealth ex rel. Bd. of Educ., 260 Ky. 608, 86 S.W.2d 167 (1935).

9. Decisions by Local School Board.

The underlying theme of this section is that the actual decisions addressed hereunder are to be made by the local school board, not the state. Blackburn v. Floyd County Bd. of Educ., 749 F. Supp. 159 (E.D. Ky. 1990).

DECISIONS UNDER PRIOR LAW

ANALYSIS

1. In general.
2. Levy.

1. In General.

The fiscal court must make the levy requested when the proposed budget shows facts authorizing it, and the board has not acted in bad faith. Elliott County Fiscal Court v. Elliott County Bd. of Educ., 193 Ky. 66, 234 S.W. 947 (1921); County Bd. of Educ. v. Fiscal Court, 229 Ky. 774, 17 S.W.2d 1009 (1929); McCreary County Fiscal Court v. McCreary County Bd. of Educ., 236 Ky. 149, 32 S.W.2d 741 (1930); Hockensmith v. County Bd. of Educ., 240 Ky. 76, 41 S.W.2d 656 (1931); Allen County Fiscal Court v. Allen County Bd. of Educ., 242 Ky. 546, 46 S.W.2d 1070 (1932); Madison County Bd. of Educ. v. Madison County Fiscal Court, 246 Ky. 201, 54 S.W.2d 652 (1932); Newell v. Cincinnati, N.O. & T.P. Ry., 246 Ky. 628, 55 S.W.2d 662 (1932).

All taxes imposed for common school purposes in this state are state taxes even though they are for use in schools located in the territory affected by the tax. Paducah-Illinois R.R. v. Graham, 46 F.2d 806 (W.D. Ky. 1931); Commonwealth ex rel. Milton Bd. v. Louisville Nat'l Bank, 220 Ky. 89, 294 S.W. 815 (1927).

2. Levy.

Mandamus may issue to compel the calling of a special term of the fiscal court and the making of a levy. Fiscal Court v. Board of Educ., 191 Ky. 263, 230 S.W. 57 (1921).

If the levy requested is insufficient, the court may levy a sufficient tax. Madison County Bd. of Educ. v. Madison County Fiscal Court, 246 Ky. 201, 54 S.W.2d 652 (1932); Newell v. Cincinnati, N.O. & T.P. Ry., 246 Ky. 628, 55 S.W.2d 662 (1932).

Fact that State Board of Education had not approved the tax rate is not fatal. Knox County v. Lewis' Adm'r, 253 Ky. 652, 69 S.W.2d 1000 (1934).

The form of the levy is not material. Knox County v. Lewis' Adm'r, 253 Ky. 652, 69 S.W.2d 1000 (1934).

Collateral References. 79 C.J.S., Schools and School Districts, §§ 586-600, 602-606.

Validity of basing public school financing system on local property taxes. 41 A.L.R.3d 1220.

160.462. Financial analysis of school system — Format of presentation (counties of 300,000). [Repealed.]

Compiler's Notes. This section (Acts 1972, ch. 254, § 1) was repealed by Acts 1978, ch. 275, § 1, effective June 17, 1978.

160.463. Publication of financial statements of school systems in counties of 300,000.

The school board of each public school system in any county having 300,000 or more inhabitants shall direct its superintendent to publish, in full, annually, in the newspaper of the largest general circulation in the county, the annual financial statements of the school system audited by certified public accountants or an accountant approved by the State Department of Education. Each system's financial statements shall be prepared and presented on a basis consistent with that of the other systems.

(Repealed and reenact. Acts 1990, ch. 476, Pt. III, § 108, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1972, ch. 254, § 2) was repealed and reenacted by Acts 1990, ch. 476, Part III, § 108, effective July 13, 1994.

160.464. School board to brief members of General Assembly (counties of 300,000). [Repealed.]

Compiler's Notes. This section (Enact. Acts 1972, ch. 254, § 3) was repealed by Acts 1984, ch. 146, § 1, effective July 13, 1984.

160.470. Tax rate limits — Hearing — Levy exceeding four percent increase subject to recall vote or reconsideration — Levy of minimum equivalent tax rate.

(1) (a) Notwithstanding any statutory provisions to the contrary, no district board of education shall levy a general tax rate which will produce more revenue, exclusive of revenue from net assessment growth as defined in KRS 132.010, than would be produced by application of the general tax rate that could have been levied in the preceding year to the preceding year's assessment, except as provided in subsection (9) of this section and KRS 157.440.

(b) If an election is held as provided for in KRS 132.017 and the question should fail, such failure shall not reduce the "...general tax rate that could have been levied in the preceding year...," referred to in subsection (1)(a) of this section, for purposes of computing the general tax rate for succeeding years.

In the event of a merger of school districts, the limitations contained in this section shall be based upon the combined revenue of the merging districts, as computed under the provisions of this section.

(2) No district board of education shall levy a general tax rate within the limits imposed in subsection (1) of this section which respectively exceeds the compensating tax rate defined in KRS 132.010, except as provided in subsection (9) of this section, KRS 157.440, and KRS 157.621, until the district board of education has complied with the provisions of subsection (7) of this section.

(3) Upon receipt of property assessments from the Revenue Cabinet, the commissioner of education shall certify the following to each district board of education:

(a) The general tax rate that a district board of education could levy under the provisions of subsection (1) of this section, and the amount of revenue expected to be produced;

(b) The compensating tax rate as defined in KRS 132.010 for a district's general tax rate the amount of revenue expected to be produced;

(c) The general tax rate which will produce, respectively, no more revenue from real property, exclusive of revenue from new property, than four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010, and the amount of revenue expected to be produced.

(4) Upon completion of action on property assessment data, the Revenue Cabinet shall submit certified property assessment data as required in KRS 133.125 to the chief state school officer.

(5) Within thirty (30) days after the district board of education has received its assessment data, the rates levied shall be forwarded to the Kentucky Board of Education for its approval or disapproval. The failure of the district board of education to furnish the rates within the time prescribed shall not invalidate any levy made thereafter.

(6) (a) Each district board of education shall, on or before January 31 of each calendar year, formally and publicly examine detailed line item estimated revenues and proposed expenditures for the subsequent fiscal year. On or before May 30 of each calendar year, each district board of education shall adopt a tentative working budget which shall include a minimum reserve of two percent (2%) of the total budget.

(b) Each district board of education shall submit to the Kentucky Board of Education no later than September 30, a close estimate or working budget which shall conform to the administrative regulations prescribed by the Kentucky Board of Education.

(7) (a) Except as provided in subsection (9) of this section and KRS 157.440, a district board of education proposing to levy a general tax rate within the limits of subsection (1) of this section which exceed the compensating tax rate defined in KRS 132.010 shall hold a public hearing to hear comments from the public regarding the proposed tax rate. The hearing shall be held in the principal office of the taxing district or, in the event the taxing district has no office, or the office is not suitable for such a hearing, the hearing shall be held in a suitable facility as near as possible to the geographic center of the district.

(b) The district board of education shall advertise the hearing by causing the following to be published at least twice for two (2) consecutive weeks, in the newspaper of largest circulation in the county, a display type advertisement of not less than twelve (12) column inches:

1. The general tax rate levied in the preceding year, and the revenue produced by that rate;
2. The general tax rate for the current year, and the revenue expected to be produced by that rate;
3. The compensating general tax rate, and the revenue expected from it;
4. The revenue expected from new property and personal property;
5. The general areas to which revenue in excess of the revenue produced in the preceding year is to be allocated;
6. A time and place for the public hearing which shall be held not less than seven (7) days nor more than ten (10) days after the day that the second advertisement is published;
7. The purpose of the hearing; and
8. A statement to the effect that the General Assembly has required publication of the advertisement and the information contained herein.

(c) In lieu of the two (2) published notices, a single notice containing the required information may be sent by first-class mail to each person owning real property, addressed to the property owner at his residence or principal place of business as shown on the current year property tax roll.

(d) The hearing shall be open to the public. All persons desiring to be heard shall be given an opportunity to present oral testimony. The district board of education may set reasonable time limits for testimony.

(8) (a) That portion of a general tax rate, except as provided in subsection (9) of this section, KRS 157.440, and KRS 157.621, levied by an action of a district board of education which will produce, respectively, revenue from real property, exclusive of revenue from new property, more than four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010, shall be subject to a recall vote or reconsideration by the district board of education as provided for in KRS 132.017, and shall be advertised as provided for in paragraph (b) of this subsection.

(b) The district board of education shall, within seven (7) days following adoption of an ordinance, order, resolution, or motion to levy a general tax rate, except as provided in subsection (9) of this section and KRS 157.440, which will produce revenue from real property, exclusive of revenue from new property as defined in KRS 132.010, more than four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010, cause the following to be published, in the newspaper of largest circulation in the county, a display type advertisement of not less than twelve (12) column inches:

1. The fact that the district board of education has adopted such a rate;

2. The fact that the part of the rate which will produce revenue from real property, exclusive of new property as defined in KRS 132.010, in excess of four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010 is subject to recall; and
3. The name, address, and telephone number of the county clerk of the county or urban-county in which the school district is located, with a notation to the effect that that official can provide the necessary information about the petition required to initiate recall of the tax rate.

(9) (a) Notwithstanding any statutory provisions to the contrary, effective for school years beginning after June 30, 1990, the board of education of each school district shall levy a minimum equivalent tax rate of thirty cents ($0.30) for general school purposes. Equivalent tax rate is defined as the rate which results when the income collected during the prior year from all taxes levied by the district for school purposes is divided by the total assessed value of property plus the assessment for motor vehicles certified by the Revenue Cabinet. School districts collecting school taxes authorized by KRS 160.593 to 160.597, 160.601 to 160.633, or 160.635 to 160.648 for less than twelve (12) months during a school year shall have included in income collected under this section the pro rata tax collection for twelve (12) months.

(b) If a board fails to comply with paragraph (a) of this subsection, its members shall be subject to removal from office for willful neglect of duty pursuant to KRS 156.132.

(4339-40: amend. Acts 1949 (Ex. Sess.), ch. 7, § 2; 1956, ch. 177; 1965 (1st Ex. Sess.), ch. 2, § 3; 1970, ch. 118, § 1; 1976, ch. 127, § 3; 1976, ch. 187, § 1; 1976, ch. 93, § 16, effective January 1, 1977; 1978, ch. 155, § 82, effective June 17, 1978; 1979 (Ex. Sess.), ch. 25, § 6, effective February 13, 1979; 1980, ch. 317, § 7, effective July 15, 1980; 1980, ch. 319, § 6, effective July 15, 1980; 1982, ch. 360, § 49, effective July 15, 1982; 1984, ch. 137, § 2, effective March 27, 1984; 1990, ch. 476, Pt. III, § 105, effective July 13, 1990; 1992, ch. 40, § 1, effective July 14, 1992; 1994, ch. 436, § 2, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 399, § 1, effective July 15, 1998; 2000, ch. 389, § 6, effective July 14, 2000.)

Legislative Research Commission Note. (11/5/90). In subsection (12)(b) of this section, "(12)" has been inserted before the reference to "(a)" to correct a manifest clerical or typographical error pursuant to KRS 7.136(1) and 1990 Acts Ch. 476, § 652.

Cross-References. Education of the physically handicapped, KRS Chapter 167.

State vocational rehabilitation, KRS 151B.180 to 151B.210.

School council allocation formula: KETS District Administrative System Chart of Accounts, 702 KAR 3:246.

School district tax rate formulas, 702 KAR 3:275.

SEEK funding formula, 702 KAR 3:270.

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Kentucky Law Journal. Kentucky Law Survey, Vasek and Bradley, Kentucky Taxation, 68 Ky. L.J. 777 (1979-1980).

Kentucky Law Survey, Whiteside, Taxation, 71 Ky. L.J. 479 (1982-83).

Russo, School-Based Decision Making in Kentucky: Dawn of a New Era or Nothing New Under the Sun?, 83 Ky. L.J. 123 (1994-95).

Opinions of Attorney General. There is no deadline in terms of a calendar date by which a city board of education must submit its tax rate to the city. OAG 64-380.

Under the 1965 amendment to KRS 160.470, school districts which do not seek percentage increases are frozen or limited to income received in the 1965-1966 school year plus net assessment (new property) growth, but districts seeking the additional percentage increases are thereafter limited permanently to the income received at the end of the 1967-1968 school year plus subsequent net assessment (new property) growth. OAG 65-655.

If a school's fiscal year was the calender year, in order to use the increase, the budget would have to be prepared and separated into the two school terms involved so that the increase would apply to the school year rather than the calendar year. OAG 65-820.

The increase is to be permitted for "school years" rather than "fiscal years." OAG 65-820.

A school board may elect to continue to operate at the 1965-1966 revenue level for the coming and following school years, may request one percentage increase for either 1966-1967 or 1967-1968, or may request percentage increases for both of those years. OAG 66-387.

A local board of education may forego requesting any percentage increase in its ad valorem tax revenue for the 1966-1967 school year, in which event the limitations prescribed in subsection (2) of this section govern, but may then request an increase for the 1967-1968 school year if its need for that school year so dictates. OAG 66-387.

Revenue received by school districts from electric plant boards is not ad valorem tax revenue for purposes of this section and a plant board does not have net assessment growth that can be included in the Department of Revenue's (now Revenue Cabinet's) certification of net assessment growth. OAG 66-441.

A county school board could request a budget increase and the levy of a utility gross receipts license tax in the same year. OAG 66-675.

The words "preceding year's rate" mean the correct rate that could have been levied for the preceding year if final assessment figures had been available and used in the certification given by the Superintendent of Public Instruction. OAG 67-165.

A county school district may receive a credit toward the "required local tax effort" figure of former law regarding attendance for income received from the the state and paid from federal funds granted to the state for distribution among the schools. OAG 67-231.

A county school district may receive a credit toward the "required local tax effort" figure of KRS 157.320(11) for income derived from payments received in lieu to taxes. OAG 67-231.

A county school district may not receive credit toward the "required local tax effort" figure of KRS 157.320(11) for income derived from franchise taxes. OAG 67-231.

A county school district may receive credit toward the "required local tax effort" figure of KRS 157.320(11) for income derived from poll taxes. OAG 67-231.

State Board of Education could not approve deficit expenditure unless a school district acted reasonably and in good faith in anticipating the collection of revenue in circumstances where the debt is contracted because of failure to collect such revenue. Only in such cases is the debt valid. OAG 67-293.

Subsections (2) and (4) of this section relate to the basic general fund levy while KRS 160.477(6) (repealed) and KRS

157.440(2) limit special voted levies to the compensating tax rate. Accordingly, these statutes do not authorize an independent school district to apply a 10 percent increase to the special voted tax in effect in the district. OAG 67-300.

The district board of education can request the Circuit Court to mandamus the fiscal court to make the levy requested. OAG 67-510.

The fiscal court cannot avoid the levy of an increased property tax when properly requested to do so by the county board of education. OAG 67-510.

Where the rates actually levied the preceding year were less than what could properly have been levied, the general fund budget can be drawn this year on the basis of the revenue that would have been produced the year before from the levy of the general fund tax at the correct maximum rate which would have been certified by the Superintendent of Public Instruction if he had been correctly advised of the true total assessed value of property in the district subject to such taxes. OAG 68-186.

The maximum property tax levies for a merged school district for 1968-1969 are calculated as follows: (a) To the revenue that would be produced by applying the old city district's basic general fund levy for 1967-1968 to the assessment for that year add the revenue that would be produced by applying the old county (as it existed before the merger) district's basic general fund levy for 1967-1968 to the assessment for that year. The sum of these figures is the total amount of ad valorem tax revenue in the computation of the maximum permissible local ad valorem tax revenue under subsection (3) of this section. The proper basic general fund levy can be calculated from the combined revenue and combined current assessment figures (with net growth treated separately). (b) The special voted general fund rate should be calculated at the proper compensating tax rate under the formula established in KRS 132.010(6) based on the 1965 revenue from this source and the 1966 assessment. (c) The special voted building fund rate (KRS 160.477 (repealed)) should be calculated at the proper "compensating tax rate," again using the formula appearing in KRS 132.010(6). (d) The overall tax rate can then be determined by adding the rates in (a), (b), and (c) above. OAG 68-343.

Following the tax rollback, the Executive Department of State Government had the authority and duty to provide supplemental payments to certain schools under the minimum foundation program as would insure the orderly continuation of the common schools program and as would prevent the regression of the program. OAG 70-474.

It is mandatory that local boards of education use the rates prescribed by the Department of Education. OAG 70-540.

The Department of Education has authority under this section for setting local tax rates for school purposes. OAG 70-540.

Assessments for school tax levy purposes under this section and for state aid purposes under KRS 157.380 (repealed) must be the same. OAG 72-330.

The county ad valorem tax revenue is limited to the application of the preceding year's tax rate to the preceding year's assessment, exclusive of voting levies, plus the revenue determined from applying the effective tax rate to the net assessment growth base. OAG 74-393.

Unless a school board indicates that the budget goes beyond the limit of this section or the fiscal court proves illegality, fraud or bad faith, and assuming budget approval by the State Board of Education, the fiscal court must accept the board's budget, fixing the necessary tax rate and making the tax levy required accordingly. OAG 74-455.

The mere fact that a school authority waited until after the city fixed its tax rate to come in and fix the school board's tax rate, in the absence of a showing of corruption, bad faith or illegality on the part of the school board, is not sufficient grounds for the city council to refuse to set the rate asked. OAG 74-499.

Even though due to a delay in certifying the county assessment, the advertising and hearing requirements necessary to levying a school district's tax rate would not be completed 45 days before the date of the next regular election, the school district, of its own volition, could waive the petition and place the question on the ballot. OAG 82-485.

While the amending of KRS 160.470 and the making of each school district their own tax levying authority repeals that part of KRS 424.250 as to filing the budget with a clerk, the other part of the statute calling for the budget to be published in a newspaper is capable of being observed. OAG 82-603.

Even though the 1990 amendment to this section by Ch. 476, § 105 set a new maximum equivalent tax rate, since in subsection (1)(c) of KRS 157.440 the 1990 amendment by Ch. 476, § 107 to that section provided that any school district, which is at or above the equivalent tax rate permitted, shall not be required to levy an equivalent tax rate which is lower than the rate levied during the 1989-90 school year, Jefferson County may keep its equivalent tax rate at 75.9 cents for the 1990-91 school year. OAG 90-45.

When levying a utilities gross receipts license tax for the purpose of complying with the minimum equivalent tax rate requirement set forth in subdivision (12)(a) of this section or for the purpose of participating in the "Tier 1" program set forth in KRS 157.440, a school board must follow the notice and hearing requirements of KRS 160.593 and KRS 160.603, but the recall provisions of KRS 160.597 do not apply. OAG 90-88.

Cited: Schuerman v. State Bd. of Educ., 284 Ky. 556, 145 S.W.2d 42 (1940); Bell v. Board of Educ., 308 Ky. 848, 215 S.W.2d 1007 (1948); Bell v. Board of Educ., 343 S.W.2d 804 (Ky. 1961); State Property & Bldgs. Comm'n v. Hays, 346 S.W.2d 3 (Ky. Ct. App. 1961); Baker v. Strode, 348 F. Supp. 1257 (W.D. Ky. 1971); Cunningham v. Grayson, 541 F.2d 538 (6th Cir. 1976).

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Determination of expenditures.
3. Estimate of anticipated revenue.
4. Premature submission.
5. Indebtedness.
6. Amendment by court.
7. Evidence of budget.
8. Determination of maximum rate.
9. Voter recall elections.

1. Constitutionality.

This statute did not violate the Fourteenth Amendment because it was not arbitrary, not irrelevant to the achievement of the state's objectives, not invidiously discriminatory, not administered unevenly, not based on some hidden motive and did bear a reasonable relationship to the legitimate purpose of preserving the financial integrity of the state. Baker v. Strode, 348 F. Supp. 1257 (W.D. Ky. 1971).

The "rollback" law is not unconstitutional as perpetuating unconstitutional assessments, for the taxing power of the district is not frozen, because under KRS 157.440 a district, by popular vote, can select as high a rate as it chooses. Miller v. Nunnelley, 468 S.W.2d 298 (Ky. 1971), cert. denied, 404 U.S. 941, 92 S. Ct. 286, 30 L. Ed. 2d 255 (1971).

The present school funding statutes permit local Boards of Education to raise funds through property taxes and permissive taxes such as the utilities tax; base funding and Tier One funding can be produced by a property tax not subject to voter recall and this nonrecallable option enables Boards of Education to fund schools without relying on permissive taxes; the

General Assembly has supplied a mechanism to satisfy base funding, as well as Tier One funding, according to the mandate of Section 183 of the Kentucky Constitution; and that is all that Rose v. Council for Better Educ., Inc., 790 S.W.2d 186 (Ky. 1989) requires. Board of Educ. v. Brooks, 824 S.W.2d 431 (Ky. Ct. App. 1992).

2. Determination of Expenditures.

Board of education had right to appropriate by amended budget additional funds to be received in the fiscal year from collection of delinquent taxes which it had not anticipated to improvement of its physical properties, which had been badly damaged by flood, and the propriety of its decision in doing so cannot be questioned by the board of commissioners of second-class city, unless the board of commissioners can show the properties not to be in need of repair or reconstruction and the mere fact that the expenditure will absorb that portion of the anticipated revenue which would otherwise be surplus does not preclude the school board from making necessary expenditures upon discovery that the funds are available for the purpose. City of Paducah v. Board of Educ., 289 Ky. 284, 158 S.W.2d 615 (1942).

The board of education has the exclusive right to determine within lawful limits the amount of money necessary to be expended and the items for which it shall be expended in the operation of the schools, and, unless the governing authorities of the tax levying districts can show an illegal expenditure, or a computation unlawfully arrived at, or bad faith on the part of the school board, it must levy a tax within limits prescribed by the Constitution and statutes sufficient to raise the revenue required under the provisions of the budget filed with it by the board of education. City of Paducah v. Board of Educ., 289 Ky. 284, 158 S.W.2d 615 (1942).

Budget submitted by board of education was not unlawful or did not indicate bad faith which would warrant refusal by fiscal court to levy taxes pursuant to it where commission for collection was correct when made, but was rendered excessive by a subsequent court of appeal's decision. Stokley v. Fleming County Bd. of Educ., 305 Ky. 602, 205 S.W.2d 168 (1947).

3. Estimate of Anticipated Revenue.

The board of education cannot base its estimate of anticipated revenue on experience in collecting taxes and deduct the amount which may not be collected within the fiscal year but it must base its estimate on what the rate would produce if all the taxes were collected in the fiscal year. City of Paducah v. Board of Educ., 289 Ky. 284, 158 S.W.2d 615 (1942).

4. Premature Submission.

Premature submission of budget does not show bad faith. White v. Board of Educ., 263 Ky. 91, 91 S.W.2d 539 (1936).

5. Indebtedness.

Where voted building fund levy of school district had always been insufficient to meet rental payments required for the payment of revenue bonds, so that part thereof had been paid from the general fund levy, the addition of subsection (7) to KRS 160.477 (repealed) in a 1965 "rollback" act did not authorize an increase in building fund levy over the compensating rate as defined in KRS 132.010 to pay all of such rentals. Fayette County Bd. of Educ. v. White, 410 S.W.2d 612 (Ky. 1966).

6. Amendment by Court.

When a court finds a budget to be incorrect, it is not necessary that an amended budget be submitted to the council. It may be amended in the trial court. White v. Board of Educ., 263 Ky. 91, 91 S.W.2d 539 (1936).

7. Evidence of Budget.

In all cases where budgets and financial reports are available they are the best evidence of the information therein contained and they should be made a part of the record in order for the courts to have a clear and definite idea as to whether or not the officials have had due regard for the finances of the taxing district. Ebert v. Board of Educ., 277 Ky. 633, 126 S.W.2d 1111 (1939).

8. Determination of Maximum Rate.

The language of KRS 132.487(3), governing a centralized ad valorem tax system for motor vehicles, clearly and unequivocally removes all valuations of and tax revenues from motor vehicles from the base amount used in determining the compensating tax rate and maximum possible tax rate envisioned under the provisions of KRS 68.245, 132.023, 132.027, and this section. Kling v. Geary, 667 S.W.2d 379 (Ky. 1984).

9. Voter Recall Elections.

The 1990 change in subsections (10) and (11) of this section prevents voter recall of a property tax levy if the tax revenue is intended to provide mandatory minimum base funding or permissive Tier One funding, but under the previous funding scheme, the "notwithstanding" language of this section had no abrogative effect on voter recall of permissive utility taxes and the General Assembly preserved this right in the funding scheme. Board of Educ. v. Brooks, 824 S.W.2d 431 (Ky. Ct. App. 1992).

County Board of Education's levy of a utility gross receipts license tax, designed to produce additional revenue up to 15% of the base funding level, was subject to statutory recall election provisions. Board of Educ. v. Brooks, 824 S.W.2d 431 (Ky. Ct. App. 1992).

Collateral References. 79 C.J.S., Schools and School Districts, §§ 511, 565-567, 602-608.

160.472. Determination of maximum permissible school district revenue.

Notwithstanding any provisions of this chapter to the contrary, the tax rate on motor vehicles and trailers for the preceding year shall be applied to the preceding year's total valuation of such motor vehicles and trailers and the resulting amount added to the revenue from other tangible personal property for purposes of determining the maximum permissible school district revenue under KRS 160.470.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 441, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1978, ch. 371, § 6, effective January 1, 1981) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 441, effective July 13, 1994.

160.473. Limits for district board of education on personal property tax rates — Public hearing and recall not applicable.

(1) In the event that a general tax rate applicable to real property levied by a district board of education will produce a percentage increase in revenue from personal property less than the percentage increase in revenue from real property, the district board of education may levy a general tax rate applicable to personal property which will produce the same percentage increase in revenue from personal property as the percentage increase in revenue from real property; however, in no event shall the general tax rate levied by the district board of education applicable to personal property exceed the prior year general tax rate applicable to personal property levied by the respective district board of education.

(2) The general tax rate applicable to personal property levied by a district board of education under the provisions of subsection (1) of this section shall not be subject to the public hearing provisions of KRS 160.470(7) and to the recall provisions of KRS 160.470(8).

(Repealed and reenact. Acts 1990, ch. 476, Pt. III, § 109, effective July 13, 1990; 2000, ch. 389, § 11, effective July 14, 2000.)

Compiler's Notes. This section (Enact. Acts 1982, ch. 397, § 7, effective July 15, 1982) was repealed and reenacted by Acts 1990, ch. 476, Part III, § 109, effective July 13, 1990.

Cross-References. School district tax rate formulas, 702 KAR 3:275.

160.474. Cumulative increase for 1982-83 only — Limit — Public hearing and recall not applicable. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1982, ch. 397, § 8, effective July 15, 1982; repealed and reenacted by Acts 1990, ch. 476, Part III, § 110, effective July 13, 1990) was repealed by Acts 2000, ch. 389, § 13, effective July 14, 2000.

160.475. Ad valorem tax levy for school purposes — Maximum rates — Subdistrict taxes abolished.

(1) Except as otherwise provided in KRS 157.440, 160.470(1), and 160.476(4), the ad valorem tax levy for school purposes, other than sinking fund purposes, in each school district, shall be not more than one dollar and fifty cents ($1.50) annually on each one hundred dollars ($100) of property subject to local taxation.

(2) All existing subdistrict school tax levies, except those required to retire voted bonds, are hereby abolished.

(Enact. Acts 1946, ch. 36, §§ 1(1), (2), 2; 1974, ch. 316, § 3; 1974, ch. 386, § 30; 1976, ch. 93, § 17, effective January 1, 1977; 1990, ch. 476, Pt. III, § 111, effective July 13, 1990; 1996, ch. 87, § 5, effective July 15, 1996; 2000, ch. 389, § 12, effective July 14, 2000.)

Cross-References. Bank franchise and local deposit tax, KRS 136.500 to 136.575.

City of first class may levy tax for support of municipal university, KRS 165.030.

Electric and water plant of third-class city may pay tax equivalent to school district, KRS 96.179.

Limits on levies for school purposes on distilled spirits, KRS 132.150.

Municipal light, water or gas plant may pay tax equivalent to school district, KRS 96.536.

Poll tax authorized, Const., § 180.

Rate of school tax on railroad bridge, KRS 136.180, 136.200.

Sinking fund purposes, tax levy for, KRS 162.090.

Kentucky Law Journal. Reynolds, Education Finance Reform Litigation and Separation of Powers: Kentucky Makes Its Contribution, 80 Ky. L.J. 309 (1990-91).

Opinions of Attorney General. A fiscal court may legally levy a tax at a figure above the $1.50 maximum set by this section where the figure is the amount necessary to provide the required local tax effort for participation in the minimum foundation program by the local school district. OAG 65-600.

Under the 1965 amendment to KRS 160.470, school districts which do not seek percentage increases are frozen or limited to income received in the 1965-1966 school year plus net assessment (new property) growth, but districts seeking the additional percentage increases are thereafter limited permanently to the income received at the end of the 1967-1968 school year plus subsequent net assessment (new property) growth. OAG 65-655.

A county school district may receive credit toward the "required local tax effort" figure of KRS 157.320(11) for income derived from poll taxes. OAG 67-231.

Cities or counties may not levy a poll tax since it has been eliminated by amendment of KRS 68.090, 92.280 and this section. OAG 74-631.

The poll tax is not a prerequisite to the right to vote and is nothing more than another revenue measure for the taxing jurisdiction in question. OAG 72-816. (Decision prior to 1974 amendment).

Cited: Harlan-Wallins Coal Corp. v. Cawood, 303 Ky. 544, 198 S.W.2d 218 (1946); Bell v. Board of Educ., 308 Ky. 848, 215 S.W.2d 1007 (1948); Folks v. Barren County, 313 Ky. 515, 232 S.W.2d 1010 (1950); Fendley v. Board of Educ., 240 S.W.2d 837 (Ky. Ct. App. 1951); Board of Educ. v. Harville, 416 S.W.2d 730 (Ky. 1967); Cunningham v. Grayson, 541 F.2d 538 (6th Cir. 1976).

NOTES TO DECISIONS

1. Exceeding Maximum.

Regardless of time or amount, the principle remains the same, that the voting of the tax does not impose a tax in futuro, but merely grants authority to the taxing power to increase the amount of the annual tax that the law otherwise authorizes to be levied. Board of Educ. v. Board of Educ., 250 S.W.2d 1017 (Ky. 1952).

Only a maximum rate need be specified in the proposition submitted to the voters under KRS 157.440 to exceed the maximum levy under this section. Hopson v. Board of Educ., 280 S.W.2d 489 (Ky. 1955).

A special annual tax levy above the present maximum regular levy authorized by this section may be made to authorize the principal and interest of the bonds. Bell v. Board of Educ., 343 S.W.2d 804 (Ky. 1961).

The maximum school property tax rate of one dollar and fifty cents ($1.50) on each $100 valuation may be exceeded when increased levy is necessary to provide the required local tax effort in order to participate in the foundation program under KRS 157.380 (now repealed). Holmes v. Walden, 394 S.W.2d 458 (Ky. 1965).

Collateral References. 79 C.J.S., Schools and School Districts, §§ 565-567, 586-600.

160.476. School building fund taxes — Investment — Expenditures — Audit.

(1) The board of education of any district may, in addition to other taxes for school purposes, levy not less than four cents ($0.04) nor more than twenty cents ($0.20) on each one hundred dollars ($100) valuation of property subject to local taxation, to provide a special fund for the purchase of sites for school buildings and physical education and athletic facilities, for the erection and complete equipping of school buildings and physical education and athletic facilities, and for the major alteration, enlargement and complete equipping of existing buildings and physical education and athletic facilities, provided, however, that such tax shall come within the maximum school tax levy provided by KRS 160.470. In addition to or in lieu of this

special tax, any board of education may pay into this special fund at the close of any fiscal year the proceeds from the sale of land or property no longer needed for school purposes and all or any balances remaining in the general fund over and above the amount necessary for discharging obligations for the fiscal year in full.

(2) The special fund provided for herein shall be kept in a separate account designated as "school building fund." The fund shall be kept in a depository selected by the board of education, or invested in bonds of the United States, of this state, or county or municipality in this state, provided, however, that such investments shall be approved by the Kentucky Board of Education.

(3) All expenditures from such fund shall be made solely for the purposes enumerated herein and shall be made in accordance with the school laws of the state at such times as the board of education determines. The board of education shall cause to be made annually an audit of the building fund by a certified public accountant or by an accountant approved by the State Department of Education.

(4) Notwithstanding the provisions of any other subsection of this section to the contrary, for the 1966 tax year and for all subsequent years no district board of education shall levy a tax at a rate under the provisions of this section which exceeds the compensating tax rate as defined in KRS 132.010. The chief state school officer shall certify the compensating tax rate to the district board of education.

(Enact. Acts 1946, ch. 36, § 1(3); 1965 (1st Ex. Sess.), ch. 2, § 4; 1976, ch. 127, § 4; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. III, § 112, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

Cross-References. School property and buildings, KRS Ch. 162.

Bond issue approval, 702 KAR 3:020.

Restructuring revenue bond issues, 702 KAR 3:260.

School district tax rate formulas, 702 KAR 3:275.

SEEK funding formula, 702 KAR 3:270.

Opinions of Attorney General. Boards of education may place their general funds in banks designated as depositories pursuant to KRS 160.570 and obtain from such banks certificates of deposit representing time deposits of surplus funds subject to withdrawal on demand. OAG 64-70.

A fund resulting from the sale of school property could be used for the purchase of sites for school buildings, for the erection and complete equipping of school buildings, and for the major alteration, enlargement and complete equipping of buildings, in accordance with the provisions of this section, even though refunding revenue bonds were outstanding on other school property. OAG 66-224.

Cited: Harlan-Wallins Coal Corp. v. Cawood, 303 Ky. 544, 198 S.W.2d 218 (1946); Lewis v. Morgan, 252 S.W.2d 691 (Ky. 1952); Ranier v. Board of Educ., 273 S.W.2d 577 (Ky. 1954); Cunningham v. Grayson, 541 F.2d 538 (6th Cir. 1976).

NOTES TO DECISIONS

1. High School Stadium.

A board is not authorized to expend funds for a high school stadium as the latter is not a "school building" within the meaning of this section. Board of Educ. v. Williams, 256 S.W.2d 29 (Ky. 1953).

Collateral References. 78, 79 C.J.S., Schools and School Districts, §§ 381-384, 644, 645.

160.477. Special voted building taxes — Purposes — Special fund to be in separate account — Expenditures from fund. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1950, ch. 142; 1965 (1st Ex. Sess.), ch. 2, § 5; 1970, ch. 118, § 2; 1976, ch. 127, § 5; 1978, ch. 155, § 82, effective June 17, 1978; 1986, ch. 187, § 1, effective July 15, 1986; 1990, ch. 48 § 84, effective July 13, 1990; 1990, ch. 476, Pt. III, § 113, effective July 13, 1990) was repealed by Acts 1996, ch. 87, § 7, effective July 15, 1996.

160.480. Minimum limits on ad valorem tax — Poll tax. [Repealed.]

Compiler's Notes. This section (2980, 4399-40) was repealed by Acts 1946, ch. 36, § 3.

160.482. Occupational license, policy (counties of 300,000).

To help provide for an efficient system of common schools in any county having three hundred thousand (300,000) or more inhabitants, the General Assembly delegates to the fiscal courts and boards of education of any such county the powers and duties set forth in KRS 160.482 to 160.488. The General Assembly finds and declares that in any such county there are besetting public education special problems which can best be solved pursuant to KRS 160.482 to 160.488. Furthermore, the General Assembly declares that the public policy of the Commonwealth is not offended but is best served by the authority of KRS 160.482 to 160.488 for the imposition, payment, and collection of license fees on businesses, trades, occupations, and professions over and above license fees that may already be imposed thereon.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 442, effective July 13, 1990.)

Collateral References. 84 C.J.S., Taxation, § 18.

160.483. Occupational license fees, rates, exemptions (counties of 300,000).

The license fees imposed under KRS 160.482 to 160.488 on businesses, trades, occupations, and professions shall be at a single, uniform percentage rate not to exceed one-half of one percent (0.5%) of (a) salaries, wages, and commissions, and other compensations earned by persons within the county for work done and services performed or rendered in the county, and (b) the net profits of all businesses, trades, occupations, and professions, for activities conducted in the county. The license fees, once imposed, shall continue from year to year until changed as prescribed in KRS 160.484. No public service company which pays an ad valorem tax is required to pay a license fee hereunder. No license fee shall be imposed upon or collected from any bank, trust company, combined bank and trust

company, combined trust, banking and title business in this state, any savings and loan association whether state or federally chartered, or upon income received by members of the Kentucky National Guard for active duty training, unit training assemblies, and annual field training, or upon income received by precinct workers for election training or work at election booths in state, county, and local primary, regular, or special elections. No license tax shall be collected from any individual who is not a resident of the county of the tax-levying authority imposing the tax.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 443, effective July 13, 1990; 1998, ch. 509, § 6, effective July 15, 1998.)

Compiler's Notes. Section 10 of Acts 1998, ch. 509, provided that the 1998 amendments to this section "apply to tax years beginning after December 31, 1997."

160.484. Occupational license fees, imposition and discontinuation (counties of 300,000).

(1) Except as provided in subsections (2), (3), and (4) the fiscal court has discretion to impose or not impose the license fees authorized by KRS 160.482 to 160.488 at a percentage rate, not to exceed one-half of one percent (0.5%), determined by the fiscal court. A fiscal court shall not proceed under this subsection without first giving all boards of education in the county thirty (30) days notice of its intention.

(2) If one (1) or more boards of education of school districts within the county which contain at least ninety percent (90%) of county's inhabitants, in the same calendar year certify to the fiscal court requests for a license fee at an identical percentage rate, not to exceed one-half of one percent (0.5%), then the fiscal court shall impose such license fees at the requested rate.

(3) Any license fees imposed under subsections (1) or (2) shall remain in full effect from year to year until all boards of education within the county have certified to the fiscal court requests for a reduction in the percentage rate theretofore imposed. Thereafter, the fiscal court shall reduce the rate to the highest rate certified as yet necessary by any board of education in the county. The fiscal court may require each board of education to make no more than one (1) certificate annually.

(4) In any calendar year in which one (1) or more boards of education of school districts containing at least ninety percent (90%) of the county's inhabitants make a certification pursuant to subsection (2) for a rate which is at a higher percentage than any currently imposed, the fiscal court shall impose the license fee at the higher rate and any rate imposed pursuant to subsections (1), (2), or (3) shall be rescinded upon the date the new rate takes effect.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 444, effective July 13, 1990.)

160.485. Occupational license fees, adoption — Referendum procedure (counties of 300,000).

(1) The imposition of license fees authorized hereby shall be by order or resolution of the fiscal court. There shall be no more than one (1) such order or resolution passed in any one (1) calendar year. In the case of license fees required to be imposed pursuant to subsection (2) of KRS 160.484, the fiscal court shall make the order or resolution within ten (10) days following receipt of the first request which makes subsection (2) of KRS 160.484 effective.

(2) The order or resolution of the fiscal court imposing license fees pursuant to subsections (1), (2), or (4) of KRS 160.484 shall go into effect thirty (30) days after its passage. If during the thirty (30) days next following the passage of the order or resolution a petition signed by a number of registered and qualified voters equal to fifteen percent (15%) of the votes cast in the county for the office receiving the greatest total vote at the last preceding presidential election is presented to the fiscal court protesting against passage of the order or resolution, the order or resolution shall be suspended from going into effect until after the election referred to in subsection (3) of this section. Each sheet of the petition shall contain the names and addresses of voters in but one (1) voting precinct, and each sheet shall state the name, number, or designation of the precinct and, where applicable, the name, designation, or number of the district or ward wherein the precinct is situated. If the signature is difficult to read, the voter shall, on the same line legibly write or print his name in the same fashion as he signed it. One (1) or more persons shall verify by affidavit the signatures and addresses of the signers of the petition. The board or boards of registration in the county shall give necessary and appropriate aid to the fiscal court so that the latter body may make the initial, but not conclusive, determination of whether the petition contains enough signatures of qualified voters to suspend the effect of the order or resolution.

(3) Thereupon the fiscal court shall submit to the voters of the county at the next regular election or called common school district election, either of which to be held not less than sixty (60) days from the date of passage of said order or resolution, the question as to whether such license fees for common school purposes shall be levied. If the election is to be held in conjunction with a regular election, the question shall be submitted to the county clerk not later than the second Tuesday in August preceding the regular election. The question shall be so framed that the voter may by his vote answer, "for" or "against." If a majority of the votes cast upon the question oppose its passage, the order or resolution shall not go into effect. If a majority of the votes cast upon the question favor its passage, the order or resolution shall go into effect.

(4) License fees imposed pursuant to KRS 160.482 to 160.488 shall become applicable upon the date

specified in the order or resolution, but in no event later than the first day of the calendar year first beginning after the day upon which the said order or resolution is made.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 445, effective July 13, 1990; 1996, ch. 195, § 57, effective July 15, 1996.)

Opinions of Attorney General. Although subsection (2) of this section provides that each sheet of the petition should contain the signatures of voters in but one voting precinct, the whole sheet would not be disqualified where one of the persons signing that sheet was not a voter in that precinct, even though that person would be subject to disqualification. OAG 72-174.

The election referred to in subsection (3) of this section refers to the regular November election that takes place every year. OAG 72-174.

The "not less than sixty days" provision in subsection (3) of this section refers to the date of passage of the fiscal court order levying the school tax. OAG 72-174.

The provision in subsection (2) of this section that the petition contain the signatures of 15% of the votes cast in the county for the office receiving the greatest total vote at the last preceding presidential election does not mean that every precinct in the county must be represented by 15% of the votes cast in the precinct, but that the aggregate number of signers must be 15%. OAG 72-174.

Under subsection (2) of this section, the fiscal court must conduct an examination of the petition, and if it is regular on its face then the election is ordered as directed in subsection (3) of this section, subject to an appeal from the fiscal court order to the circuit court. OAG 72-174.

In order to generate the referendum provisions of this section the signatures equal to 15 percent of those districts whose boards of education requested the tax are needed. OAG 72-471.

After a tax levy is approved by the court under KRS 160.593 the question as to whether such tax should be levied may be passed on by the voters pursuant to the procedures specified in this section. OAG 72-521.

Any school district in which a special school tax is levied or about to be levied may petition for a referendum to recall said tax within the district and such recall would not have to be on a countywide basis as the 1972 amendment to KRS 160.593 by chapter 271, section 1 provides that a tax shall be limited to the district requesting the tax. OAG 72-576.

The provisions of this section providing for recall on a countywide basis were amended by implication by the 1972 amendment to KRS 160.593 by chapter 271, section 1. OAG 72-603.

Where a request for the levy of a utility gross receipts tax for schools was defeated at the 1972 general election and the fiscal court has been presented with new requests for the imposition of said tax and the residents of the districts have filed petitions protesting the tax levy and requesting that the matter be placed on the ballot, the utility tax question can only be held at the general election in November, unless there has been a called election with respect to county school questions at a time other than the November election. OAG 73-301.

The petition provided for in this section should be filed with the county clerk who is the clerk of the fiscal court. OAG 76-440.

In a referendum seeking recall of certain school taxes while there is no specific wording for the ballot question provided in this section, it would appear that under the terms of subsection (3) it is the responsibility of the fiscal court to frame the question. OAG 76-440.

The county clerk's responsibilities on behalf of the fiscal court concerning a referendum petition that may be filed seeking the recall of certain taxes are that of accepting and checking the petition to see that it is legal on its face and in compliance with this section and KRS 160.609 (repealed), insofar as the number and validity of the signatures are concerned. OAG 76-440.

There is no requirement that notice be published with respect to the filing of the petition for referendum seeking recall of certain school taxes or the referendum election provided for in this section; however, if such petition is found to be valid, the referendum question would appear on the ballot face required to be published by the clerk pursuant to KRS 424.290. OAG 76-440.

NOTES TO DECISIONS

Analysis

1. Verification of petition.
2. Number of petitioners needed.

1. Verification of Petition.

Where the petition contained the signatures and addresses of the signers, but there was no verification of the addresses on the petition, and where the proponents of the petition undertook to file new verifying affidavits subsequent to the expiration of the time for filing, such late action could not cure the defectiveness of the petition and it remained insufficient to fulfill the requirements of this section. Board of Educ. v. Fiscal Court, 485 S.W.2d 752 (Ky. 1972).

2. Number of Petitioners Needed.

Where fiscal court imposed tax levy on utilities in the county and the school districts and, within 30 days after passage of the tax levy, a petition was filed with the court for a referendum on the tax, containing a number of names equal to 15% of the votes in the school districts, the fiscal court was not authorized to order the tax levy suspended since the recall petition was not countywide and therefore contained insufficient number of signatures. Fiscal Court v. Board of Educ., 522 S.W.2d 454 (Ky. 1975).

160.486. Occupational license fees — Collection — Distribution (counties of 300,000).

The license fees imposed by authority of KRS 160.482 to 160.488 shall be collected by the fiscal court or its agent, and the proceeds thereof shall be promptly divided and distributed to each school district within the county in proportion to the number of pupils in average daily attendance in each school district as shown by the most recent statistics certified by the chief state school officer pursuant to KRS 157.310 to 157.440. The fees shall be used for any purpose for which other common school funds may be used.

(Enact. Acts 1965 (1st Ex. Sess.), ch. 2, § 20; 1990, ch. 476, Pt. IV, § 233, effective July 13, 1990.)

Opinions of Attorney General. This section requires the distribution of the proceeds of the occupational license fees on the basis of the "most recent" data on average daily attendance and revised average daily attendance statistics cannot be applied retroactively to the beginning of the fiscal year to alter the percentage of proceeds distributed to the school districts in the county. OAG 67-183.

NOTES TO DECISIONS

1. Constitutionality.

This section is valid and does not contravene the express

will of the people contained in the Constitution of Kentucky. Board of Educ. v. Board of Educ., 458 S.W.2d 6 (Ky. 1970).

160.487. Action for refund of occupational license fees (counties of 300,000).

Any person who has paid the license fees imposed under KRS 160.484 and 160.485 may bring an action for the refund thereof without interest only within one (1) year after the license fees for any year become due. If the court finds that the license fees were invalidly collected for any reason, it shall order a refund thereof. (Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 446, effective July 13, 1990.)

160.488. Effect of occupational license fees law (counties of 300,000).

(1) KRS 68.180, 68.185, 68.190, and 160.482 to 160.488 shall not be construed as repealing any other laws of the Commonwealth relating to the levy, assessment, and collection of taxes or license fees but shall be held and construed to authorize an additional license fee, against which the credit allowed by KRS 68.190 does not apply.

(2) KRS 68.180, 68.185, 68.190, and 160.482 to 160.488 shall not in any manner repeal, amend, affect, or apply to any existing statute exempting property from local taxation, or fixing a special rate on proper classification, or imposing a state tax which is declared to be in lieu of all local taxation.

(3) The provisions of any statute relating to ad valorem taxes do not apply to KRS 68.180, 68.185, 68.190, and 160.482 to 160.488 or to the license fees authorized by it.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 447, effective July 13, 1990.)

160.490. Maximum limits on ad valorem tax. [Repealed.]

Compiler's Notes. This section (2980, 4399-40) was repealed by Acts 1946, ch. 36, § 3.

160.500. Collector of school taxes — Allowances to — Special collector — Tax bills.

(1) School taxes shall be collected by the sheriff for county school districts and by the regular tax collector of the city or special tax collector for the independent school districts at the same time and in the same manner as other local taxes are collected, except as provided in this section and in KRS 160.510. The bond of the regular or special tax collector shall be made to cover his duties as the tax collector of the school district or districts for which he collects taxes. The tax collector shall be entitled to a fee equal to his expense but not less than one and one-half percent (1.5%) and not to exceed the rate of four percent (4%) for the collection of school taxes, which fee may be charged only for collecting or receiving school taxes or school funds received from the local school levy. No allowance shall be made for the collection of school taxes to any collecting officer who continues to collect taxes after his term that would not be allowed him had he collected the taxes during his term.

(2) An independent school district may select a special tax collector to collect its school taxes, and in the event such independent school district does so select a special tax collector, a majority of the members of the independent school district board of education shall fix a fee for such special tax collector at a rate of not less than one and one-half percent (1.5%) and not more than four percent (4%) of the school taxes or school funds collected by such special tax collector from the local school levy in such independent school district. The special tax collector shall be required to execute bond in the same manner as provided in KRS 160.560 for the execution of a treasurer's bond, and the penal sum of the bond shall not be less than the aggregate of the tax bills that come into the hands of the special tax collector.

(3) The clerk shall include all school taxes on the regular tax bills furnished the tax collector except in case an independent district has selected a special tax collector, in which case the school taxes shall be listed by the clerk on a separate bill. The clerk shall be allowed a fee not to exceed three cents ($0.03) for each separate school tax bill, to be paid by the independent district board of education.

(4) The county clerk shall be the ad valorem tax collector for motor vehicle taxes for county and independent school districts, and shall receive a commission of four percent (4%) of all such moneys collected for any school district, which commission shall be deducted monthly before payment to the depository of the district board of education.

(5) For collections related to January 1, 1984 assessments other than motor vehicles, no county or independent school district shall fix a fee for the sheriff or special tax collector at a lesser percentage rate than was fixed in the prior year.

(6) The General Assembly of Kentucky finds that commissions and fees set by the General Assembly for services performed in collecting ad valorem taxes by county clerks are the reasonable costs of collection by county clerks and their offices. The county clerk shall account for all funds collected to each taxing authority; however, in any accounting or settlement with district boards of education, the county clerk shall not be required to itemize any incremental costs in any accounting or settlement for ad valorem taxes collected.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 448, effective July 13, 1990.)

Compiler's Notes. This section (4399-40, 4399-41: amend. Acts 1946, ch. 143; 1976, ch. 127, § 6; 1982, ch. 264, § 13, effective January 1, 1984; 1988, ch. 355, § 2, effective July 15, 1988) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 448, effective July 13, 1994.

Cross-References. Assessments of taxing districts, when to be certified to county clerk, KRS 134.140.

County clerk to calculate taxes due school districts, KRS 132.550.

Sheriff is tax collector, by virtue of his office, unless payment is directed to be made to some other officer, KRS 134.140.

Opinions of Attorney General. Since, under KRS 160.400, the fiscal court is the levying authority for school

districts not embraced by cities of the first four classes, the county sheriff must collect the taxes levied on behalf of such schools. OAG 61-414.

Under subsection (1) of this section a board of education may not enter into a contract with a sheriff to pay, as a fee for the collection of school taxes, a certain percentage of the amount collected but may contract to pay a reasonable amount which approximates the cost of collection not to exceed four percent. OAG 62-335.

If penalties collected on delinquent taxes are due and owing to the local school district, then to permit the sheriff to retain said penalty moneys would constitute an unlawful use of school funds for other than school purposes. OAG 63-121.

Subsection (1) of this section requires that the sheriff's bond be made to cover his duties as tax collector of the school district or districts for which he collects taxes and if the sheriff fails to pay over to the school district the proper amount of tax money, he is liable on his official bond. OAG 64-159.

Where the sheriff turned in all school taxes for which he was accountable, excess fees should not have been paid to the school board. OAG 65-779.

A special tax collector selected by an independent school district pursuant to subsection (2) of this section is an officer of the school district and an employee of the school district under the definition of that term in the Social Security Act and enabling legislation enacted by the Kentucky General Assembly. OAG 67-95.

A county attorney would have no official duty to represent the sheriff in a lawsuit filed by the school board against the sheriff for fees reimbursable to the school board. OAG 67-144.

A fee increase to the sheriff for collecting county school taxes could be made retroactive to the beginning of the tax year. OAG 67-164.

The county clerk is entitled to a fee of three cents per bill for preparation of separate tax bills if a special school tax collector is selected, but the clerk is entitled to no compensation if the sheriff collects the school taxes on the regular county tax bills. OAG 67-288.

It is mandatory that the county clerk prepare the tax bills for an independent school district. OAG 67-288.

Separate tax bills should be prepared only if the independent school district selects a tax collector other than the sheriff. OAG 67-288.

The sheriff's excess fees for collecting school tax should be turned over to the county as excess fees and any part of such fees which exceeds the cost of collection should be delivered to the board of education as school money. OAG 69-59.

Under subsection (1) of this section, the regular tax collecting authority is required to collect school taxes for the independent school district if so requested. OAG 69-283.

A special tax collector is not liable for uncollectible tax bills but can only be held to a duty to diligently and faithfully attempt to collect all taxes due. OAG 72-290.

There is no final date by which the independent school district must notify the county sheriff or the county clerk of its intent to change collectors and if the tax bills in question have been prepared by the county clerk and delivered to the sheriff for collection, it would appear that the sheriff is the collector of taxes for the independent school district and the fee for such collection can be from one percent to four percent, depending upon what is sufficient to cover the costs of collection. OAG 73-630.

The tax collector is entitled to recover the reasonable cost of collection of school taxes, not to exceed four percent of the amount collected, in accordance with an itemized statement of collection expenses which he must file. OAG 73-804.

It is up to the sheriff to keep the school tax collection separate from other collections in order to determine the legal fee. OAG 74-595.

The sheriff should not settle his fee with the school board or receive it until after he computes the reasonable cost of collection, since his fee cannot exceed the reasonable cost of collection. OAG 74-595.

If a sheriff receives 4% for school taxes collected under this section, and a later determination indicates that the reasonable cost of collection is a lesser fee, then he must charge the school board the lesser fee and the excess or illegal part of the fee must be returned to the school board. OAG 74-595.

The county sheriff who acts as the regular tax collector for the school district is not required by this section to purchase an additional bond for the collection of school taxes and, if the school board decides for any reason that an additional bond is required, the premium for such bond should be paid with school district funds. OAG 75-23.

There is no requirement of a written contract for the collection of school taxes. OAG 75-131.

Even though a 4% commission fee for the collection of school taxes is authorized, if the charge including his compensation exceeds the reasonable costs of collecting the taxes, the sheriff can be limited to a lesser commission rate. OAG 75-131.

Where the fiscal court directly pays a portion of the expenses of the sheriff's office, the portion of that payment which is attributable to the expenses of the sheriff's office incurred in collecting school taxes may be collected by the sheriff from the county board of education as a part of the cost of collecting school taxes and, in turn, should be repaid by the sheriff to the fiscal court. OAG 75-361.

The sheriff's fee for collecting school taxes can be up to four percent of the taxes collected, except the fee cannot exceed the reasonable cost of collecting such taxes. OAG 76-627.

A sheriff could not base his fee for collecting school taxes on nine months of his salary, for the sheriff must compute his cost of collection of school taxes as a percentage of the cost of collection of all taxes. OAG 77-98.

Nothing in this section provides for the fiscal court to either assume part of the cost for each special tax collector or share envelope and postage costs. OAG 77-290.

Once the sheriff's total fee for collecting school taxes is properly computed the constitutional test of diversion is met since the constitutional diversion occurs no sooner than the reasonable cost of collection is exceeded, regardless of how much the excess is. OAG 78-146.

The reasonable cost of collecting school taxes is based upon a proper determination of the cost of collecting all taxes, and then the determination of the cost of collecting school taxes and that percentage of the total time allocable to school tax collection is really the percentage of all taxes collected represented by school taxes. OAG 78-146.

The total cost of collecting school taxes (prior to the 75% and 25% distribution at state level) is strictly constitutional as being an expenditure for school purposes. OAG 78-146.

The definition of the word "shall" as used in subsection (3) of this section is mandatory and the county clerk may not break the tax bill down into two installments. OAG 79-536.

A school system need not delay payment of the collection fee until all taxes are collected; a predetermined time, be it monthly or otherwise, for payment by the school district to the sheriff of his fee for school tax collection, if based upon a reasonable approximation of the cost of collection, is legally permissible. OAG 82-587. (Opinion prior to effective date of 1982 amendment.)

A sheriff, or other tax collection agent, if retained by an independent school district, may not deduct the collection fee before school tax funds are presented to the depository for the school district; since, pursuant to KRS 160.510, the sheriff, and special tax collector also, are obligated to make monthly statements of the amount of school taxes collected, all tax amounts collected must be turned over to the depository of the district board of education. OAG 82-587. (Opinion prior to effective date of 1982 amendment.)

A school system may write a monthly check for the collection fee for the collection of taxes providing the sheriff delivers a

proper bill; a school may monthly, or bimonthly, agree to pay the sheriff his fee, up to four percent, covering the school taxes collected for the particular reporting period, based upon a showing by the sheriff of the reasonable costs incurred in collecting the school taxes. OAG 82-587. (Opinion prior to effective date of 1982 amendment.)

It is clear from the express language and context of subsection (1) of this section that the one and one-half percent fee must be based upon an actual and reasonable expense at least equal to that percentage; where the facts indicate that the actual and reasonable expense was something less than one and one-half percent, only that lesser percentage could be paid the sheriff. Regardless of the statutory fee treatment given by the General Assembly, the sheriff's fee cannot exceed the actual and reasonable cost of collection up to a maximum of four percent. OAG 84-325.

The clerk's fee for collecting school ad valorem taxes on motor vehicles is the reasonable cost of collecting such taxes, not to exceed four percent. OAG 84-369.

City is not entitled to a collection fee under this section for its services in collecting a utility gross receipts license tax levied by the County Board of Education when the city is the owner and operator of the water utility taxed. OAG 91-170.

A board of education cannot designate the sheriff to collect some school taxes, and designate an employee to collect the remainder, because a shared responsibility would defeat the legislative intention present in this section and KRS 160.505 to make a single person responsible for collection of the taxes. OAG 92-11.

Collection agencies may not collect school taxes imposed by county school districts because under subsection (1) of this section the sheriff is designated as the party responsible for the collection of school taxes for county schools; the only alternative is provided by KRS 160.505, which authorizes a board of education to "appoint a person who shall be responsible for collection and administration" of the tax which clearly contemplates that the person so appointed will be an employee of the school district rather than a private contractor. OAG 92-11.

While delinquent taxes may be placed in a separate logical category from school taxes in general, it is a category without legal significance; delinquent school taxes are still school taxes, and their collection must comply with the statutory provisions for the collection of school taxes. OAG 92-11.

Cited: Board of Educ. v. City of Newport, 283 Ky. 215, 140 S.W.2d 1046 (1940); Stokley v. Fleming County Bd. of Educ., 305 Ky. 602, 205 S.W.2d 168 (1947).

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Fee to be reasonable cost.
3. —Determination.
4. Collection after expiration of term.
5. Collection costs.

1. Constitutionality.

The additional three percent fee formerly allowed the sheriff of Jefferson County for the collection of school taxes violated Const., §§ 180, 184 as a diversion of more than $50,000 annually from school purposes would have resulted. Dickson v. Jefferson County Bd. of Educ., 311 Ky. 781, 225 S.W.2d 672 (1949).

A flat four percent fee violates provisions of Const., §§ 180, 184, against diverting taxes or school funds in cases where the reasonable cost of collection is less than the amount reached by the application of the four percent formula to the total amount of taxes collected. Dickson v. Jefferson County Bd. of Educ., 311 Ky. 781, 225 S.W.2d 672 (1949).

Retention by sheriff of four percent of school tax collected was unconstitutional diversion of school funds where evidence indicated one percent was sufficient to cover cost of collecting school tax and the extra three percent was to be used by the sheriff for general expenses of his office. Board of Educ. v. Wagers, 239 S.W.2d 48 (Ky. 1951).

Although it may have been that the General Assembly's intent was to create a flat four percent commission for the county clerks for collecting the taxes, such interpretation would bring subsection (3) of KRS 134.805 into conflict with Const., §§ 180, 184; therefore, a county clerk may not receive a fee for collecting the school tax which is in excess of his or her actual cost of collection, not exceeding four percent. Benson v. Board of Educ., 748 S.W.2d 156 (Ky. Ct. App. 1988).

2. Fee to Be Reasonable Cost.

Four percent fee fixed by this section could only be allowed where the reasonable cost of collection justified allowance of the maximum fee and where sheriff did not employ deputies and had no expenses for supplies and equipment, maximum fee was not allowable. Wells v. Board of Educ., 244 S.W.2d 160 (Ky. 1951).

Under this section, the sheriff is entitled to retain as compensation the reasonable cost of collecting school taxes, not to exceed four percent. Davie v. Board of Educ., 249 S.W.2d 954 (Ky. 1952).

The school fund is chargeable only with the reasonable expenses actually incurred in collecting the school tax. Board of Educ. v. Workman, 256 S.W.2d 528 (Ky. 1953).

Even though this section authorizes the sheriff to charge a fee of four percent of the school taxes collected, if the charge, including his compensation, exceeds reasonable costs of collecting, he is limited to a lesser charge. Grayson County Bd. of Educ. v. Boone, 452 S.W.2d 371 (Ky. 1970).

3. —Determination.

The question of whether a four percent fee is reasonable will be adjudged according to the facts developed in each case. Board of Educ. v. Wagers, 239 S.W.2d 48 (Ky. 1951).

Entire annual salaries of sheriff's deputies were not chargeable to collection of taxes, but allowance should be made for personal supervisory services of sheriff and under the facts allowance in fixing the reasonable cost of collection at two percent of the school taxes collected was not erroneous. Board of Educ. v. Ballard, 249 S.W.2d 956 (Ky. 1952).

The trial court must fix the quantity of the fee for collecting school taxes at a figure commensurate with the services rendered. Barren County Bd. of Educ. v. Edmunds, 252 S.W.2d 882 (Ky. 1952).

For the purpose of determining the cost of school tax collections the expense must be determined on the basis of a reasonable compensation for the time devoted by the deputies to tax collection work and a percentage contract between the sheriff and his deputies whereby they receive compensation computed on basis of tax collection cannot be used to determine cost of collection of such tax. Board of Educ. v. Workman, 256 S.W.2d 528 (Ky. 1953).

In an action to determine the sheriff's fees for school tax collection where it was stipulated that the county attorney and county clerk received $6,100 through salary and fees, it was proper to allow the sheriff the same amount, as a basis upon which to compute the percentage of the sheriff's compensation chargeable to tax collections. Board of Educ. v. Workman, 256 S.W.2d 528 (Ky. 1953).

Sheriff should be allowed compensation for collecting the franchise and oil production taxes which were paid by large checks at his office with no collection work required. Board of Educ. v. Workman, 256 S.W.2d 528 (Ky. 1953).

Simply deducting from the total expenses of the sheriff's office the amount of money paid the sheriff by the state for law-enforcement work, was not a proper way of determining what expenses were attributable to tax collection work for the

amount of money received by sheriff in the form of compensation has nothing at all to do with a determination of the expenses of office. Board of Educ. v. Workman, 256 S.W.2d 528 (Ky. 1953).

In a declaratory judgment action to determine the sheriff's fee for collecting school taxes where the proof was not adequate to enable the court to make a final and correct decision, the case was remanded for the purpose of taking further proof designed to show what portion of the time of the sheriff and his deputies was devoted to tax collection work. Board of Educ. v. Workman, 256 S.W.2d 528 (Ky. 1953).

The school fund cannot be compelled to finance law-enforcement functions of the sheriff's office. Board of Educ. v. Workman, 256 S.W.2d 528 (Ky. 1953).

Although each case must be decided upon the particular facts involved, the general formula in computing the cost of collection (although it is not intended to be applied as an exact mathematical rule) has been to (1) first determine the percentage of their time the sheriff and his deputies devote to all tax collection work, and take this percentage of their total compensation giving the compensation for personal services allocable to the collection of all taxes then (2) to determine the ratio of school tax collections to total tax collections and apply it to the amount of compensation for personal services allocated to the cost of collecting all taxes, thus producing the amount allocable to school tax collection and (3) when costs other than personal services were involved to allocate them according to the same formula except where clearly attributable to a specific activity and (4) local standards of compensation were given some consideration in determining the sum that should be allowed the sheriff for his own services. However the keeping of more adequate and detailed records by the sheriff might eliminate the necessity of applying any formula. Board of Educ. v. Workman, 256 S.W.2d 528 (Ky. 1953).

Where from the record it was clear that no settlement had been made in the county court for school taxes, and that by tacit understanding the sheriff had paid over to the school board all tax collections except the amount of his commission which was in dispute, the sheriff's contention that the only remedy of the school board was by taking exceptions to the sheriff's settlement in county court was without merit and an action for a declaratory judgment was maintainable. Board of Educ. v. Workman, 256 S.W.2d 528 (Ky. 1953).

Where no accurate time accounting could be made for school tax collection by the sheriff and his employees but the four percent he retained was not excessive, there was no diversion of school funds in the retention of the four percent. Grayson County Bd. of Educ. v. Boone, 452 S.W.2d 371 (Ky. 1970).

4. Collection after Expiration of Term.

In view of provision of subsection (1) of this section that no allowance shall be made for collection of school taxes to any collecting officer who continues to collect taxes after his term that would not be allowed to him had he collected the taxes during his term, a sheriff who could not claim, during his term, the increased collection fee provided by the 1946 amendment to this section, because he was in office at the time the amendment became effective, likewise could not claim the increased fee in serving as special tax collector after expiration of his term. Weber v. True, 304 Ky. 681, 202 S.W.2d 174 (1947).

5. Collection Costs.

The allocation of the costs of collection of school taxes based on a percentage of revenue collected does not violate Const., § 184; such collection costs in no way diminish the constitutional command that school taxes must be appropriated to the common schools and no other purpose. These basic principles were not changed by the adoption of the Kentucky Education Reform Act of 1990. Board of Educ. v. Williams, 930 S.W.2d 399 (Ky. 1996).

Collateral References. 79 C.J.S., Schools and School Districts, §§ 613, 614.

160.505. Certain taxes to be collected by person appointed by board of education.

KRS 160.500 to the contrary notwithstanding, if a tax authorized by KRS 160.593 to 160.597, 160.601 to 160.633, and 160.635 to 160.648 shall be collected by a board of education, the board of education shall appoint a person who shall be responsible for collection and administration of such tax. If one (1) or more boards of education agree in writing to levy identical taxes authorized by the statutes mentioned hereinabove, the boards of education so agreeing shall jointly appoint a person who shall be responsible for collection and administration of such tax as provided for in KRS 160.593(2). The position may be full-time or part-time and his compensation shall be fixed by the board and/or boards of education. The bond of this person shall be made to cover his duties as tax collector.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 449, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1978, ch. 233, § 37, effective June 17, 1978) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 449, effective July 13, 1990.

Opinions of Attorney General. A board of education cannot designate the sheriff to collect some school taxes, and designate an employee to collect the remainder, because a shared responsibility would defeat the legislative intention present in KRS 160.500 and this section to make a single person responsible for collection of the taxes. OAG 92-11.

Collection agencies may not collect school taxes imposed by county school districts because under KRS 160.500(1), the sheriff is designated as the party responsible for the collection of school taxes for county schools; the only alternative is provided by this section, which authorizes a board of education to "appoint a person who shall be responsible for collection and administration" of the tax which clearly contemplates that the person so appointed will be an employee of the school district rather than a private contractor. OAG 92-11.

While delinquent taxes may be placed in a separate logical category from school taxes in general, it is a category without legal significance; delinquent school taxes are still school taxes, and their collection must comply with the statutory provisions for the collection of school taxes. OAG 92-11.

160.510. Taxes paid to depository — Reports of tax collector.

The tax collector shall, on or before the tenth day of each month, pay to the depository of the district board of education the amount of school tax collected up to and including the last day of the preceding month, except that the county clerk shall deduct his collection fee before payment to the district board of education depository. The amount so paid together with the classes of property from which it was received shall be reported in writing to the treasurer of the board. The report shall be accompanied by a duplicate of the receipt for the money given to the tax collector by the depository. The tax collector shall make final settlement with the district board of education at the same time he makes final settlement with the local taxing authority to which he is responsible. Blanks for such purposes shall be furnished by the Kentucky Board of Education.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 450, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

Compiler's Notes. This section (4399-40: amend. Acts 1978, ch. 155, § 82, effective June 17, 1978; 1988, ch. 355, § 3, effective July 15, 1988) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 450, effective July 13, 1990.

Opinions of Attorney General. The gross amount of all tax collections by the sheriff must be paid over to the school district and the school district treasurer should then reimburse the sheriff in the amount of his agreed-to commission. OAG 75-131.

A sheriff acting as collector of school taxes may not, after the 10th of the month, withhold school taxes collected from a district, but if he does withhold beyond the 10th, he is liable for 6% interest on the unpaid amount. OAG 76-54.

A tax collector cannot retain his collection fee out of the school taxes collected; instead, he must turn over to the school board all the taxes collected and the board will then pay him the proper fee. OAG 76-251.

The sheriff has no statutory authority to invest tax money during the period prior to his turning the money over to the appropriate taxing authority. OAG 80-518, modifying OAG 78-9.

A school system need not delay payment of the collection fee until all taxes are collected; a predetermined time, be it monthly or otherwise, for payment by the school district to the sheriff of his fee for school tax collection, if based upon a reasonable approximation of the cost of collection, is legally permissible. OAG 82-587.

A school system may write a monthly check for the collection fee for the collection of taxes providing the sheriff delivers a proper bill; a school may monthly, or bimonthly, agree to pay the sheriff his fee, up to four percent, covering the school taxes collected for the particular reporting period, based upon a showing by the sheriff of the reasonable costs incurred in collecting the school taxes. OAG 82-587.

A sheriff, or other tax collection agent if retained by an independent school district, may not deduct the collection fee before school tax funds are presented to the depository for the school district; since, pursuant to this section, the sheriff, and special tax collector also, is obligated to make monthly statements of the amount of school taxes collected, all tax amounts collected must be turned over to the depository of the district board of education. OAG 82-587.

NOTES TO DECISIONS

Analysis

1. Prior month's collection.
2. Liability of collector.
3. Deduction before deposit.

1. Prior Month's Collection.

The sheriff becomes indebted to the school board each month for taxes collected the month before. Helton v. Hoskins, 278 Ky. 352, 128 S.W.2d 732 (1939).

2. Liability of Collector.

Acceptance of a tax collector's final settlement release him and his sureties from further liability for delinquent taxes. McKinney's Adm'x v. Commonwealth ex rel. Bd. of Educ., 260 Ky. 608, 86 S.W.2d 167 (1935).

Where sheriff collected $201,210.40 in school taxes and at the time of settlement withheld $8,048.40 representing a fee of 4 percent but claimed $4,900 as a fee and the board of education claimed he was entitled to only $800 and the court allowed him $3,782.75, he was liable for interest on the difference between the $3,782.75 commission allowed him by the court and the $8,048.40 he withheld. However, the costs should be divided equally between the sheriff and the board since the fee awarded the sheriff by the court was substantially in excess of the amount to which the board sought to limit him. Board of Educ. v. Collins, 259 S.W.2d 17 (Ky. 1953).

3. Deduction Before Deposit.

The plain reading of this section requires that the whole amount of school tax collected be paid to the depository; thus, a clerk may not deduct his or her fee prior to paying to the depository of the School District Board of Education the amount of the school tax collected. Benson v. Board of Educ., 748 S.W.2d 156 (Ky. Ct. App. 1988).

Collateral References. 79 C.J.S., Schools and School Districts, § 616.

160.520. Penalties for tax delinquency — General laws apply.

The laws applying to penalties on and the collection of delinquent school taxes shall be the same as the general laws applying to penalties on and the collection of delinquent taxes of the taxing districts which embrace the various school districts.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 451, effective July 13, 1990.)

Compiler's Notes. This section (4399-40) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 451, effective July 13, 1994.

Cross-References. Taxes on corporate franchises, when due, KRS 136.050.

Taxes on railroad bridge, when due, KRS 136.050, 136.990.

Opinions of Attorney General. Penalties and interest accruing on delinquent school taxes must be paid to the board of education. OAG 60-808.

Decisions Under Prior Law

Analysis

1. Penalties and interest.
2. Liability of collector.

1. Penalties and Interest.

Penalties and interest on delinquent school taxes belong to the board of education. Board of Educ. v. City of Paducah, 261 Ky. 549, 88 S.W.2d 292 (1935); City of Pineville v. Board of Educ., 272 Ky. 636, 114 S.W.2d 1088 (1938).

2. Liability of Collector.

The collector must account for penalty and interest payable by taxpayer, and he was liable for interest as of the statutory due date. Knox County v. Lewis' Adm'r, 253 Ky. 652, 69 S.W.2d 1000 (1934). But see Clarke v. Commonwealth ex rel. Rockcastle County Bd. of Educ., 233 Ky. 728, 26 S.W.2d 1041 (1930).

A city tax collector was liable for only such penalties on delinquent taxes as were prescribed by the city ordinances. Board of Educ. v. Hatton, 253 Ky. 828, 70 S.W.2d 923 (1934).

A city is liable to the school board for all school taxes, penalty and interest that have been collected, but not for amounts due and uncollected. Board of Educ. v. City of Paducah, 261 Ky. 549, 88 S.W.2d 292 (1935).

Collateral References. 79 C.J.S., Schools and School Districts, §§ 618, 627.

160.530. Use of school money.

The money collected by taxation under the provisions of KRS 160.460 to 160.520 and other school money shall be expended by the board of education in accordance

with the recommendations contained in the budget submitted to the Kentucky Board of Education.
(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 452, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

Compiler's Notes. This section (4399-40: amend. Acts 1954, ch. 214, § 16(1), 1976, ch. 127, § 7; 1978, ch. 155, § 82, effective June 17, 1978) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 452, effective July 13, 1990.

Cross-References. Agricultural extension work, appropriations may be made from school funds for, KRS 247.080.

Boards of education of Louisville and Jefferson County may pay money to city-county board of health for school health services, KRS 212.470.

Conferences of school officials, expenses of to be paid from school funds, KRS 156.190.

Financial matters to be reported to state board of education, KRS 157.060.

Investment of school funds, KRS 386.050.

School district not to lend credit or become stockholder in corporation, Const., § 179.

State school fund, distribution of, Const., § 186; KRS Ch. 157.

Superintendent of public instruction to supervise accounts of local boards, KRS 156.160, 156.200.

Opinions of Attorney General. Where the General Assembly failed to include a delayed effective date for the provisions regarding the teachers' duty-free lunch period and class-size limitations in grades 1-8 contained in the education package enacted in the 1985 extraordinary session, the effective date of these provisions was October 18, 1985. However, given the restrictions of KRS 160.550(1) and this section, as well as the impracticalities of implementation on October 18, it was doubtful that any local school district could be expected to implement these programs on October 18. Therefore, except where otherwise expressly indicated in a particular provision, the education improvement programs which the local school districts have a duty to implement would have to be implemented by the local school districts beginning with the 1986-87 school year. OAG 85-132.

NOTES TO DECISIONS

Analysis

1. District school funds.
2. Judgment against county board of education.
3. Decisions by local school board.

1. District School Funds.

District school funds collected by taxation under the provisions of KRS 160.460 to 160.520 do not become part of the common school fund of the state which is distributed by the state to the various school districts on a per capita basis and the state has nothing to do with the funds of the local school district. Commonwealth ex rel. Meredith v. Reeves, 289 Ky. 73, 157 S.W.2d 751 (1941).

2. Judgment Against County Board of Education.

Fact that there is no fund available to pay judgment against county board of education for refund of illegal taxes does not invalidate judgment, since county board of education may sue and be sued, and sufficient funds may be lawfully raised by taxation and used to pay the judgment. Board of Educ. v. Louisville & N.R.R., 280 Ky. 650, 134 S.W.2d 219 (1939).

3. Decisions by Local School Board.

The underlying theme of this section is that the actual decisions addressed hereunder are to be made by the local school board, not the state. Blackburn v. Floyd County Bd. of Educ., 749 F. Supp. 159 (E.D. Ky. 1990).

Collateral References. 78 C.J.S., Schools and School Districts, § 11.

160.531. Board of education in county containing a city of the first class may impose license fees on business, trade, occupation or profession; Rates— Approval of voters required; Exemptions. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1956, ch. 108, §§ 1 and 3) was repealed by Acts 1965 (1st Ex. Sess.), ch. 2, § 26.

160.532. Election. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1956, ch. 108, § 2) was repealed by Acts 1965 (1st Ex. Sess.), ch. 2, § 26.

160.533. Collection of license fees. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1956, ch. 108, § 4) was repealed by Acts 1965 (1st Ex. Sess.), ch. 2, § 26.

160.534. Provisions of KRS 160.460, 160.500 and 160.510 inapplicable to license fees. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1956, ch. 108, § 5) was repealed by Acts 1965 (1st Ex. Sess.), ch. 2, § 26.

160.540. Power to borrow money in anticipation of taxes.

Any board of education may borrow money on the credit of the board and issue negotiable notes in anticipation of revenues from school taxes and state revenue for the fiscal year in which the money is borrowed, and may pledge the anticipated revenues from state and local sources for the payment of principal and interest on the loan. The rate of interest shall be at the rate or rates or method of determining rates as the board determines. In all cases such loans shall be repaid within the fiscal year in which they are borrowed.
(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 453, effective July 13, 1990; 1996, ch. 274, § 33, effective July 15, 1996.)

Compiler's Notes. This section (4399-44: amend. Acts 1982, ch. 45, § 1, effective July 15, 1982) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 453, effective July 13, 1990.

Cross-References. Banks not limited in loans to school districts, KRS 287.290.

Bonds, power to issue, KRS 162.080 to 162.100, KRS Ch. 66.

Laws authorizing political subdivision to borrow money must specify purpose, Const., § 178.

Opinions of Attorney General. KRS 58.430 does not implicitly repeal or in any way modify the maximum interest rate a school district may pay on money borrowed in anticipation of taxes. OAG 80-571.

NOTES TO DECISIONS

Analysis

1. Floating indebtedness.
2. Limitation on borrowing.

3. Liquidation of notes.

1. Floating Indebtedness.

A valid floating indebtedness may be funded without violating Const., §§ 157 and 158. Lee v. Board of Educ., 261 Ky. 379, 87 S.W.2d 961 (1935). See Lawson v. Board of Educ., 265 Ky. 630, 97 S.W.2d 542 (1936); Abbott v. Oldham County Bd. of Educ., 272 Ky. 654, 114 S.W.2d 1128 (1938).

2. Limitation on Borrowing.

A county board of education can accumulate a valid indebtedness only by borrowing in anticipation of the collection of a levy an amount not exceeding the total of said taxes to be collected, which borrowing is to be paid from said revenue when collected. Farson v. County Bd. of Educ., 100 F.2d 974 (6th Cir. 1939).

A county board of education has no authority to incur or refund indebtedness in excess of revenue, and recitals in its resolution furnish no basis for estoppel. Farson v. County Bd. of Educ., 100 F.2d 974 (6th Cir. 1939).

A school board cannot validly anticipate revenue in excess of the amount which it has fixed in its budget. Ebert v. Board of Educ., 278 Ky. 75, 128 S.W.2d 185 (1939).

3. Liquidation of Notes.

Where county board of education had incurred a $141,000 debt represented by promissory notes due to great deficiency in allocable franchise tax collections and the expenditures giving rise to the debt were for legitimate school purposes, revenue bonds could be issued to liquidate the indebtedness and an annual special tax in excess of maximum regular ad valorem tax levy authorized by statute could be levied to amortize principal and interest of funding bonds validly issued by the county school district where the maximum regular levy provided by KRS 160.475 was insufficient. Bell v. Board of Educ., 343 S.W.2d 804 (Ky. 1961).

DECISIONS UNDER PRIOR LAW

ANALYSIS

1. Floating indebtedness.
2. Limitation on borrowing.

1. Floating Indebtedness.

A floating indebtedness cannot be funded without violating Const., §§ 157 and 158 when it arose because expenditures exceeded the revenue provided for. Downey v. Board of Educ., 243 Ky. 66, 47 S.W.2d 931 (1932).

2. Limitation on Borrowing.

Provisions of this section are held to be limitations on actual borrowing, and not on the power to incur indebtedness which is controlled by the Constitution. Waller v. Georgetown Bd. of Educ., 209 Ky. 726, 273 S.W. 498 (1925).

Collateral References. 79 C.J.S., Schools and School Districts, §§ 481, 482.

160.550. Expenditure of funds in excess of income and revenue of any year.

(1) No superintendent shall recommend and no board member shall knowingly vote for an expenditure in excess of the income and revenue of any year, as shown by the budget adopted by the board and approved by the Kentucky Board of Education, except for a purpose for which bonds have been voted or in case of an emergency declared by the Kentucky Board of Education.

(2) Any school district having authorized an expenditure in violation of subsection (1) of this section may be so certified at any time by the Kentucky Board of Education. A district so certified shall thereafter, any contrary statutory provisions notwithstanding, make no expenditure of money, give no authorization involving the expenditure of money, and make no employment, purchase, or contract, unless the chief state school officer has approved in writing, as fiscally sound and necessary, the expenditure, authorization, employment, purchase, or contract. Any expenditure, authorization, employment, purchase, or contract made in violation of this subsection shall be void.

(3) Any school district subject to the provisions of subsection (2) of this section shall so remain until such time as the Kentucky Board of Education has approved, in conformity with KRS 160.470, a budget for the district for a succeeding fiscal year.

(4) In addition to the penalties set forth in KRS 160.990, any person who knowingly expends or authorizes the expenditure of school district funds or who knowingly authorizes or executes any employment, purchase, or contract, in violation of this section, shall be jointly and severably liable in person and upon any official bond he has given to such district to the extent of any payments on the void claim. For purposes of this section, "knowingly" shall mean a person acts with respect to conduct or to a circumstance described by a statute defining an offense when he is aware that his conduct is of that nature or that the circumstance exists.

(4399-45: amend. Acts 1978, ch. 155, § 82, effective June 17, 1978; 1982, ch. 92, § 1, effective July 15, 1982; 1990, ch. 476, Pt. IV, § 234, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

Cross-References. Application to exceed budget, 702 KAR 3:050.

Opinions of Attorney General. A local board of education may never legally present a deficit budget for approval; the fact that a local board can show that it will live within its means for a current fiscal year but cannot eradicate a carried forward deficit does not put the district in a legal financial posture. OAG 79-464.

A local superintendent and local board members who violate this section may be prosecuted and fined in the District Court for this violation and are subject to removal from office. OAG 79-464.

The intent of this section is that every fiscal year will be commenced by each public common school district with a balanced budget. OAG 79-464.

This section and 702 KAR 3:050 clearly prohibit a "running" deficit financial status by a local board of education. OAG 79-464.

This section and 703 KAR 3:050 safeguard against deficit spending by local boards of education. OAG 79-464.

Under this section, once the local board of education finds itself in an emergency situation, it applies to the State Superintendent of Public Instruction who, if he finds the evidence supports the claim of an emergency, submits the application and his finding for approval to the State Board for Elementary and Secondary Education (now State Board of Education), which application, if approved, would permit a deficit expenditure to be carried forward to the next year during which the deficit must be eradicated. OAG 79-464.

Where the General Assembly failed to include a delayed effective date for the provisions regarding the teachers' duty-free lunch period and class-size limitations in grades 1-8

contained in the education package enacted in the 1985 extraordinary session, the effective date of these provisions was October 18, 1985. However, given the restrictions of KRS 160.530 and subsection (1) of this section, as well as the impracticalities of implementation on October 18, it was doubtful that any local school district could be expected to implement these programs on October 18. Therefore, except where otherwise expressly indicated in a particular provision, the education improvement programs which the local school districts have a duty to implement would have to be implemented by the local school districts beginning with the 1986-87 school year. OAG 85-132.

Cited: White v. Board of Educ., 263 Ky. 91, 91 S.W.2d 539 (1936); Board of Educ. v. Talbott, 286 Ky. 543, 151 S.W.2d 42 (1941).

NOTES TO DECISIONS

ANALYSIS

1. Annual cash basis.
2. Expenditures limited to budget.
3. Amended or supplemental budget.
4. Penalties.

1. Annual Cash Basis.

Aside from certain capital outlay expenditures, all of the statutes relating to school financing contemplate that school districts shall operate on a cash basis from year to year. Bell v. Board of Educ., 308 Ky. 848, 215 S.W.2d 1007 (1948).

2. Expenditures Limited to Budget.

A school board cannot validly anticipate revenue in excess of the amount which it has fixed in its budget. Ebert v. Board of Educ., 278 Ky. 75, 128 S.W.2d 185 (1939).

3. Amended or Supplemental Budget.

Where a county board proposed to construct a new school, revised plans setting out the financing as well as the architectural plans must be submitted in the form of an amended or supplemental budget to the state board for consideration and approval. (This opinion has prospective effect only and did not impair the validity of any revenue bonds already issued.) Bell v. Board of Educ., 308 Ky. 848, 215 S.W.2d 1007 (1948).

4. Penalties.

Subsection (2), the "prior written approval" statute, does not provide an independent basis for removing school board members from office under KRS 160.990(4). Hale v. Combs, 30 S.W.3d 146 (Ky. 2000).

160.560. Treasurer of board of education — Selection — Bond — Duties.

(1) Each board of education shall elect a treasurer for the board. The board may elect its secretary to serve as treasurer. The board may remove the treasurer from office at any time for cause by a vote of a majority of the members of the board.

(2) The treasurer shall execute an official bond for the faithful performance of the duties of his office, to be approved by the local board and the commissioner of education. The bond shall be guaranteed by a surety company authorized to do business in this state, and shall be in an amount determined by the board of education in accordance with the administrative regulations promulgated by the Kentucky Board of Education. The premium on the bond shall be paid by the board of education. A copy of the bond shall be filed with the board of education and with the commissioner of education.

(3) The treasurer shall receive all moneys to which the board is entitled by the Constitution or by the statutes, except as otherwise provided by law, or which may in any way come into its possession, and deposit such funds in the properly designated depository. He shall withdraw such funds from the depository only upon proper order of the board. He shall keep a full and complete account of all funds in such manner and make such reports concerning them as is required by the board of education or by the Kentucky Board of Education. He shall preserve all records relating to the transactions and duties of the office and turn them over to his successor along with all public funds in his hands and all accounts and records after due and proper audit is made by a competent outside agent when he is required to do so by the board of education.

(4) The treasurer shall issue his check on the depository for payment of all legal claims which have been authorized for payment in accordance with policies previously adopted by the local board of education and approved by the commissioner of education.

(4399-42: amend. Acts 1956, ch. 173; 1978, ch. 54, § 1, effective June 17, 1978; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 235, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 389, § 7, effective July 14, 2000.)

Cross-References. Bonds of public officers, conditions, recovery on, KRS 62.060 to 62.080.

Treasurer's bond, penal sum, 702 KAR 3:080.

Kentucky Bench & Bar. Whalen, The Kentucky Education Reform Act of 1990 and Local Boards of Education, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 11.

Opinions of Attorney General. The treasurer of a local board of education, who received a salary of $10.00 per month and who had a pecuniary interest in an agency that sold insurance to the board of education, would be disqualified as treasurer if the pecuniary interest in the sale, direct or indirect, was in excess of $25.00. OAG 61-211.

The offices of treasurer of the school board and city clerk are incompatible. OAG 61-823.

The secretary and treasurer of the city board of education and the treasurer of the county board of education were disqualified from serving on the electric plant board. OAG 61-846.

While a board of education may discharge its secretary and its attorney at any time, the board may only remove its treasurer for cause by a vote of three members of the board and the treasurer is entitled to a hearing as to the cause of removal. OAG 73-128.

The treasurer of a county school board is considered a state officer and may not at the same time serve as commissioner of a municipal public utility which office in all probability constitutes a municipal office and, even if not, constitutes municipal employment. OAG 74-707.

As this section requires each board of education to elect a treasurer but is silent as to compensation for the treasurer, under the general powers given to boards of education under KRS 160.290, the board may fix a reasonable compensation. OAG 75-461.

Cited: Lewis v. Morgan, 252 S.W.2d 691 (Ky. 1952); Commonwealth v. Hamilton, 905 S.W.2d 83 (Ky. Ct. App. 1995).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 81-88.

160.570. Depository of board — Bond — Duties.

(1) Each board of education shall appoint a bank, trust company, or savings and loan association to serve as its depository, and if its annual receipts from all sources exceed one hundred thousand dollars ($100,000), it may designate three (3) depositories, except boards of education of school districts in counties containing cities of the first class may designate up to six (6) depositories. The depository may be designated for a period not to exceed two (2) years, and before entering upon its duties shall agree with the board as to the rate of interest to be paid on average daily or monthly balances.

(2) The depository selected shall, before entering upon its duties, execute bond for the faithful performance of its duties, to be approved by the local board of education in accordance with Kentucky Board of Education administrative regulations, and to be approved by the commissioner of education. The bond shall be guaranteed by at least five (5) solvent personal sureties whose solvency must exceed the amount of the bond, or by a surety company authorized to do business in this state, or through the execution of a collateral bond consistent with the general banking laws of the state and the bonding laws applying to the safeguarding of state funds. The penal sum of the depository bond shall be determined by the board of education in accordance with the administrative regulations promulgated by the Kentucky Board of Education. A board of education may enter into an agreement with its depository whereby the premium on a bond guaranteed by a surety company may be paid either by the board or by the depository. If the board pays the premium, the depository shall allow the board not less than two percent (2%) interest on its average daily or average monthly balances. All depository bond forms shall be prepared by the chief state school officer and approved by the Kentucky Board of Education.

(3) The depository shall hold for the board all funds deposited by the treasurer of the board or its tax collector or duly authorized agent, subject to withdrawal by the board at any time, and shall pay all funds so deposited to such person and in such manner as the board directs. The depository shall keep full and complete accounts of all of the board's funds, and make reports to the board or its authorized agents upon request. The depository shall keep all records relating to the transactions and duties of the office and turn them over to the successor of its office along with all school funds in hand. The board of education may at any time require a due and proper audit of the depository's records of the funds of the board by a competent outside agent.

(4) A board of education may designate as its depository the authorized and bonded depository of the governing authority of the territory which the school district embraces. In such cases, the bond of the depository shall be made to cover specifically the safekeeping of the school board's funds, and all conditions set out in this section shall be carried out.

(4399-43: amend. Acts 1978, ch. 155, § 82, effective June 17, 1978; 1980, ch. 337, § 1, effective July 15, 1980; 1982, ch. 43, § 1, effective July 15, 1982; 1990, ch. 476, Pt. IV, § 236, effective July 13, 1990; 1966, ch. 362, § 6, effective July 15, 1996; 2000, ch. 389, § 8, effective July 14, 2000; 2001, ch. 99, § 1, effective June 21, 2001.)

Cross-References. Bonds of depositories of public funds, conditions, recovery on, KRS 62.060 to 62.080.

Depository bond, penal sum, 702 KAR 3:090.

Opinions of Attorney General. Subsection (4) of this section does not require the county board of education to designate a depository within the county. OAG 60-554.

Subsection (1) of this section requires that interest be paid on the average daily or monthly balances of school board funds in a depository. OAG 60-554.

While the exact rate is not specified, subsection (1) of this section requires that some interest be paid. OAG 60-600.

The requirements of this section are mandatory, not directory, and unless they are fully complied with there has been no valid designation of a depository. OAG 60-600.

Boards of education may place their general funds in banks designated as depositories pursuant to this section and obtain from such banks certificates of deposit representing time deposits of surplus funds subject to withdrawal on demand. OAG 64-70.

A local board of education is violating the law if it deposits money in a bank other than its named depository bank. OAG 79-538.

Applicable Kentucky administrative regulations could be amended to lawfully provide that obligations of a Federal Farm Credit Bank, the Federal National Mortgage Association and the Federal Home Loan Bank could be used as collateral as security for the depository bond mentioned in this section, since KRS 41.240(4)(a) permits as collateral obligations or securities issued or guaranteed by any federal governmental agency. OAG 85-3.

NOTES TO DECISIONS

Analysis

1. Bond.
2. —Approval.
3. —Alterations.
4. Application of funds.
5. Audit of records.
6. Liability for failure of depository.

1. Bond.

The bond of a depository is a guarantee of the security of the funds and the assurance that they will be delivered on demand, and such bond imposes a greater responsibility than a bond conditioned upon the faithful performance of the duties of an officer. Phillips v. Board of Educ., 283 Ky. 173, 140 S.W.2d 819 (1940).

2. —Approval.

Failure of school board or officer to approve or secure approval of bond of depository does not affect liability of sureties on bond, since requirement for approval is for protection of public funds and not for benefit of sureties, and since government is not responsible for laches or wrongful acts of its officers. Bennett v. County Bd. of Educ., 273 Ky. 143, 116 S.W.2d 302 (1938).

3. —Alterations.

Burden was on plaintiff seeking to recover from defendants

as sureties on depository bond to prove that alterations changing bond from treasurer's bond to depository bond were made prior to defendants' signatures, or if subsequent, by their agreement. Phillips v. Board of Educ., 283 Ky. 173, 140 S.W.2d 819 (1940).

4. Application of Funds.
A bank, which is treasurer of a school board, and to which the board is indebted, cannot apply funds held by it to satisfaction of a matured debt due it by the board. Citizens' Bank v. Rowan County Bd. of Educ., 245 Ky. 384, 53 S.W.2d 549 (1932).

5. Audit of Records.
Statutory power to audit records of depository was merely an addition to the powers of the board and was not intended as limiting or restricting the inherent power to conduct its final affairs. Lewis v. Morgan, 252 S.W.2d 691 (Ky. 1952).

6. Liability for Failure of Depository.
Treasurer and sureties are not liable for failure of a depository when its selection is by law given to another. Edwards v. Logan County, 244 Ky. 296, 50 S.W.2d 83 (1932).

DECISIONS UNDER PRIOR LAW

1. Form.
The bond need not be signed by the principal. United States Fid. & Guar. Co. v. Board of Educ., 228 Ky. 426, 15 S.W.2d 255 (1929).

Collateral References. 78 C.J.S., Schools and School Districts, § 357.

160.580. Gift, grant, or devise to school board.

All sums arising from any gift, grant, or devise by any person wherein the intent is expressed that the same is to be used to aid in the education of children in any school district in this state shall be held and used for the purposes specified in the gift, grant, or devise. The district board of education shall receive the gift, grant, or devise for the benefit of the schools of its district and shall hold and use it as requested by the donor or devisor, provided that the purpose for which it is used shall be in harmony with the aims and general program of public education in this state.
(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 454, effective July 13, 1990.)

Compiler's Notes. This section (4399-57: amend. Acts 1974, ch. 49, § 4) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 454, effective July 13, 1994.

Opinions of Attorney General. Under this section a school board is obligated to accept a gift provided that the potential use of the gift may be considered to be in harmony with the aims and general program of public education in the state. OAG 69-431.

Cited: Japs v. Board of Educ., 291 S.W.2d 825 (Ky. 1956).

NOTES TO DECISIONS

ANALYSIS

1. Application.
2. Trustee.
3. Discretionary powers of board.

1. Application.
The jurisdiction conferred by KRS 160.290 relates to school property arising from public funds and necessarily does not apply to specific charitable trust donations made to a particular type of school district for its exclusive benefit, which are controlled by this section. Board of Educ. v. Todd County Bd. of Educ., 289 Ky. 803, 160 S.W.2d 170 (1942).

2. Trustee.
The county board of education in taking out insurance policy on district school building built by specific charitable trust donation was only a naked trustee of the property, while pupils of district school were the real beneficiaries and thus entitled to proceeds of the insurance. Board of Educ. v. Todd County Bd. of Educ., 289 Ky. 803, 160 S.W.2d 170 (1942).

3. Discretionary Powers of Board.
School board could make a white male high school coeducational although the land on which the school was built was partially purchased with funds contributed by the alumni association and the school board allowed the alumni association to be made a third party to the deed conveying the land and inserted a covenant that the school board agreed with the alumni association that it would hold said property for the exclusive use and benefit of white male students since the covenant in the deed was void as interfering with the exercise by the school board of its discretionary powers in the management and control of the public schools under its jurisdiction and against general public policy. Board of Educ. v. Society of Alumni of Louisville Male High Sch., Inc., 239 S.W.2d 931 (Ky. 1951).

Collateral References. 78 C.J.S., Schools and School Districts, § 357.

160.590. Special funds — Disposition of. [Repealed.]

Compiler's Notes. This section (4399-60) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

160.593. Levy of occupational license tax, utility gross receipts license tax, or excise tax for schools.

(1) Any board of education of a school district may, after compliance with the public hearing requirement contained in KRS 160.603, levy school taxes authorized by KRS 160.593 to 160.597, 160.601 to 160.633, and 160.635 to 160.648. The imposition of any tax levied under the provisions of 160.593 to 160.597, 160.601 to 160.633, and 160.635 to 160.648 shall be limited to the territory of the school district except as provided in subsection (2) of this section.

(2) Two (2) or more boards of education may agree in writing to levy identical school taxes authorized by KRS 160.605 to 160.611, 160.613 to 160.617, and 160.621 to 160.633. After the levying in each district so agreeing of a tax under the terms of such agreement, the receipts from said tax shall be held in a common fund and disbursed therefrom to each district on the basis of average daily attendance, as set forth in KRS 160.644. Any districts levying taxes under the terms of such an agreement shall be deemed to constitute a combined taxing district for the purposes of reference in KRS Chapter 160.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 455, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1966, ch. 24, Part III, § 1; 1972, ch. 203, § 19, 1972, ch. 271, § 1; 1974, ch. 125, § 1; 1974, ch. 308, § 35; 1976, ch. 127, § 8; 1978, ch. 155, § 82, effective June 17, 1978; 1982, ch. 98, § 1, effective July

15, 1982; 1984, ch. 43, § 1, effective July 13, 1984) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 455, effective July 13, 1990.

Opinions of Attorney General. A board of education of a school district has no discretion as to the subject of the utility gross receipts license tax. OAG 66-551.

Unless a county board of education had acted in bad faith the fiscal court had no alternative but to accept the school budget as presented to them and levy the requested three percent utility gross receipts license tax. OAG 67-435.

If the school board complies with this section and with KRS 160.603, the fiscal court is mandatorily required to levy a utility gross receipts license tax, within 15 days of such request, at the rate requested. OAG 69-367.

The term "shall" in the statute is mandatory. OAG 69-367.

Where a school board complies with the provisions of this section and KRS 160.603, the fiscal court is mandatorily required to levy the requested tax within 15 days of such request and at the rate requested. OAG 72-365.

It would appear that a school board which does not wish to have the tax applied to its district should make such fact known by formal written motion entered into the board minutes. OAG 72-471.

Under the 1972 amendment to this section the voters of one district can recall the tax for that particular district while the voters of another district can vote to have the tax remain in effect. OAG 72-471.

If the fiscal court refuses to levy a requested tax, the school board would have the right to sue the court to compel the levy but if only a minority of the members of the court vote against the levy the board would have no right of action against such minority. OAG 72-521.

The fiscal court is required to levy a requested tax when it is presented with a properly passed resolution of the school board requesting such tax. OAG 72-521.

This section empowers either of two county school districts to levy a utilities tax under KRS 160.613. OAG 72-521.

Any school district in which a special school tax is levied or about to be levied may petition for a referendum to recall said tax within the district and such recall would not have to be on a countywide basis. OAG 72-576.

Where a petition to have the issue of a school tax placed on the ballot is filed, the names of residents of an independent school district which does not desire to have the tax imposed in its jurisdiction may properly be removed from the petition. OAG 72-579.

Districts which have taken no action to either request or deny a levy may come in at a later date and make a request as applicable to their particular district. OAG 72-603.

Once the fiscal court has approved a requested levy the question of whether or not such tax should be levied may be passed on to the voters pursuant to the procedures specified in KRS 160.485. OAG 72-603.

The 1972 amendment to this section amends by implication the provisions of KRS 160.485 insofar as that section provides for recall on a countywide basis. OAG 72-603.

The question of the imposition of a utilities gross receipts tax should be placed on the ballot only in the territory encompassed by the three districts requesting the tax. OAG 72-603.

The tax is to be imposed only in the territorial limits of the district making the request for the levy. OAG 72-603.

The word "shall" appearing in this section is mandatory. OAG 75-152.

Where the school board had requested the fiscal court to levy a gross receipts utility tax for school purposes after compliance with this section and KRS 160.603 and the fiscal court refused to levy such tax, the county attorney could not represent the school board if a suit against fiscal court became necessary because of conflict of interest as county attorney pursuant to KRS 69.210. OAG 75-152.

Where a county adopts a three percent utility gross receipts license tax for schools, pursuant to subsection (1) of this section the applicable board or boards of education must levy the school tax, not the fiscal court, since the fiscal court has nothing to do with the levying and collecting of this tax. OAG 80-331.

The consequence of the 1976 amendment to this section was to let school districts that had been mandatorily tied together by preexisting law go their separate ways unless they requested in writing to levy an identical tax as a combined taxing district and had that request approved by the State Board of Education. School districts that had their request approved by the State Board would have the receipts from the tax distributed between the districts based upon average daily attendance as set forth in KRS 160.644. If this positive step of requesting the State Board of Education approval was not sought, each school district by itself continued to levy the tax, but was limited to the territory of its school district. Of course, any school district wishing to decrease the rate of its tax or cease levying the tax altogether could do so. OAG 82-146.

When levying a utilities gross receipts license tax for the purpose of complying with the minimum equivalent tax rate requirement set forth in KRS 160.470(12)(a) or for the purpose of participating in the "Tier 1" program set forth in KRS 157.440, a school board must follow the notice and hearing requirements of this section and KRS 160.603, but the recall provisions of KRS 160.597 do not apply. OAG 90-88.

Cited: Cunningham v. Grayson, 541 F.2d 538 (6th Cir. 1976); Board of Elections v. Board of Educ., 635 S.W.2d 324 (Ky. Ct. App. 1982); Storer Communications of Jefferson County, Inc. v. Oldham County Bd. of Educ., 850 S.W.2d 340 (Ky. Ct. App. 1993).

NOTES TO DECISIONS

ANALYSIS

1. Utility tax.
2. —Levy.
3. —Distribution.

1. Utility Tax.

2. —Levy.

As presently worded, this section and KRS 160.644 do not prohibit an individual school district from unilaterally levying a utility tax on the territory within its school district. Moreover, the legislature obviously intended this practice to be the rule rather than the exception. Board of Educ. v. Independent Bd. of Educ., 681 S.W.2d 429 (Ky. Ct. App. 1984).

There is nothing in this section and KRS 160.644 to preclude a school district which had agreed with another district or districts to levy taxes from rescinding that agreement and levying the taxes unilaterally. Board of Educ. v. Independent Bd. of Educ., 681 S.W.2d 429 (Ky. Ct. App. 1984).

3. —Distribution.

If a utility tax is levied by an individual school district, all the money goes to that school board. If the tax is levied by multiple districts in combination, the money is distributed proportionately. Board of Educ. v. Independent Bd. of Educ., 681 S.W.2d 429 (Ky. Ct. App. 1984).

160.595. Only one tax to be in effect at any time. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1966, ch. 24, part III, § 2; 1972, ch. 203, § 20; 1972, ch. 271, § 2; 1976, ch. 127, § 9) was repealed by Acts 1984, ch. 43, § 2, effective July 13, 1984.

160.597. Levy recall procedure.

Any school tax authorized by KRS 160.593 to 160.597, 160.601 to 160.633, and 160.635 to 160.648 may be recalled as follows:

(1) The order or resolution levying any of the school taxes designated heretofore in this section shall go into effect not less than thirty (30) days nor more than ninety (90) days after its passage. If, during the thirty (30) days immediately following the passage of the order or resolution, a petition signed by a number of registered and qualified voters equal to fifteen percent (15%), except in counties containing a city of the first class, equal to five percent (5%), of the votes cast in the school district or combined taxing district levying the tax for the office receiving the greatest total vote at the last preceding presidential election is presented to the county clerk requesting that the order or resolution of the tax be placed before the voters for approval, the order or resolution shall be suspended from going into effect for that district until after the election provided for in subsection (2) of this section. The person presenting the petition shall be given a receipt indicating the date of presentation. Each sheet of the petition shall contain the names, residence addresses, Social Security numbers, or dates of birth of voters in but one (1) voting precinct and each sheet shall state the name, number, or designation of the precinct and, where applicable, the name, number, or designation of the district or ward wherein the precinct is situated. If the signature is difficult to read, the voter shall, on the same line legibly write or print his name in the same fashion as he signed it. One (1) or more persons shall verify by affidavit the signatures and addresses of the signers of the petition. The county clerk shall make the determination of whether the petition contains enough signatures of qualified voters to suspend the effect of the order or resolution, and immediately shall notify the school board that the petition has been received and that the order or resolution levying the tax will be placed before the voters for approval. The county clerk shall certify to the school board within thirty (30) days of receipt of the petition that the petition is properly presented and in compliance with the provisions of this section. If the county clerk finds the petition to be invalid, it shall state in writing the deficiency of said petition. Written notification that the petition has been declared invalid and the deficiencies thereof shall be sent by certified mail to the person to whom a receipt was given by the county clerk, and shall be published at least one (1) time in a newspaper of general circulation within the county containing the school district levying the tax, or if there be no such newspaper, shall be posted at the courthouse door. If good cause is shown, the county clerk shall permit the petitioners to correct the deficiencies either by securing additional valid signatures or by circulating a new petition, the petition to be submitted to the county clerk within thirty (30) days from the date of the written notification of the deficiencies.

(2) Thereupon, if it has been determined that the petition contains enough valid signatures to suspend the effect of the order or resolution, the county clerk shall submit the question to the voters of the school district at the next regular election or a called common school election, either of which is to be held not less than sixty (60) days from the date of the passage of the order or resolution. If the election is to be held in conjunction with a regular election, the question shall be submitted to the county clerk not later than the second Tuesday in August preceding the regular election. The question shall be so framed that the voter may by his vote answer, "for" or "against." If a majority of the votes cast in a district or combined taxing district upon the question oppose its passage, the order or resolution shall not go into effect in that district or combined taxing district. If a majority of the votes cast in a district or combined taxing district upon the question favor its passage, the order or resolution shall go into effect in that district. If the election is to be held in more than one (1) school district within a county, the votes shall be counted separately. The cost of a called common school election shall be borne by the school district causing the election to be held.

(3) If any statute in existence on June 17, 1978, is found to be in conflict with any provision of this section, the provisions of this section shall prevail.

(Enact. Acts 1966, ch. 24, part III, § 3; 1972, ch. 203, § 21; 1974, ch. 125, § 6; 1976, ch. 127, § 10; 1978, ch. 345, § 1, effective June 17, 1978; 1980, ch. 114, § 25, effective July 15, 1980; 1980, ch. 188, § 118, effective July 15, 1980; 1982, ch. 48, § 1, effective March 3, 1982; 1982, ch. 217, § 4, effective July 15, 1982; 1982, ch. 360, § 50, effective July 15, 1982; 1990, ch. 48, § 85, effective July 13, 1990; 1990, ch. 476, Pt. V, § 456, effective July 13, 1990; 1996, ch. 195, § 58, effective July 15, 1996.)

Opinions of Attorney General. A recall petition must be filed within 30 days following the passage of the order or resolution of the fiscal court levying the tax. OAG 72-522.

A county may proportionately reduce the occupational license tax imposed under KRS 160.605 by enacting an ordinance with a logical arrangement for such a reduction, when the tax is to be levied after the start of the fiscal year and likewise penalties may be imposed for failure to pay the tax, but such penalties must be codified by ordinance. OAG 78-383.

It is the responsibility of the county board of elections to frame the question for the ballot proposal for recall of school taxes under this section. OAG 79-462.

Where a county board of education levied a utility gross receipts tax pursuant to an order authorized by KRS 160.613, after which a recall petition was presented to the county board of elections requesting that the tax levy be placed on the ballot for voter approval or disapproval, the board of education's subsequent withdrawal of the tax levy order was a valid exercise of its discretion and the board of elections would not be required to still submit the recall question to the voters, since the necessity of the public having to bear the expense of holding such an election would serve no useful purpose. OAG 80-442.

When levying a utilities gross receipts license tax for the purpose of complying with the minimum equivalent tax rate requirement set forth in KRS 160.470(12)(a) or for the purpose of participating in the "Tier 1" program set forth in KRS

157.440, a school board must follow the notice and hearing requirements of KRS 160.593 and KRS 160.603, but the recall provisions of this section do not apply. OAG 90-88.

Any board complying fully with the provisions of KRS 160.614 and KRS 160.603 is not subject to the provisions of this section. OAG 90-96.

Cited: Board of Educ. v. Fiscal Court, 485 S.W.2d 752 (Ky. 1972); Doe v. Knox County Bd. of Educ., 918 F. Supp. 181 (E.D. Ky. 1996).

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Application.
3. Timeliness of petition.
4. Verification by affidavit.
5. Levy subject to recall.
6. Levy not subject to recall.

1. Constitutionality.

The present school funding statutes permit local Boards of Education to raise funds through property taxes and permissive taxes such as the utilities tax; base funding and Tier One funding can be produced by a property tax not subject to voter recall and this nonrecallable option enables Boards of Education to fund schools without relying on permissive taxes; the General Assembly has supplied a mechanism to satisfy base funding, as well as Tier One funding, according to the mandate of Section 183 of the Kentucky Constitution; and that is all that Rose v. Council for Better Educ., Inc., 790 S.W.2d 186 (Ky. 1989) requires. Board of Educ. v. Brooks, 824 S.W.2d 431 (Ky. Ct. App. 1992).

2. Application.

The county Board of Education argued that the enactment of KRS 160.614 indicated that the General Assembly intended that the recall provisions of this section would not be applicable to utility taxes levied to provide base or Tier One funding, but KRS 160.614 merely expanded the utilities subject to a permissive school funding levy to include cable television and in the absence of a strong statutory indication to the contrary, an express statute will not be deemed to have been abrogated by implication. Board of Educ. v. Brooks, 824 S.W.2d 431 (Ky. Ct. App. 1992).

3. Timeliness of Petition.

Where the 30th day following the levy of a utility gross receipts tax was a Saturday, and the taxpayers' petition to recall the levy and place the question before the voters for approval was filed on the following Monday, the county board of elections erroneously refused to consider the petition on the ground that it was not filed within the 30-day period since, under KRS 446.030(1) and (2), the last day of the period is not included in the 30 days if it is a Saturday or Sunday; however, the taxpayers' remedy was to reapply to the board of elections, pointing out the error, rather than to file an action in court. Taxpayer's Action Group v. Madison County Bd. of Elections, 652 S.W.2d 666 (Ky. Ct. App. 1983).

4. Verification by Affidavit.

Where affidavits were merely read, signed, and notarized, and only one circulator of the petition testified that some form of oath may have taken place, while testimony of the others was clear that it did not, the petitions were not "verified by affidavit" as required by this section. Board of Elections v. Board of Educ., 635 S.W.2d 324 (Ky. Ct. App. 1982).

An affidavit implies the taking of an oath as to the truth of its contents. A later administration of an oath to persons who previously signed affidavits cannot make the affidavits sufficient after the time has elapsed for filing the petitions to be verified, nor does the later administration of an oath constitute the "newly discovered evidence" provided for in Civil Rule 59.01(g). Board of Elections v. Board of Educ., 635 S.W.2d 324 (Ky. Ct. App. 1982).

5. Levy Subject to Recall.

County Board of Education's levy of a utility gross receipts license tax, designed to produce additional revenue up to 15% of the base funding level, was subject to statutory recall election provisions. Board of Educ. v. Brooks, 824 S.W.2d 431 (Ky. Ct. App. 1992).

School district board of education's levy of a utility gross receipts license tax on cable television services, pursuant to subsection (2) of KRS 160.614, was subject to the levy recall procedure set out in this section. Owensboro Cablevision, Inc. v. Libs, 863 S.W.2d 331 (Ky. Ct. App. 1993).

6. Levy Not Subject to Recall.

The 1990 change in KRS 160.470(10) and (11) prevents voter recall of a property tax levy if the tax revenue is intended to provide mandatory minimum base funding or permissive Tier One funding, but under the previous funding scheme, the "notwithstanding" language of KRS 160.470 had no abrogative effect on voter recall of permissive utility taxes and the General Assembly preserved this right in the funding scheme. Board of Educ. v. Brooks, 824 S.W.2d 431 (Ky. Ct. App. 1992).

Collateral References. 79 C.J.S., Schools and School Districts, §§ 586-600.

160.599. Emergency loans to public common school districts.

(1) A special fund is hereby created which shall be known as "the emergency revolving school loan fund account," hereinafter referred to as account. This account, which shall be administered by the Kentucky Board of Education, is for the purpose of providing emergency loans to eligible public common school districts.

(2) In order to be eligible for a loan from the account, a school district shall meet all of the following conditions:
   (a) A loss of physical facilities must have been suffered as a result of a fire or a natural disaster;
   (b) Insurance on such facilities was insufficient to replace the loss;
   (c) The district is bonded to practical capacity and has insufficient resources to meet its immediate capital outlay needs as determined by an investigation of the chief state school officer.

(3) As an alternative to the criteria in subsection (2) of this section, a school district shall be eligible for a loan from the account if the sheriff has failed to collect or disburse delinquent tax revenue, which is for the benefit of the school district, within the fiscal year that the school district is to utilize those receipts according to its budget.

(4) Under the criteria of subsection (2) of this section, no loan from the account shall be made for a period in excess of ten (10) years, and under the criteria of subsection (3) of this section, no loan from the account shall be made for a period in excess of three (3) years. The maximum amount of any one (1) loan from the account shall not exceed two hundred fifty thousand dollars ($250,000) and shall be determined by the Kentucky Board of Education on recommendation of the chief state school officer.

(5) The Kentucky Board of Education shall establish the terms and conditions for repaying the principal of such loan and interest shall not be charged on the loan. No loan shall cover a loss prior to January 1, 1972.
(6) School districts eligible under this section to borrow from the account shall file formal application for such loan on forms provided by the state department of education. Before any loan is made, the application must be approved by the Kentucky Board of Education on the recommendation of the chief state school officer.
(7) All repayments of loans made under this section shall be paid into the emergency revolving school loan fund account, which shall be funded by an appropriation through the biennial budget. Balances remaining in the fund shall not revert to the general fund at the end of any fiscal year.
(8) On approval of the loan application by the Kentucky Board of Education on the recommendation of the chief state school officer, the Finance and Administration Cabinet, on the certification of the chief state school officer, shall draw a warrant on the State Treasurer for the amount of the approved loan that is due the school district. The check shall be issued by the State Treasurer and transmitted to the Department of Education for distribution to the proper official of the school district when the district has complied with the rules and regulations of the Kentucky Board of Education.
(9) Any loan to a local school district under the provisions of this section shall not be considered as an indebtedness of the school district within the meaning of Sections 157 and 158 of the Kentucky Constitution.

(Enact. Acts 1974, ch. 133, § 1; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. III, § 114, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

Miscellaneous

160.600. Accepting bribe for employment of school employee. [Renumbered.]

Compiler's Notes. This section (4399-58) was renumbered as KRS 160.991 and has since been repealed.

Occupational License Tax for Schools

160.601. Taxes, how designated.

The school taxes authorized by KRS 160.605 to 160.611, 160.613 to 160.617, and 160.621 to 160.633 shall be known as an occupational license tax for schools, a utility gross receipts tax for schools, and an excise tax for schools as set out in the following sections.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 457, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1966, ch. 24, Part III, § 4; 1972, ch. 203, § 22) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 457, effective July 13, 1994.

Opinions of Attorney General. A board of education of a school district has no discretion as to the subject of the utility gross receipts license tax. OAG 66-551.

Any settlement of claims for taxes owed, including interest and penalties, would be a diversion of school fund moneys for a purpose other than that of the common schools. OAG 88-46.

Interest and penalties on past due and unpaid taxes belong to the local school district in the same manner as the taxes. OAG 88-46.

The allowance of a settlement or compromise of interest and penalties which have accrued to taxes owed a school district would be a circumvention of the provisions of this section. The result of the settlement or reduction would be that the property for which the tax was reduced would have been taxed at a different rate, which would be determined only upon the negotiating skills of the parties involved. OAG 88-46.

There is no statute which allows a local board to remit or release a claim for taxes, interest or penalty, in whole or in part. OAG 88-46.

Cited: Baker v. Strode, 348 F. Supp. 1257 (W.D. Ky. 1971).

160.603. Notice and hearing before levy.

No school district board of education shall levy any of the school taxes authorized by KRS 160.593 to 160.597, 160.601 to 160.633, and 160.635 to 160.648 until after compliance with the following:
(1) The school district board of education desiring to levy any one (1) of these taxes shall give notice of any proposed levy of one (1) of the school taxes. Notwithstanding any statutory provisions to the contrary, notice shall be given by causing to be published, at least one (1) time in a newspaper of general circulation published in the county or by posting at the courthouse door if there be no such newspaper, the fact that such levy is being proposed. The advertisement shall state that the district board of education will meet at a place and on a day fixed in the advertisement, not earlier than one (1) week and not later than two (2) weeks from the date of the advertisement, for the purpose of hearing comments and complaints regarding the proposed increase and explaining the reasons for such proposal.
(2) The school district board of education shall conduct a public hearing at the place and on the date advertised for the purpose of hearing comments and complaints regarding the proposed levy and explaining the reasons for such proposal.
(3) In the event that a combined taxing district desires to levy any one (1) of these taxes, the boards of education shall make a joint advertisement and hold a joint hearing in the manner prescribed heretofore for an individual school district.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 458, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1966, ch. 24, Part III, § 5; 1972, ch. 203, § 23, 1974, ch. 125, § 2; 1976, ch. 127, § 11) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 458, effective July 13, 1990.

Opinions of Attorney General. Unless a county board of education had acted in bad faith the fiscal court had no alternative but to accept the school budget as presented to them and levy the requested three percent utility gross receipts license tax. OAG 67-435.

If the school board complies with KRS 160.593 and with this section, the fiscal court is manditorily required to levy a utility

gross receipts license tax, within 15 days of such request, at the rate requested. OAG 69-367.

Where a school board complies with the provisions of this section and KRS 160.593, the fiscal court is mandatorily required to levy the requested tax within 15 days of such request and at the rate requested. OAG 72-365.

Where the fiscal court levies the utility gross receipts license tax authorized by KRS 160.613, the public should be notified by the school board in compliance with this section. OAG 74-288.

Where the school board had requested the fiscal court to levy a gross receipts utility tax for school purposes after compliance with KRS 160.593 and this section and the fiscal court refused to levy such tax, the county attorney could not represent the school board if a suit against fiscal court became necessary because of conflict of interest as county attorney pursuant to KRS 69.210. OAG 75-152.

The utility gross receipts license tax is levied by the fiscal court at the request of the school district board of education. OAG 80-22.

When levying a utilities gross receipts license tax for the purpose of complying with the minimum equivalent tax rate requirement set forth in KRS 160.470(12)(a) or for the purpose of participating in the "Tier 1" program set forth in KRS 157.440, a school board must follow the notice and hearing requirements of KRS 160.593 and this section, but the recall provisions of KRS 160.597 do not apply. OAG 90-88.

Any board complying fully with the provisions of KRS 160.614 and this section is not subject to the provisions of KRS 160.597. OAG 90-96.

Cited: Flincheum v. Hickman County Ky. Bd. of Educ., 503 S.W.2d 752 (Ky. 1973).

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Notice.

1. Constitutionality.

The authorization to the school boards to adopt an occupational tax does not violate Const., § 29. Turrell v. Board of Educ., 441 S.W.2d 767 (Ky. 1969).

2. Notice.

Wide publicity is not a substitute for statutory compliance, but when coupled with a notice which substantially follows the legal requirements the notice may be held valid. Turrell v. Board of Educ., 441 S.W.2d 767 (Ky. 1969).

Where the notice of a public hearing on the adoption of the occupational tax did not state that it was for the purpose of hearing comments and complaints and the number of the house bill under which the hearing was to be held was incorrectly printed but the notice was supported by front-page publicity, there was substantial compliance with the notice requirement. Turrell v. Board of Educ., 441 S.W.2d 767 (Ky. 1969).

Collateral References. 79 C.J.S., Schools and School Districts, §§ 586-600.

160.605. Occupational tax — Exemptions.

There is hereby authorized the levy of an occupational license tax for schools on salaries, wages, commissions, and other compensation of individuals for work done and services performed or rendered in a county and on the net profits of all businesses, professions, or occupations from activities conducted in a county. No public service company which pays an ad valorem tax is required to pay an occupational license tax for schools. No occupational license tax for schools shall be imposed upon or collected from any insurance company, bank, trust company, combined bank and trust company, combined trust, banking and title business in this state, any savings and loan association whether state or federally chartered, or upon income received by members of the Kentucky National Guard for active duty training, unit training assemblies, and annual field training, or upon income received by precinct workers for election training or work at election booths in state, county, and local primary, regular, or special election.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 459, effective July 13, 1990; 1998, ch. 509, § 7, effective July 15, 1998.)

Compiler's Notes. This section (Enact. Acts 1966, ch. 24, Part III, § 6; 1976, ch. 104, § 3; 1976, ch. 301, § 8) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 459, effective July 13, 1990.

Section 10 of Acts 1998, ch. 509, provided that the 1998 amendments to this section "apply to tax years beginning after December 31, 1997."

Opinions of Attorney General. A county may impose an occupational license tax for school purposes under this section only as to earned income and such a tax can be levied against natural or artificial persons as to the amount of income earned or services performed within the county limits, except as to those activities which are isolated, occurring infrequently (nonsystematic) or are a result of temporary special employment and, furthermore, an occupational license tax may be imposed upon a federal reservation by a county, notwithstanding the exclusive jurisdiction of the federal government. OAG 78-383.

A county may proportionately reduce the occupational license tax imposed under KRS 160.605 by enacting an ordinance with a logical arrangement for such a reduction, when the tax is to be levied after the start of the fiscal year and likewise penalties may be imposed for failure to pay the tax, but such penalties must be codified by ordinance. OAG 78-383.

A proportionate deduction may be used where the taxing ordinance is effectuated during the middle of a calendar-tax year, so long as it is logically arranged. OAG 78-383.

If a Union County business, whether a partnership or a corporation, performs work and services outside the county, only that portion which is earned in Union County is taxable. OAG 78-383.

The board of education can require the employer to comply with the occupational license tax ordinance by explicitly stating in a separate ordinance a penalty for failure to comply. OAG 78-383.

The scope of an occupational license tax as relates to revenue received for the privilege of engaging in a livelihood is confined to earned income. OAG 78-383.

Where a person resides is not the basis for levying an occupational license tax; the touchstone is where the person works and whether that activity is continuous or systematic. OAG 78-383.

Where an employee enters his place of employment is not important; rather, the question is where he is to perform the work, and therefore, in the case of a coal miner, the location of the entrance to the mine is unimportant but the location of the vein he works is important. OAG 78-383.

Union county may impose and collect an occupational license tax on earned income of persons employed at Camp Breckinridge. OAG 78-383.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Resolution and order.
3. Notice of hearing.

1. Constitutionality.
The statute did not make an unconstitutional delegation of authority to tax. Turrell v. Board of Educ., 441 S.W.2d 767 (Ky. 1969).

2. Resolution and Order.
Where a resolution was adopted making the tax levy at the meeting of the fiscal court on July 2, 1968 and it was implemented by amendment at the August 20 meeting and the amendment did not change the amount, nature or purpose of the levy, there was no violation of the enabling statute. Turrell v. Board of Educ., 441 S.W.2d 767 (Ky. 1969).

Where the resolution and order as amended adopting the tax levy did not provide for all possible controversies, it was not void for uncertainty. Turrell v. Board of Educ., 441 S.W.2d 767 (Ky. 1969).

3. Notice of Hearing.
Where the notice of a public hearing on the adoption of the occupational tax did not state that it was for the purpose of hearing comments and complaints and the number of the house bill under which the hearing was to be held was incorrectly printed but the notice was supported by front-page publicity, there was substantial compliance with the notice requirement. Turrell v. Board of Educ., 441 S.W.2d 767 (Ky. 1969).

160.607. Rate of tax.

(1) The school tax authorized by KRS 160.482 to 160.488 and 160.605 shall be at a single uniform rate not to exceed one-half of one percent (0.5%) and shall continue from year to year until changed as prescribed in KRS 160.635 and 160.484.

(2) Any county having three hundred thousand (300,000) or more inhabitants is authorized to increase the school tax rate to exceed the maximum set in subsection (1) of this section by one-quarter of one percent (0.25%).

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 460, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1966, ch. 24, Part III, § 7; 1972, ch. 254, § 4; 1974, ch. 251, § 1) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 460, effective July 13, 1990.

Collateral References. 79 C.J.S., Schools and School Districts, §§ 565, 567.

160.608. Authorization for levy of either or both utility gross receipts tax and excise tax on income, in addition to occupational license taxes. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1974, ch. 251, § 2; 1982, ch. 50, § 1, effective March 4, 1982) was repealed by Acts 1984, ch. 43, § 2, effective July 13, 1984.

160.609. Procedure for recall of levy. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1974, ch. 251, § 3; 1982, ch. 50, § 2, effective March 4, 1982) was repealed by Acts 1984, ch. 43, § 2, effective July 13, 1984.

160.610. Fort Knox independent school district. [Repealed.]

Compiler's Notes. This section (Acts 1944, ch. 26, §§ 1, 2) was repealed by Acts 1966, ch. 255, § 283.

160.611. Nonresidents of school districts exempt.

No occupational license tax for schools shall be collected from any individual who is not a resident of the school district imposing the school tax.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 461, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1966, ch. 24, Part III, § 8; 1976, ch. 127, § 12) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 461, effective July 13, 1994.

NOTES TO DECISIONS

1. Constitutionality.
This section, which exempts nonresidents of the county from paying the license or occupational tax for schools, did not violate either the state or federal Constitutions because it taxed only the persons living in that area that would receive the benefit. Board of Educ. v. Board of Educ., 458 S.W.2d 6 (Ky. 1970).

Utility Gross Receipts License Tax for Schools

160.613. Utility gross receipts license tax — Exemptions — Application to mobile telecommunications services.

(1) There is hereby authorized a utility gross receipts license tax for schools not to exceed three percent (3%) of the gross receipts derived from the furnishing, within the county, of telephonic and telegraphic communications services, electric power, water, and natural, artificial, and mixed gas. "Gross receipts" includes all amounts received in money, credits, property, or other money's worth in any form, as consideration for the furnishing of the above utilities, except that "gross receipts" shall not include amounts received for furnishing energy or energy-producing fuels, used in the course of manufacturing, processing, mining, or refining to the extent that the cost of the energy or energy-producing fuels used exceeds three percent (3%) of the cost of production, and shall not include amounts received for furnishing any of the above utilities which are to be resold.

(2) In the event that any user of telephonic and telegraphic communications services, electrical power, water, and natural, artificial, or mixed gas purchases the telephonic and telegraphic communications services, electrical power, water, and natural, artificial, or mixed gas directly from any supplier who is exempt either by state or federal law from the utility gross receipts license tax under the provisions of subsection (1) of this section, then the consumer, if such tax has been levied in his district, shall be liable for the tax and shall pay directly to the county finance officer, in accordance with the provisions of KRS 160.615, a utility gross receipts license tax for schools computed by multiplying the gross cost of all telephonic and telegraphic communications services, electrical power, water, and natural, artificial, or mixed gas received by the tax rate levied under the provisions of this section.

(3) "Gross cost" shall mean the total cost of the telephonic and telegraphic communications, electrical power, water, and natural, artificial, or mixed gas including the cost of the tangible personal property and any services associated with obtaining the telecommunication and telegraphic services or tangible personal property, such as gas, electricity, and water, regardless from whom purchased.

(4) The tax imposed by this section shall apply to mobile telecommunications services as defined in 4 U.S.C. sec. 124 only if the customer's place of primary use is within the jurisdictional boundaries of the taxing jurisdiction. The provisions of 4 U.S.C. secs. 116 to 126 are hereby adopted and incorporated by reference.

(5) If a customer believes that a tax, charge, fee, or assignment of place of primary use or taxing jurisdiction on a bill is incorrect, the customer shall notify the home service provider about the alleged error in writing. This notification shall include the street address for the customer's place of primary use, the account name and number for which the customer seeks a correction, a description of the alleged error, and any other information that the home service provider reasonably requires. Within sixty (60) days of receiving the customer's notification, the home service provider shall either correct the error and refund or credit all taxes, charges, and fees incorrectly charged to the customer within four (4) years of the customer's notification, or explain to the customer in writing how the bill was correct and why a refund or credit will not be made.

(6) A customer shall not have a cause of action against a home service provider for any erroneously collected taxes, charges, or fees until the customer has exhausted the procedure set forth in subsection (5) of this section.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 462, effective July 13, 1990; 1998, ch. 500, § 1, effective July 15, 1998; 2002, ch. 69, § 5, effective July 15, 2002.)

Legislative Research Commission Note. (7/15/2002). The amendments made to this statute in 2002 Ky. Acts ch. 69, sec. 5, which created subsections (4), (5), and (6) of this statute, "take effect for customer service bills issued after August 1, 2002." 2002 Ky. Acts ch. 69, sec. 6.

Compiler's Notes. This section (Enact. Acts 1966, ch. 24, Part III, § 9; 1974, ch. 250, § 1, 1980, ch. 27, § 1, effective March 6, 1980) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 462, effective July 13, 1990.

Opinions of Attorney General. A board of education of a school district has no discretion as to the subject of the utility gross receipts license tax. OAG 66-551.

Bottled gas companies are not utilities and are not subject to the utility gross receipts license tax. OAG 66-555.

Electrical power furnished to coal mines for the purpose of mining coal would be exempt from the three percent utility gross receipts license tax if it can be shown by the mining companies that such electrical power consumed by them is more than three percent of their total cost of production. OAG 66-599.

The county fiscal court would be the proper party to institute any legal action to enforce the collection and payment of the utility gross receipts license tax. OAG 66-599.

Electrical power furnished to coal mines for the purpose of mining coal would be exempt from the three percent utility gross receipts license tax to the extent that such power used by the companies exceeds three percent of their total cost of production. OAG 66-663.

A county school board could request a budget increase and the levy of a utility gross receipts license tax in the same year. OAG 66-675.

The utility gross receipts license tax would not apply to the sale of mineral spring water, fuel oil, or drinking water in a particular school district. OAG 67-51.

Since the utility gross receipts license tax for schools is on the vendor there is no exemption for agencies of the federal government. OAG 67-201.

A water district is not required to pay the three percent utility tax on sewerage charges where such charges are made a part of the total water bill and are not itemized or separated on the bill to the customer. OAG 67-282.

Utility companies are not responsible for payment of the three percent tax on sewerage charges when the charge is determined from water consumption but is separated from the rest of the utility bill. OAG 67-282.

The monthly remittance of the gross receipts license tax for schools is mandatory and the Attorney General's office has no authority to approve a different period for the payment of the tax. OAG 67-403.

Unless a county board of education had acted in bad faith the fiscal court had no alternative but to accept the school budget as presented to them and levy the requested three percent utility gross receipts license tax. OAG 67-435.

For a pulp and paper company the price of pulp wood and other raw materials would be excluded from operating costs. OAG 68-58.

Each source of energy or energy-producing fuel would be taxable to the extent it does not exceed three percent of production. OAG 68-58.

In determining the cost of energy or energy-producing fuels each type of energy-producing fuel would have to be treated separately. OAG 68-58.

The cost to a pulp and paper company of treating water from the river could be treated as cost of production, but not as a cost of energy or energy-producing fuels. OAG 68-58.

A natural gas pipeline company, required by the provisions of KRS 278.485 to furnish gas to homeowners living adjacent to its lines, but not required to serve the public in general, is not a public utility and is not required to collect the tax imposed by this section. OAG 68-179.

The school board may request the tax at any time. OAG 69-17.

The levy can become effective within a reasonable time after the provisions of this section have been complied with which would be 30 to 60 days. OAG 69-17.

A county public library is required to pay a school tax on utilities. OAG 69-202.

If the school board complies with KRS 160.593 and with 160.603, the fiscal court is mandatorily required to levy a utility gross receipts license tax, within 15 days of such request, at the rate requested. OAG 69-367.

The collection of the tax authorized by this section is limited to utility services furnished to customers located within the county and would not extend to utility services furnished customers in an adjoining state. OAG 69-576.

Energy furnished a company for manufacturing, processing, mining, or refining purposes would be exempt from the utility gross receipts tax only to the extent that the cost of the energy used exceeds three percent of the cost of production. OAG 70-757.

The housing authority of Lexington, under the provisions of KRS 80.190, is required to pay the utility gross receipts license tax for schools provided for in this section. OAG 70-788.

The procedure for reducing the tax is set out in KRS 160.635. OAG 71-323.

This section contains no tax exemptions for counties and other political subdivisions. OAG 72-460.

A city-owned utility, as well as a public utility, is required to pay the three percent utility gross receipts tax for schools when it has been enacted by the fiscal court upon request of the school district after notice and hearing in accordance with KRS 160.603. OAG 73-822.

A city-owned utility is not entitled to be paid the expense of collecting the utility gross receipts tax since it may pass the tax on to consumers through a rate increase which, in contrast to a public utility under the Public Service Commission, may be done without commission approval. OAG 73-822.

Whether or not a rural electric cooperative corporation increases its rates it must pay the utility gross receipts license tax for schools provided in KRS 160.613 since the exemption provided for in KRS 279.200 was repealed by the later enactment of KRS 160.613 and 160.617, leaving as the only exemption that provided for in KRS 160.613. OAG 74-507.

As the tax authorized by this section may be passed on to the customers directly as a rate increase, the amounts paid thereunder are not deductible by the utility for state income tax purposes. OAG 74-814.

The flat charge for the furnishing of energy to security lights would fall within the definition of gross receipts set out in this section and would subject such fee to the tax provided in the section. OAG 75-432.

A rural water district required to pay the utility gross receipts tax may increase its rates by 3%, but the increase shall be noted on the bills as a "rate increase for school taxes" and any expenses incurred in passing the tax on to the customers must be absorbed by the utility company. OAG 75-455.

The state, county and city governments are subject to the utility gross receipts license tax authorized by this section. OAG 76-269.

Where a water district, which purchases water from the municipal water and sewer commission, sells water to its own customers and bills them individually, the water district must pay the utility gross receipts license tax to the county finance officer on the amount it bills to its individual customers, but if the customers resell the water to commercial haulers, then the customers must pay the utility tax. OAG 76-269.

Since the utility gross receipts license tax is denominated a rate increase with only those exceptions set out herein, religious institutions would not be exempt from paying the tax. OAG 80-22.

A school board is not prohibited from decreasing the tax rate below the maximum three percent if, in the board's discretion, such a decrease is deemed warranted. OAG 80-59.

The local board of education has discretion to adopt a resolution calling for the levying of a utility gross receipts license tax for an indefinite number of years to come or to prescribe a predetermined number of years for existence of the tax. OAG 80-59.

Where a county board of education levied a utility gross receipts tax pursuant to an order authorized by this section, after which a recall petition was presented to the county board of elections requesting that the tax levy be placed on the ballot for voter approval or disapproval pursuant to KRS 160.597, the board of education's subsequent withdrawal of the tax levy order was a valid exercise of its discretion and the board of elections would not be required to still submit the recall question to the voters, since the necessity of the public having to bear the expense of holding such an election would serve no useful purpose. OAG 80-442.

The furnishing of telephonic communications services "within the county" is the taxable event and the basis of the county's jurisdiction to impose the gross receipts tax. OAG 82-45.

The installation, maintenance and continued provision of telephones to residents within a county must constitute the furnishing of "telephonic communications services" and the phrase "telephonic communications services" makes no distinction between local calls and intrastate long distance calls; consequently, there is no reasonable basis to assume that the legislature ever intended to make such a distinction. OAG 82-45.

Any intrastate long distance telephone call which is made to or from a telephone located within a county where the tax is applicable and which is billed to that telephone is subject to the utility gross receipts license tax and the customer's payment for such a call would then be included in "gross receipts" as defined in this section; any suggestion that such a payment should not be included in gross receipts is simply not supported by the plain language of this section since the only amounts that are to be exempted from gross receipts are specifically set out and those exemptions do not include receipts from intrastate long distance telephone calls. OAG 82-45.

Two school districts, which were a combined taxing district prior to 1976 amendment of KRS 160.593, were no longer a combined taxing district for the levying of the three percent utility gross receipts license tax, where, at no time after June 19, 1976, did the two school districts seek and obtain written approval from the State Board of Education to continue to levy an identical tax as a combined taxing district. OAG 82-146.

A religious institution is not exempt from paying the utility gross receipts license tax. OAG 82-190.

The 3% utility gross receipts license tax authorized by this section may not be collected on sewerage and thus the water usage and sewerage usage will have to be separated on the bill in order for the 3% to be charged only on the water usage. OAG 82-519.

Upon a merger of a county school district and an independent school district, the utility gross receipts license tax of three percent in effect in the county school district would become effective as to the entire merged district. OAG 83-325.

Telephonic communications services encompass telephonic equipment provided to consumers by telephone companies for a periodic fee which would be included in gross receipts subject to the tax. OAG 83-346.

Since cable television is not specifically named in this section, and does not fall within the meaning of "telephonic and telegraphic communications services" because it is not a form of communication provided by telephones or telegraphs, the tax does not apply to cable television. OAG 83-346.

Even though a utility company may raise its rates under KRS 160.617 to compensate for the utility gross receipts license tax levied by this section, this does not make it a tax levied on the customers; it remains the utility company's liability. Consequently, the Providence Housing Authority, a tax exempt organization, is not exempt from paying the added cost since it is not paying the utility gross receipts license tax, it is paying for utility services. OAG 83-445.

The utility gross receipts tax is not actually a tax on the consumer, but rather is a tax on the utility itself although the utility does have the statutory authority, under KRS 160.617, to pass on the tax to the consumer; there is no statutory basis for providing an exemption to any consumer. OAG 84-70.

Where the only road by which one could gain access to property located in a county which had a utility gross receipts tax was through the adjacent county, which did not have such tax, and where the Property Valuation Administrators of the two counties agreed to allow residents of such property to pay their property taxes in adjacent county in exchange for the county magistrate in that area caring for the roads and providing other services to these people, such arrangement had no valid legal basis and residents of the property were not entitled to exemption from utility gross receipts tax if their property was within the boundaries of the county school district, even though their children attended school in the adjacent county. OAG 84-70.

While this section does contain an exemption for utilities that are resold, it is obvious that the exemption applies only to utility purchases that are resold as utilities, in which event the reseller becomes liable for the tax as a supplier of the utility; in the case of a brick manufacturer, presumably the water purchases represent the cost of a raw material necessary for production; although the water may be a component of the finished bricks, nobody buys bricks to get the water out of them and therefore, the manufacturer may not be deemed to be reselling the water utility, and consequently its water purchases are taxable. OAG 92-22.

County is obligated to pay the cost of taxes imposed on utilities that are passed through to the county as a consumer. County is not entitled to a refund of such taxes that have been previously paid. OAG 93-17.

Cited: Baker v. Strode, 348 F. Supp. 1257 (W.D. Ky. 1971); Board of Educ. v. Fiscal Court, 485 S.W.2d 752 (Ky. 1972); Board of Elections v. Board of Educ., 635 S.W.2d 324 (Ky. Ct. App. 1982); Board of Educ. v. Independent Bd. of Educ., 681 S.W.2d 429 (Ky. Ct. App. 1984).

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Liability for tax.
3. Exemptions.
4. Regulations.
5. Refund.
6. Recall election.

1. Constitutionality.

The tax authorized under this section is for state purposes and, therefore, does not violate the provisions of Const., § 181. Lamar v. Board of Educ., 467 S.W.2d 143 (Ky. 1971).

Taxation of gross receipts from sales of gas which has moved in interstate commerce and is delivered direct to a Kentucky consumer is not an infringement of the commerce clause of the United States Constitution. Texas Gas Transmission Corp. v. Board of Educ., 502 S.W.2d 82 (Ky. Ct. App. 1973).

The county regulation requiring the payment of the Utility Gross Receipts License Tax by the direct payment method in order to claim the exemption under this section to the extent that the cost of energy or energy-producing fuels used by a manufacturer, processor, miner, or refiner exceeds three percent of its cost of production, did not violate Const., §§ 171 and 172, as the regulation was neither arbitrary nor unreasonable, and the taxpayer was not assessed for excess tax. Martin Marietta Aluminum, Inc. v. Hancock County Bd. of Educ., 806 F.2d 678 (6th Cir. 1986).

2. Liability for Tax.

Where a fiscal court levied a utility gross receipts license tax of three percent pursuant to KRS 160.613 and a utility therefore increased its customers' bills by three percent pursuant to KRS 160.617, the utility was the taxpayer liable for its consequent increase in gross receipts since such receipts were not exempt from sales tax and the increase could not be considered as a tax on customers in which the utility company merely acted as a collection agency. Luckett v. Electric & Water Plant Bd., 558 S.W.2d 611 (Ky. 1977).

3. Exemptions.

The county regulation requiring the payment of the Utility Gross Receipts License Tax in order to claim the exemption under subsection (1) of this section did not enlarge or limit the terms of the legislative enactment, and the county fiscal court had the authority to promulgate regulations for the collection of the tax; therefore, the regulation did not violate the law, and the taxpayer was not entitled to a refund for the overpaid tax on the ground that the regulation was invalid and it paid the excess tax involuntarily. Martin Marietta Aluminum, Inc. v. Hancock County Bd. of Educ., 806 F.2d 678 (6th Cir. 1986).

The regulation requiring the payment of the Utility Gross Receipts License Tax by the direct payment method in order to claim the exemption to the extent that the cost of energy or energy-producing fuels used by a manufacturer, processor, miner or refiner exceeds three percent of its cost of production did not conflict with the enabling statute. Martin Marietta Aluminum, Inc. v. Hancock County Bd. of Educ., 806 F.2d 678 (6th Cir. 1986).

A local regulation providing for a local utility tax for the purpose of collecting revenue for schools was invalid to the extent that it allowed taxpayers with an energy direct pay authorization (EDPA) to claim an exemption for energy costs that exceed three percent (3%) of the cost of production and provided no regulatory scheme for a refund of excess tax paid prior to the time a taxpayer is eligible to obtain an EDPA. Inland Container Corp. v. Mason County Bd. of Educ., 6 S.W.3d 374 (Ky. 1999).

4. Regulations.

Where the direct payment method caused less disruption in the finances of the county school district, the county regulation which gave refunds or credits to taxpayers who paid according to the direct payment method when their cost of energy or energy-producing fuels used exceeded three percent of their cost of production, but denied it to those who failed to use that method, did not violate the equal protection clause of the Fourteenth Amendment of the United States Constitution. Martin Marietta Aluminum, Inc. v. Hancock County Bd. of Educ., 806 F.2d 678 (6th Cir. 1986).

5. Refund.

Since the Utility Gross Receipts License Tax is a local tax and the moneys levied by the tax are not paid into the state treasury, KRS 134.580 would not provide a refund to a taxpayer. Martin Marietta Aluminum, Inc. v. Hancock County Bd. of Educ., 806 F.2d 678 (6th Cir. 1986).

6. Recall Election.

County Board of Education's levy of a utility gross receipts license tax, designed to produce additional revenue up to 15% of the base funding level, was subject to statutory recall election provisions. Board of Educ. v. Brooks, 824 S.W.2d 431 (Ky. Ct. App. 1992).

160.614. Tax on gross receipts from furnishing of cable television services.

(1) A utility gross receipts license tax initially levied by a school district board of education on or after July 13, 1990, shall be levied on the gross receipts derived from the furnishing of cable television services in addition to the gross receipts derived from the furnishing of the services enumerated in KRS 160.613.

(2) A utility gross receipts license tax initially levied by a school district board of education prior to July 13, 1990, shall be levied on the gross receipts derived from the furnishing of cable television services, in addition to the gross receipts derived from the furnishing of the services enumerated in KRS 160.613, if the school district board of education repeats the notice and hearing requirements of KRS 160.603, but only as to the levy of the tax on the gross receipts derived from the furnishing of cable television services.

(Enact. Acts 1990, ch. 476, Pt. III, § 115, effective July 13, 1990.)

Opinions of Attorney General. Any board complying fully with the provisions of this section and KRS 160.603 is not subject to the provisions of KRS 160.597. OAG 90-96.

The inclusion of cable television services under the utility gross receipts license tax is merely an enlargement of the class of utilities subject to the utility gross receipts license tax and not a new tax. OAG 90-96.

Cited: Storer Communications of Jefferson County, Inc. v. Oldham County Bd. of Educ., 850 S.W.2d 340 (Ky. Ct. App. 1993).

NOTES TO DECISIONS

Analysis

1. Application.
2. Recall election.

1. Application.

The county Board of Education argued that the enactment of this section indicated that the General Assembly intended that the recall provisions of KRS 160.597 would not be applicable to utility taxes levied to provide base or Tier One funding, but this section merely expanded the utilities subject to a permissive school funding levy to include cable television and in the absence of a strong statutory indication to the contrary, an express statute will not be deemed to have been abrogated by implication. Board of Educ. v. Brooks, 824 S.W.2d 431 (Ky. Ct. App. 1992).

2. Recall Election.

County Board of Education's levy of a utility gross receipts license tax, designed to produce additional revenue up to 15% of the base funding level, was subject to statutory recall election provisions. Board of Educ. v. Brooks, 824 S.W.2d 431 (Ky. Ct. App. 1992).

School district board of education's levy of a utility gross receipts license tax on cable television services, pursuant to subsection (2) of this section, was subject to the levy recall procedure set out in KRS 160.597. Owensboro Cablevision, Inc. v. Libs, 863 S.W.2d 331 (Ky. Ct. App. 1993).

160.615. Taxes payable, when.

The school taxes authorized by KRS 160.613 shall be due and payable monthly and shall be remitted on or before the twentieth day of the next succeeding calendar month.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 463, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1966, ch. 24, Part III, § 10) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 463, effective July 13, 1990.

Opinions of Attorney General. A board of education of a school district has no discretion as to the subject of the utility gross receipts license tax. OAG 66-551.

The monthly remittance of the gross receipts license tax for schools is mandatory and the Attorney General's office has no authority to approve a different period for the payment of the tax. OAG 67-403.

The levy can become effective within a reasonable time after the provisions of KRS 160.613 have been complied with which would be 30 to 60 days. OAG 69-17.

Cited: Martin Marietta Aluminum, Inc. v. Hancock County Bd. of Educ., 806 F.2d 678 (6th Cir. 1986).

160.617. Utility rate increase.

Notwithstanding the provisions of KRS 278.040(2), any utility required to pay the tax authorized by KRS 160.613 may increase its rates in any county in which it is required to pay the school tax by three percent (3%). Any utility so increasing its rates shall separately state on the bills sent to its customers the amount of such increase and shall identify such amount as: "Rate increase for school tax."

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 464, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1966, ch. 24, Part III, § 11; 1976, ch. 127, § 13) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 464, effective July 13, 1990.

Opinions of Attorney General. The utility company should pay the tax to the county finance officer who would then distribute the tax to the school districts in the county. OAG 66-420.

The fiscal court could by regulation require a periodic roster or list of legal users or customers from the utility company. OAG 66-420.

A board of education of a school district has no discretion as to the subject of the utility gross receipts license tax. OAG 66-551.

The county fiscal court would be the proper party to institute any legal action to enforce the collection and payment of the utility gross receipts license tax. OAG 66-599.

Since the utility gross receipts license tax for schools is on the vendor there is no exemption for agencies of the federal government. OAG 67-201.

The three percent tax can be passed on to the consumer, but if this option is exercised the special three percent must be identified on the utility bill. OAG 70-757.

Whether or not a rural electric cooperative corporation increases its rates it must pay the utility gross receipts license tax for schools provided in KRS 160.613 since the exemption provided for in KRS 279.200 was repealed by the later enactment of KRS 160.613 and 160.617, leaving the only exemption that provided for in KRS 160.613. OAG 74-507.

A utility may not impose Kentucky sales and use tax upon that part of the bill which is a license tax as there is nothing in the Kentucky Constitution which authorizes the levy of a tax on a tax. OAG 75-221.

Where a water district, which purchases water from the municipal water and sewer commission, sells water to its own customers and bills them individually, the water district must pay the utility gross receipts license tax to the county finance officer on the amount it bills to its individual customers, but if the customers resell the water to commercial haulers, then the customers must pay the utility tax. OAG 76-269.

Even though a utility company may raise its rates under this section to compensate for the utility gross receipts license tax levied by KRS 160.613, this does not make it a tax levied on the customers; it remains the utility company's liability. Consequently, the Providence Housing Authority, a tax exempt organization, is not exempt from paying the added cost since it is not paying the utility gross receipts license tax, it is paying for utility services. OAG 83-445.

The utility gross receipts tax is not actually a tax on the consumer, but rather is a tax on the utility itself although the utility does have the statutory authority, under this section, to pass on the tax to the consumer; there is no statutory basis for providing an exemption to any consumer. OAG 84-70.

Cited: Baker v. Strode, 348 F. Supp. 1257 (W.D. Ky. 1971); Texas Gas Transmission Corp. v. Board of Educ., 502 S.W.2d 82 (Ky. Ct. App. 1973).

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Increase in gross receipts.

1. Constitutionality.
This section does not impose an arbitrary or discriminatory tax classification in violation of Const., §§ 2, 171. Lamar v. Board of Educ., 467 S.W.2d 143 (Ky. 1971).

2. Increase in Gross Receipts.
Where a fiscal court levied a utility gross receipts license tax of three percent pursuant to KRS 160.613 and a utility therefore increased its customers' bills by three percent pursuant to KRS 160.617, the utility was the taxpayer liable for its consequent increase in gross receipts since such receipts were not exempt from sales tax and the increase could not be considered as a tax on customers in which the utility company merely acted as a collection agency. Luckett v. Electric & Water Plant Bd., 558 S.W.2d 611 (Ky. 1977).

160.620. Independent school district at Louisville and Jefferson County Children's Home. [Repealed.]

Compiler's Notes. This section (Acts 1946, ch. 198) was repealed by Acts 1966, ch. 255, § 283.

Excise Tax for Schools

160.621. Excise tax on individual income for schools.

There is hereby authorized an excise tax for schools not to exceed twenty percent (20%) on a county resident's state individual income tax liability as computed under KRS Chapter 141. The tax year, for purposes of this school tax, shall be the same as the individual's tax year for state income tax purposes. An individual is a resident of a county if, on December 31 of his tax year, he was domiciled in such county.
(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 465, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1966, ch. 24, Part III, § 12) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 465, effective July 13, 1990.

160.623. Regulations on excise. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1966, ch. 24, part III, § 13) was repealed by Acts 1976, ch. 127, § 23.

160.625. Excise tax returns — Payment — Form.

The school tax authorized by KRS 160.621 shall be self-assessing. Each county resident paying state individual income taxes under KRS Chapter 141 shall file, on or before July 1 of each year for calendar year taxpayers and six (6) months after the close of the tax year for all other taxpayers, with the proper tax collector, a return showing his state individual income tax liability and the amount of county school tax due. This school tax shall be remitted with the return and shall be delinquent six (6) months after the close of the individual's tax year. The district board of education shall furnish the necessary tax returns for the administration of this school tax.
(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 466, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1966, ch. 24, Part III, § 14; 1976, ch. 127, § 14) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 466, effective July 13, 1990.

160.627. Information on state income tax liability of school district residents — Revenue Cabinet as tax collector.

(1) The Revenue Cabinet shall, where that cabinet is not acting as such, make available to the tax collector, or to the school district, where the Revenue Cabinet is acting as tax collector under subsection (2) of this section, by October 1 of each year, such information as the tax collector or the school district may request concerning the state income tax liability of the school district residents. Such information shall be made available on a confidential basis as provided in KRS 131.190.

(2) The Revenue Cabinet, upon request by a school district, shall act as tax collector for the school tax authorized by KRS 160.621, and the Revenue Cabinet, where so acting, KRS 160.625 notwithstanding, may in its own discretion incorporate its tax collecting duties with those relative to collection of state individual income taxes under KRS Chapter 141, thereby making an individual's tax payment hereunder due along with his individual income tax payment and subject to law applicable to such as to time and manner of payment. Tax required to be paid under the provisions of this chapter shall be remitted together with the state income tax return. The Revenue Cabinet, when so acting, KRS 160.500 notwithstanding, shall remit school excise taxes collected to the school districts for which it is acting as tax collector in a reasonably timely and expeditious manner.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 467, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1966, ch. 24, Part III, § 15; 1976, ch. 127, § 15; 1982, ch. 98, § 2, effective July 15, 1982; 1982, ch. 105, § 2, effective March 24, 1982) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 467, effective July 13, 1990.

160.630. Schools at houses of reform and Louisville-Jefferson County Children's Home classed as common schools and entitled to benefits as such. [Repealed.]

Compiler's Notes. This section (Acts 1950, ch. 184, §§ 1-5) was repealed by Acts 1966, ch. 255, § 283.

160.631. Definitions for KRS 160.632. [Renumbered.]

Compiler's Notes. This section (Acts 1952, ch. 88, § 1; 1958, ch. 126, § 19) has been recompiled as KRS 158.135(1), (2).

160.632. Reimbursement of districts for school services to out-of-school district children — Reports — Payment. [Renumbered.]

Compiler's Notes. This section (Acts 1952, ch. 88, §§ 2 to 4) has been recompiled as KRS 158.135(3) to (5).

160.633. Deposit of excise tax proceeds.
The proceeds of the tax authorized by KRS 160.621 shall, except when collected pursuant to KRS 160.627(2), be deposited in a special fund until they have been distributed as provided in KRS 160.644.
(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 468, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1966, ch. 24, Part III, § 16; 1982, ch. 98, § 3, effective July 15, 1982; 1982, ch. 105, § 3, effective March 24, 1982) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 468, effective July 13, 1990.

GENERAL PROVISIONS ON SCHOOL TAXES

160.635. Continuance of tax until reduced — Expiration date.
School taxes imposed under the provisions of KRS 160.593 to 160.597, 160.601 to 160.633, and 160.635 to 160.648 shall remain in full force and effect from year to year until the board of education reduces the rate in effect; however, at the time the tax is first levied the board may set a date on which the tax shall expire.
(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 469, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1966, ch. 24, Part III, § 17, 1972, ch. 203, § 24; 1974, ch. 125, § 3; 1976, ch. 127, § 16; 1980, ch. 27, § 2, effective March 6, 1980) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 469, effective July 13, 1990.

Opinions of Attorney General. A school board is not prohibited from decreasing the tax rate below the maximum three percent if, in the board's discretion, such a decrease is deemed warranted. OAG 80-59.

160.637. Administrative costs — Revenue Cabinet collection procedure.

(1) "Requesting school districts" shall mean those school districts for which the Revenue Cabinet is requested to act as tax collector under the authority of KRS 160.627(2).

(2) Reasonable expenses not to exceed the actual costs of collection incurred by any tax collector, except the Revenue Cabinet, for the administration or collection of the school taxes authorized by KRS 160.605 to 160.611, 160.613 to 160.617, and 160.621 to 160.633 shall be reimbursed by the school district boards of education on a monthly basis or on the basis agreed upon by the boards of education and the tax collector. The expenses shall be borne by the school districts on a basis proportionate to the revenue received by the districts.

(3) The following shall apply only when the Revenue Cabinet is acting as tax collector under the authority of KRS 160.627(2):

(a) When the cabinet is initially requested to be the tax collector under KRS 160.627(2), the cabinet shall estimate the costs of implementing the administration of the tax so requested, and shall inform the requesting school district of this estimated cost. The requesting school district shall pay to the cabinet ten percent (10%) of this estimated cost referred to as "start-up costs" within thirty (30) days of notification by the cabinet. Subsequent requesting school districts shall pay their pro rata share, or ten percent (10%), whichever is less, of the unpaid balance of the initial "start-up costs" until the cabinet has fully recovered the costs. The payment shall be made within thirty (30) days of notification by the cabinet.

(b) The Revenue Cabinet shall also be reimbursed by each school district for its proportionate share of the actual operational expenses incurred by the cabinet in collecting the excise tax. The expenses, which shall be deducted by the Revenue Cabinet from payments to school districts made under the provisions of KRS 160.627(2), shall be allocated by the cabinet to school districts on a basis proportionate to the number of returns processed by the Revenue Cabinet for each district compared to the total processed by the Revenue Cabinet for all districts.

(c) All funds received by the cabinet under the authority of paragraphs (a) and (b) of this subsection shall be deposited into an account entitled the "school tax fund account," an account created within the restricted fund group set forth in KRS 45.305. The use of these funds shall be restricted to paying the cabinet for the costs described in paragraphs (a) and (b) of this subsection. This account shall not lapse.

(d) The cabinet may retain a portion of the school tax revenues collected in a special account entitled the "school tax refund account" which is an account created within the restricted fund group set forth in KRS 45.305. The sole purpose of this account shall be to authorize the Revenue Cabinet to refund school taxes. This account shall not lapse. Refunds shall be made in accordance with the provisions in KRS 134.580(4), and when the taxpayer has made an overpayment or a payment where no tax was due as defined in KRS 134.580(5), within four (4) years of payment.

(e) KRS 160.621 notwithstanding, when the cabinet is acting as tax collector under the authority of KRS 160.627(2), the requesting school district may enact the tax enumerated in KRS 160.621 only at the following rates: five percent (5%), ten percent (10%), fifteen percent (15%), and twenty percent (20%) on a school district resident's state individual income tax liability as computed under KRS Chapter 141.

(f) Beginning August 1, 1982, any school district which requests the cabinet to collect taxes under the authority of KRS 160.627(2) shall inform the cabinet of this request not less than one hundred fifty (150) days prior to January 1.

(g) The cabinet shall not be required to collect taxes authorized in KRS 160.621 of an individual when the cabinet is not pursuing collection of that individual's state income taxes. The cabinet shall not be required to collect or

defend the tax set forth in KRS 160.621 in any board or court of this state.

(h) Any overpayments of the tax set forth in KRS 141.020 or payments made when no tax was due may be applied to any tax liability arising under KRS 160.621 before a refund is authorized to the taxpayer. No individual's tax payment shall be credited to the tax set forth in KRS 160.621 until all outstanding state income tax liabilities of that individual have been paid.

(i) KRS 160.510 notwithstanding, the State Auditor shall be the only party authorized to audit the Revenue Cabinet with respect to the performance of its duties under KRS 160.621.

(Enact. Acts 1966, ch. 24, part III, § 18; 1972, ch. 203, § 25; 1976, ch. 127, § 17; 1982, ch. 105, § 4, effective March 24, 1982; 1984, ch. 111, § 92, effective July 13, 1984; 1988, ch. 324, § 1, effective July 15, 1988; 1990, ch. 177, § 5, effective July 13, 1990; 1990, ch. 476, Pt. V, § 470, effective July 13, 1990.)

Legislative Research Commission Note. (7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 1940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

160.640. Custodian of tax funds to give bond — Expense, how paid.

Any person having custody of the proceeds of any school tax authorized by KRS 160.605 to 160.611, 160.613 to 160.617, and 160.621 to 160.633 shall be required to secure a corporate surety bond in an amount to be set by the Kentucky Board of Education. The cost of the surety bond shall be considered a part of the cost of the administration of the school taxes authorized under KRS 160.605 to 160.611, 160.613 to 160.617, and 160.621 to 160.633.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 471, effective July 13, 1990; 1996. ch. 362, § 6, effective July 15, 1996.)

Compiler's Notes. This section (Enact. Acts 1966, ch. 24, Part III, § 19; 1972, ch. 203, § 26; 1976, ch. 127, § 18; 1978, ch. 155, § 82, effective June 17, 1978) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 471, effective July 13, 1994.

Collateral References. 78 C.J.S., Schools and School Districts, § 11.

160.642. Custodian to be audited.

Any person having custody of the proceeds of any school tax authorized by KRS 160.605 to 160.611, 160.613 to 160.617, 160.621 to 160.633 shall be audited as provided by KRS 156.265 to 156.285.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 472, effective July 13, 1990; 1994, ch. 296, § 7, effective July 15, 1994.)

Legislative Research Commission Note. (9/2/94). By letter of September 2, 1994, the Secretary of the Finance and Administration Cabinet, acting under KRS 48.500, advised the Reviser of Statutes of his determination "that no funds appropriated by the Executive Branch Appropriations Act for the 1995-96 biennium can be identified as having been appropriated for the purpose of implementing Sections 1 to 7 of House Bill No. 616, Chapter (296), Acts of the 1994 Regular Session of the General Assembly." Accordingly, the amendment to this statute contained in 1994 Ky. Acts ch. 296 is void under sec. 3(8) of that Act and has not been codified into the statute.

Compiler's Notes. This section (Enact. Acts 1966, ch. 24, Part III, § 20; 1972, ch. 203, § 27) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 472, effective July 13, 1990.

Collateral References. 78 C.J.S., Schools and School Districts, § 11.

160.644. Tax proceeds, apportionment to districts.

The school taxes and penalties collected under KRS 160.593 to 160.597, 160.601 to 160.633, 160.635 to 160.648 shall be distributed to the treasurer of the board of education of the school district. In the event that more than one (1) board of education within the county is participating in one (1) of these tax levies, the funds collected shall be distributed in proportion to the tax rate levied and the number of pupils in average daily attendance in the participating districts as shown by the final certification by the chief state school officer for the previous school year pursuant to the provisions of KRS 157.310 to 157.440.

(Enact. Acts 1966, ch. 24, part III, § 21; 1972, ch. 203, § 28; 1974, ch. 125, § 4; 1990, ch. 476, Pt. IV, § 237, effective July 13, 1990.)

Opinions of Attorney General. Where two school districts which were a combined taxing district prior to the 1976 amendment of KRS 160.593 never obtained written approval to continue to act as a combined district, this section was no longer applicable to the collection and distribution of the utility gross receipts tax as levied in one of the two districts. OAG 82-146.

NOTES TO DECISIONS

ANALYSIS

1. Utility tax.
2. —Levy.
3. —Distribution.

1. Utility Tax.

2. —Levy.

As presently worded, KRS 160.593 and this section do not prohibit an individual school district from unilaterally levying a utility tax on the territory within its school district. Moreover, the legislature obviously intended this practice to be the rule rather than the exception. Board of Educ. v. Independent Bd. of Educ., 681 S.W.2d 429 (Ky. Ct. App. 1984).

There is nothing in KRS 160.593 and this section to preclude a school district which had agreed with another district or districts to levy taxes from rescinding that agreement and levying the taxes unilaterally. Board of Educ. v. Independent Bd. of Educ., 681 S.W.2d 429 (Ky. Ct. App. 1984).

3. —Distribution.

If a utility tax is levied by an individual school district, all the money goes to that school board. If the tax is levied by multiple districts in combination, the money is distributed proportionately. Board of Educ. v. Independent Bd. of Educ., 681 S.W.2d 429 (Ky. Ct. App. 1984).

Collateral References. 78 C.J.S., Schools and School Districts, § 21.

160.646. Finance officer to administer tax — Appointment. [Repealed.]

Compiler's Notes. This section (Acts 1966, ch. 24, part III, § 22; 1972, ch. 203, § 29; 1974, ch. 125, § 5) was repealed by Acts 1976, ch. 127, § 23.

160.648. Penalty for failure to make returns or pay tax.

(1) Any person, individual, or corporation required by the provisions of KRS 160.605 to 160.611, 160.613 to 160.617, and 160.621 to 160.633 to file any return or report or furnish any information requested under the authority of KRS 160.605 to 160.611, 160.613 to 160.617, and 160.621 to 160.633 who fails to file such return or report or furnish such information on or before the date required shall pay a penalty in the amount of ten dollars ($10) for each such failure.

(2) Any person, individual, or corporation who fails to pay, on or before the due date, any school tax authorized by KRS 160.605 to 160.611, 160.613 to 160.617, and 160.621 to 160.633 and levied by the district board of education shall pay a penalty of one percent (1%) per month of the amount of such tax past due until paid.

(Repealed and reenact. Acts 1990, ch. 476, Pt. IV, § 473, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1966, ch. 24, Part III, § 23; 1972, ch. 203, § 30; 1976, ch. 127, § 19) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 473, effective July 13, 1994.

Opinions of Attorney General. Neither the school nor the tax collector can abate past due interest or penalty on local school taxes paid prior to or after filing suit for collection of the unpaid taxes, penalty and interest. OAG 88-46.

This section is not written in a permissive form but requires the payment of the penalty which has accrued at a rate of one percent per month until the taxes have been paid. OAG 88-46.

Cited: Martin Marietta Aluminum, Inc. v. Hancock County Bd. of Educ., 806 F.2d 678 (6th Cir. 1986).

NOTES TO DECISIONS

1. In General.

The statute does not allow a county board of education to negotiate the amount of tax, interest, or penalties owed by a taxpayer prior to collection of the tax. Inland Container Corp. v. Mason County Bd. of Educ., 6 S.W.3d 374 (Ky. 1999).

Collateral References. 79 C.J.S., Schools and School Districts, §§ 618, 627.

Kentucky Family Education Rights and Privacy Act

160.700. Definitions related to KRS 160.700 to 160.730.

As used in this chapter, unless the context otherwise requires:

(1) "Directory information" means the student's name, address, telephone listing, date and place of birth, participation in school recognized sports and activities, height and weight of members of athletic teams, dates of attendance, awards received, major field of study, and the most recent previous educational agency or institution attended by the student, contained in education records in the custody of the public schools;

(2) "Educational institution" means any public school providing an elementary and secondary education, including vocational;

(3) "Education record" means data and information directly relating to a student that is collected or maintained by educational institutions or by a person acting for an institution including academic records and portfolios; achievement tests; aptitude scores; teacher and counselor evaluations; health and personal data; behavioral and psychological evaluations; and directory data recorded in any medium including handwriting, magnetic tapes, film, video, microfiche, computer-generated and stored data, or data otherwise maintained and used by the educational institution or a person acting for an institution. "Education record" shall not include:

(a) Records of instructional, supervisory, and assisting administrative personnel which are in the sole possession of the maker and are not accessible or revealed to any other person except a substitute for any of those persons;

(b) Records maintained by a law enforcement unit of the educational institution that were created by that law enforcement unit for the purpose of law enforcement;

(c) In the case of persons who are employed by an educational agency or institution but who are not in attendance at that agency or institution, records made and maintained in the normal course of business which relate exclusively to that person in the person's capacity as an employee and are not available for use for any other purpose; or

(d) Records on a student who is eighteen (18) years of age or older, which are made, used, or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional for treatment of the student, and are not available to anyone other than persons providing this treatment, except a physician or other appropriate professional of the student's choice.

(4) "Eligible student" means a student, or a former student, who has reached the age of eighteen (18) or is pursuing an education beyond high school and therefore the permission or consent required of, and the rights accorded to the parents of the student shall thereafter be required of, and accorded to the student;

(5) "School official" means personnel employed in instructive and administrative positions with a school board or educational institution. Parents and other noneducational persons who are elected or appointed to school-based decision making councils or committees thereof, or other voluntary boards or committees shall not be considered school officials.

(Enact. Acts 1994, ch. 98, § 1, effective July 15, 1994.)

Opinions of Attorney General. A county school system did not violate the Open Records Act in denying a request to

inspect a videotape recording of an incident involving the requester's son that occurred on a county school bus; the videotape qualified for exclusion from public inspection under KRS 81.878(1)(k) and (1)(l) which incorporate the Family Educational Rights and Privacy Act and its state counterpart into the Open Records Act as it contained information on more than one student and such information was inextricably intermingled and therefore nonsegregable, and, therefore, the school system could not disclose the videotape in such a way as to meaningfully honor the rights of the requester to inspect the tape without violating the corresponding rights of the other students and their parents in nondisclosure of the tape to third parties. OAG 99-ORD-217.

160.705. Confidentiality of students' educational records — Protection and preservation of records.

(1) Education records of students in the public educational institutions in this state are deemed confidential and shall not be disclosed, or the contents released, except under the circumstances described in KRS 160.720.

(2) School officials shall take precautions to protect and preserve all education records including records generated and stored in the education technology system.

(Enact. Acts 1994, ch. 98, § 2, effective July 15, 1994.)

Opinions of Attorney General. A county public school system violated the Open Records Act in partially denying a request for records relating to traditional school enrollment policies and residency requirements; the school system's reliance on KRS 160.705 et seq. and 20 U.S.C. § 1232g, incorporated into the Open Records by operation of KRS 61.878(1)(k) and (1)(l), was misplaced. OAG 00-ORD-119.

160.710. Notification of privacy rights — Written policies.

Parents or eligible students shall be informed of the rights of privacy and confidentiality accorded student education records. The educational institution shall determine the means and method of notice and adopt written policies consistent with the state law.

(Enact. Acts 1994, ch. 98, § 3, effective July 15, 1994.)

160.715. Inspection and review of records — Procedures — Fees for copying permitted.

(1) Parents of students or eligible students attending public institutions or who have been in attendance shall have the right to inspect and review student education records within a reasonable time of making a request to inspect.

(2) Educational institutions shall establish procedures for honoring requests for inspection within a reasonable time. Fees for copying materials and documents may be charged.

(Enact. Acts 1994, ch. 98, § 4, effective July 15, 1994.)

160.720. Consent to release of records — Release without consent — Waiver by student — Records of release.

(1) Parents or eligible students may consent to the release of written documents by completing and signing forms devised by the educational institution identifying the records to be released, the date of the release, the party to whom the release is granted, and the purpose of the request.

(2) Educational institutions shall not permit the release or disclosure of records, reports, or identifiable information on students to third parties other than directory information as defined in KRS 160.700, without parental or eligible student consent except to:

(a) Other school officials, including teachers, with legitimate education interests and purposes.

(b) Other school systems, colleges, and universities to which the student has sought enrollment and transfer, or from which the student was graduated.

(c) Federal, state, or local officials who carry out a lawful function and who are authorized to receive this information pursuant to statute or regulation. This authority includes requests from any agency of the federal and state government for the purpose of determining a student's eligibility for military service.

(d) Federal, state, or local officials to whom the information is required to be disclosed or reported.

(e) Individuals or organizations conducting legitimate studies, surveys, and data collection in such a manner so as not to permit personal identification of the students or parents.

(f) Accrediting organizations enlisted to carry out accrediting functions.

(g) Parents of a dependent student of the parent as defined in Section 152 of the Internal Revenue Code of 1954 (26 U.S.C. sec. 152).

(3) Students may waive the right to inspect confidential recommendations relating to admission to educational institutions, application for employment, and receipt of an honor or honorary recognition. In the case of admissions, the waiver of release shall apply if the student, upon request, is notified of names of persons or organizations making confidential recommendations, and those recommendations are used solely for the purpose intended.

(4) Records of release for information contained in education records, other than directory information indicating the agency, institution, or organization that has requested or has had access to student education records and indicating the purpose of the release or inspection shall be maintained by the educational institution. These records of release shall be limited to inspection by parents, eligible students, school officials and their assistants who are responsible for custody of education records; by school officials within the educational institution who have legitimate educational interests; and by federal and state officials and representatives conducting audits and evaluations of the education programs or in connection with the enforcement of federal or state legal requirements relating to the programs.

(Enact. Acts 1994, ch. 98, § 5, effective July 15, 1994.)

Cited: Doe v. Knox County Bd. of Educ., 918 F. Supp. 181 (E.D. Ky. 1996).

160.725. Directory information on student — Student's right to restrict release — Official recruiters' access to public high school campuses and student directory information.

(1) An educational institution may publish and release to the general public directory information relating to a student. An educational institution shall give public notice of the categories of directory information that it has designated as directory information with respect to each student in attendance and shall allow a reasonable time after the notice has been given for a parent or eligible student to inform the institution that any or all of the information designated should not be released without prior consent.

(2) (a) If an educational institution provides access to its campus or its student directory information to persons or groups which make students aware of occupational or educational options, the board shall provide access on the same basis to official recruiting representatives of:
1. The Armed Forces of the United States;
2. The Kentucky Air National Guard;
3. The Kentucky Army National Guard; and
4. The service academies of the Armed Forces of the United States.

(b) Local secondary schools shall provide the student directory information to official recruiting representatives by September 30 of each year.

(c) Student directory information given to official recruiting representatives may be used for the purpose of informing students of educational and career opportunities available in the Armed Forces of the United States, the Kentucky Air National Guard, the Kentucky Army National Guard and the service academies of the Armed Forces of the United States.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 433, effective July 13, 1990; 1994, ch. 98, § 6, effective July 15, 1994; 2002, ch. 39, § 1, effective July 15, 2002.)

Compiler's Notes. This section as enacted (Enact. Acts 1972, ch. 84, § 2, effective July 15, 1982) was codified as KRS 160.297, was repealed and reenacted by Acts 1990, ch. 476, Part V, § 473, effective July 13, 1990, was amended by 1994, ch. 98, § 6 and was renumbered by the Reviser of Statutes as this section effective July 15, 1994, pursuant to KRS 7.136(1).

160.730. Challenge of contents of record — Procedure.

(1) Parents or eligible students may challenge the content of a student record to ensure that the record or report is not inaccurate, misleading, or otherwise in violation of privacy or other rights of the student. The right to challenge shall also provide the opportunity for rebuttal to, and the correction, deletion, or expunction of, any inaccurate, misleading, or inappropriate information.

(2) A challenge to the record may take the form of an informal discussion among the parents, student, and school officials. Any agreement between these parties shall be reduced in writing, signed by all parties, and placed in the student's records. If no agreement can be reached, either party may request a formal hearing to the challenge which shall be conducted in accordance with procedures established by rules and regulations of the Department of Education and the Council on Postsecondary Education for educational institutions under their jurisdiction. The rules and regulations shall provide that a formal hearing be conducted within a reasonable time after the request for a hearing; and an official of the educational institution who has no direct interest in the outcome of the challenge shall conduct the hearing and render a decision on the challenge within a reasonable time after the hearing. All parties to the challenge shall be afforded a full and fair opportunity to present evidence relevant to the issues raised. Furthermore, school officials shall take the necessary action to implement the decision.

(Enact. Acts 1994, ch. 98, § 7, effective July 15, 1994; 1997 (1st Ex. Sess.), ch. 1, § 64, effective May 30, 1997.)

PENALTIES

160.990. Penalties.

(1) Any person who violates any of the provisions of KRS 160.250 shall be fined not more than two hundred dollars ($200).

(2) Any person who violates any of the provisions of KRS 160.300 shall be fined not less than ten ($10) nor more than fifty dollars ($50).

(3) Any superintendent who violates any of the provisions of KRS 160.350 to 160.400 shall be fined not less than one hundred ($100) nor more than one thousand dollars ($1,000) for each offense, and the violation is grounds for revocation of his certificate.

(4) Any person who violates any of the provisions of KRS 160.550 shall be fined not less than fifty ($50) nor more than one hundred dollars ($100), and shall be subject to removal from office.

(5) The Kentucky Board of Education may withhold funds allotted under KRS 157.350 from any local district which violates subsection (3) of KRS 160.380 in the amount of one thousand dollars ($1,000) per violation.

(6) In addition to penalties listed in this section, any local district which violates subsection (3) of KRS 160.380 shall be fined not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000).

(4399-25, 4399-34, 4399-36, 4399-45, 4399-55: amend. Acts 1988, ch. 345, § 7, effective July 15, 1988; 1990, ch. 476, Pt. II, § 86, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

Compiler's Notes. The reference to State Board of Elementary and Secondary Education in this section has been changed to Kentucky Board of Education on authority of Acts 1996, ch. 362, § 6, effective July 15, 1996.

Cited: White v. Board of Educ., 263 Ky. 91, 91 S.W.2d 539 (1936).

NOTES TO DECISIONS

1. Prior Written Approval.

KRS 160.550(2), the "prior written approval" statute, does

not provide an independent basis for removing school board members from office under subsection (4) of this section. Hale v. Combs, 30 S.W.3d 146 (Ky. 2000).

160.991. Accepting bribe for employment of school employee. [Repealed.]

Compiler's Notes. This section (4399-58) which was formerly compiled as KRS 160.600, was renumbered, and was repealed by Acts 1974, ch. 406, § 336, effective January 1, 1975.

CHAPTER 161

SCHOOL EMPLOYEES—TEACHERS' RETIREMENT AND TENURE

SECTION.

CERTIFICATION OF SCHOOL EMPLOYEES

161.010. Definitions for KRS 161.020 to 161.120.
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161.030. Certification authority — Assessments of beginning teachers and teachers seeking additional certification — Conditional certificates — Temporary certificates — Internship — Beginning teacher committee — Resource teachers.
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161.051. Braille requirements for teacher certification of blind and visually impaired students.
161.052. Certification of teachers for gifted education.
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161.060. [Repealed.]
161.070. [Repealed.]
161.080. [Repealed.]
161.090. [Repealed.]
161.095. Continuing education for teachers.
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INTERSTATE AGREEMENT ON QUALIFICATION OF EDUCATIONAL PERSONNEL

161.124. Interstate Agreement on Qualification of Educational Personnel.
161.126. Designation of executive director of the Education Professional Standards Board as state official under agreement — Handling contracts under agreement.
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161.131. Legislative findings and goals on national board certification.
161.132. Definitions for KRS 161.131 to 161.134 and KRS 157.395 and 161.123.
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161.145. Cost of physical examination required for employment of classified personnel.
161.148. Use of volunteer personnel — Criminal records check — Orientation — Exception.
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161.151. Removal of references to criminal allegations, not resulting in charge or conviction from school employee's personnel file — Nonpreclusion of separate investigation.
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161.156. [Repealed.]
161.157. Credits allowed transferred employee of Department of Education or Education Professional Standards Board.
161.158. Group insurance — Board's termination of participation in state health plan — Deductions from salaries.
161.159. Adoption of rules and regulations to implement life insurance program.
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161.162. [Repealed.]
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161.350. [Repealed.]
161.360. [Repealed.]
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161.450. [Repealed.]
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161.510. [Repealed.]
161.515. Out-of-state service credit — Contribution — Kentucky Peace Corps and federal Peace Corps service credit.
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161.625. [Repealed.]
161.630. Benefit options — Change in benefit option — Beneficiary redesignation after retirement.
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161.700. Funds exempt from taxation and process — Taxability after December 31, 1997 — Benefits not considered marital property.
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161.710. Local system merged with state system.
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161.714. Inviolable contract — Exception.
161.715. [Repealed.]
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TEACHERS' TENURE

161.720. Definitions for teachers' tenure law.
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161.780. Termination of contract by teacher or superintendent — Resignation binding as of date of acceptance.
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161.795. Investigation of and records that school employee acted improperly relating to statewide assessment program — Certain records to be expunged.
161.800. Suspension of contracts on reducing number of teachers.
161.810. Continuance of status in case of annexation or consolidation of schools.

SECTION.

CIVIL SERVICE FOR NONINSTRUCTIONAL EMPLOYEES OF BOARD OF EDUCATION OF CITY OF SECOND CLASS

161.821. [Repealed.]
161.822. [Repealed.]
161.823. [Repealed.]
161.824. [Repealed.]
161.825. [Repealed.]
161.826. [Repealed.]
161.827. [Repealed.]
161.828. [Repealed.]
161.829. [Repealed.]
161.830. [Repealed.]
161.831. [Repealed.]
161.832. [Repealed.]
161.833. [Repealed.]
161.834. [Repealed.]
161.835. [Repealed.]
161.836. [Repealed.]
161.837. [Repealed.]
161.841. [Repealed.]

PENALTIES

161.990. Penalties.

CERTIFICATION OF SCHOOL EMPLOYEES

161.010. Definitions for KRS 161.020 to 161.120.
As used in KRS 161.020 to 161.120:

(1) "Continuing education" means study or other activities to provide professional improvement and personal growth for certified teachers throughout their career. It may include, but shall not be limited to, university courses, an advanced degree, or a combination of university courses, field-based experience, individual research, and approved professional development activities, pursuant to KRS 156.095.

(2) "Standard college or university" means an institution accredited by the Southern Association of Colleges and Schools or by one of the other recognized regional accrediting agencies or by the Education Professional Standards Board.

(3) "College or university work of graduate grade" means academic preparation which extends beyond the usual four (4) year program of undergraduate studies leading to a bachelor's degree and which is completed at a college or university accredited for the graduate level.

(4) "Student teacher" means an adult who has completed the prerequisite teacher preparation as prescribed by the accredited teacher education institution in which he or she is enrolled, and who is jointly assigned by the institution and a local school district to engage in a period of practice teaching under the direction and supervision of the administrative and teaching staff of the school district and the institution.

(5) "Teacher's aide" means an adult school employee who works under the direction of the professional administrative and teaching staff in performing, within the limitations of his or her training and competency, certain instructional and noninstructional functions in the school program including, but not limited to, clerical duties, tutoring individual pupils, leading pupils in recre-

ational activities, conducting pupils from place to place, assisting with classroom instruction as directed by the teacher, aiding the school librarian, and preparing and organizing instructional materials and equipment.

(4502-2: amend. Acts 1972, ch. 178, § 1; 1978, ch. 55, § 1, effective June 17, 1978; 1985 (1st Ex. Sess.), ch. 10, § 38, effective October 18, 1985; 1988, ch. 38, § 1, effective July 15, 1988; 1990, ch. 476, Pt. II, § 53, effective July 13, 1990; 1996, ch. 298, § 2, effective July 15, 1996; 2001, ch. 137, § 5, effective June 21, 2001.)

Cross-References. Conduct of schools, KRS Ch. 158.
Education of the physically handicapped, KRS Ch. 167.
Instructional leader's certification, KRS 156.101.
Legal notices, KRS Ch. 424.
Military leave, annual, KRS 61.396.
School districts, KRS Ch. 160.
School property and buildings, KRS Ch. 162.
Junior Reserve Officers Training Corps certification, 704 KAR 20:260.
Rank I classification, 704 KAR 20:015.

Opinions of Attorney General. Although conservation officers cannot act as teachers, they may act as guest lecturers on conservation without being licensed as teachers if a certified teacher remains in the classroom and maintains control of the class. OAG 63-37.

A student teacher may not legally take charge of a classroom in the absence of the regular teacher. OAG 63-269.

In view of the description of duties and definition of "paraprofessional" and "teacher aide" given in subsections (6) and (7) (now subsections (4) and (5)) of this section, and the fact that KRS 161.044 (1), (2), and (3) refers to such persons performing "supplementary instructional and noninstructional activities with pupils," and that while reference is made to "provisions established by the State Board of Education," such regulations have not been prepared and adopted, it would appear that a teacher's aide cannot conduct a class, even with a teacher present. OAG 73-206.

Since the State Board of Education has adopted regulations relating to paraprofessional personnel (704 KAR 15:080), a local board of education could prepare a job description outlining the duties of a paraprofessional which would include some limited teaching responsibilities if the paraprofessional held a valid and appropriate teaching certificate; however, the instructional assistance of a paraprofessional with a teaching certificate may not be permitted to supplant the day to day teaching responsibilities of the regular classroom teacher. OAG 76-555.

NOTES TO DECISIONS

1. Limited or Continuing Contract.

Under Teachers' Tenure Act the county board of education could enter into a limited or continuing contract with teacher. Beverly v. Highfield, 307 Ky. 179, 209 S.W.2d 739 (1948).

Collateral References. 68 Am. Jur. 2d, Schools, §§ 118-120.

161.011. Definitions of "classified employee" and "seniority" — Job classifications and minimum qualifications — Requirement of written contracts and written personnel policies — Reduction in force — Registry of vacant classified employee positions — Review of local board policies by Department of Education.

(1) (a) "Classified employee" means an employee of a local district who is not required to have certification for his position as provided in KRS 161.020; and

(b) "Seniority" means total continuous months of service in the local school district, including all approved paid and unpaid leave.

(2) The commissioner of education shall establish by January, 1992, job classifications and minimum qualifications for local district classified employment positions which shall be effective July 1, 1992. After June 30, 1992, no person shall be eligible to be a classified employee or receive salary for services rendered in that position unless he holds the qualifications for the position as established by the commissioner of education.

(3) No person who is initially hired after July 13, 1990, shall be eligible to hold the position of a classified employee or receive salary for services rendered in such position, unless he holds at least a high school diploma or high school certificate of completion or GED certificate, or he shows progress toward obtaining a GED. To show progress toward obtaining a GED, a person shall be enrolled in a GED program and be progressing satisfactorily through the program, as defined by administrative regulations adopted by the State Board for Adult and Technical Education.

(4) Local school districts shall encourage classified employees who were initially hired before July 13, 1990, and who do not have a high school diploma or a GED certificate to enroll in a program to obtain a GED.

(5) Local districts shall enter into written contracts with classified employees. Contracts with classified employees shall be renewed annually except contracts with the following employees:

(a) An employee who has not completed four (4) years of continuous active service, upon written notice which is provided or mailed to the employee by the superintendent, no later than April 30, that the contract will not be renewed for the subsequent school year. Upon written request by the employee, within ten (10) days of the receipt of the notice of nonrenewal, the superintendent shall provide, in a timely manner, written reasons for the nonrenewal.

(b) An employee who has completed four (4) years of continuous active service, upon written notice which is provided or mailed to the employee by the superintendent, no later than April 30, that the contract is not being renewed due to one (1) or more of the reasons described in subsection (7) of this section. Upon written request within ten (10) days of the receipt of the notice of nonrenewal, the employee shall be provided with a specific and complete written statement of the grounds upon which the nonrenewal is based. The employee shall have ten (10) days to respond in writing to the grounds for nonrenewal.

(6) Local districts shall provide in contracts with classified employees of family resource and youth services centers the same rate of salary adjustment as provided for other local board of education employees in the same classification.

(7) Nothing in this section shall prevent a superintendent from terminating a classified employee for incompetency, neglect of duty, insubordination, inefficiency, misconduct, immorality, or other reasonable grounds which are specifically contained in board policy.

(8) The superintendent shall have full authority to make a reduction in force due to reductions in funding, enrollment, or changes in the district or school boundaries, or other compelling reasons as determined by the superintendent.

(a) When a reduction of force is necessary, the superintendent shall, within each job classification affected, reduce classified employees on the basis of seniority and qualifications with those employees who have less than four (4) years of continuous active service being reduced first.

(b) If it becomes necessary to reduce employees who have more than four (4) years of continuous active service, the superintendent shall make reductions based upon seniority and qualifications within each job classification affected.

(c) Employees with more than four (4) years of continuous active service shall have the right of recall positions if positions become available for which they are qualified. Recall shall be done according to seniority with restoration of primary benefits, including all accumulated sick leave and appropriate rank and step on the current salary schedule based on the total number of years of service in the district.

(9) Local school boards shall develop and provide to all classified employees written policies which shall include, but not be limited to:

(a) Terms and conditions of employment;

(b) Identification and documentation of fringe benefits, employee rights, and procedures for the reduction or laying off of employees; and

(c) Discipline guidelines and procedures that satisfy due process requirements.

(10) Local school boards shall maintain a registry of all vacant classified employee positions that is available for public inspection in a location determined by the superintendent and make copies available at cost to interested parties. If financially feasible, local school boards may provide training opportunities for classified employees focusing on topics to include, but not be limited to, suicide prevention, abuse recognition, and cardiopulmonary resuscitation (CPR).

(11) The evaluation of the local board policies required for classified personnel as set out in this section shall be subject to review by the Department of Education while it is conducting district management audits pursuant to KRS 158.785.

(Enact. Acts 1988, ch. 388, § 1, effective July 15, 1988; 1990, ch. 476, Pt. II, § 54, effective July 13, 1990; 1994, ch. 25, § 1, effective July 15, 1994; 1998, ch. 590, § 1, effective April 14, 1998; 2000, ch. 271, § 2, effective March 31, 2000; 2002, ch. 5, § 1, effective July 15, 2002.)

Legislative Research Commission Note. (7/5/2001). Previous references to "subsection (6) of this section" in subsection (5(b) of this statute were not changed to "subsection (7)" when the subsections renumbered in 2000 Ky. Acts ch. 271, sec. 2. It is clear from the context that this should have been done but was inadvertently overlooked. This omission has been corrected by the reviser of statutes under KRS 7.136(1)(e) and (h).

Cross-References. Qualifications for progressing satisfactorily through a GED program, 785 KAR 1:110.

Opinions of Attorney General. Anyone employed as a bus driver or cook initially before or on July 13, 1990, does not need a high school diploma or GED certificate; anyone initially employed after that date may satisfy the requirement by enrolling in a GED program and proceeding under the schedule for satisfactory progress set by the Board of Adult, Vocational Education and Vocational Rehabilitation. OAG 90-103.

"Certified employee" means teacher, principal, superintendent, director of pupil personnel, and any employee who supervises any such employee or who has any type of responsibility for instruction or teaching of pupils; school bus drivers and cooks are not "certified employees" and therefore are "classified employees." OAG 90-103.

The opinion in OAG 92-133 is overruled since the 1994 General Assembly enacted House Bill 50 (Enact. Acts 1994, ch. 25) which provides local school boards with the authority to adopt a seniority policy for classified employees. OAG 94-37.

161.017. Executive director of Education Professional Standards Board.

(1) The Education Professional Standards Board, established in KRS 161.028, shall be headed by an executive director who shall be responsible for the day to day operations of the board including the following:

(a) Setting up appropriate organizational structures and personnel policies for approval by the board;

(b) Appointing all staff, including the deputy executive director;

(c) Preparing annual reports on the board's program of work;

(d) Carrying out policy and program directives of the board;

(e) Preparing and submitting to the board for its approval a proposed biennial budget; and

(f) Performing all other duties and responsibilities assigned by state law.

(2) When it is necessary to fill the position of executive director, the board shall conduct a comprehensive search for candidates and may employ a search firm if the board deems it necessary. The executive director shall possess broad-based experience in education and teacher development, and have demonstrated leadership skills in addition to other qualifications to be established by the board as authorized in KRS 161.028.

(3) With approval of the board, the executive director may enter into agreements with any state agency or political subdivision of the state, any postsecondary education institution, or any other person or entity to enlist assistance to implement the duties and responsibilities of the board.

(4) The executive director shall have access to the papers, books, and records of education personnel as part of an inquiry or investigation relating to disciplinary actions against a certified employee.
(5) Pursuant to KRS 161.120, the executive director, on behalf of the board, may issue administrative subpoenas for the attendance of witnesses and the production of documents relevant to disciplinary cases under consideration. Compliance with the subpoenas shall be enforceable by the Circuit Court in Franklin County.

(Enact. Acts 2001, ch. 137, § 1, effective June 21, 2001; 2002, ch. 288, § 2, effective July 15, 2002.)

161.020. Certificates required of school employees — Filing requirements — Validity and terms for renewal.

(1) No person shall be eligible to hold the position of superintendent, principal, teacher, supervisor, director of pupil personnel, or other public school position for which certificates may be issued, or receive salary for services rendered in the position, unless he or she holds a certificate of legal qualifications for the position, issued by the Education Professional Standards Board.
(2) No person shall enter upon the duties of a position requiring certification qualifications until his or her certificate has been filed or credentials registered with the local district employer.
(3) The validity and terms for the renewal of any certificate shall be determined by the laws and regulations in effect at the time the certificate was issued.

(4502-6, 4502-10, 4502-11, 4503-2: amend. Acts 1978, ch. 56, § 1, effective June 17, 1978; 1990, ch. 476, Pt. II, § 55, effective July 13, 1990; 2001, ch. 137, § 6, effective June 21, 2001.)

Cross-References. Approval for teaching business education, grades 5—8, 704 KAR 20:570.
Approval for teaching in the primary school program, 704 KAR 20:660.
Art at elementary level on high school certification, 704 KAR 20:105.
Certificate endorsements for certain subjects, 704 KAR 20:057.
Certificates for teachers of exceptional children — communication disorders, 704 KAR 20:500.
Certification for early elementary school principal, grades K—4, 704 KAR 20:380.
Certification for elementary grades, 704 KAR 20:290.
Certification for middle grade school principal, grades 5—8, 704 KAR 20:390.
Certification for school superintendent, 704 KAR 20:420.
Certification for secondary school principal, grades 9—12, 704 KAR 20:400.
Certification for supervisor of instruction, grades K—12, 704 KAR 20:410.
Certification for teaching in the secondary grades, 704 KAR 20:070.
Certification requirements for teachers of exceptional children, 704 KAR 20:740.
Dating of certification, 704 KAR 20:056.
Director of special education, 704 KAR 20:198.
District director, 702 KAR 6:020.
Driver education, 704 KAR 20:115.
Elementary level on high school certification, 704 KAR 20:095.
Elementary teacher's endorsement for middle grades, 704 KAR 20:076.
Emergency certification and out-of-field teaching, 704 KAR 20:120.
Endorsement for individual intellectual assessment, 704 KAR 20:330.
Endorsement for teachers of computer courses, 704 KAR 20:340.
Endorsement for teachers of gifted education, 704 KAR 20:280E.
Examination prerequisites for principal certification, 704 KAR 20:460.
Experimental program teachers, 704 KAR 20:125.
Fifth-year Program for renewal of teaching certificates, 704 KAR 20:020.
Foreign teachers serving under the teacher exchange program, 704 KAR 20:212.
Guidance counselor, provisional and standard certificates, 704 KAR 20:530.
Guidance counselors, 704 KAR 20:130.
Health education at the elementary school level, 704 KAR 20:520.
Hearing impaired; endorsement for teaching, 704 KAR 20:229.
Hearing impaired; teacher's provisional certificate, 704 KAR 20:230.
High school teacher's endorsement for middle grades, 704 KAR 20:078.
Industrial education teachers, 704 KAR 20:222.
Interdisciplinary early childhood education, birth to primary, 704 KAR 20:084.
Junior Reserve Officers Training Corps certification, 704 KAR 20:260.
Kentucky standards for preparation-certification of professional school personnel program approval, 704 KAR 20:005.
Kentucky teaching certificates, 704 KAR 20:670.
Kindergarten teachers, 704 KAR 20:135.
Learning and behavior disorders; teacher's provisional certificate, 704 KAR 20:235.
Master of Arts in teaching, 704 KAR 20:560.
Music at elementary level on high school certification, 704 KAR 20:160.
Music, general, at elementary level, 704 KAR 20:161.
Music, provisional certificate, 704 KAR 20:159.
Part-time adjunct instructor certificate, 704 KAR 20:300.
Physical education at elementary level on high school certification, 704 KAR 20:175.
Planned Fifth-year Program, 704 KAR 20:021.
Principal Intern Program, 704 KAR 20:470.
Probationary certificate for teachers of children, birth to primary, 704 KAR 20:082.
Probationary certificate for teachers of exceptional children, 704 KAR 20:510.
Probationary certificate for teachers of technology education, 704 KAR 20:475.
Professional certificate for directors of pupil personnel and assistants, 704 KAR 20:540.
Professional certificate for instructional leadership — school principal, all grades, 704 KAR 20:710.
Professional certificate for teaching the moderately and severely disabled, 704 KAR 20:251.
Professional school certificate for college faculty, 704 KAR 20:550.
Proficiency evaluation, 704 KAR 20:030.
Provisional middle grades certificate, 704 KAR 20:080.
Qualifications for professional school positions, 704 KAR 20:165.
Reading specialists, 704 KAR 20:180.
Recency and certification fees, 704 KAR 20:045.

Recruitment plan for position of school media librarian, 704 KAR 20:490.

Renewals, 704 KAR 20:060.

School media librarians, endorsement, 704 KAR 20:146.

School media librarians, provisional certificate, 704 KAR 20:145.

School nurse, 704 KAR 20:132.

School psychologist, 704 KAR 20:128.

Secondary school level on elementary certification, 704 KAR 20:075.

Social workers' provisional certification, 704 KAR 20:195.

Social workers' standard certification, 704 KAR 20:194.

Standards for certified school personnel, 704 KAR 20:730.

Substitute teachers and emergency school personnel, 704 KAR 20:210.

Teaching English as a second language, 704 KAR 20:275.

Visually impaired; teaching endorsement, 704 KAR 20:255.

Vocational education administrators, 704 KAR 20:215.

Kentucky Bench & Bar. Brooks, Disciplinary Action Against School Teachers, Vol. 42, No. 4, Fall 1995, Ky. Bench & Bar 6.

Opinions of Attorney General. A school psychologist does not fall within the group of school personnel excluded from the provisions of KRS Ch. 319 by KRS 319.015(4) and consequently, an individual may not be employed as a school psychologist without being a licensed psychologist pursuant to the provisions of that chapter. OAG 67-180.

Since a school district is a public agency under the Open Records Law and the certificates required by this section are public records as defined in KRS 61.870(2), denial of a request to inspect certificates required by this section to be filed with the board of education was improper under the Open Records Law, except that information, if any, on the certificates of a personal nature, such as social security numbers, home addresses and telephone numbers, need not be released. OAG 85-109.

Notwithstanding the apparent legislative intent of this section to make the revocation of any instructional leader's certificate contingent upon laws then in force, KRS 156.101 clearly controls revocation of an instructional leader's certificate; therefore a certificate of an instructional leader may be revoked for failure to obtain the hours of intensive training required by KRS 156.101. All instructional leaders, including those who received a certificate prior to the effective date of the statute, are required to comply with KRS 156.101. OAG 88-37.

The legislative purpose of the instructional leadership program, set forth in subsection (1) of KRS 156.101, was to develop a program which would result in improvement in the quality of performance of principals, assistant principals, supervisors of instruction, guidance counselors or directors of special education. Practically, this prescribed program of improvement could not be effective if it did not supersede this section. OAG 88-37.

The requirement of subsection (3) of this section, that certificates be considered pursuant to the application of the laws which were in effect at the time of the granting of the certificate, is not in harmony with the instructional leadership program. Therefore, subsection (3) of this section is controlling except when an instructional leader fails to comply with the instructional leader improvement program. At such time, the state board may exercise its power of revocation granted by subsection (4) of KRS 156.101. OAG 88-37.

"Certified employee" means teacher, principal, superintendent, director of pupil personnel, and any employee who supervises any such employee or who has any type of responsibility for instruction or teaching of pupils; school bus drivers and cooks are not "certified employees" and therefore are "classified employees." OAG 90-103.

The Cabinet for Workforce Development was directed to release the employment applications and resumes of the named employees of a state vocational-technical school, after separating or otherwise masking any information of a personal nature which appeared on those documents, including the employees' home addresses, social security numbers, and medical information; if the employees' teaching certificates were contained in the file, they too should have been released. OAG 92-59.

NOTES TO DECISIONS

Analysis

1. Limitation or abolishment of professional standing.
2. Tenure.
3. Certificate.
4. Minimum qualifications.
5. —Date determined.
6. —Ineligibility.
7. Filing of certificate.
8. Less than four-year degree.
9. Administrator.

1. Limitation or Abolishment of Professional Standing.

A certificate of professional standing may be abolished or limited by the legislature. Gullett v. Sparks, 444 S.W.2d 901 (Ky. 1969).

2. Tenure.

Teacher tenure is statutory and not contractual, and the legislature may abridge or destroy it. Gullett v. Sparks, 444 S.W.2d 901 (Ky. 1969).

3. Certificate.

The qualification of an applicant as teacher must be determined as of time when he begins to fulfill the contract and not as of date of application, but teacher must hold certificate when he begins to teach. Martin v. Knott County Bd. of Educ., 275 Ky. 483, 122 S.W.2d 98 (1938).

4. Minimum Qualifications.

Boards of education may establish minimum qualifications for teachers higher than those required by statute. Board of Educ. v. Messer, 257 Ky. 836, 79 S.W.2d 224 (1935).

5. —Date Determined.

The qualification to teach is to be determined as of the day an applicant is to begin teaching, and not as of the date of application for the position. Reynolds v. Spurlock, 257 Ky. 582, 78 S.W.2d 787 (1935). See Swinford v. Chasteen, 261 Ky. 249, 87 S.W.2d 373 (1935); Cottongim v. Stewart, 277 Ky. 706, 127 S.W.2d 149 (1939).

6. —Ineligibility.

Where minor was ineligible to be teacher because she held no certificate and failed to qualify for same under former KRS 161.040, she was a volunteer and entitled to no salary for the period prior to her eighteenth birthday. Floyd County Bd. of Educ. v. Slone, 307 S.W.2d 912 (Ky. 1957).

7. Filing of Certificate.

A discharged teacher, suing to compel reinstatement, must allege compliance with subsection (2). Bullock v. Brown, 258 Ky. 522, 80 S.W.2d 593 (1935).

Teacher, whose certificate had expired previous year and who failed to file with school board evidence of his qualification to teach, was not entitled to damages for board's failure to employ him. Martin v. Knott County Bd. of Educ., 275 Ky. 483, 122 S.W.2d 98 (1938).

8. Less Than Four-Year Degree.

The General Assembly has the power to provide that teachers with less qualification than a four-year degree shall receive only a minimum salary and the fact that the motive of

such a provision might be to make teaching so economically unattractive as to discourage the less-qualified teachers from continuing in service does not make the provision unfair. Gullett v. Sparks, 444 S.W.2d 901 (Ky. 1969).

9. Administrator.

An administrator is one who (1) holds a position categorized as an administrative position pursuant to KRS 161.720(8) or pursuant to approval by the State Board of Education of the position as a certified administrative position; and (2) is duly certified by the State Board of Education as an administrator. Petett v. Board of Educ., 684 S.W.2d 7 (Ky. Ct. App. 1984).

Collateral References. 68 Am. Jur. 2d, Schools, §§ 118-120.

78 C.J.S., Schools and School Districts, §§ 196, 197.

161.025. Kentucky council on teacher education and certification created — Membership — Terms — Duties. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1972, ch. 248, § 2; 1978, ch. 155, § 101, effective June 17, 1978) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

Cross-References. Approval for teaching business education, grades 5—8, 704 KAR 20:570.

Art at elementary level on high school certification, 704 KAR 20:105.

Certificate endorsements for certain subjects, 704 KAR 20:057.

Driver education, 704 KAR 20:115.

Elementary level on high school certification, 704 KAR 20:095.

Elementary teacher's endorsement for middle grades, 704 KAR 20:076.

Endorsement for individual intellectual assessment, 704 KAR 20:330.

Endorsement for teachers of computer courses, 704 KAR 20:340.

Experimental programs of teacher preparation, 704 KAR 20:003.

Experimental program teachers, 704 KAR 20:125.

Foreign teachers serving under the teacher exchange program, 704 KAR 20:212.

Guidance counselor, provisional and standard certificates, 704 KAR 20:530.

Guidance counselors, 704 KAR 20:130.

Health education at the elementary school level, 704 KAR 20:520.

Hearing impaired; endorsement for teaching, 704 KAR 20:229.

Hearing impaired; teacher's provisional certificate, 704 KAR 20:230.

High school teacher's endorsement for middle grades, 704 KAR 20:078.

Industrial education teachers, 704 KAR 20:222.

Kindergarten teachers, 704 KAR 20:135.

Learning and behavior disorders; teacher's provisional certificate, 704 KAR 20:235.

Master of Arts in teaching, 704 KAR 20:560.

Music at elementary level on high school certification, 704 KAR 20:160.

Music, general, at elementary level, 704 KAR 20:161.

Music, provisional certificate, 704 KAR 20:159.

Physical education at elementary level on high school certification, 704 KAR 20:175.

Professional school certificate for college faculty, 704 KAR 20:550.

Proficiency evaluation, 704 KAR 20:030.

Provisional middle grades certificate, 704 KAR 20:080.

Reading specialists, 704 KAR 20:180.

Recruitment plan for position of school media librarian, 704 KAR 20:490.

School media librarians, endorsement, 704 KAR 20:146.

School media librarians, provisional certificate, 704 KAR 20:145.

School nurse, 704 KAR 20:132.

School psychologist, 704 KAR 20:128.

Secondary school level on elementary certification, 704 KAR 20:075.

Social workers' provisional certification, 704 KAR 20:195.

Social workers' standard certification, 704 KAR 20:194.

Teaching English as a second language, 704 KAR 20:275.

Visually impaired; teaching endorsement, 704 KAR 20:255.

Vocational education administrators, 704 KAR 20:215.

161.027. Preparation program for principals — Assessment and internship requirements.

(1) The Education Professional Standards Board, pursuant to KRS 161.028, shall by administrative regulation establish requirements for a preparation program in institutions of higher education for all new applicants for principal certification and establish criteria for admission to the program.

(2) The Education Professional Standards Board and the Council on Postsecondary Education shall evaluate the preparation programs for principals and maintain only those institutional programs that can demonstrate both the quality and the capability to enroll adequate numbers of students to justify the resources necessary for maintenance of a quality program.

(3) The Education Professional Standards Board shall develop or select appropriate assessments for applicants seeking certification as principals, including:

(a) An assessment of the ability to apply knowledge, instructional leadership, management, and supervision skills; and

(b) A specialized assessment on the current instructional and administrative practices in Kentucky public education.

(4) The Education Professional Standards Board shall establish the minimum score for successful completion of assessments and shall establish a reasonable fee to be charged applicants for the actual cost of administration of the assessments. The Education Professional Standards Board shall provide for confidentiality of assessment scores.

(5) The Education Professional Standards Board shall develop an internship program which shall provide for the supervision, assistance, and assessment of beginning principals and assistant principals. The internship shall not be required of applicants who have completed, within a ten (10) year period prior to making application, at least two (2) years of successful experience as a principal in a school situation. The Education Professional Standards Board, by administrative regulation, shall establish the internship program.

(6) The certification of principals shall require the successful completion of the examinations required by subsection (3) of this section. A one (1) year certificate may be given to a person who has:

(a) A comparable certificate from another state; or

(b) All other qualifications except the assessments and is selected as a principal in a district where the superintendent certifies to the Education Professional Standards Board that there is a limited number of applicants to meet the requirements of the school council selecting a principal.

Upon successful completion of the assessments, a certificate shall be issued for an additional four (4) years.

(7) Upon successful completion of the approved preparation program and the assessments, the Education Professional Standards Board shall issue to the applicant a statement of eligibility for internship valid for five (5) years. If the applicant does not participate in an internship program within the five (5) year period, the applicant shall reestablish eligibility by repeating and passing the assessments in effect at that time or by completing a minimum of six (6) graduate hours, directly related to instructional leadership, management, or supervision, at a regionally or nationally accredited institution. The option for renewal through completion of graduate hours shall be available only for the first reestablishment of eligibility. Upon obtaining employment for an internship position as principal or assistant principal within the period of eligibility, the applicant shall be issued the appropriate one (1) year certificate for the position.

(8) All applicants for principal certification, after successfully completing the assessments, shall successfully complete the internship program described in subsection (5) of this section for certification as a principal. If the principal's internship performance is judged to be less than satisfactory pursuant to administrative regulations developed by the Education Professional Standards Board, the principal applicant shall be provided with an opportunity to repeat the internship one (1) time if the applicant is employed by a school district as a principal or assistant principal.

(9) Following successful completion of the internship program, the principal's certificate shall be extended for four (4) years. Renewal of the certificate shall require the completion of a continuing education requirement as prescribed by the Education Professional Standards Board.

(Enact. Acts 1985, (1st Ex. Sess.), ch. 10, § 22, effective October 18, 1985; 1988, ch. 275, § 1, effective April 9, 1988; 1990, ch. 476, Pt. II, § 60, effective July 13, 1990; 1996, ch. 343, § 3, effective July 15, 1996; 1997 (1st Ex. Sess.), ch. 1, § 65, effective May 30, 1997; 1998, ch. 362, § 2, effective July 15, 1998.)

Cross-References. Certification for early elementary school principal, grades K—4, 704 KAR 20:380.

Certification for middle grade school principal, grades 5—8, 704 KAR 20:390.

Certification for secondary school principal, grades 9—12, 704 KAR 20:400.

Examination prerequisites for principal certification, 704 KAR 20:460.

Principal Intern Program, 704 KAR 20:470.

Professional certificate for instructional leadership — school principal, all grades, 704 KAR 20:710.

Vocational education administrators, 704 KAR 20:215.

161.028. Education Professional Standards Board — Powers and duties regarding the preparation and certification of professional school personnel — Membership.

(1) The Education Professional Standards Board is recognized to be a public body corporate and politic and an agency and instrumentality of the Commonwealth, in the performance of essential governmental functions. The Education Professional Standards Board has the authority and responsibility to:

(a) Establish standards and requirements for obtaining and maintaining a teaching certificate;

(b) Set standards for, approve, and evaluate college, university, and school district programs for the preparation of teachers and other professional school personnel. Program standards shall reflect national standards and shall address, at a minimum, the following:

1. The alignment of programs with the state's core content for assessment as defined in KRS 158.6457;
2. Research-based classroom practices, including effective classroom management techniques;
3. Emphasis on subject matter competency of teacher education students;
4. Methodologies to meet diverse educational needs of all students;
5. The consistency and quality of classroom and field experiences, including early practicums and student teaching experiences;
6. The amount of college-wide or university-wide involvement and support during the preparation as well as the induction of new teachers;
7. The diversity of faculty;
8. The effectiveness of partnerships with local school districts; and
9. The performance of graduates on various measures as determined by the board.

(c) Conduct an annual review of diversity in teacher preparation programs;

(d) Provide assistance to universities and colleges in addressing diversity, which may include researching successful strategies and disseminating the information, encouraging the development of nontraditional avenues of recruitment and providing incentives, waiving administrative regulations when needed, and other assistance as deemed necessary;

(e) Discontinue approval of programs that do not meet standards or whose graduates do not perform according to criteria set by the board;

(f) Issue, renew, revoke, suspend, or refuse to issue or renew; impose probationary or supervisory conditions upon; issue a written repri-

mand or admonishment; or any combination of actions regarding any certificate;

(g) Develop specific guidelines to follow upon receipt of an allegation of sexual misconduct by an employee certified by the Education Professional Standards Board. The guidelines shall include investigation, inquiry, and hearing procedures which ensure the process does not revictimize the alleged victim or cause harm if an employee is falsely accused;

(h) Receive, along with investigators hired by the Education Professional Standards Board, training on the dynamics of sexual misconduct of professionals, including the nature of this abuse of authority, characteristics of the offender, the impact on the victim, the possibility and the impact of false accusations, investigative procedures in sex offense cases, and effective intervention with victims and offenders;

(i) Recommend to the Kentucky Board of Education the essential data elements relating to teacher preparation and certification, teacher supply and demand, teacher attrition, teacher diversity, and employment trends to be included in a state comprehensive data and information system and report the recommendations to the Interim Joint Committee on Education;

(j) Submit reports to the Governor and the Legislative Research Commission and inform the public on the status of teaching in Kentucky;

(k) Devise a credentialing system that provides alternative routes to gaining certification and greater flexibility in staffing local schools while maintaining standards for teacher competence;

(l) Develop a professional code of ethics;

(m) Set the qualifications and salary for the positions of executive director and deputy executive director to the board, notwithstanding the provisions of KRS 64.640;

(n) Recruit, select, employ and evaluate the executive director to the board;

(o) Approve employment procedures for the employment of policy level staff, subject to the provisions of KRS 12.050;

(p) Approve the biennial budget request;

(q) Charge reasonable fees for the issuance, reissuance, and renewal of certificates that are established by administrative regulation. The proceeds shall be used to meet a portion of the costs of the issuance, reissuance, and renewal of certificates, and the costs associated with disciplinary action against a certificate holder under KRS 161.120;

(r) Waive a requirement that may be established in an administrative regulation promulgated by the board. A request for a waiver shall be submitted to the board, in writing, by an applicant for certification, a postsecondary institution, or a superintendent of a local school district, with appropriate justification for the waiver. The board may approve the request if the person or institution seeking the waiver has demonstrated extraordinary circumstances justifying the waiver. Any waiver granted under this subsection shall be subject to revocation if the person or institution falsifies information or subsequently fails to meet the intent of the waiver;

(s) Promote the development of one (1) or more innovative, nontraditional or alternative administrator or teacher preparation programs through public or private colleges or universities, private contractors, the Department of Education, or the Kentucky Commonwealth Virtual University and waive administrative regulations if needed in order to implement the program;

(t) Grant approval, if appropriate, of a university's request for an alternative program that enrolls students in a postbaccalaureate teacher preparation program concurrently with employment as a teacher in a local school district. A student in the alternative program shall be granted a temporary provisional certificate and shall be a candidate in the Kentucky Teacher Internship Program, notwithstanding provisions of KRS 161.030. The temporary certificate shall be valid for a maximum of two (2) years, and shall be contingent upon the candidate's continued enrollment in the preparation program and compliance with all requirements established by the board. A professional certificate shall be issued upon the teacher candidate's successful completion of the program, the internship requirements, and all assessments required by the board;

(u) Grant approval, if appropriate, of a university's request for an alternative program that enrolls an administrator candidate in a postbaccalaureate administrator preparation program concurrently with employment as an assistant principal, principal, assistant superintendent, or superintendent in a local school district. An administrator candidate in the alternative program shall be granted a temporary provisional certificate and shall be a candidate in the Kentucky Principal Internship Program, notwithstanding provisions of KRS 161.030, or the Superintendent's Assessment process, notwithstanding provisions of KRS 156.111, as appropriate. The temporary certificate shall be valid for a maximum of two (2) years, and shall be contingent upon the candidate's continued enrollment in the preparation program and compliance with all requirements established by the board. A professional certificate shall be issued upon the candidate's successful completion of the program, internship requirements, and assessments as required by the board;

(v) Employ consultants as needed;

(w) Enter into contracts. Disbursements to professional educators who receive less than one thousand dollars ($1,000) in compensation per fiscal year from the board for serving on an

assessment validation panel or as a test scorer or proctor shall not be subject to KRS 45A.690 to 45A.725;

(x) Sponsor studies, conduct research, conduct conferences, and publish information as appropriate; and

(y) Issue orders as necessary in any administrative action before the board.

(2) (a) The board shall be composed of seventeen (17) members. The chief state school officer and the president of the Council on Postsecondary Education, or their designees, shall serve as ex officio voting members. The Governor shall make the following fifteen (15) appointments:

1. Nine (9) members who shall be teachers representative of elementary, middle or junior high, secondary, special education, and secondary vocational classrooms;
2. Two (2) members who shall be school administrators, one (1) of whom shall be a school principal;
3. One (1) member representative of local boards of education; and
4. Three (3) members representative of postsecondary institutions, two (2) of whom shall be deans of colleges of education at public universities and one (1) of whom shall be the chief academic officer of an independent not-for-profit college or university.

(b) The members appointed by the Governor after June 21, 2001, shall be confirmed by the Senate and the House of Representatives under KRS 11.160. If the General Assembly is not in session at the time of the appointment, persons appointed shall serve prior to confirmation, but the Governor shall seek the consent of the General Assembly at the next regular session or at an intervening extraordinary session if the matter is included in the call of the General Assembly.

(c) A vacancy on the board shall be filled in the same manner as the original appointment within sixty (60) days after it occurs. A member shall continue to serve until his successor is named. Any member who, through change of employment status or residence, or for other reasons, no longer meets the criteria for the position to which he was appointed shall no longer be eligible to serve in that position.

(d) Members of the board shall serve without compensation but shall be permitted to attend board meetings and perform other board business without loss of income or other benefits.

(e) A state agency or any political subdivision of the state, including a school district, required to hire a substitute for a member of the board who is absent from his employment while performing board business shall be reimbursed by the board for the actual amount of any costs incurred.

(f) A chairman shall be elected by and from the membership. A member shall be eligible to serve no more than three (3) one (1) year terms in succession as chairman. The executive director shall keep records of proceedings. Regular meetings shall be held at least semiannually on call of the chairman.

(g) To carry out the functions relating to its duties and responsibilities, the board is empowered to receive donations and grants of funds; to appoint consultants as needed; and to sponsor studies, conduct conferences, and publish information.

(Enact. Acts 1990, ch. 476, Pt. II, § 56, effective July 13, 1990; 1994, ch. 265, § 1, effective July 15, 1994; 1994, ch. 470, § 1, effective July 15, 1994; 1996, ch. 107, § 1, effective July 15, 1996; 1996, ch. 343, § 4, effective July 15, 1996; 1997 (1st Ex. Sess.), ch. 1, § 66, effective May 30, 1997; 1998, ch. 362, § 3, effective July 15, 1998; 2000, ch. 527, § 15, effective July 14, 2000; 2001, ch. 137, § 7, effective June 21, 2001; 2002, ch. 288, § 3, effective July 15, 2002.)

Legislative Research Commission Note. (7/15/96, revised 9/28/99). Notwithstanding 1996 Ky. Acts ch. 362, sec. 6, the reference to the State Board for Elementary and Secondary Education in subsection (3), formerly subsection (4), of this statute has been left unchanged because that reference is historical in nature. The former subsection (4) became subsection (3) from 1998 Ky. Acts ch. 362, sec. 3, effective July 15, 1998.

Cross-References. Admission, placement, and supervision in student teaching, 704 KAR 20:706.

Approval for teaching in the primary school program, 704 KAR 20:660.

Alternative training program eligibility requirements for middle school and secondary school teachers, 704 KAR 20:590.

Certificates for teachers of exceptional children — communication disorders, 704 KAR 20:500.

Certification for early elementary school principal, grades K—4, 704 KAR 20:380.

Certification for elementary grades, 704 KAR 20:290.

Certification for middle grade school principal, grades 5—8, 704 KAR 20:390.

Certification for school superintendent, 704 KAR 20:420.

Certification for secondary school principal, grades 9—12, 704 KAR 20:400.

Certification for supervisor of instruction, grades K—12, 704 KAR 20:410.

Certification for teaching in the secondary grades, 704 KAR 20:070.

Certification requirements for teachers of exceptional children, 704 KAR 20:740.

Continuing education alternative to planned Fifth-year Program, 704 KAR 20:022.

Criteria for preparation-certification programs, 704 KAR 20:650.

Dating of certification, 704 KAR 20:056.

Director of special education, 704 KAR 20:198.

Emergency certification and out-of-field teaching, 704 KAR 20:120.

Endorsement for teachers of gifted education, 704 KAR 20:280E.

Fifth-year Program for renewal of teaching certificates, 704 KAR 20:020.

Interdisciplinary early childhood education, birth to primary, 704 KAR 20:084.

Junior Reserve Officers Training Corps certification, 704 KAR 20:260.

Kentucky primary alternative certification program, 704 KAR 20:610.

Kentucky standards for preparation-certification of professional school personnel program approval, 704 KAR 20:005.
Kentucky Teacher Internship Program, 704 KAR 20:690.
Kentucky teaching certificates, 704 KAR 20:670.
Part-time adjunct instructor certificate, 704 KAR 20:300.
Planned Fifth-year Program, 704 KAR 20:021.
Principal Intern Program, 704 KAR 20:470.
Probationary certificate for teachers of children, birth to primary, 704 KAR 20:082.
Probationary certificate for teachers of exceptional children, 704 KAR 20:510.
Probationary certificate for teachers of technology education, 704 KAR 20:475.
Procedures for certificate revocation, suspension, voluntary surrender, reinstatement and reissuance, and application denial, 704 KAR 20:585.
Professional certificate for college faculty: secondary education, 704 KAR 20:555.
Professional certificate for directors of pupil personnel and assistants, 704 KAR 20:540.
Professional certificate for exceptional work experience, limited to secondary education, 704 KAR 20:720.
Professional certificate for instructional leadership — school principal, all grades, 704 KAR 20:710.
Professional certificate for teaching the moderately and severely disabled, 704 KAR 20:251.
Professional code of ethics for Kentucky school certified personnel, 704 KAR 20:680.
Qualifications for professional school positions, 704 KAR 20:165.
Rank I classification, 704 KAR 20:015.
Recency and certification fees, 704 KAR 20:045.
Renewals, 704 KAR 20:060.
Standards for accreditation of teacher education units and approval of programs, 704 KAR 20:696.
Standards for admission to teacher education, 704 KAR 20:700.
Standards for certified school personnel, 704 KAR 20:730.
Substitute teachers and emergency school personnel, 704 KAR 20:210.
The alternative training program for preparation of candidates for initial teacher certification, 704 KAR 20:600.
Written examination and internship prerequisites for vocational teachers, 704 KAR 20:310.
Written examination prerequisites for teacher certification, 704 KAR 20:305.

Kentucky Bench & Bar. Brooks, Disciplinary Action Against School Teachers, Vol. 42, No. 4, Fall 1995, Ky. Bench & Bar 6.

Opinions of Attorney General. The Educational Professional Standards Board (EPSB) lacks the authority to delegate the holding of a revocation hearing, as found in KRS 161.120, to a hearing officer. Nowhere in the statutory sections dealing with the board is there any authority for such a delegation of power, and therefore, based upon the lack of authority granted to the EPSB under their statutes, the board must be physically present to "hear" the evidence introduced during a hearing. Of course, a hearing officer may assist the Board during and following the hearing. OAG 91-37.

161.030. Certification authority — Assessments of beginning teachers and teachers seeking additional certification — Conditional certificates — Temporary certificates — Internship — Beginning teacher committee — Resource teachers.

(1) Notwithstanding the age of the pupil, the certification of all teachers and other school personnel, in public schools only, is vested in the Education Professional Standards Board. When so certified, teachers and other school personnel shall not be required to have licensure, certification, or other forms of approval from any other state agency for the performance of their respective assignments within the common schools, except as provided for by law. All certificates authorized under KRS 161.010 to 161.126 shall be issued in accordance with the administrative regulations of the Education Professional Standards Board. After July 15, 1994, all certificate applications and other data collection instruments of the board shall include a request for voluntary information about the applicant's ethnic background. This information shall be available to help local school districts locate minority candidates. A person who holds a certificate prior to this requirement may request that ethnic information be added to his or her file. Nothing in this section shall preclude the right of an individual in a nonpublic school from seeking voluntary certification by the Education Professional Standards Board.

(2) Certificates shall be issued upon written application and in accordance with statutes and regulations in effect at the time of application to persons who have completed, at colleges, universities, or local school district programs approved by the Education Professional Standards Board for the preparation of teachers and other school personnel, the curricula prescribed by the administrative regulations of the Education Professional Standards Board.

(3) (a) Certification of all new teachers and teachers seeking additional certification shall require the successful completion of appropriate assessments prior to certification. The assessments shall be selected by the Education Professional Standards Board and shall measure knowledge in the specific teaching field of the applicant, including content of the field and teaching of that content. The Education Professional Standards Board shall determine the minimum acceptable level of achievement on each assessment. The assessments shall measure those concepts, ideas, and facts which are being taught in teacher education programs in Kentucky. Upon successful completion of the assessments and the approved teacher preparation program, a certificate valid for one (1) year shall be issued.

(b) If an applicant for teacher certification has completed the approved teacher preparation program and has taken but failed to successfully complete the appropriate assessments selected by the Education Professional Standards Board, a conditional certificate may be issued for a period not to exceed one (1) year, if the employing school district, in collaboration with the teacher education institution, agrees to provide technical assistance and mentoring support to the conditionally certified teacher. The teacher shall retake the assessments during the validity period of the conditional certificate. The conditional certificate shall not be

reissued. Upon successful completion of the required assessments, a certificate valid for one (1) year shall be issued and the teacher shall be eligible to participate in the internship program as provided in subsection (5) of this section. The teacher shall not be eligible to participate in the internship program while teaching on the conditional certificate. The Education Professional Standards Board shall promulgate administrative regulations to establish the standards and procedures for issuance of the conditional certificate.

(c) If an out-of-state teacher with less than two (2) years' experience comes to Kentucky after the deadline for taking the assessments, a temporary certificate may be issued for a period up to six (6) months provided the local board cannot fill the vacant position with a certified teacher. The teacher shall take the assessments if they are administered during the period of the temporary certificate. The certificate shall be extended for the remainder of the year if the teacher successfully completes the assessments. If the teacher fails the assessments, the temporary certificate shall be valid only for the current semester.

(4) A reasonable fee to be paid by the teacher and directly related to the actual cost of the administration of the assessments shall be established by the Education Professional Standards Board. Provisions shall be made for persons having less than minimum levels of performance on any assessment to repeat that assessment, and candidates shall be informed of their strengths and weaknesses in the specific performance areas. The Education Professional Standards Board shall provide for confidentiality of the individual assessment scores. Scores shall be available only to the candidate and to the education officials who are responsible for determining whether established certification standards have been met. Scores shall be used only in the assessment for certification of new teachers and of out-of-state teachers with less than two (2) years of teaching experience who are seeking initial certification in Kentucky.

(5) Except as provided in subsection (3)(b) of this section, all new teachers and out-of-state teachers with less than two (2) years of successful teaching experience who are seeking initial certification in Kentucky shall serve a one (1) year internship. The teacher shall be a full-time employee or shall have an annual contract and serve on at least a half-time basis and shall have supervision, assistance, and assessment during the one (1) year internship. The internship may be served in a public school or a nonpublic school which meets the state performance standards as established in KRS 156.160 or which has been accredited by a regional or national accrediting association. Successful completion shall be determined by a majority vote of the beginning teacher committee. The internship period shall be counted as experience for the purpose of continuing contract status, retirement eligibility, and benefits for single salary experience increments. Upon successful completion of the beginning teacher program, the one (1) year initial teaching certificate shall be extended for the remainder of the usual duration period established for that particular certificate by Education Professional Standards Board administrative regulations.

(6) The beginning teacher committee shall be composed of three (3) persons who have successfully completed special training in the supervision and assessment of the performance of beginning teachers as provided in subsection (8) of this section, except as provided in paragraph (g) of this subsection. The committee shall consist of a resource teacher, the school principal of the school where the internship is served, and a teacher educator appointed by a state-approved teacher training institution.

(a) If more than two (2) teacher interns are employed in the same school, the principal's responsibility may be shared with an assistant principal who holds certification as a principal.

(b) In unusual situations, the Education Professional Standards Board may permit the assistant principal to serve in lieu of the principal on a beginning teacher committee.

(c) If the teacher training institution is unable to provide a member, the district superintendent shall appoint an instructional supervisor from the school district.

(d) If the intern is teaching in a regionally or nationally accredited nonpublic school without a principal, the person filling the principal member position may have other appropriate qualifications as required by administrative regulations promulgated by the Education Professional Standards Board.

(e) If the teacher training institution is unable to provide a member to serve on the beginning teacher committee in a nonpublic school, the chief officer of the school shall appoint an instructional supervisor or a teacher with like qualifications and responsibilities to serve on the beginning teacher committee in lieu of the teacher educator.

(f) The resource teacher shall be appointed by the Education Professional Standards Board with recommendations from the local school district from a pool of qualified resource teachers, and, any statutes to the contrary notwithstanding and to the extent of available appropriations, shall be entitled to be paid a reasonable stipend by the Education Professional Standards Board for work done outside normal working hours. In the case of a resource teacher in a nonpublic school, payment shall be made directly to the resource teacher by the Education Professional Standards Board. Priority shall be given to resource teachers in the following order, except as provided in paragraph (g) of this subsection:

1. Teachers with the same certification in the same school;
2. Teachers with the same certification in the same district;

3. Teachers in the same school;
4. Teachers in the same district; and
5. Teachers in an adjacent school district.

(g) 1. The resource teacher for an individual pursuing initial certification as a baccalaureate level teacher of exceptional children/communication disorders shall be a master's level teacher of exceptional children/communication disorders, if one is available.

2. If a master's level teacher of exceptional children/communication disorders is not available, the Education Professional Standards Board may allow a licensed speech-language pathologist to serve on the beginning teacher committee in lieu of a resource teacher.

(h) The committee shall meet with the beginning teacher a minimum of three (3) times per year for evaluation and recommendation with all committee members present. In addition, each member of the committee shall observe the beginning teacher in the classroom a minimum of three (3) times per year. If the teacher's first year performance is judged by the committee to be less than satisfactory, the teacher shall be provided with an opportunity to repeat the internship one (1) time if the teacher is employed by a school district.

(7) The resource teacher shall spend a minimum of seventy (70) hours working with the beginning teacher. Twenty (20) of these hours shall be in the classroom setting, and fifty (50) of these hours shall be in consultation other than class time or attending assessment meetings. The resource teacher shall have completed at least four (4) years of successful teaching experience as attested to by his or her immediate supervisor or by having achieved tenure and be able to show evidence of continuing professional development by having achieved a master's degree or its equivalent or the accumulation of two thousand (2,000) hours of continuing professional activities.

(8) By contract with teacher education institutions in the Commonwealth, the Education Professional Standards Board shall provide special training for persons who will be serving on the beginning teacher committees. Completion of special training shall be evidenced by successfully passing the assessments as prescribed by the Education Professional Standards Board. A principal hired after July 15, 1996, shall be required to complete the beginning teacher committee training program within one (1) year after his or her appointment.

(9) If an applicant establishes eligibility for a one (1) year certificate under the provisions of subsection (3)(a) of this section, but does not become employed on the basis needed to satisfy the one (1) year internship requirement, the applicant shall be eligible for the issuance of a certificate for substitute teaching as provided by the administrative regulations of the Education Professional Standards Board. The applicant shall remain eligible for the one (1) year certificate, as provided in subsection (3)(a) of this section, and for the opportunity to serve the internship for a period of five (5) years after establishing eligibility. If the internship is not completed within the five (5) year period, the applicant must reestablish eligibility by repeating and passing the assessment program in effect for new teachers at that time or by completing a minimum of six (6) graduate hours toward completion of a graduate program required by administrative regulations promulgated by the Education Professional Standards Board. The option for renewal through completion of graduate hours shall be available only for the first reestablishment of eligibility.

(10) The Education Professional Standards Board shall approve the curricula of any college or university, or of any department thereof, for the training of teachers, and any nontraditional or alternative teacher preparation program offered in a public or private postsecondary education institution, private contractor, or state agency, and shall also approve the curricula of any local district alternative certification program, when the curricula comply with the administrative regulations of the Education Professional Standards Board for the issuance of certificates and when the institution has met the terms and conditions provided in KRS 161.010 to 161.120. Any student who has completed any of these curricula, as approved by the Education Professional Standards Board, and who has completed the prescribed requirements for the issuance of certificates shall be granted a certificate corresponding to the curricula completed.

(4502-1: amend. Acts 1968, ch. 152, § 117; 1970, ch. 49, § 1; 1972, ch. 248, § 1; 1978, ch. 155, § 102, effective June 17, 1978; 1984, ch. 396, § 1, effective July 13, 1984; 1986, ch. 119, § 1, effective July 13, 1986; 1988, ch. 388, § 2, effective July 15, 1988; 1990, ch. 476, Pt. II, § 57, effective July 13, 1990; 1994, ch. 192, § 2, effective July 15, 1994; 1994, ch. 417, § 1, effective July 15, 1994; 1996, ch. 343, § 5, effective July 15, 1996; 1998, ch. 362, § 4, effective July 15, 1998; 2000, ch. 375, § 3, effective July 14, 2000; 2001, ch. 137, § 8, effective June 21, 2001; 2002, ch. 288, § 1, effective July 15, 2002.)

Cross-References. Certification of teachers of exceptional or handicapped children, KRS 157.250.

Admission, placement, and supervision in student teaching, 704 KAR 20:706.

Alternative training program eligibility requirements for middle school and secondary school teachers, 704 KAR 20:590.

Approval for teaching business education, grades 5—8, 704 KAR 20:570.

Approval for teaching in the primary school program, 704 KAR 20:660.

Art at elementary level on high school certification, 704 KAR 20:105.

Certificate endorsements for certain subjects, 704 KAR 20:057.

Certificates for teachers of exceptional children — communication disorders, 704 KAR 20:500.

Certification for early elementary school principal, grades K—4, 704 KAR 20:380.

Certification for elementary grades, 704 KAR 20:290.

Certification for school superintendent, 704 KAR 20:420.

Certification for secondary school principal, grades 9—12, 704 KAR 20:400.
Certification for supervisor of instruction, grades K—12, 704 KAR 20:410.
Certification for teaching in the secondary grades, 704 KAR 20:070.
Certification requirements for teachers of exceptional children, 704 KAR 20:740.
Continuing education alternative to planned Fifth-year Program, 704 KAR 20:022.
Criteria for preparation-certification programs, 704 KAR 20:650.
Dating of certification, 704 KAR 20:056.
Director of special education, 704 KAR 20:198.
Driver education, 704 KAR 20:115.
Elementary level on high school certification, 704 KAR 20:095.
Elementary teacher's endorsement for middle grades, 704 KAR 20:076.
Emergency certification and out-of-field teaching, 704 KAR 20:120.
Endorsement for individual intellectual assessment, 704 KAR 20:330.
Endorsement for teachers of computer courses, 704 KAR 20:340.
Endorsement for teachers of gifted education, 704 KAR 20:280E.
Examination prerequisites for principal certification, 704 KAR 20:460.
Experimental programs of teacher preparation, 704 KAR 20:003.
Experimental program teachers, 704 KAR 20:125.
Fifth-year Program for renewal of teaching certificates, 704 KAR 20:020.
Foreign teachers serving under the teacher exchange program, 704 KAR 20:212.
Guidance counselor, provisional and standard certificates, 704 KAR 20:530.
Guidance counselors, 704 KAR 20:130.
Health education at the elementary school level, 704 KAR 20:520.
Hearing impaired; endorsement for teaching, 704 KAR 20:229.
Hearing impaired; teacher's provisional certificate, 704 KAR 20:230.
High school teacher's endorsement for middle grades, 704 KAR 20:078.
Industrial education teachers, 704 KAR 20:222.
Interdisciplinary early childhood education, birth to primary, 704 KAR 20:084.
Junior Reserve Officers Training Corps certification, 704 KAR 20:260.
Kentucky primary alternative certification program, 704 KAR 20:610.
Kentucky standards for preparation-certification of professional school personnel program approval, 704 KAR 20:005.
Kentucky Teacher Internship Program, 704 KAR 20:690.
Kentucky teaching certificates, 704 KAR 20:670.
Kindergarten teachers, 704 KAR 20:135.
Learning and behavior disorders; teacher's provisional certificate, 704 KAR 20:235.
Master of Arts in teaching, 704 KAR 20:560.
Music at elementary level on high school certification, 704 KAR 20:160.
Music, general, at elementary level, 704 KAR 20:161.
Music, provisional certificate, 704 KAR 20:159.
Out-of-state preparation, 704 KAR 20:035.
Part-time adjunct instructor certificate, 704 KAR 20:300.
Physical education at elementary level on high school certification, 704 KAR 20:175.
Planned Fifth-year Program, 704 KAR 20:021.
Probationary certificate for teachers of children, birth to primary, 704 KAR 20:082.
Probationary certificate for teachers of exceptional children, 704 KAR 20:510.
Probationary certificate for teachers of technology education, 704 KAR 20:475.
Professional certificate for college faculty: secondary education, 704 KAR 20:555.
Professional certificate for directors of pupil personnel and assistants, 704 KAR 20:540.
Professional certificate for exceptional work experience, limited to secondary education, 704 KAR 20:720.
Professional certificate for instructional leadership — school principal, all grades, 704 KAR 20:710.
Professional certificate for teaching the moderately and severely disabled, 704 KAR 20:251.
Professional school certificate for college faculty, 704 KAR 20:550.
Proficiency evaluation, 704 KAR 20:030.
Provisional middle grades certificate, 704 KAR 20:080.
Qualifications for professional school positions, 704 KAR 20:165.
Rank I classification, 704 KAR 20:015.
Reading specialists, 704 KAR 20:180.
Recency and certification fees, 704 KAR 20:045.
Recruitment plan for position of school media librarian, 704 KAR 20:490.
Renewals, 704 KAR 20:060.
School media librarians, endorsement, 704 KAR 20:146.
School media librarians, provisional certificate, 704 KAR 20:145.
School nurse, 704 KAR 20:132.
School psychologist, 704 KAR 20:128.
Secondary school level on elementary certification, 704 KAR 20:075.
Social workers' provisional certification, 704 KAR 20:195.
Social workers' standard certification, 704 KAR 20:194.
Standards for accreditation of teacher education units and approval of programs, 704 KAR 20:696.
Standards for admission to teacher education, 704 KAR 20:700.
Standards for certified school personnel, 704 KAR 20:730.
Substitute teachers and emergency school personnel, 704 KAR 20:210.
Teaching English as a second language, 704 KAR 20:275.
The alternative training program for preparation of candidates for initial teacher certification, 704 KAR 20:600.
Visually impaired; teaching endorsement, 704 KAR 20:255.
Vocational education administrators, 704 KAR 20:215.
Written examination and internship prerequisites for vocational teachers, 704 KAR 20:310.
Written examination prerequisites for teacher certification, 704 KAR 20:305.

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

Smith, Medical and Psychotherapy Privileges and Confidentiality: On Giving With One Hand and Removing With the Other, 75 Ky. L.J. 473 (1986-87).

Opinions of Attorney General. Under this section a teacher certified to teach only in a nonpublic school would not be qualified to teach in a public school. OAG 70-355.

The 1970 amendment to this section was not discriminatory because it established different standards for certification of teachers in public and nonpublic schools. OAG 70-355.

The provisions of this section as amended in 1972 supersedes and repeals by implication the provisions of KRS 164.020 as to determination of the curricula for teacher education. OAG 72-272.

The 1986 General Assembly intended to require licensing by the Board of Speech Language Pathology and Audiology of those certified speech language pathologists and audiologists who began teaching or had a certificate issued after August 1, 1986, or who had a master's degree in such subjects; those persons who were certified by the Department of Education on and prior to August 1, 1986, and who had not obtained a master's degree in speech language pathology or audiology, or the substantive equivalent, and who render speech language pathology or audiology services exclusively in the public schools were not required to obtain a license from the Board of Speech Language Pathology and Audiology. OAG 87-34.

A school board may not require principals to be residents of the school district. OAG 01-7.

Cited: Crawley v. Board of Educ., 658 F.2d 450 (6th Cir. 1981).

NOTES TO DECISIONS

ANALYSIS

1. Nonpublic school teachers.
2. Administrator.

1. Nonpublic School Teachers.

It cannot be said as an absolute that a teacher in a nonpublic school who is not certified under subsection (2) of this section will be unable to instruct children to become intelligent citizens; certainly, the receipt of "a bachelor's degree from a standard college or university" is an indicator of the level of achievement, but it is not a sine qua non the absence of which establishes that private and parochial school teachers are unable to teach their students to intelligently exercise the elective franchise. Kentucky State Bd. for Elementary & Secondary Educ. v. Rudasill, 589 S.W.2d 877 (Ky. 1979), cert. denied, 446 U.S. 938, 100 S. Ct. 2158, 64 L. Ed. 2d 792 (1980).

2. Administrator.

An administrator is one who (1) holds a position categorized as an administrative position pursuant to KRS 161.720(8), or pursuant to approval by the State Board of Education of the position as a certified administrative position; and (2) is duly certified by the State Board of Education as an administrator. Petett v. Board of Educ., 684 S.W.2d 7 (Ky. Ct. App. 1984).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 191, 196-203.

161.035. Validity of certificates issued prior to 1950. [Repealed.]

Compiler's Notes. This section (Acts 1950, ch. 103, § 2) was repealed by Acts 1978, ch. 56, § 3, effective June 17, 1978.

161.040. General qualifications for certificates. [Repealed.]

Compiler's Notes. This section (Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 474, effective July 13, 1990) was repealed by Acts 1998, ch. 362, § 6, effective July 15, 1998.

Cross-References. Procedures for certificate revocation, suspension, voluntary surrender, reinstatement and reissuance, and application denial, 704 KAR 20:585.

Professional code of ethics for Kentucky school certified personnel, 704 KAR 20:680.

161.042. Status of student teachers — Responsibility to administrative staff and supervising teachers — Professional competency requirement for supervising teachers.

(1) The Education Professional Standards Board shall provide through administrative regulation for the utilization of the common schools for the preparation of teacher education students from the colleges and universities.

(2) Within the provisions established by the Education Professional Standards Board, local boards of education are authorized to enter into cooperative agreements, including financial arrangements, with colleges and universities for the purpose of providing professional laboratory experiences and student teaching experiences for students preparing for the education profession.

(3) The Education Professional Standards Board shall promulgate administrative regulations defining the professional requirements and general duties of a supervising teacher and requirements for a local school district and school to be used for this purpose.

(4) A student teacher who is jointly assigned under agreement by a teacher education institution and a local board of education shall have the same legal status and protection as a certified teacher employed within the school district and shall be responsible to the administrative staff of the school district and the supervising teacher to whom he or she is assigned. All student teachers shall be subject to the state and national criminal records checks required of certified hires under provisions of KRS 160.380.

(5) Teacher education students, other than student teachers, may be permitted through cooperative agreements between the local school district and the teacher education institution, to engage in supplementary instructional activities with pupils under the direction and supervision of the professional administrative and teaching staff of the school district. Teacher education students shall not be subject to the criminal records checks required under KRS 161.148 or KRS 160.380.

(Enact. Acts 1972, ch. 178, § 2; 1978, ch. 155, § 82, effective June 17, 1978; 1982, ch. 11, § 1, effective July 15, 1982; 1990, ch. 476, Pt. II, § 67, effective July 13, 1990; 1992, ch. 409, § 1, effective July 14, 1992; 1996, ch. 362, § 6, effective July 15, 1996; 2001, ch. 60, § 2, effective June 21, 2001; 2001, ch. 137, § 9, effective June 21, 2001.)

Legislative Research Commission Note. (6/21/2001). This section was amended by 2001 Ky. Acts chs. 60 and 137, which do not appear to be in conflict and have been codified together.

Cross-References. Admission, placement, and supervision in student teaching, 704 KAR 20:706.

Kentucky standards for preparation-certification of professional school personnel program approval, 704 KAR 20:005.

Opinions of Attorney General. A student teacher may not perform services as a student teacher in the absence of a regular classroom teacher. OAG 75-70.

A student teacher may be held liable in tort for his negligent acts or omissions just as may a regular teacher but his actions, and whether he acted as a reasonable person would act under the circumstances, must be judged in the light of the fact that he is acting under the supervision and direction of a regular classroom teacher. OAG 75-70.

161.044. Requirements for teachers' aides — Legal status — Preference to certified applicants — Training.

(1) The Kentucky Board of Education shall promulgate administrative regulations governing the qualifications of teachers' aides in the common schools. All teachers' aides working in kindergarten or with entry level students in primary classes and all instructional teachers' aides initially employed after July 1, 1986, except those with current teacher certification, shall have a high school diploma or a general equivalency diploma.

(2) "Noninstructional teacher's aide" means an adult who works under the direct supervision of the teaching staff in performing noninstructional functions such as clerical duties, lunch room duties, leading pupils in recreational activities, aiding the school librarian, preparing and organizing instructional material and equipment and monitoring children during a noninstructional period. Noninstructional teachers' aides employed on a full-time basis shall possess skills necessary to perform their duties and shall meet the requirements established in KRS 161.011 and 160.380(5).

(3) Within the administrative regulations established by the Kentucky Board of Education, a local district may employ teachers' aides in supplementary instructional and noninstructional activities with pupils. While engaged in an assignment as authorized under the administrative regulations, and as directed by the professional administrative and teaching staff, these personnel shall have the same legal status and protection as a certified teacher in the performance of the same or similar duties.

(4) Local districts shall give preference to applicants for the position of teacher's aide who have regular or emergency teacher certification.

(5) Local districts shall provide training of the instructional teacher's aide with the certified employee to whom he is assigned.

(Enact. Acts 1972, ch. 178, § 3; 1978, ch. 155, § 82, effective June 17, 1978; 1985 (1st Ex. Sess.), ch. 10, § 19, effective October 18, 1985; 1988, ch. 38, § 2, effective July 15, 1988; 1990, ch. 476, Pt. II, § 68, effective July 13, 1990; 1994, ch. 417, § 2, effective July 15, 1994; 1996, ch. 362, § 6, effective July 15, 1996; 2000, ch. 336, § 2, effective July 14, 2000.)

Opinions of Attorney General. In view of the description of duties and definitions of "paraprofessional" and "teacher aide" given in KRS 161.010(6) and (7) (now subsections (4) and (5)) and the fact that subsections (1), (2) and (3) of this section refer to such persons performing "supplementary instructional and noninstructional activities with pupils" and that while reference is made to "provisions established by the State Board of Education," such regulations have not been prepared and adopted, it would appear that a teacher's aide cannot conduct a class even with a teacher present. OAG 73-206.

Since the State Board of Education has adopted regulations relating to paraprofessional personnel (704 KAR 15:080), a local board of education could prepare a job description outlining the duties of a paraprofessional which would include some limited teaching responsibilities if the paraprofessional held a valid and appropriate teaching certificate; however, the instructional assistance of a paraprofessional with a teaching certificate may not be permitted to supplant the day to day teaching responsibilities of the regular classroom teacher. OAG 76-555.

The distinction in subsection (1) of this section between kindergarten teacher aides and the other aides was drawn to indicate that all kindergarten teacher aides, regardless of when they were hired, must comply with the requirements, while non-kindergarten aides must comply only if they were initially hired after July 1, 1986. OAG 86-43.

161.046. Adjunct instructors.

(1) For purposes of this section, "adjunct instructor" means an individual who has training or experience in a specific subject area and who has met the requirements for certification as an adjunct instructor established by the Education Professional Standards Board.

(2) The Education Professional Standards Board shall adopt administrative regulations governing the qualifications and utilization of adjunct instructors. These administrative regulations shall specify the minimum essential competencies which must be demonstrated by persons seeking an adjunct instructor certificate.

(3) Holders of an adjunct instructor certificate shall be employed on an annual contract basis and shall not be eligible for continuing service status pursuant to KRS 161.740 or for the retirement provisions of KRS 161.220 through 161.714. The granting of successive annual contracts to the holder of an adjunct instructor certificate shall not give rise to a claim of expectation of continuing employment.

(4) Local school boards may contract with certificated adjunct instructors for part-time services on an hourly, daily, or other periodic basis as best meets the needs of the board. An adjunct instructor shall not fill a position that will result in the displacement of a qualified teacher with a regular certificate who is already employed in the district.

(5) An orientation program shall be developed and implemented for adjunct instructors by the local school board.

(Enact. Acts 1984, ch. 276, § 1, effective July 13, 1984; 1990, ch. 476, Pt. II, § 61, effective July 13, 1990; 1998, ch. 589, § 2, effective July 15, 1998.)

Cross-References. Part-time adjunct instructor certificate, 704 KAR 20:300.

161.048. Alternative certification program — Purpose — Options — Testing and eligibility requirements — Salary schedule.

(1) The General Assembly hereby finds that:

(a) 1. There are persons who have distinguished themselves through a variety of work and educational experiences that could enrich teaching in Kentucky schools;

2. There are distinguished scholars who wish to become teachers in Kentucky's public schools, but who did not pursue a teacher preparation program;
3. There are persons who need to be recruited to teach in Kentucky schools to meet the diverse cultural and educational needs of students; and
4. There should be alternative procedures to the traditional teacher preparation programs that qualify persons as teachers.

(b) There are hereby established alternative certification program options as described in subsections (2) through (6) of this section.

(c) It is the intent of the General Assembly that the Educational Professional Standards Board inform scholars, persons with exceptional work experience, and persons with diverse backgrounds who have potential as teachers of these options and assist local boards of education in implementing these options and recruitment of individuals who can enhance the education system in Kentucky.

(d) The Education Professional Standards Board shall promulgate administrative regulations establishing standards and procedures for the alternative certification options described in this section.

(2) Option 1: Certification of a person with exceptional work experience. An individual who has exceptional work experience and has been offered employment at the secondary level in a local school district shall receive a one (1) year provisional teaching certificate with approval by the Education Professional Standards Board of a joint application by the individual and the employing school district under the following conditions:

(a) The application contains documentation of all education and work experience;

(b) The candidate has documented ten (10) years of exceptional work experience in the area in which certification is being sought;

(c) The candidate possesses a bachelor's degree, with a grade point average of two and five-tenths (2.5) on a four (4) point scale from a nationally or regionally accredited postsecondary institution; and

(d) The candidate shall participate in the teacher internship program under subsections (5), (6), (7), and (8) of KRS 161.030. After successful completion of the internship, the candidate shall receive a regular provisional certificate.

An individual employed under this alternative shall be certified for one (1) year only, and may be approved for subsequent one (1) year renewals upon request of the local board of education and approval of the Education Professional Standards Board. A teacher who successfully completes three (3) contract years under the provisions of this section shall be awarded a regular provisional certificate, and subject to certificate renewal requirements the same as any other teacher with a regular provisional certificate.

(3) Option 2: Certification through a local district training program. A local district or group of districts may seek approval for a training program. The state-approved local district training program is an alternative to the college teacher preparation program as a means of acquiring teacher certification for a teacher at any grade level. The training program may be offered for all teaching certificates approved by Education Professional Standards Board, including interdisciplinary early childhood education, except for specific certificates for teachers of exceptional children. To participate in a state-approved local district alternative training program, the candidate shall:

(a) Possess a bachelor's degree with a grade point average of two and five tenths (2.5) on a four (4) point scale or, upon approval by the Education Professional Standards Board, at least a grade point average of two (2) on a four (4) point scale if the candidate has exceptional life experience related to teaching and has completed the bachelor's degree at least five (5) years prior to submitting an application to the program.

(b) Pass written tests designated by the Education Professional Standards Board for content knowledge in the specific teaching field of the applicant with minimum scores in each test as set by the Education Professional Standards Board. To be eligible to take a subject field test, the applicant shall have completed a thirty (30) hour major in the subject field or five (5) years of experience in the subject field as approved by the Education Professional Standards Board.

(c) Have been offered employment in a school district which has a training program approved by the Education Professional Standards Board.

(d) Upon meeting the participation requirements as established in this subsection, the candidate shall be issued a one (1) year provisional certificate by the Education Professional Standards Board. The regular provisional certificate shall be issued upon satisfactory completion of the program and the teacher testing internship program pursuant to KRS 161.030.

(e) The Education Professional Standards Board may reject the application of any candidate who is judged as not meeting academic requirements comparable to those for students enrolled in Kentucky teacher preparation programs.

(4) Option 3: Certification of a professional from a postsecondary institution: A candidate who possesses the following qualifications may receive alternative certification for teaching at the secondary level:

(a) A master's degree or doctoral degree in the academic subject area for which certification is sought;

(b) A minimum of five (5) years of full-time teaching experience, or its equivalent, in the academic subject area for which certification is sought in a regionally or nationally accredited institution of higher education; and

(c) Successful completion of the teacher internship requirement imposed under KRS 161.030.

(5) Option 4: Certification of an adjunct instructor. A person who has expertise in areas such as art, music, foreign language, drama, science, and other specialty areas may be employed as an adjunct instructor in a part-time position by a local board of education under KRS 161.046.

(6) Option 5: Certification of a veteran of the Armed Forces. The Education Professional Standards Board shall issue a statement of eligibility, valid for five (5) years, to a veteran for teaching at the elementary, secondary, and secondary vocational education levels with the following qualifications:

(a) Discharged or released from active duty under honorable conditions after six (6) or more years of continuous active duty immediately before the discharge or release;

(b) At least a bachelor's degree in the subject matter area or closely related area for which certification is sought, issued by a regionally or nationally accredited institution of higher education;

(c) A grade point average of two and five-tenths (2.5) on a four (4) point scale for a bachelor's degree or an advanced degree; and

(d) A passing score on the written exit assessment examination designated by the Education Professional Standards Board for content knowledge.

Upon an offer of employment by a school district, the eligible veteran shall receive a one (1) year provisional teaching certificate with approval by the Education Professional Standards Board of a joint application by the veteran and the employing school district. During this year, the veteran shall participate in the teacher internship program under subsections (5), (6), (7), and (8) of KRS 161.030. Upon successful completion of the internship program, the veteran shall receive a regular professional certificate.

(7) A teacher certified under subsections (2) to (6) of this section shall be placed on the local district salary schedule for the rank corresponding to the degree held by the teacher.

(8) Veterans who were discharged or released from active duty under honorable conditions after six (6) or more years of continuous active duty immediately before the discharge or release, and who have at least four (4) years of occupational experience in the area in which they seek certification as a vocational industrial education teacher, shall apply for certification under and meet the requirements of the administrative regulations promulgated by the Education Professional Standards Board.

(9) Subsections (1) to (3) of this section notwithstanding, a candidate who possesses the following qualifications may receive certification for teaching programs for exceptional students:

(a) An out-of-state license to teach exceptional students;

(b) A bachelor's or master's degree in the certification area or closely related area for which certification is sought; and

(c) Successful completion of the teacher internship requirement required under KRS 161.030.

(Enact. Acts 1990, ch. 476, Pt. II, § 58, effective July 13, 1990; 1996, ch. 137, § 1, effective July 15, 1996; 1996, ch. 343, § 6, effective July 15, 1996; 1998, ch. 514, § 8, effective July 15, 1998; 1998, ch. 589, § 1, effective July 15, 1998; 2000, ch. 161, § 1, effective July 14, 2000.)

Cross-References. Alternative training program eligibility requirements for middle school and secondary school teachers, 704 KAR 20:590.

Kentucky primary alternative certification program, 704 KAR 20:610.

Part-time adjunct instructor certificate, 704 KAR 20:300.

Professional certificate for college faculty: secondary education, 704 KAR 20:555.

Professional certificate for exceptional work experience, limited to secondary education, 704 KAR 20:720.

Standards for certified school personnel, 704 KAR 20:730.

The alternative training program for preparation of candidates for initial teacher certification, 704 KAR 20:600.

161.049. Professional support teams — Training program — Alternate training program.

(1) As used in this section, "professional support team" means a school principal, an experienced teacher, a college or university faculty member, and an instructional supervisor. If an instructional supervisor or college or university faculty member is not available, the district shall assign a member with comparable experience. The school principal shall serve as the chairman of the team.

(2) The Education Professional Standards Board shall establish a training program for professional support teams which shall be implemented by the board or contracted with another agency. The training shall include content and procedures for the evaluation of teacher candidates. Completion of the training shall be evidenced by successfully passing the examinations prescribed by the board.

(3) A local school district seeking to hire a teacher pursuant to KRS 161.048(3) shall submit a plan for a local district alternative training program to the Education Professional Standards Board and have it approved in accordance with administrative regulations established by the Board. The district shall show evidence that it has sought joint sponsorship of the program with a college or university. No local school district shall employ a teacher seeking certification in a state-approved local district training program unless it has submitted a plan and received approval by the Education Professional Standards Board.

(4) Each state approved local district alternative training program shall provide the teacher candidate with essential knowledge and skills and include, but not be limited to, the following components:

(a) A full-time seminar and practicum of no less than eight (8) weeks' duration prior to the time the candidate assumes responsibility for a classroom. TThe content of the formal instruc-

tion shall be prescribed by the Education Professional Standards Board and shall include an introduction to basic teaching skills through supervised teaching experiences with students, as well as an orientation on the policies, organization, and curriculum of the employing district.

(b) A period of classroom supervision while the candidate assumes responsibility on a one-half (½) time basis for a classroom and continuing for eighteen (18) weeks. During this period, the candidate shall be visited and critiqued no less than one (1) time per week by one (1) or more members of a professional support team appointed by the local district and assigned according to the administrative regulations adopted by the Education Professional Standards Board. The candidate shall be formally evaluated at the end of five (5) weeks, at the end of the second five (5) weeks, and at the end of the last eight (8) weeks by the members of the team. During this period, the candidate shall continue formal instruction which emphasizes student assessment, child development, learning, curriculum, instruction of exceptional children, and school and classroom organization.

(c) An additional period of at least eighteen (18) weeks continued supervision of the teacher candidate who may be assigned full-time classroom duties. During this period the teacher candidate shall be critiqued at least once per montth and shall be observed formally and evaluated at least twice. No more than two (2) months shall pass without a formal observation. Formal instruction shall also continue during this period. In addition, opportunities shall be provided for the teacher candidate to observe the teaching of experienced teachers.

(5) At least two hundred fifty (250) hours of formal instruction shall be provided in all three (3) phases of the program combined.

(6) At the conclusion of the alternative training program, the chair of the support team shall prepare a comprehensive evaluation report on the teacher candidate's performance. This report shall be submitted to the Education Professional Standards Board and shall contain a recommendation as to whether the teacher candidate shall be issued a one (1) year certificate of eligibility to complete the internship pursuant to KRS 161.030. The support team shall make one (1) of the following recommendations:

(a) Approved: recommends issuance of certificate to complete the internship;

(b) Insufficient: recommends the candidate be allowed to seek reentry into a teacher preparation program; or

(c) Disapproved: recommends the candidate not be allowed to enter a teacher preparation program.

(Enact. Acts 1990, ch. 476, Pt. II, § 59, effective July 13, 1990; 1998, ch. 589, § 3, effective July 15, 1998; 2001, ch. 137, § 10, effective June 21, 2001.)

161.050. Kinds of certificates issued. [Repealed.]

Compiler's Notes. This section (4502-3) was repealed by Acts 1950, ch. 103, § 2.

161.051. Braille requirements for teacher certification of blind and visually impaired students.

Teachers seeking to be certified in the education of blind and visually impaired students shall be required, prior to certification, to demonstrate competence in reading and writing braille, and in the use of appropriate instructional methods for teaching braille by use of the braille writer, the slate and stylus, and through the use of computer devices commonly used in the elementary and secondary instruction of blind students. Any teacher who teaches a blind student braille, or monitors a student's braille usage, shall demonstrate competence in braille. The Education Professional Standards Board shall promulgate administrative regulations to assess such competency which shall be consistent with the guidelines for braille instructors as adopted by the National Library Services for the Blind and Physically Handicapped.

(Enact. Acts 1992, ch. 382, § 3, effective July 14, 1992.)

161.052. Certification of teachers for gifted education.

All persons employed as teachers for gifted education shall hold an appropriate certificate endorsement for gifted education, except that all teachers having certificates initially issued for a duration period on or before July 1, 1984, or proper renewals thereof, shall remain eligible thereafter for assignment as teachers for gifted education, for the grade levels of the base certificate, provided any such assignment was valid under the original certificate at the time it was issued.

(Enact. Acts 1998, ch. 589, § 4, effective July 15, 1998.)

Cross-References. Endorsement for teachers of gifted education, 704 KAR 20:280E.

161.053. Certification of teachers of exceptional children/communication disorders.

(1) The Education Professional Standards Board shall have the authority and responsibility to certify as a teacher of exceptional children/communication disorders, an individual who has:

(a) Completed an approved program of preparation that corresponds to the certificate;

(b) Achieved a passing score on an appropriate assessment as determined by the Education Professional Standards Board;

(c) Fulfilled other requirements for teacher certification as determined by the Education Professional Standards Board, in accordance with KRS Chapter 161 and administrative regulations promulgated thereunder; and

(d) Completed the requirements set forth in subsection (2) of this section.

(2) The Education Professional Standards Board shall issue two (2) levels of certification for teachers of exceptional children/communication disorders:

(a) Baccalaureate level certification shall be issued to a person who has:
1. Completed an approved program of preparation leading to a bachelor's degree in speech-language pathology;
2. Been granted licensure as a speech-language pathology assistant from the Kentucky Board of Speech-Language Pathology and Audiology, under KRS Chapter 334A; and
3. Completed the other requirements set forth in subsection (1) of this section; and

(b) Master's level certification shall be issued to a person who has:
1. Completed an approved program of preparation leading to a master's degree in speech-language pathology; and
2. Completed the other requirements specified in subsection (1) of this section.

(3) A person holding licensure through the Kentucky Board of Speech-Language Pathology and Audiology as a speech-language pathology assistant, but not certified as a teacher of exceptional children/communication disorders, may:
(a) Continue to work in the public schools as a classified employee under the provisions of KRS Chapter 334A and administrative regulations promulgated by the Kentucky Board of Speech-Language Pathology and Audiology; or
(b) Pursue certification as a baccalaureate level teacher of exceptional children/communication disorders while working as a speech-language pathology assistant.

(4) Candidates for certification as a teacher of exceptional children/communication disorders shall participate in the teacher internship program under KRS 161.030.

(5) A bachelor's level teacher of exceptional children/communication disorders shall work under requirements for speech-language pathology assistants set forth in KRS Chapter 334A.

(6) The Education Professional Standards Board shall develop a policy through the promulgation of administrative regulations by June 30, 2001, to permit a speech-language pathology assistant with two (2) years or more of successful professional experience pursuing certification as a baccalaureate level teacher of exceptional children to:
(a) Substitute prior professional experience for student teaching requirements; and
(b) Substitute prior professional experience for beginning teacher internship requirements.

(7) A teacher of exceptional children/communication disorders shall receive salary and benefits, including membership in the Teachers' Retirement System, commensurate with his or her education, certification, and experience as prescribed by law. Years of experience as a speech-language pathology assistant shall be included in the calculation of all benefits, including membership in the Teachers' Retirement System, for individuals with baccalaureate level certification as a teacher of exceptional children/communication disorders.

(Enact. Acts 2000, ch. 375, § 1, effective July 14, 2000.)

Cross-References. Certificates for teachers of exceptional children — communication disorders, 704 KAR 20:500.

161.060. Elementary certificates — Provisional and standard. [Repealed.]

Compiler's Notes. This section (4502-3) was repealed by Acts 1950, ch. 103, § 2.

161.070. High school certificates — Provisional and standard. [Repealed.]

Compiler's Notes. This section (4502-3) was repealed by Acts 1950, ch. 103, § 2.

161.080. Administration and supervision certificates — Provisional and standard. [Repealed.]

Compiler's Notes. This section (4502-3) was repealed by Acts 1950, ch. 103, § 2.

161.090. Attendance officers' certificates. [Repealed.]

Compiler's Notes. This section (4502-4) was repealed by Acts 1950, ch. 103, § 2.

161.095. Continuing education for teachers.

By July 1, 1997, the Education Professional Standards Board, with the advice of the Kentucky Board of Education, shall promulgate administrative regulations to establish procedures for a teacher to maintain his certificate by successfully completing meaningful continuing education. The Education Professional Standards Board shall develop standards for continuing education related to maintaining a certificate, including university courses, an advanced degree, or a combination of university courses, field-based experience, individual research, and approved professional development. The Education Professional Standards Board shall establish a system of quality assurance related to continuing education activities and certification requirements. The requirements shall become effective January 1, 1998.

(Enact. Acts 1996, ch. 298, § 1, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996.)

Cross-References. Continuing education alternative to planned Fifth-year Program, 704 KAR 20:022.
Rank I classification, 704 KAR 20:015.
Standards for certified school personnel, 704 KAR 20:730.

161.100. Emergency certificates.

When a district board of education satisfies the Education Professional Standards Board that it is impossible to secure qualified teachers for a position in a school under the control of the district board, the Education Professional Standards Board may issue emergency certificates to persons who meet the qualifications determined by the Education Professional Standards Board for emergency certificates. An emergency certificate shall be valid only for the specific job for which

issued and for the current school term. The Education Professional Standards Board may require the passing of a written examination before an emergency certificate is issued. The examination shall be prepared and administered and the papers graded in the state offices of the Education Professional Standards Board under the direction of the executive director, in accordance with administrative regulations approved by the Education Professional Standards Board.

(4502-5: amend. Acts 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. II, § 62, effective July 13, 1990; 2001, ch. 137, § 11, effective June 21, 2001.)

Cross-References. Certification requirements for teachers of exceptional children, 704 KAR 20:740.

Emergency certification and out-of-field teaching, 704 KAR 20:120.

Substitute teachers and emergency school personnel, 704 KAR 20:210.

Opinions of Attorney General. Where the superintendent in the proper exercise of discretion does not recommend a particular certified teacher for a certain vacancy, it is not legally possible to employ that teacher in that district and for the purposes of this section, no qualified teacher is available. OAG 69-389.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 244-246.

161.110. When certificates to be renewed. [Repealed.]

Compiler's Notes. This section (4502-13) was repealed by Acts 1978, ch. 56, § 3, effective June 17, 1978.

161.115. Deletion of certificate, certificate endorsement, or subject specialization from official certification record at holder's option — Restoration of deleted areas of certification.

The holder of any type of Kentucky teacher certification issued by the Education Professional Standards Board may, at the holder's option, have any certificate, certificate endorsement, or subject specialization deleted from the official certification record upon application, subject to the following provisions:

(1) The application shall be submitted to the Education Professional Standards Board on a form furnished by the board. The form shall include the information required by this section and the applicant shall verify the information by affidavit. The application shall be submitted between September 1 and December 1 and shall become effective on the following July 1. If the requirements of this section are satisfied, the Education Professional Standards Board shall notify the applicant and the applicant's employing school or school district on or before February 1 following submission of the application, that the decertification has been approved.

(2) No portion of the certification shall be deleted for any subject or assignment in which the teacher has had experience during the three (3) year period preceding the request in an amount equivalent to one (1) year of full-time employment (140 days) during which at least one (1) period per day was in the subject or assignment corresponding to the portion of the certification requested for deletion.

(3) If the certification for classroom teaching at the secondary level is to be retained, at least one (1) teaching major or one (1) area of concentration shall be retained.

(4) A certificate which is a prerequisite or a concurrent requirement to the issuance of another certificate or certificate endorsement held by the applicant shall be retained.

(5) Applications for restoration of areas of certification deleted under this section shall be submitted to the Education Professional Standards Board showing restored competency and proficiency by completion of twelve (12) semester hours of credit pertinent to the deleted areas as prescribed by an institution approved for teacher education. A transcript or other appropriate verification of completion of the twelve (12) semester hours of credit from the institution approved for teacher education shall be accepted as evidence showing restoration of competency and proficiency in the areas of certification.

(Enact. Acts 1984, ch. 229, § 1, effective July 13, 1984; 1990, ch. 476, Pt. II, § 63, effective July 13, 1990.)

161.120. Disciplinary actions relating to certificates — Appeals.

(1) Except as described in KRS 161.795, the Education Professional Standards Board may revoke, suspend, or refuse to issue or renew; impose probationary or supervisory conditions upon; issue a written reprimand or admonishment; or any combination of those actions regarding any certificate issued under KRS 161.010 to 161.100, or any certificate or license issued under any previous law to superintendents, principals, teachers, substitute teachers, interns, supervisors, directors of pupil personnel, or other administrative, supervisory, or instructional employees for the following reasons:

(a) Being convicted of, or entering an "Alford" plea or plea of nolo contendere to, notwithstanding an order granting probation or suspending imposition of any sentence imposed following the conviction or entry of the plea, one (1) of the following:

1. A felony;
2. A misdemeanor under KRS Chapter 218A, 508, 509, 510, 522, 525, 529, 530, or 531; or
3. A misdemeanor involving a student or minor.

A certified copy of the conviction or plea shall be conclusive evidence of the conviction or plea;

(b) Having sexual contact as defined in KRS 510.010(7) with a student or minor. Conviction in a criminal proceeding shall not be a requirement for disciplinary action;

(c) Committing any act that constitutes fraudulent, corrupt, dishonest, or immoral conduct. If the act constitutes a crime, conviction in a

criminal proceeding shall not be a condition precedent to disciplinary action;

(d) Demonstrating willful or careless disregard for the health, welfare, or safety of others;

(e) Physical or mental incapacity that prevents the certificate holder from performing duties with reasonable skill, competence, or safety;

(f) Possessing, using, or being under the influence of alcohol, which impairs the performance of duties;

(g) Unlawfully possessing or unlawfully using a drug during the performance of duties;

(h) Incompetency or neglect of duty;

(i) Making, or causing to be made, any false or misleading statement or concealing a material fact in obtaining issuance or renewal of any certificate;

(j) Failing to report as required by subsection (2) of this section;

(k) Failing to comply with an order of the Education Professional Standards Board;

(l) Violating any state statute relating to schools or the teaching profession;

(m) Violating the professional code of ethics for Kentucky school certified personnel established by the Education Professional Standards Board through the promulgation of administrative regulation;

(n) Violating any administrative regulation promulgated by the Education Professional Standards Board or the Kentucky Board of Education; or

(o) Receiving disciplinary action or having the issuance of a certificate denied or restricted by another jurisdiction on grounds that constitute a violation of this subsection.

(2) (a) The superintendent of each local school district shall report in writing to the Education Professional Standards Board the name, address, phone number, Social Security number, and position name of any certified school employee in the employee's district whose contract is terminated or not renewed, for cause except failure to meet local standards for quality of teaching performance prior to the employee gaining tenure; who resigns from, or otherwise leaves, a position under threat of contract termination, or nonrenewal, for cause; who is convicted in a criminal prosecution; or who otherwise may have engaged in any actions or conduct while employed in the school district that might reasonably be expected to warrant consideration for action against the certificate under subsection (1) of this section. The duty to report shall exist without regard to any disciplinary action, or lack thereof, by the superintendent, and the required report shall be submitted within thirty (30) days of the event giving rise to the duty to report.

(b) The district superintendent shall inform the Education Professional Standards Board in writing of the full facts and circumstances leading to the contract termination or nonrenewal, resignation, or other absence, conviction, or otherwise reported actions or conduct of the certified employee, that may warrant action against the certificate under subsection (1) of this section, and shall forward copies of all relevant documents and records in his possession.

(c) The Education Professional Standards Board may consider reports and information received from other sources.

(d) The certified school employee shall be given a copy of any report provided to the Education Professional Standards Board by the district superintendent or other sources. The employee shall have the right to file a written rebuttal to the report which shall be placed in the official file with the report.

(3) A finding or action by a school superintendent or tribunal does not create a presumption of a violation or lack of a violation of subsection (1) of this section.

(4) The board may issue a written admonishment to the certificate holder if the board determines, based on the evidence, that a violation has occurred that is not of a serious nature. A copy of the written admonishment shall be placed in the official file of the certificate holder. The certificate holder may respond in writing to the admonishment within thirty (30) days of receipt and have that response placed in his official certification file. Alternatively, the certificate holder may file a request for a hearing with the board within thirty (30) days of receipt of the admonishment. Upon receipt of a request for a hearing, the board shall set aside the written admonishment and set the matter for hearing pursuant to the provisions of KRS Chapter 13B.

(5) (a) The Education Professional Standards Board shall schedule and conduct a hearing in accordance with KRS Chapter 13B:

1. Before revoking, suspending, refusing to renew, imposing probationary or supervisory conditions upon, issuing a written reprimand, or any combination of these actions regarding any certificate;
2. After denying an application for a certificate, upon written request filed within thirty (30) days of receipt of the letter advising of the denial; or
3. After issuing a written admonishment, upon written request for a hearing filed within thirty (30) days of receipt of the written admonishment.

(b) Upon request, a hearing may be public or private at the discretion of the certified employee or applicant.

(c) The hearing shall be conducted before the full board, a panel of three (3) members of the board, or a person appointed as hearing officer by the board pursuant to KRS 13B.030(1).

(6) The Education Professional Standards Board or its chair may take emergency action pursuant to KRS 13B.125. Emergency action shall not affect a certificate holder's contract or tenure rights in the school district.

(7) If the Education Professional Standards Board substantiates that sexual contact occurred between a certified employee and a student or minor, the employee's certificate may be revoked or suspended with mandatory treatment of the employee as prescribed by the Education Professional Standards Board. The Education Professional Standards Board may require the employee to pay a specified amount for mental health services for the student or minor which are needed as a result of the sexual contact.

(8) At any time during the investigative or hearing processes, the board may enter into an agreed order or accept an assurance of voluntary compliance with the certificate holder.

(9) The board may reconsider, modify, or reverse its decision on any disciplinary action.

(10) Suspension of a certificate shall be for a specified period of time, not to exceed two (2) years.

(a) At the conclusion of the specified period, upon demonstration of compliance with any educational requirements and the terms set forth in the agreed order, the certificate shall be reactivated.

(b) A suspended certificate is subject to expiration and termination.

(11) Revocation of a certificate is a permanent forfeiture. The board shall establish the minimum period of time before an applicant can apply for a new certificate.

(a) At the conclusion of the specified period, and upon demonstration of compliance with any educational requirements and the terms set forth in the agreed order, the applicant shall bear the burden of proof to show that he or she is again fit for practice.

(b) The board shall have discretion to impose conditions that it deems reasonably appropriate to ensure the applicant's fitness and the protection of public safety. Any conditions imposed by the board shall address or apply to only that time period after the revocation of the certificate.

(12) An appeal from any final order of the Education Professional Standards Board shall be filed in Franklin Circuit Court in accordance with KRS Chapter 13B.

(4502-9: amend. Acts 1978, ch. 56, § 2, effective June 17, 1978; 1978, ch. 155, § 82, effective June 17, 1978; 1980, ch. 188, § 119, effective July 15, 1980; 1990, ch. 476, Pt. II, § 64, effective July 13, 1990; 1992, ch. 182, § 1, effective July 14, 1992; 1994, ch. 265, § 2, effective July 15, 1994; 1994, ch. 470, § 2, effective July 15, 1994; 1996, ch. 318, § 54, effective July 15, 1996; 1996, ch. 343, § 7, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 362, § 5, effective July 15, 1998; 1998, ch. 465, § 2, effective July 15, 1998; 2000, ch. 269, § 1, effective July 14, 2000.)

Legislative Research Commission Note. (7/15/96). This section was amended by 1996 Ky. Acts chs. 318 and 343. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 343, which was last enacted by the General Assembly, prevails under KRS 446.250.

(7/15/94). This statute was amended by 1994 Ky. Acts chs. 265 and 470, which were companion bills and are substantively identical. These Acts have been codified together. For the few minor variations between the Acts, Acts ch. 470 prevails under KRS 446.250, as the Act which passed the General Assembly last.

Cross-References. Additional grounds for revocation of certificates, KRS 158.990, 159.990, 161.990.

Removal of school employes, KRS 156.132 to 156.142.

Suspension of certificate in case of breach of contract by teacher, KRS 161.780.

Part-time adjunct instructor certificate, 704 KAR 20:300.

Procedures for certificate revocation, suspension, voluntary surrender, reinstatement and reissuance, and application denial, 704 KAR 20:585.

Professional code of ethics for Kentucky school certified personnel, 704 KAR 20:680.

Standards for certified school personnel, 704 KAR 20:730.

Kentucky Bench & Bar. Brooks, Disciplinary Action Against School Teachers, Vol. 42, No. 4, Fall 1995, Ky. Bench & Bar 6.

Kentucky Law Journal. Comments, The Dismissal of Public School Teachers for Aberrant Behavior, 64 Ky. L.J. 911 (1975-76).

Opinions of Attorney General. Although this section seems to provide for an abbreviated consideration by the state board of revocation of certificate, a fundamentally fair adversary due process hearing would, at the minimum, be required, and a decision to revoke a certificate must be by a majority vote of the membership of the state board (four votes). OAG 79-394.

The state superintendent need not recommend revocation of certificate even though he has recommended suspension or removal under KRS 156.132 for the same acts. OAG 79-394.

The Educational Professional Standards Board (EPSB) lacks the authority to delegate the holding of a revocation hearing, as found in this section, to a hearing officer. Nowhere in the statutory sections dealing with the board is there any authority for such a delegation of power, and therefore, based upon the lack of authority granted to the EPSB under their statutes, the board must be physically present to "hear" the evidence introduced during a hearing. Of course, a hearing officer may assist the Board during and following the hearing. OAG 91-37.

The Education Professional Standards Board, as a public agency, may meet to take action so long as a majority of the members are present and express themselves by vote. This section provides that a majority of the board may take official action upon hearing the evidence presented, and it would not be appropriate to require that additional members who are not present and did not hear the evidence should render a vote. It is clear that the quorum necessary for the board to conduct business may also act. The Education Professional Standards Board, composed of 15 members, may act when eight members are present to hear the evidence and to take action; that action may consist of a vote of which a majority of those present prevail over the rest. OAG 91-107.

The language of KRS 160.270 which is applicable to local boards of education and states that a concurring vote by a majority of the board, the number of board members in the quorum notwithstanding, shall be necessary to take any particular action unless otherwise specified by statute does not apply to this section, which is applicable to the Education Professional Standards Board. OAG 91-107.

A report written under subsections (2)(a) and (b) (now (3)(a) and (b)) of this section does not represent final agency action, but is more closely analogous to an internal affairs report and is exempt under KRS 61.878. OAG 91-198.

NOTES TO DECISIONS

1. Immunity.

A school superintendent as a public official acting under

express authority of law is entitled to absolute immunity from a defamation action, even if the information he forwarded to the Professional Standards Board, regarding the reasons why a principal's contract wasn't renewed, was false. Matthews v. Holland, 912 S.W.2d 459 (Ky. Ct. App. 1995).

Collateral References. 78 C.J.S., Schools and School Districts, § 200.

Bias of members of license revocation board, 97 A.L.R.2d 1210.

Dismissal or rejection of public school teacher because of disloyalty. 27 A.L.R.2d 487.

Revocation of teacher's certificate for moral unfitness. 97 A.L.R.2d 827.

161.121. Definitions for KRS 161.122. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1985 (1st Ex. Sess.), ch. 10, § 20, effective October 18, 1985) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

161.1211. Classification of teachers.

(1) The Education Professional Standards Board shall rank teachers as follows:

Rank I. Those holding regular certificates and who have a master's degree in a subject field approved by the Education Professional Standards Board or equivalent continuing education and who have earned thirty (30) semester hours of approved graduate work or equivalent continuing education; and those teachers who have met the requirements for Rank II and hold current certification of the National Board for Professional Teaching Standards.

Rank II. Those holding regular certificates and who have a master's degree in a subject field approved by the Education Professional Standards Board or equivalent continuing education.

Rank III. Those holding regular certificates and who have an approved four (4) year college degree or the equivalent.

Rank IV. Those holding emergency certificates and who have ninety-six (96) to one hundred twenty-eight (128) semester hours of approved college training or the equivalent.

Rank V. Those holding emergency certificates and who have sixty-four (64) to ninety-five (95) semester hours of approved college training or the equivalent.

(2) In determining ranks, the Education Professional Standards Board shall classify teachers who hold valid certificates in the respective ranks according to approved college semester hours of credit or equivalent continuing education. The board, in defining preparation for certain types of vocational teachers as equivalent to college training, shall give consideration to apprenticeship training and industrial experience.

(3) For purposes of the state salary schedule only as referenced in KRS 15B.070, rank shall be determined on September 15 of each year.

(4) Nothing in this section shall allow the Education Professional Standards Board by regulation to reclassify downward any teachers in Ranks II or I.

(Enact. Acts 2000, ch. 527, § 7, effective July 14, 2000.)

161.122. Career-ladder commission to develop pilot program — Commission report required — Initiation of two-year program. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1984, ch. 397, § 2, effective July 13, 1984; 1985 (1st Ex. Sess.), ch. 10, § 21, effective October 18, 1985) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990.

161.1221. Out-of-field teaching.

(1) By January 15, 2001, the Education Professional Standards Board shall define "out-of-field" teaching and inform all local school districts of the definition. The board shall review its policies relating to emergency certificates as it develops a definition and consider if these policies contribute to the problem of out-of-field teaching.

(2) By October 15, 2001, the Education Professional Standards Board shall identify every teacher assigned classes out-of-field in the 2001-2002 school year and shall inform the Kentucky Department of Education.

(3) The Kentucky Department of Education shall provide to each school district a summary of the teachers identified as teaching out-of-field and give the district opportunity to correct the situation during the year. No teacher shall be reduced in salary due to being involuntarily moved out-of-field or being hired into a position out of his or her field. Emergency certification shall not be a valid reason for reducing any certified teacher's salary.

(Enact. Acts 2000, ch. 527, § 6, effective July 14, 2000.)

Cross-References. Emergency certification and out-of-field teaching, 704 KAR 20:120.

161.123. Reciprocity certification for out-of-state teachers.

Notwithstanding any other statute to the contrary, an experienced, out-of-state teacher shall qualify for a regular provisional certificate if the applicant:

(1) Completes the application process;

(2) Holds a valid certificate issued by the state where the applicant most recently taught; and

(3) Holds a valid certificate issued by the National Board of Professional Teaching Standards.

(Enact. Acts 2000, ch. 257, § 6, effective July 14, 2000.)

Interstate Agreement on Qualification of Educational Personnel

161.124. Interstate Agreement on Qualification of Educational Personnel.

The Interstate Agreement on Qualification of Educational Personnel is hereby enacted into law and entered into with all jurisdictions legally joining therein, in the form substantially as follows:

ARTICLE I. PURPOSE, FINDINGS, AND POLICY

(1) The states party to this agreement, desiring by common action to improve their respective school systems by utilizing the teacher or other profes-

sional educational person wherever educated, declare that it is the policy of each of them, on the basis of cooperation with one another, to take advantage of the preparation and experience of these persons wherever gained, thereby serving the best interests of society, of education, and of the teaching profession. It is the purpose of this agreement to provide for the development and execution of these programs of cooperation as will facilitate the movement of teachers and other professional educational personnel among the states party to it, and to authorize specific interstate educational personnel contracts to achieve that end.

(2) The party states find that included in the large movement of population among all sections of the nation are many qualified educational personnel who move for family and other personal reasons but who are hindered in using their professional skill and experience in their new locations. Variations from state to state in requirements for qualifying educational personnel discourage these personnel from taking the steps necessary to qualify in other states. As a consequence, a significant number of professionally prepared and experienced educators is lost to our school systems. Facilitating the employment of qualified educational personnel, without reference to their states of origin, can increase the available educational resources. Participation in this compact can increase the availability of educational manpower.

ARTICLE II. DEFINITIONS

As used in this agreement and contracts made pursuant to it, unless the context clearly requires otherwise:

(1) "Educational personnel" means persons who must meet requirements pursuant to state law as a condition of employment in educational programs.

(2) "Designated state official" means the education official of a state selected by that state to negotiate and enter into, on behalf of his state, contracts pursuant to this agreement.

(3) "Accept," or any variant thereof, means to recognize and give effect to one (1) or more determinations of another state relating to the qualifications of educational personnel in lieu of making or requiring a like determination that would otherwise be required by or pursuant to the laws of a receiving state.

(4) "State" means a state, territory, or possession of the United States; the District of Columbia; or the Commonwealth of Puerto Rico.

(5) "Originating state" means a state and its subdivisions, if any, whose determination that certain educational personnel are qualified to be employed for specific duties in schools is acceptable in accordance with the terms of a contract made pursuant to Article III.

(6) "Receiving state" means a state and its subdivisions which accept educational personnel in accordance with the terms of a contract made pursuant to Article III.

ARTICLE III. INTERSTATE EDUCATIONAL PERSONNEL CONTRACTS

(1) The designated state official of a party state may make one or more contracts on behalf of his state with one or more other party states providing for the acceptance of educational personnel. Any contract for the period of its duration shall be applicable to and binding on the states whose designated state officials enter into it, and the subdivisions of those states, with the same force and effect as if incorporated in this agreement. A designated state official may enter into a contract pursuant to this Article only with states in which he finds that there are programs of education, certification standards or other acceptable qualifications that assure preparation or qualification of educational personnel on a basis sufficiently comparable, even though not identical to that prevailing in his own state.

(2) Any contract shall provide for:

(a) Its duration.

(b) The criteria to be applied by an originating state in qualifying educational personnel for acceptance by a receiving state.

(c) Waivers, substitutions, and conditional acceptance as shall aid the practical effectuation of the contract without sacrifice of basic educational standards.

(d) Any other necessary matters.

(3) No contract made pursuant to this agreement shall be for a term longer than five years but any contract may be renewed for like or lesser periods.

(4) Any contract dealing with acceptance of educational personnel on the basis of their having completed an educational program shall specify the earliest date or dates on which originating state approval of the program or programs involved can have occurred. No contract made pursuant to this agreement shall require acceptance by a receiving state of any persons qualified because of successful completion of a program prior to January 1, 1954.

(5) The certification or other acceptance of a person who has been accepted pursuant to the terms of a contract shall not be revoked or otherwise impaired because the contract has expired or been terminated. However, any certificate or other qualifying document may be revoked or suspended on any ground which would be sufficient for revocation or suspension of a certificate or other qualifying document initially granted or approved in the receiving state.

(6) A contract committee composed of the designated state officials of the contracting states or their representatives shall keep the contract under continuous review, study means of improving its administration, and report no less frequently than once a year to the heads of the appropriate education agencies of the contracting states.

ARTICLE IV. APPROVED AND ACCEPTED PROGRAMS

(1) Nothing in this agreement should be construed to repeal or otherwise modify any law or regulation of a party state relating to the approval of programs of educational preparation having effect solely on the qualification of educational personnel within that state.

(2) To the extent that contracts made pursuant to this agreement deal with the educational requirements for the proper qualification of educational personnel, acceptance of a program of educational preparation shall be in accordance with such procedures and requirements as may be provided in the applicable contract.

ARTICLE V. INTERSTATE COOPERATION

The party states agree that:

(1) They will, so far as practicable, prefer the making of multilateral contracts pursuant to Article III of this agreement.

(2) They will facilitate and strengthen cooperation in interstate certification and other elements of educational personnel qualification and for this purpose shall cooperate with agencies, organizations, and associations interested in certification and other elements of educational personnel qualification.

ARTICLE VI. AGREEMENT EVALUATION

The designated state officials of any party state may meet from time to time as a group to evaluate progress under the agreement, and to formulate recommendation for changes.

ARTICLE VII. OTHER ARRANGEMENTS

Nothing in this agreement shall be construed to prevent or inhibit other arrangements or practices of any party state or states to facilitate the interchange of educational personnel.

ARTICLE VIII. EFFECT AND WITHDRAWAL

(1) This agreement shall become effective when enacted into law by two (2) states. Thereafter it shall become effective as to any state upon its enactment of this agreement.

(2) Any party state may withdraw from this agreement by enacting a statute repealing the agreement, but no withdrawal shall take effect until one (1) year after the Governor of the withdrawing state has given notice in writing of the withdrawal to the Governors of all other party states.

(3) No withdrawal shall relieve the withdrawing state of any obligation imposed upon it by a contract to which it is a party. The duration of contracts and the methods and conditions of withdrawal therefrom shall be those specified in their terms.

ARTICLE IX. CONSTRUCTION AND SEVERABILITY

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the Constitution of any state or of the United States, or the application thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement shall be held contrary to the Constitution of any state participating therein, the agreement shall remain in full force and effect as to the state affected as to all severable matters.

(Enact. Acts 1970, ch. 174, § 1; 1990, ch. 476, Pt. II, § 65, effective July 13, 1990.)

Cross-References. Out-of-state preparation, 704 KAR 20:035.

161.126. Designation of executive director of the Education Professional Standards Board as state official under agreement — Handling contracts under agreement.

(1) The "designated state official" for this state shall be the executive director of the Education Professional Standards Board. The executive director shall enter into contracts pursuant to Article III of the agreement only with the approval of the specific text by the Education Professional Standards Board.

(2) True copies of all contracts made on behalf of this state pursuant to the agreement shall be kept on file in the office of the Education Professional Standards Board and in the office of the Secretary of State. The executive director of the board shall publish all contracts in convenient form.

(Enact. Acts 1970, ch. 174, §§ 2, 3; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. II, § 66, effective July 13, 1990; 2001, ch. 137, § 12, effective June 21, 2001.)

161.130. Fees for certificates — Agency fund account. [Repealed.]

Compiler's Notes. This section (4502-8: amend. Acts 1950, ch. 103, § 3) was repealed by Acts 1960, ch. 98.

NATIONAL BOARD CERTIFICATION OF TEACHERS

161.131. Legislative findings and goals on national board certification.

(1) The General Assembly hereby finds that:

(a) Student achievement is directly related to the competency levels of the teachers and the teachers' ability to nurture student learning;

(b) All students are entitled to have teachers who know the subjects they teach and who demonstrate skill for managing and monitoring student learning;

(c) Teachers who meet entry-level standards need support and opportunities to develop higher-level skills throughout their teaching careers;

(d) Certification through the National Board for Professional Teaching Standards is based on high and rigorous standards and provides a process of development and assessment of teachers' knowledge, skills and abilities embedded in classroom practices in the certificate field; and

(e) Teachers who successfully meet the certification requirements through the National Board for Professional Teaching Standards can help

strengthen the teaching profession within their schools and school districts by advising, assisting, and mentoring new teachers; by serving as role models and master teachers to student teachers; and by assisting other experienced teachers who seek national board certification.

(2) The General Assembly establishes, on behalf of the public school teachers and students in the Commonwealth, a goal that by the year 2020 there will be at least one (1) national board certified teacher in every public school in Kentucky.

(Enact. Acts 2000, ch. 257, § 1, effective July 14, 2000.)

161.132. Definitions for KRS 161.131 to 161.134 and KRS 157.395 and 161.123.

As used in KRS 161.131 to 161.134 and KRS 157.395 and 161.123, unless the context otherwise requires:

(1) "Mentor" means a highly skilled, experienced teacher who provides systematic and on-going support and assistance to other teachers in a school or school district to help them improve their teaching skills and practices;

(2) "National Board for Professional Teaching Standards" and "national board" means a nonpartisan, independent, and nonprofit board composed of teachers and others that has developed a set of high and rigorous standards for accomplished teachers and that operates a national voluntary system to assess and certify teachers who meet their standards; and

(3) "National board certification" means a demonstration by an experienced teacher of his or her teaching practice as measured against high and rigorous standards through a comprehensive assessment process administered by the National Board for Professional Teaching Standards.

(Enact. Acts 2000, ch. 257, § 2, effective July 14, 2000.)

161.133. Teachers' national certification incentive trust fund — Purposes — Appropriations.

(1) There is hereby established a "Teachers' National Certification Incentive Trust Fund" in the State Treasury for the purposes of:

(a) Funding stipends for teachers to prepare for certification by the National Board for Professional Teaching Standards;

(b) Reimbursing a portion of the certification fee to each teacher who is awarded national board certification;

(c) Reimbursing local boards of education for persons who serve as substitute teachers for national board certification candidates; and

(d) Funding stipends for national board certified teachers who serve as mentors to other teachers within the school district.

(2) Appropriations by the General Assembly in each biennial budget for the purpose of supporting national board certification shall be credited to the fund and invested until needed. All money credited to the fund, including interest earned on money in the fund, shall be retained in the fund for reinvestment and used for the purposes of this section. Funds appropriated to the fund shall not lapse at the end of a fiscal year or a biennium.

(3) The Education Professional Standards Board shall promulgate administrative regulations that establish the procedures for the administration of the funds as described in this section and the requirements for participating teachers and local boards of education.

(4) Money in the fund shall be distributed to local boards of education and teachers by the Kentucky Department of Education in compliance with the administrative regulations promulgated by the board.

(Enact. Acts 2000, ch. 257, § 3, effective July 14, 2000.)

Cross-References. Teachers' National Certification Incentive Trust Fund, 704 KAR 20:750.

161.134. Preparation for national board certification — Incentives — Administrative regulations for mentoring program.

(1) (a) A teacher pursuing national board certification shall receive from the fund established under KRS 161.133 a stipend of two hundred dollars ($200) per day for two (2) days beyond the school contract year to prepare for the certification assessments.

(b) A local board of education shall provide five (5) days' released time during the school year for a teacher pursuing national board certification. The local board of education shall request reimbursement from the fund established under KRS 161.133 for substitute teacher pay based on the local board of education salary schedule for substitute teachers and for stipends paid to a teacher described in subsection (3) of this section. A local board of education may, at its own expense, provide additional released time for teachers pursuing national board certification.

(c) If a teacher does not successfully complete all assessments required for national board certification during a school year, the provisions in this subsection may be applied to a second school year.

(2) As of July 14, 2000, a teacher who attains national board certification shall be reimbursed seventy-five percent (75%) of the certification fee for the initial ten (10) year certificate. Fees for renewal of the national board certificate shall be at the teacher's expense.

(3) A national board certified teacher may receive a stipend in addition to his or her annual compensation for serving as a mentor to teachers within his or her school or school district. The Education Professional Standards Board shall promulgate administrative regulations by January 1, 2001, under which a local board of education, in cooperation with the school-based decision making council, may establish a mentoring program within a school to utilize national board certified teachers. The administrative regulations shall specify the conditions for the mentoring program as well as

the amount of the stipend that will be provided to a teacher serving as a mentor.

(Enact. Acts 2000, ch. 257, § 4, effective July 14, 2000.)

REGULATIONS AS TO SCHOOL EMPLOYEES

161.140. Duties of school employees prescribed by board of education. [Repealed.]

Compiler's Notes. This section (4503-1) was repealed by Acts 1982, ch. 34, § 1, effective July 15, 1982.

161.145. Cost of physical examination required for employment of classified personnel.

(1) When a physical examination is required as a condition of employment of classified personnel, excluding bus drivers, the examination shall be provided at no cost to the employee by the board. The examination shall be provided by the county health department if appropriate health department personnel are available.

(2) If employee elects to be examined by private physician, the cost of examination shall be borne by employee.

(3) Each examination shall include a test for tuberculosis and shall be conducted prior to August 1 of the employable year in which the person is employed.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 475, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1980, ch. 70, § 1, effective March 20, 1980) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 475, effective July 13, 1994.

Opinions of Attorney General. KRS 336.220 does not apply to public employers and under this section the Board of Education is not required to pay the cost of physical examinations of bus drivers who work for the board. OAG 91-1.

161.148. Use of volunteer personnel — Criminal records check — Orientation — Exception.

(1) As used in this section, "volunteers" means adults who assist teachers, administrators, or other staff in public school classrooms, schools, or school district programs, and who do not receive compensation for their work.

(2) Local school districts may utilize adult volunteers in supplementary instructional and noninstructional activities with pupils under the direction and supervision of the professional administrative and teaching staff.

(3) Each board of education shall develop policies and procedures that encourage volunteers to assist in school or district programs.

(4) Each local board of education shall develop and adopt a policy requiring a state criminal records check on all volunteers who have contact with students on a regularly scheduled or continuing basis, or who have supervisory responsibility for children at a school site or on school-sponsored trips. The request for records may be from the Justice Cabinet or the Administrative Office of the Courts, or both, and shall include records of all available convictions as described in KRS 17.160(1). Any request for a criminal records check of a volunteer under this subsection shall be on a form or through a process approved by the Justice Cabinet or the Administrative Office of the Courts. If the cabinet or the Administrative Office of the Courts charges fees, the local board of education shall arrange to pay the cost which may be from local funds or donations from any source including volunteers.

(5) The local board of education shall provide orientation material to all volunteers who have contact with students on a regularly scheduled or continuing basis, including school policies, safety and emergency procedures, and other information deemed appropriate by the local board of education.

(6) The provisions of this section shall not apply to students enrolled in an educational institution and who participate in observations and educational activities under direct supervision of a local school teacher or administrator in a public school.

(Enact. Acts 2000, ch. 336, § 1, effective July 14, 2000; 2001, ch. 60, § 1, effective June 21, 2001.)

161.150. Minimum salary for teachers. [Repealed.]

Compiler's Notes. This section (4399-46) was repealed by Acts 1954, ch. 214, § 16.

161.151. Removal of references to criminal allegations, not resulting in charge or conviction from school employee's personnel file — Nonpreclusion of separate investigation.

(1) All records and references relating to an allegation of a criminal offense committed by a school employee that did not lead to formal charges and all records relating to a criminal proceeding in which a school employee was found not guilty or the charges were dismissed shall be removed from the school employee's personnel file by the superintendent or the superintendent's designee in the local school district.

(2) The provisions of subsection (1) of this section shall not preclude a school district from separately investigating, taking action upon, and creating and maintaining records on the same or a similar fact situation upon which the allegations of a criminal offense was based.

(Enact. Acts 1998, ch. 469, § 1, effective July 15, 1998.)

161.152. Emergency leave for school employees.

(1) For the purpose of this section, "school personnel" shall mean any person employed as a full-time employee in the public schools.

(2) Each district board of education may allow each person employed as a full-time employee in the public schools not to exceed three (3) emergency days per school year for reasons designated by the district board of education, without loss of salary to the employee and without affecting his sick leave.

(3) Personal leave granted under this section shall not be treated as having effect on the provisions of KRS 161.155, except that school personnel, after using the maximum days allowed in subsection (2) of this section, may, upon the recommendation of the school district superintendent and approval of the district board of education, use up to three (3) sick-leave days per school year for emergency leave according to the district board policy as established pursuant to subsection (2) of this section.

(4) Payments made by a district board of education under the provisions of this section are presumed to be for services rendered and for the benefit of the common schools and the payments do not affect the eligibility of any school district to participate in the public school funding program as established in KRS Chapter 157.

(Enact. Acts 1970, ch. 170, § 1; 1986, ch. 126, § 1, effective July 15, 1986; 1990, ch. 476, § 238, effective July 13, 1990.)

Opinions of Attorney General. Under this section the granting of emergency leave is discretionary on the part of the board of education, and if the board, within its discretion, decides to grant emergency leave, this section provides that the district board of education may designate the specific reasons for which the leave will be granted, and limitations which exclude the death of a mother-in-law from the emergency leave benefits is a legal limitation. OAG 71-199.

The fact that teachers of the Jewish faith are not granted emergency days with pay when they are absent on religious holidays does not constitute unjust discrimination against such teachers. OAG 72-348.

A school board does not have to have an emergency leave regulation, but if it does have one, it cannot provide that emergency leave shall be charged as sick leave. OAG 73-832.

Proposal of school board to grant certified personnel two emergency leave days and one personal leave day for a total of three and to grant noncertified personnel three emergency leave days and no personal leave days does not follow the requirements of this section and KRS 161.154 and the board cannot permit two emergency days for certified personnel and three emergency days for noncertified personnel. OAG 76-427.

If a teacher is absent on an extended school day and is not covered by sick leave, personal leave or emergency death leave, he or she loses one and one-fifth day's salary. OAG 78-367.

161.153. Leave for jury duty for teachers and state employees.

(1) Any teacher or state employee, except employees subject to the provisions of KRS Chapter 18A, who serves on a jury in any duly constituted local, state, or federal court shall be granted leave with full compensation, less any compensation received as jury pay, for the period of his actual jury service, which leave shall be in addition to all other leave to which the teacher or state employee may be entitled.

(2) Any state employee who is subject to the provisions of KRS Chapter 18A and who serves on a jury in any duly constituted local, state, or federal court shall be granted leave with full compensation for the period of his actual jury service, which shall be in addition to all other leave to which the employee may be entitled.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 476, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1972, ch. 97, § 1; 1978, ch. 269, § 8, effective June 17, 1978) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 476, effective July 13, 1990.

Opinions of Attorney General. A teacher is to receive his or her school teacher's compensation less $5.00 per day received as jury pay, but the $7.50 per diem received need not be deducted from the teacher's regular compensation. OAG 78-696.

161.154. Personal leave days for school employees.

(1) For the purpose of this section, "school employees" shall mean any person for whom certification is required as a basis of employment in the public schools.

(2) Each district board of education may provide up to three (3) personal leave days per school year to school employees, without loss of salary to the employee and without affecting any other type of leave granted by law, regulation, or school board policy. Local boards of education may establish policy regarding the number of teachers who may take personal leave on any one (1) day.

(3) Personal leave granted under this section shall not be treated as having effect on the provisions of KRS 161.152 to 161.155 and shall be supported by personal affidavit of the school employee stating that the leave taken is personal in nature; no other reason for or verification of the leave shall be required.

(4) Payments to school employees made by a district board of education under the provisions of this section are presumed to be for services rendered and for the benefit of the common schools and such payments do not affect the eligibility of any school district to share in the distribution of funds from the public school foundation program fund as established in KRS Chapter 157.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 477, effective July 13, 1990.)

Compiler's Notes. This section as enacted (Enact. Acts 1976, ch. 238, § 1) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 477, effective July 13, 1990.

161.155. Sick leave for employee or teacher — Sick leave bank — Sick leave donation program — Payment for unused sick leave upon retirement or death.

(1) As used in this section:

(a) "Teacher" shall mean any person for whom certification is required as a basis of employment in the common schools of the state;

(b) "Employee" shall mean any person, other than a teacher, employed in the public schools, whether on a full or part-time basis;

(c) "Immediate family" shall mean the teacher's spouse, children including stepchildren and foster children, grandchildren, daughters-in-law and sons-in law, brothers and sisters,

parents and spouse's parents, and grandparents and spouse's grandparents, without reference to the location or residence of said relative, and any other blood relative who resides in the teacher's home; and

(d) "Sick leave bank" shall mean an aggregation of sick leave days contributed by teachers or employees for use by teachers or employees who have exhausted all sick leave and other available paid leave days.

(2) Each district board of education shall allow to each teacher in its common school system not less than ten (10) days of sick leave during each school year, without deduction of salary. Sick leave shall be granted to a teacher if he presents a personal affidavit or a certificate of a physician stating that the teacher was ill, that the teacher was absent for the purpose of attending to a member of his immediate family who was ill, or for the purpose of mourning a member of his immediate family. The ten (10) days of sick leave granted in this subsection may be taken by a teacher on any ten (10) days of the school year and shall be granted in addition to accumulated sick leave days that have been credited to the teacher under the provisions of subsection (3) of this section.

(3) Days of sick leave not taken by an employee or a teacher during any school year shall accumulate without limitation and be credited to that employee or teacher. Accumulated sick leave may be taken in any school year. Any district board of education may, in its discretion, allow employees or teachers in its common school system sick leave in excess of the number of days prescribed in this section and may allow school district employees and teachers to use up to three (3) days' sick leave per school year for emergency leave pursuant to KRS 161.152(3). Any accumulated sick leave days credited to an employee or a teacher shall remain so credited in the event he transfers his place of employment from one (1) school district to another within the state or to the Kentucky Department of Education or transfers from the Department of Education to a school district.

(4) Accumulated days of sick leave shall be granted to a teacher if, prior to the opening day of the school year, an affidavit or a certificate of a physician is presented to the district board of education, stating that the teacher is unable to commence his duties on the opening day of the school year, but will be able to assume his duties within a period of time that the board determines to be reasonable.

(5) Any school teacher or employee may repurchase previously used sick leave days with the concurrence of the local school board by paying to the district an amount equal to the total of all costs associated with the used sick leave.

(6) A district board of education may adopt a plan for a sick leave bank. The plan may include limitations upon the number of days a teacher or employee may annually contribute to the bank and limitations upon the number of days a teacher or employee may annually draw from the bank. Only those teachers or employees who contribute to the bank may draw upon the bank. Days contributed will be deducted from the days available to the contributing teacher or employee. The sick leave bank shall be administered in accordance with a policy adopted by the board of education.

(7) (a) A district board of education shall establish a sick leave donation program to permit teachers or employees to voluntarily contribute sick leave to teachers or employees in the same school district who are in need of an extended absence from school. A teacher or employee who has accrued more than fifteen (15) days' sick leave may request the board of education to transfer a designated amount of sick leave to another teacher or employee who is authorized to receive the sick leave donated. A teacher or employee may not request an amount of sick leave be donated that reduces his or her sick leave balance to less than fifteen (15) days.

(b) A teacher or employee may receive donations of sick leave if:

1. a. The teacher or employee or a member of his or her immediate family suffers from a medically certified illness, injury, impairment, or physical or mental condition that has caused or is likely to cause the teacher or employee to be absent for at least ten (10) days; or

b. The teacher or employee suffers from a catastrophic loss to his or her personal or real property, due to either a natural disaster or fire, that either has caused or will likely cause the employee to be absent for at least ten (10) consecutive working days;

2. The teacher's or employee's need for the absence and use of leave are certified by a licensed physician for leave requested under subparagraph 1.a. of this subsection;

3. The teacher or employee has exhausted his or her accumulated sick leave, personal leave, and any other leave granted by the school district; and

4. The teacher or employee has complied with the school district's policies governing the use of sick leave.

(c) While a teacher or employee is on sick leave provided by this section, he or she shall be considered a school district employee, and his or her salary, wages, and other employee benefits shall not be affected.

(d) Any sick leave that remains unused, is not needed by a teacher or employee, and will not be needed in the future shall be returned to the teacher or employee donating the sick leave.

(e) The board of education shall adopt policies and procedures necessary to implement the sick leave donation program.

(8) A teacher may use up to thirty (30) days of sick leave following the birth or adoption of a child or children. Additional days may be used when the need is verified by a physician's statement.

(9) After July 1, 1982, a district board of education may compensate, at the time of retirement or upon the death of a member in active contributing status at the time of death who was eligible to retire by reason of service, an employee or a teacher, or the estate of an employee or teacher, for each unused sick leave day. The rate of compensation for each unused sick leave day shall be based on a percentage of the daily salary rate calculated from the employee's or teacher's last annual salary, not to exceed thirty percent (30%). Payment for unused sick leave days shall be incorporated into the annual salary of the final year of service; provided that the member makes the regular retirement contribution for members on the sick leave payment. The accumulation of these days includes unused sick leave days held by the employee or teacher at the time of implementation of the program.

(10) Any statute to the contrary notwithstanding, employees and teachers who transferred from the Department of Education to a school district, from a school district to the Department of Education, or from one (1) school district to another school district after July 15, 1981, shall receive credit for any unused sick leave to which the employee or teacher was entitled on the date of transfer. This credit shall be for the purposes set forth in subsection (9) of this section.

(11) The death benefit provided in subsection (9) of this section may be cited as the Baughn Benefit.

(Enact. Acts 1948, ch. 88; 1962, ch. 75; 1968, ch. 27; 1970, ch. 184, § 1; 1974, ch. 7, § 1; 1974, ch. 274, § 1; 1976, ch. 132, § 1; 1976, ch. 239, § 1; 1980, ch. 244, § 1, effective July 15, 1980; 1982, ch. 35, § 1, effective July 15, 1982; 1982, ch. 314, § 1, effective July 15, 1982; 1982, ch. 326, § 1, effective July 1, 1982; 1986, ch. 54, § 1, effective July 15, 1986; 1986, ch. 126, § 2, effective July 15, 1986; 1986, ch. 395, § 1, effective July 15, 1986; 1986, ch. 450, § 1, effective July 15, 1986; 1988, ch. 363, § 20, effective July 1, 1988; 1988, ch. 375, § 1, effective July 15, 1988; 1990, ch. 483, § 4, effective July 13, 1990; 1990, ch. 476, Pt. V, § 478, effective July 13, 1990; 1996, ch. 147, § 1, effective July 15, 1996; 1996, ch. 309, § 1, effective July 15, 1996; 1998, ch. 530, § 1, effective July 15, 1998; 2000, ch. 137, § 1, effective July 14, 2000; 2000, ch. 381, § 1, effective July 14, 2000; 2000, ch. 390, § 1, effective July 14, 2000; 2000, ch. 485, § 1, effective July 14, 2000; 2002, ch. 138, § 1, effective July 15, 2002.)

Legislative Research Commission Note. (7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

Opinions of Attorney General. Subsection (2) of this section includes sick leave for mental or emotional illnesses as well as physical sickness. OAG 60-1193.

Under this section the cause of the illness is not controlling and sick leave is allowed for illness due to pregnancy. OAG 61-13.

A school board has legal authority to purchase liability insurance to cover the liability for sick leave payments imposed by this section. OAG 64-841.

This section does not authorize a "lump-sum" payment of additional salary in lieu of accumulated sick leave at the termination of employment either during or at the end of the school year or in the event of the termination of employment for purposes of retirement. OAG 67-371.

Subsection (2) of this section authorizes the use of either a personal affidavit or a physician's certificate to support a sick leave absence and a regulation of the board prohibiting the use of the personal affidavit would be improper. OAG 67-447.

Aside from the inherent right of the board to disallow sick leave by reason of fraud, the allowance of sick leave, within the minimum prescribed by this section, upon the presentment of a personal affidavit or physician's certificate is not discretionary. OAG 67-523.

Former subsection (4) of this section (deleted by 1970 amendment) did not authorize a district board of education to adopt a regulation which would permit the utilization of sick leave by a teacher for the purpose of attending religious observances. OAG 68-525.

The phrase "member of his immediate family," added to this section by the 1970 amendment, includes any member of the teacher's household who is bound to the teacher by blood or marriage. OAG 70-412.

Maternity leave is not "sick leave" within the meaning of this section but a "leave of absence" under KRS 161.770 and as such it results in a cessation of salary benefits during the period of absence. OAG 70-730.

There is no apparent legal basis for distinguishing between types of illnesses which may incapacitate a teacher for duty or for restoring and crediting, as accumulated sick leave, those sick leave days either unused during the 1958-68 period or cut off by the prior 20-day ceiling. OAG 71-144.

Under this section a teacher not treated by a physician may present a personal affidavit and a teacher treated by a physician may present a certificate signed by the physician which need not be in the form of an affidavit. OAG 72-302.

A teacher may receive full sick leave and workmen's compensation benefits at the same time. OAG 72-684.

A school board does not have to have an emergency leave regulation, but if it does have one, it cannot provide that emergency leave shall be charged as sick leave. OAG 73-832.

Whether or not a teacher was entitled to payment for accumulated sick leave was a question of fact within the province of the board of education to decide and in making the determination as to the facts the board could consider what effect its decision would have on similar circumstances which might arise in the future where the teacher presented a certificate of a physician stating that she was totally disabled from her teaching position but the board had in its possession a statement from another high school that part of the time during the teacher's absence from her teaching position she was completing her library practice at that high school. OAG 74-119.

A regulation by a board of education that not more than thirty days of accumulated sick leave may be used in one year is void. OAG 74-378.

A public school teacher does not have an absolute right to receive paid sick leave, even if already accumulated, for a normal pregnancy but does have a statutory right to such leave for illness due to surgery performed after, but not connected with, the birth of the child. OAG 74-741.

A teacher, who is absent to care for a spouse who is ill, is entitled to all accumulated sick leave up to 60 days as of June 21, 1974 and all accumulated, unused sick leave without limit after that date. OAG 75-209.

Accumulated sick leave must, if requested, be given for childbirth but only for the days the physician certifies the teacher is actually disabled from performing her teaching duties, but this ruling need not be made retroactive. OAG 75-259.

Although accumulated sick leave may not be granted for child care following childbirth, a leave of absence for that purpose is appropriate. OAG 75-259.

A certificate by a physician signed by rubber stamp is sufficient certification of a teacher's illness. OAG 75-359.

In allowing paid sick leave for childbirth, a teacher should be granted leave only for the days she, or a member of her immediate family, were ill, based upon the presentation of her personal affidavit or the certificate of a physician. OAG 75-367.

A public school teacher may claim sick leave in addition to receiving worker's compensation benefits. OAG 75-604 (affirming OAG 40-041).

When a teacher transfers from the local board of education to the vocational school system, none of the teacher's accrued benefits are carried over to the new position. OAG 76-151.

A local board of education could establish a policy permitting a school principal to accept statements signed by teachers relating to request for sick leave even though the statements have not been notarized. OAG 77-307.

Where a school teacher was ill and missed most of one month and part of the next, during which time the schools were closed 17 days due to severe weather and permission was granted by the department of education to cut short the school year by five days, as calamity days, the teacher was entitled to be paid for the calamity days; however, since she would have been unable to teach on these days, she must take these days as sick leave days under this section. OAG 78-311.

If a teacher is absent on an extended school day and is not covered by sick leave, personal leave or emergency death leave, he or she loses one and one-fifth day's salary. OAG 78-367.

In the event a teacher is absent for illness during the time the school system is operating on the extended school day, this constitutes a deduction of one and one-fifth days from his or her current or accumulated sick leave. OAG 78-367.

A local board of education continues to have at its reasonable discretion the authority to adopt a uniform policy relative to sick leave which would permit granting to teachers, who had resigned with accumulated sick leave and who were subsequently reemployed, part or all of the previously accumulated sick leave, and the length of time between resignation and reemployment issue is simply for the board to determine. OAG 79-148.

KRS 161.740(1)(c) and subsection (3) of this section are quite similar and should be construed consistently one with the other. OAG 79-148.

The language in subsection (3) of this section that "any accumulated sick leave days, not to exceed thirty (30) days, credited to a teacher shall remain so credited in the event he transfers his place of employment from one school district to another within the state" contemplates a continuity of employment from one school district to another. OAG 79-148.

Although this section will not permit a school board requirement of a physician's certificate of an employee's disability to work in that an affidavit of the teacher will suffice, there is nothing in KRS 161.770 to preclude a board of education from requiring a physician's certificate; a school board could adopt such a policy pursuant to KRS 160.340(2)(e) which requires the board to adopt personnel policies that apply to certified employees. OAG 80-151.

Sick leave with pay under this section is available to the pregnant teacher who is thereby disabled from performing her teaching duties, but a pregnant condition in and of itself would not entitle a teacher to sick leave; if, however, the teacher by affidavit or physician's certificate states she is ill or otherwise disabled from teaching due to her "pregnancy, childbirth or other related medical conditions," then a local board of education must permit the teacher to take days of accumulated sick leave. OAG 80-151.

The teacher who requests and goes on a leave of absence under KRS 161.770 is not entitled to sick leave days authorized under this section; any sick leave accrued that is desired to be taken should be used before the teacher commences the leave of absence without pay status, authorized by KRS 161.770. OAG 80-151.

The language in subsection (5) of this section stating that compensation may be credited for unused sick leave "after July 1, 1981," does not prohibit crediting of such credit to those certificated employees, otherwise eligible, who retire prior to July 1, 1981, provided that the additional amount to be added to their last year of final salary, due to accumulated unused sick days, is determined not later than July 15, 1981. OAG 81-1.

A plan which provides an annual bonus to teachers who use no sick leave is not legally permissible in Kentucky. There is no statute authorizing a bonus for unused sick leave and, if the legislature passed such a statute, it would be unconstitutional as violative of Const., § 3. OAG 82-316.

The provisions of this section preempt the field of teachers' sick leave and set the limits for local boards on that subject. OAG 82-316.

A county school board may not by policy choose to compensate an employee or teacher, at the time of retirement, for less than all of the unused sick leave days rightly accumulated; although subsection (5) of this section gives the board discretion in setting the rate of compensation as long as it doesn't exceed 30 percent of the teacher's last annual salary, the language of that subsection clearly requires that the retiring teacher be compensated for "each" unused sick leave day. OAG 83-191.

A teacher may take his or her sick leave days on any day of the school year upon compliance with the statutorily required presentation of a personal affidavit or certificate of a physician or as provided for by an appropriately adopted regulation or policy of a local board of education, and a teacher who uses accumulated sick leave to cover a period of absence is not required to use a sick leave day when the schools are already closed for a paid holiday, since the teacher is authorized by KRS 158.070 to be paid for such holidays without the payment being charged to accumulated sick leave. OAG 83-457.

The 1986 amendment to subsection (5) (now (8)) of this section is constitutionally valid so that a teacher may use up to 30 days of sick leave following the adoption of a child or children. OAG 86-66.

A teacher is entitled to utilize earned sick leave due to disability from pregnancy, childbirth or recovery therefrom. OAG 86-66.

Employee who transferred from one school district to another is entitled to the sick leave days earned during her prior employment in the other school district. OAG 91-135.

Compensation for sick leave as set forth in subsections (8) and (9) (now (9) and (10)) of this section is constitutionally permissible. OAG 91-219.

Compensation for unused sick leave at time of retirement does not consitute a bonus, in contravention of Section 3 of the Kentucky Constitution, but instead constitutes part of retirement benefits. OAG 91-219.

There is no authority that would have enabled the superintendent to transfer more than 30 days of sick leave from county to county, but once in the new county, the superintendent could accumulate sick leave days without limitation. OAG 91-219.

This section allows the board to grant a superintendent only those unused sick leave days which he was entitled to keep upon transfer from county to county. OAG 91-219.

Under subsection (9) (now (10)) of this section, a teacher who has transferred from one school district to another after July 15, 1981, is entitled to credit for unused sick leave days "to which entitled on the date of transfer," for the purpose of compensation at the time of retirement as per subsection (8) of this section. OAG 91-219.

Under subsection (1)(a) of this section, "teacher" consistently has been defined to include "any person for whom certification is required as a basis of employment in the

common schools of the state,"; this definition includes principals and superintendents, who are certified as teachers and as administrators. OAG 91-219.

Under subsections (8) and (9) (now (9) and (10)) of this section, after employee has completed 27 years of service, not withstanding sick leave, the school board may approve compensation for unused sick leave days, and apply that compensation toward the teacher or employee's final salary. OAG 91-219.

A son-in-law and daughter-in-law are not included in the definition of immediate relative in subdivision (1)(c) of this section. OAG 93-39.

At the death of an employed active public school teacher, a school board may not pay the decedent's estate or named beneficiary the value of the employee's accumulated unused sick leave even if the employee were eligible for retirement; rather, a local school district may only compensate a district employee at the time of retirement for accumulated unused sick leave. OAG 94-39.

NOTES TO DECISIONS

ANALYSIS

1. Purpose.
2. Transfer of accumulated leave.
3. Reduction of accumulated leave.
4. Property interest.
5. Liability for improper application.
6. Accumulation above statutory caps.

1. Purpose.

The sick leave statute and the tenure statute, as embodied in this section and in KRS 161.740 respectively, are both designed to protect a teacher by allowing transfer from one school district to another without losing accumulated benefits. Young v. Board of Educ., 661 S.W.2d 787 (Ky. Ct. App. 1983).

2. Transfer of Accumulated Leave.

Even though the legislature has not specifically defined a meaning for the phrase, "transfers his place of employment from one school district to another within the state" as used in subsection (3) of this section, it is quite logical to infer that the construction to be applied to the statutory language infers that the sick leave statute requires continuity of employment from one district to another district. Young v. Board of Educ., 661 S.W.2d 787 (Ky. Ct. App. 1983).

Under the provisions of subsection (3) of this section, in order for accumulated sick leave days to remain credited upon transfer from one school district to another within the state, the transfer must be a direct one; accordingly, county board of education properly refused to credit teacher, who left school system entirely and subsequently returned, with the unused sick leave days accumulated during her first period of employment in the public school system. Young v. Board of Educ., 661 S.W.2d 787 (Ky. Ct. App. 1983).

3. Reduction of Accumulated Leave.

The conduct of the school board in reducing the teacher's unused accumulated sick leave was rational in that it desired to conform its records with this section, and no denial of substantive due process took place. Sublette v. Board of Educ., 664 F. Supp. 265 (W.D. Ky. 1987).

4. Property Interest.

This section, as well as the recording of the teacher's accumulated sick leave days on her sick leave cards by school officials, could have created a legitimate claim of entitlement by the teacher to her accumulated sick leave days; consequently, she could have had a constitutionally protected property interest in those days and could not be deprived of such interest without being afforded due process of law. Ramsey v. Board of Educ., 844 F.2d 1268 (6th Cir. 1988).

5. Liability for Improper Application.

A county board of education could not be held accountable for the failure of its superintendents to properly apply this section. Ramsey v. Board of Educ., 789 S.W.2d 784 (Ky. Ct. App. 1990).

6. Accumulation Above Statutory Caps.

There is no dispute but that this section requires affirmative action by a board of education to allow accumulation above the statutory caps. Ramsey v. Board of Educ., 789 S.W.2d 784 (Ky. Ct. App. 1990).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 179, 203.

161.156. Free physical examinations. [Repealed.]

Compiler's Notes. This section (Acts 1950, ch. 204) was repealed by Acts 1972, ch. 301, § 21.

161.157. Credits allowed transferred employee of Department of Education or Education Professional Standards Board.

An employee of the Department of Education or the Education Professional Standards Board who transfers to become an employee of the local school district shall be allowed credit for accrued sick leave up to the maximum allowed for transfers for teachers between school districts as provided by KRS 161.155(3) and shall be allowed credit for each full year of employment with the Department of Education or the Education Professional Standards Board for the determination of pay under the school districts' single salary schedule. (Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 479, effective July 13, 1990; 2001, ch. 137, § 13, effective June 21, 2001.)

Compiler's Notes. This section (Enact. Acts 1982, ch. 234, § 2, effective July 15, 1982) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 479, effective July 13, 1990.

161.158. Group insurance — Board's termination of participation in state health plan — Deductions from salaries.

(1) (a) Each district board of education may form its employees into a group or groups or recognize existing groups for the purpose of obtaining the advantages of group life, disability, medical, and dental insurance, or any group insurance plans to aid its employees including the state employee health insurance group as described in KRS 18A.225, as long as the employees continue to be employed by the board of education. Medical and dental group insurance plans obtained under authority of this section may include insurance benefits for the families of the insured group or groups of employees. Any district board of education may pay all or part of the premium on the policies, and may deduct from the salaries of the employees that part of the premium which is to be paid by them and may contract with the insurer to provide the above benefits. As

permitted in KRS 160.280(5), board members shall be eligible to participate in any group medical or dental insurance provided by the district for employees.

(b) If a district board of education participates in the state employee health insurance program, as described in KRS 18A.225, for its active employees and terminates participation and there is a state appropriation approved by the General Assembly for the employer's contribution for active employees' health insurance coverage, neither the board of education nor the employees shall receive the state-funded contribution after termination from the state employee health insurance program.

(2) Each district board of education shall adopt policies or regulations which will provide for deductions from salaries of its employees or groups of employees whenever a request is presented to the board by said employees or groups thereof. The deductions shall be made from salaries earned in at least eight (8) different pay periods, and shall be remitted to the appropriate organization or association as specified by the employees within thirty (30) days following the deduction provided the district has received appropriate invoices or necessary documentation. The deductions may be made for, but are not limited to, membership dues, tax-sheltered annuities, and group insurance premiums. With the exception of membership dues, the board shall not be required to make more than one (1) remittance of amounts deducted during a pay period for a separate type of deduction. Health insurance, life insurance, and tax-sheltered annuities shall be interpreted as separate types of deductions. When amounts have been correctly deducted and remitted by the board, the board shall bear no further responsibility or liability for subsequent transaction.

(3) Payments and deductions made by the board of education under the authority of this section are presumed to be for services rendered and for the benefit of the common schools, and the payments and deductions shall not affect the eligibility of any school system to participate in the public school funding program as established in KRS Chapter 157.

(Enact. Acts 1970, ch. 166, § 1; 1972, ch. 322, § 1; 1978, ch. 234, § 1, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 239, effective July 13, 1990; 1992, ch. 170, § 2, effective July 14, 1992; 1998, ch. 557, § 1, effective July 15, 1998; 2000, ch. 438, § 3, effective April 21, 2000.)

Cross-References. Group health and life insurance, 702 KAR 1:035.

Opinions of Attorney General. The members of families of employees and/or the dependents of employees may, within the discretion of the board, participate in the various types of group coverage provided the extra cost of the family coverage or dependent coverage is paid by the employee. OAG 70-336.

Where a district board of education desires to pay all or any part of the premiums on group policies for district employees, the advertising and competitive bid procedure of KRS 424.260 should be followed where the amount to be paid by the board is in excess of $1,000. OAG 70-687.

This section does not disqualify political organizations from receiving the authorized deductions. OAG 72-663.

This section requires that each school board make payroll deductions for the Kentucky Educator's Public Affairs Council when properly authorized according to its adopted policies and regulations. OAG 72-663.

A school board cannot be required, after making one deduction for health insurance, to make any other deductions for cancer insurance or for insurance for any other specific disease. OAG 72-707.

The board of education may make such rules as are reasonable and it would be reasonable to require that there be a minimum number of employees desiring a particular deduction before it shall be made by the board. OAG 72-802.

Board of education may contract for an insurance plan for its employees as long as it pays all or part of the premium on the policies. OAG 73-390.

In a proposed contract between an insurance company and Fayette County Board of Education to provide tax sheltered annuities in lieu of full salary for any employee, a section holding the school district liable for any act of negligence was improper under this section and the doctrine of sovereign immunity. OAG 74-414.

Where a school board provides a fixed sum of money to be used in purchasing fringe benefits for each of its teachers, it may afford the teachers the option to receive the fringe benefits or an equivalent fixed sum in cash. OAG 75-646.

Although a board of education would be required to make deductions from teachers' salaries for membership in a credit union, the board would not be required to withhold monthly payments on loans taken out by members from the credit union. OAG 77-333.

A local school board may elect to purchase liability insurance for its employees and pay all or a portion of the premium from board of education funds. OAG 78-21.

This section, permissive in nature, would permit a school board to pay any or all of the costs of a group optical insurance plan coverage for its employees, but not for the employees' families unless such a plan was included in a group medical plan. OAG 78-592.

A reduction for the Kentucky Deferred Compensation System Program is not a "deduction" for a tax-sheltered annuity, but is a different type of program than tax-sheltered annuities; accordingly, where an employee participates in a tax-sheltered annuity and the Kentucky Public Employee's Deferred Compensation System, the reduction for both is not the "same type" of deduction, and does not violate subsection (2) of this section. OAG 80-515.

KRS 18.510 to 18.600 (now see KRS 18A.230 to 18A.275) and this section are not in conflict and school employees can participate in both school annuity programs and the Kentucky Deferred Compensation System Program. OAG 80-515.

There is nothing in the school laws to preclude a school district from establishing a cafeteria insurance plan for its teachers, pursuant to the conditions and criteria set out in 26 U.S.C. § 125. However, the money available to the teacher to be applied, if desired, to a cafeteria plan is still a part of that teacher's salary even though nontaxable; the teacher can elect to take a part of the money provided for by the school district in this regard as cash and, of course, this amount would be taxable. Moreover, the school districts must include the amount of money established for such a plan in all computations required for single salary schedule determinations, including the procedure required for determining the amount of money to be received by a school district for teachers' salaries from the Minimum Foundation Fund. OAG 83-151.

NOTES TO DECISIONS

Analysis

1. Payroll deductions.
2. Membership dues.

1. Payroll Deductions.

This chapter permits employee organizations to participate in payroll deductions. Kentucky Educators Pub. Affairs Council v. Kentucky Registry of Election Fin., 677 F.2d 1125 (6th Cir. 1982).

Reverse check-off procedure utilized by the Kentucky Educators Public Affairs Council, an unincorporated political action committee established by the Kentucky Education Association (KEA), whereby contributions were deducted from KEA members' paychecks unless the member affirmatively checked off that he declined to contribute and whereby the member could subsequently decide not to participate and obtain a refund, was neither coercion nor an assessment under KRS 121.320, and sufficiently protected the rights of dissenting members. Hence, an order of the Kentucky Registry of Election Finance finding KEPAC's procedure violative of KRS 121.320 infringed on KEPAC's first amendment rights to collect money for political purposes. Kentucky Educators Pub. Affairs Council v. Kentucky Registry of Election Fin., 677 F.2d 1125 (6th Cir. 1982).

Section 337.060 did not prohibit a school board from deducting union dues from employees' wages where such deduction was authorized by subsection (2) of this section. Clevinger v. Board of Educ., 789 S.W.2d 5 (Ky. 1990).

2. Membership Dues.

The common, ordinary meaning of "membership" is the total number of members of an organization. Unions are made up of members. There is nothing in this section that hints that union members were not to be included along with other membership organizations. Thus, "membership dues" perforce includes union dues. Clevinger v. Board of Educ., 789 S.W.2d 5 (Ky. 1990).

161.159. Adoption of rules and regulations to implement life insurance program.

The Kentucky Board of Education, upon the recommendation of the chief state school officer, shall adopt rules and regulations to implement the state life insurance program provided for employees of the common schools subject to the following standards:

(1) The life insurance program shall cover both certified and noncertified common school personnel.

(2) The life insurance program shall be made available to all regular full-time personnel as defined by the Kentucky Board of Education regulations.

(Enact. Acts 1974, ch. 237, § 1; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 240, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

Cross-References. Group health and life insurance, 702 KAR 1:035.

161.160. Marriage of teachers — Restraint of prohibited. [Repealed.]

Compiler's Notes. This section (4503-11) was repealed by Acts 1942, ch. 113, § 13.

161.162. Discrimination prohibited. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1962, ch. 244, Art. IV, § 1) was repealed by Acts 1990, ch. 476, Pt. VI, § 616, effective July 13, 1990. For present law see KRS 161.164.

161.163. Employees' application form not to require disclosure of religious affiliation.

No application form for certified or classified employees used by any school district shall contain any block or question that would require the applicant to disclose his religious affiliation.

(Repealed and reenact. Acts 1990, ch. 476, Pt. IV, § 480, effective July 13, 1990; 1994, ch. 21, § 1, effective July 15, 1994.)

Compiler's Notes. This section (Enact. Acts 1972, ch. 59, § 1) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 480, effective July 13, 1990.

161.164. Political activity prohibited — Discrimination prohibited.

(1) No employee of the local school district shall take part in the management or activities of any political campaign for school board.

(2) No candidate for school board shall solicit or accept any political assessment, subscription, contribution, or service of any employee of the school district.

(3) No person shall use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position as teacher or employee of any district board of education, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person.

(4) No teacher or employee of any district board of education shall be appointed or promoted to, or demoted or dismissed from, any position or in any way favored or discriminated against with respect to employment because of his political or religious opinions or affiliations or ethnic origin or race or color or sex or age or disabling condition.

(5) The local superintendent shall inform all school employees of the provisions of this section.

(Enact. Acts 1962, ch. 244, Art. IV, § 2; 1990, ch. 476, Pt. II, § 79, effective July 13, 1990; 1994, ch. 405, § 29, effective July 15, 1994.)

Cross-References. Human Rights Commission, KRS 344.150 to 344.190.

Opinions of Attorney General. A teacher employed by a school board of a district where the teacher does not reside is not prohibited from simultaneously serving as a member of a school board of a different district where the teacher *does* reside. OAG 90-127.

Employee of a school board for a county in which employee does not live, may campaign for or seek election to the school board in the district of employee's residence since employee is not employed by that district's school board. OAG 90-127.

Subsection (3) of this section refers to "any district" whereas subsection (1) refers to "the local school district" and subsection (2) refers to "the school district"; because of the difference in wording (namely, the use of "the" in subsection (1) as opposed to "any," prior to "district"), the General Assembly intended the restrictions on campaigning under subsections (1) and (2) *only* to apply to persons employed by the school

district where the candidate is seeking to be elected. OAG 90-127.

A member of the county board of education may sell insurance to school employees on an individual basis. OAG 90-138.

A school board candidate may not solicit or accept any money, goods, property, or services, from a school district employee. However, in the case of "services," the First Amendment right to voice one's political opinion must be balanced against the state's interest in ridding schools of undue political influence. Conduct which would be permitted includes: registration and voting, signing of nominating petitions, the expressing of personal opinions regarding a school board candidate, and the display of political pictures, signs, buttons, or bumper stickers. Additionally, school board candidates may provide on request, campaign literature for the personal use of a school district employee. In contrast, the following activities would be prohibited: campaign literature distribution by a school employee, solicitation of political support by a school district employee in canvassing a district or soliciting political support for a school board candidate, either in person, by telephone, or in writing, and providing assistance or working for the school board candidate's campaign. OAG 92-145.

School board candidates may not solicit or accept contributions and services from school district employees. This prohibition applies equally to agents of the candidate; therefore, the school board candidate's campaign manager and staff are prohibited from soliciting or accepting the services of school employees on behalf of the campaign. OAG 92-145.

A school board candidate need not either accept or decline an endorsement of a local education association or similar employee union. Endorsing a school board candidate is not the same as contributing or providing a service to the campaign; rather, voluntary endorsement of a candidate is the same as an expression of personal opinion and therefore not prohibited by this section. OAG 92-145.

A school board candidate may not solicit or accept the following services from a school district employee: (1) distributing campaign material, literature, or signs; (2) working for the campaign by canvassing voters, stuffing campaign envelopes, working at a campaign phone bank, or driving the candidate; (3) performing any fundraising services or contributing money, goods or property; or (4) being involved with the management of a school board campaign. OAG 92-145.

This section clearly prohibits a school board candidate from accepting cash contributions from a political action committee (PAC) whose members are local school employees. OAG 92-145.

This section prohibits a school board candidate from accepting contributions or services from school employees. The fact that the school employees have formed a political action committee does not change the fact that the employees are actually providing the service or contribution, even if activities such as manning telephone banks, door-to-door solicitation, or distribution of campaign material are described by the PAC as "in-kind" contributions. Allowing the PAC to do indirectly what the school board candidates are prohibited from doing directly is a violation of this section. OAG 92-145.

The local education association or school employee union may not attempt to evade the statutory prohibition against contributing to school board elections by claiming their actions are independent of the campaign. OAG 92-145.

Constitutional factors that should be utilized when determining whether a political expression or promise by a school board candidate has violated subsection (3) of this section are the precise nature of the promise; the conditions upon which it is given; the circumstances under which it is made; the size of the audience; and the nature and size of the group to be benefited. OAG 92-156.

A statement by a school board candidate that he prefers a certain individual to serve as superintendent is protected by the first amendment of the United States Constitution and the Kentucky Constitution. OAG 92-156.

NOTES TO DECISIONS

ANALYSIS

1. Constitutionality.
2. —Management.
3. —Activities.
4. Purpose.
5. Solicitation of money or services.
6. Discrimination suit.

1. Constitutionality.

2. —Management.

The word "management" as used in subsection (1) of this section is constitutional because it does give school employees a fair notice of the standard of conduct to which they will be held accountable. While there may be some confusion over what constitutes a political activity, a person exercising ordinary common sense can discern the difference between a political activity, such as placing a sign in the yard, and managing or directing a school board candidate's campaign. State Bd. for Elementary & Secondary Educ. v. Howard, 834 S.W.2d 657 (Ky. 1992).

3. —Activities.

A person of ordinary intelligence cannot identify the conduct prohibited under the word "activities" as used in subsection (1) of this section. Moreover, the word "activities" is not facially intelligible or clear; therefore, this section is unconstitutionally vague because it does not give school employees a fair notice of the standard of conduct to which they are to be held accountable. The criteria established are so vague that the enforcing authority is vested with too much discretion. Consequently, many school employees would suffer a chilling effect on political expression of all kinds. State Bd. for Elementary & Secondary Educ. v. Howard, 834 S.W.2d 657 (Ky. 1992).

4. Purpose.

Constitution § 183 places a duty on the General Assembly to establish an efficient common school system free from political influence and this section and KRS 161.990 were enacted by the General Assembly in an effort to comply with this directive. State Bd. for Elementary & Secondary Educ. v. Howard, 834 S.W.2d 657 (Ky. 1992).

5. Solicitation of Money or Services.

Subsection (2) of this section clearly puts a school board candidate on notice that he or she is not to solicit school district employees for either money or services; it gives fair and plain notice to those to whom it applies and is not subject to arbitrary enforcement. State Bd. for Elementary & Secondary Educ. v. Howard, 834 S.W.2d 657 (Ky. 1992).

Subsection (2) of this section is not overly broad. The state has a legitimate compelling interest in regulating the conduct of school board candidates in connection with their ability to receive money and services from school district employees. There is a real and present danger in any system where those who have the overall responsibility for the administration of the schools can attain their position in large part because of solicitations from those who work for the system. Political neutrality for school employees is a sound element in any efficient system of education. State Bd. for Elementary & Secondary Educ. v. Howard, 834 S.W.2d 657 (Ky. 1992).

6. Discrimination Suit.

An applicant who was denied consideration for two teaching positions could not bring a discrimination suit under this section, which applies only to teachers and employees — not

applicants — of any state board of education. Creech v. McQuinn, 957 S.W.2d 261 (Ky. Ct. App. 1997).

DECISIONS UNDER PRIOR LAW

ANALYSIS

1. Evidence of discrimination.
2. Office of superintendent.
3. Removal of administrator.
4. Protected conduct.

1. Evidence of Discrimination.

As a matter of proof, there need be no more than an inference of arbitrariness in the dismissal or transfer of a teacher on account of political activities to bring the action within the prohibition of this section and where the evidence showed that an assistant principal and the school superintendent supported opposing candidates in a board of education election and that, shortly thereafter, the superintendent dismissed the principal because of an alleged decrease in student population and funding, which did not in fact exist, arbitrariness was clearly established. Harlan County Bd. of Educ. v. Stagnolia, 555 S.W.2d 828 (Ky. Ct. App. 1977).

2. Office of Superintendent.

Former law similar to subsection (4) of this section did not prevent a board of education from failing to reappoint a superintendent once his contract has expired; and with the office of superintendent being an appointed position, it was not inconceivable that political views and allegiances could be a consideration in the selection. Floyd v. Board of Educ., 598 S.W.2d 460 (Ky. Ct. App. 1979).

3. Removal of Administrator.

An administrator has been given no right of tenure to an administrative position and may be removed from such position by the local board of education upon recommendation of the superintendent for any reason not offending some right protected by the state or federal constitutions or this section. Hooks v. Smith, 781 S.W.2d 522 (Ky. Ct. App. 1989).

4. Protected Conduct.

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

Collateral References. Discrimination because of race, color, or creed in respect of appointment of schoolteachers. 130 A.L.R. 1512.

161.165. Recruitment of minority teachers.

(1) The Kentucky Department of Education in cooperation with the Education Professional Standards Board, the Kentucky Board of Education, local school districts, universities, and colleges, and the Council on Postsecondary Education shall review and revise as needed the strategic plan for increasing the number of minority teachers and administrators in the Commonwealth. The plan shall include, but not be limited to, recommendations on ways to:
   (a) Identify methods for increasing the percentage of minority educators in proportion to the number of minority students;
   (b) Establish programs to identify, recruit, and prepare as teachers minority persons who have already earned college degrees in other job fields;
   (c) Create awareness among secondary school guidance counselors of the need for minority teachers.

(2) The Kentucky Department of Education and the Education Professional Standards Board shall promote programs that increase the percentage of minorities who enter and successfully complete a four (4) year teacher preparation program and provide support to minority students in meeting qualifying requirements for students entering a teacher preparation program at institutions of higher education.

(3) The Kentucky Department of Education with input from the Education Professional Standards Board shall periodically submit a report to the Interim Joint Committee on Education that evaluates the results of these efforts and includes accompanying recommendations to establish a continuing program for increasing the number of minorities in teacher education.

(Enact. Acts 1992, ch. 432, § 1, effective July 14, 1992; 1996, ch. 362, § 6, effective July 15, 1996; 1997 (1st Ex. Sess.), ch. 1, § 67, effective May 30, 1997; 2001, ch. 137, § 14, effective June 21, 2001.)

161.167. Program to encourage persons to enter Kentucky teaching profession — Reports.

(1) By January 1, 2001, the Kentucky Department of Education, with help from representatives of the Education Professional Standards Board, the Council on Postsecondary Education, the Kentucky Higher Education Assistance Authority, the Association of Independent Kentucky Colleges and Universities, public and private not-for-profit postsecondary institutions, and local educational agencies, shall develop a plan, including timelines for implementation, for a multidimensional recruitment and information program, to encourage persons to enter the teaching profession and to seek employment in Kentucky.

(2) The program shall not supplant or diminish current efforts required in KRS 161.165.

(3) The components of the program shall include:
   (a) Early recruitment programs to inform middle and high school students about the potential of teaching as a career;
   (b) Programs to encourage paraprofessionals in schools, as well as other nontraditional students, to pursue additional education to become teachers;
   (c) Programs to enlist highly skilled career employees in specific content areas to pursue teaching as a second career;
   (d) Options for recruiting persons with liberal arts and sciences majors and current students with nondeclared majors into nontraditional and accelerated teacher preparation programs;
   (e) Marketing strategies for informing the public of the importance of high quality teaching to student achievement, the value of teachers to

society as a whole, the benefits and rewards of teaching, and the options for entering teacher preparation, including scholarship information; and

(f) Expanding the Kentucky Department of Education's electronic bulletin board for certified vacancies in local school districts to include an option for potential teachers to voluntarily post their availability for education positions within the state.

(4) No later than March 15, 2001, the Department of Education shall present a status report of the recruitment and information program to the Interim Joint Committee on Education; and no later than October 15, 2001, the Department of Education shall present to the Interim Joint Committee on Education and the Interim Joint Committee on Appropriations and Revenue a summary report with recommendations.

(Enact. Acts 2000, ch. 527, § 5, effective July 14, 2000.)

161.170. Teachers to enforce course of study and use of books — Removal for failure.

Each teacher in the public schools shall enforce the course of study, the use of the legally authorized textbooks, and the rules and regulations prescribed for the schools. If any teacher willfully refuses or neglects to comply with the law or such rules and regulations, the local superintendent may remove him at any time. When so removed the teacher shall receive payment only for the time taught.

(4503-3: amend. Acts 1990, ch. 476, Pt. IV, § 241, effective July 13, 1990.)

Cross-References. Removal of teachers, KRS 156.132 to 156.142.

Opinions of Attorney General. A board of education has adequate authority to adopt regulations which would require teachers to submit to periodic physical examinations if it appears that they are physically unable to discharge their duties as a teacher. OAG 65-560.

A school board may impose reasonable regulations governing the appearance of the teachers it employs. OAG 79-158.

A teacher is obligated, not only to enforce the rules and regulations for the school system, but also to comply with those rules and regulations. OAG 79-158.

The authority to promulgate such rules and regulations rests solely with the board of education; the school administrators, such as principals, do not have the authority to set rules and regulations. OAG 79-158.

One time payments to teachers to induce retirement are constitutional under Const., § 3 as such payments are in consideration of public service. The key fact that makes these payments constitutional is the voluntary retirement of the teacher; such an act is a "present" service for which an emolument is paid, not a past service for which a gratuity is given. OAG 96-23.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 351, 352.

161.180. Supervision of pupils' conduct.

(1) Each teacher and administrator in the public schools shall in accordance with the rules, regulations, and bylaws of the board of education made and adopted pursuant to KRS 160.290 for the conduct of pupils, hold pupils to a strict account for their conduct on school premises, on the way to and from school, and on school sponsored trips and activities.

(2) The various boards of education of the Commonwealth of Kentucky, and the principals of the public schools, may use teacher's aides in supervisory capacities, such as playground supervision, hallway supervision, lunchroom and cafeteria supervision, and other like duties, including, but not limited to, recreational activities and athletic events, relating to the supervision and control of the conduct of the pupils; and while so engaged, such teacher's aides shall have the same authority and responsibility as is granted to and imposed by law upon teachers in the performance of the same or similar duties.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 481, effective July 13, 1990.)

Compiler's Notes. This section (4503-4: amend. Acts 1970, ch. 105, § 1; 1978, ch. 273, § 1, effective June 17, 1978) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 481, effective July 13, 1990.

Cross-References. Permissible use of force by teachers under penal code, KRS 503.110.

Suspension of pupils, KRS 158.150.

Kentucky Law Journal. Taylor, With Temperate Rod: Maintaining Academic Order in Secondary Schools, 58 Ky. L.J. 616 (1970).

Opinions of Attorney General. Under this section, a teacher is authorized to detain a student who had failed to prepare his lessons for a reasonable period of time after school hours. OAG 61-293.

A teacher may be assigned "extra duties" without "extra compensation" so long as said "extra duties" are not unreasonable, arbitrary, or discriminatory. OAG 63-106.

A board of education may prohibit any student who operates his automobile on the way to or from school in a reckless or wanton manner from driving said motor vehicle to or from school. OAG 63-486.

A school teacher may search a pupil's pockets or purse and confiscate such articles as cigarette lighters, pocket knives, or key chains with cigarette lighters attached if the teacher acts with reasonable judgment and for good cause, without malice and for the welfare of the child, as well as the school, but the parents should be advised of the action. OAG 64-329.

A teacher has the right to administer corporal punishment to students enrolled in the school but not enrolled in the teacher's classroom so long as it does not exceed that which appears to be appropriate under the circumstances. OAG 69-534.

A teacher does have the legal authority to discipline students enrolled in the school but not enrolled in the teacher's classroom. OAG 69-534.

Teachers' aides, both paid and volunteer, may serve in supervisory capacities with the same authority and responsibility as teachers when assigned these duties by the school principal and will be held to the same accountability for negligence as a teacher but the school board itself cannot be held liable for the negligence of either teachers or teachers' aides. OAG 73-770.

It was improper for supervisor to order a teacher to bathe a first grade pupil as such a duty may not reasonably be defined as a teaching duty. OAG 74-241.

This section is not authorization for school officials to regulate students' use of cars as a means of transportation to and from school nor could the school board be held liable in

tort for injury to students on or off school grounds, due to the school boards' sovereign immunity in torts. OAG 74-783.

This section does not conflict with a school board's policy, requiring that corporal punishment take place in the principal's office with both the principal and teacher being present, to such a degree that the policy can be considered invalid. OAG 75-693.

Under this section, teachers could impose some reasonable form of punishment to regulate student conduct off school grounds when a child is coming to or going from the school. OAG 76-348.

If a child brings to school medication that has been prescribed by a physician, the teacher would not be required to assume the responsibility to see that the medication is taken. OAG 77-530.

A principal may require teachers to supervise the loading of school buses even though the last bus does not leave until after 3:30 p.m. OAG 77-718.

A school system has the right to suspend a child from the school bus for misconduct. OAG 78-392.

Corporal punishment is a legitimate form of discipline to be used in Kentucky's public common schools but with some restraints legally implied, for example, the force used must be reasonable and not excessive; and, although teachers have, by Kentucky Penal Code provision (KRS 503.110), guidelines for justification of use of physical force upon a pupil, if the punishment is excessive, the school teacher or administrator inflicting the spanking may be held liable in damages to the child and possibly subject to criminal penalties. OAG 78-704.

In view of the responsibilities of teachers and school administrators and in view of the fact that teachers and administrators are state officers or employes they are within the purview of fourth amendment and Const., § 10 restraint upon activities of the government. OAG 79-168.

NOTES TO DECISIONS

Analysis

1. Construction.
2. Use of discipline.

1. Construction.

This section and KRS 158.150 plainly authorize public schools to make and enforce reasonable regulations for the government of such schools during school hours. Casey County Bd. of Educ. v. Luster, 282 S.W.2d 333 (Ky. 1955).

2. Use of Discipline.

Where a teacher believes that she is in danger of bodily harm, the jury must be instructed as to the defendant teacher's power under this section to exercise such disciplinary force as is necessary to restrain the complaining witness before the defendant teacher can be found guilty of assault and battery. Owens v. Commonwealth, 473 S.W.2d 827 (Ky. 1971).

Research References. Caldwell's Kentucky Form Book, Prac. & Proc. Forms, 4th Ed., Schools, General Note; Form 142.2.

Palmore, Kentucky Instructions to Juries, 4th Ed., Assault and Battery, § 28.13.

Collateral References. 68 Am. Jur. 2d, Schools, §§ 242-268.

78 C.J.S., Schools and School Districts, §§ 351, 352.

161.185. Teacher or staff member to accompany students on school-sponsored or endorsed trips — Exceptions.

(1) Except as provided in subsection (2), boards of education shall require a member of the school faculty or a member of the administrative staff to accompany students on all school-sponsored or school-endorsed trips.

(2) Boards of education may permit a nonfaculty coach or nonfaculty assistant, as defined by administrative regulation promulgated by the Kentucky Board of Education under KRS 156.070(2), to accompany students on all school-sponsored or school-endorsed athletic trips. A nonfaculty coach or nonfaculty assistant shall be at least twenty-one (21) years of age, shall not be a violent offender or convicted of a sex crime as defined by KRS 17.165 which is classified as a felony, and shall submit to a criminal record check under KRS 160.380.

(3) Prior to assuming his or her duties, a nonfaculty coach or nonfaculty assistant shall successfully complete training provided by the local school district. The training shall include, but not be limited to, information on the physical and emotional development of students of the age with whom the nonfaculty coach and nonfaculty assistant will be working, the district's and school's discipline policies, procedures for dealing with discipline problems, and safety and first aid training. Follow-up training shall be provided annually.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 482, effective July 13, 1990; 1998, ch. 178, § 1, effective July 15, 1998.)

Compiler's Notes. This section (Enact. Acts 1968, ch. 61) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 482, effective July 13, 1990.

Opinions of Attorney General. Where students are engaged in an extracurricular activity, such as a senior prom, which is held off school grounds, the board of education members would not be subject to liability for permitting the students to drive themselves to the school-sponsored activity, in the event of a student's injury or death while driving to or from the location. OAG 76-40.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 351, 352.

161.190. Abuse of teacher prohibited.

Whenever a teacher or school administrator is functioning in his capacity as an employee of a board of education of a public school system, it shall be unlawful for any person to direct speech or conduct toward the teacher or school administrator when such person knows or should know that the speech or conduct will disrupt or interfere with normal school activities or will nullify or undermine the good order and discipline of the school.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 483, effective July 13, 1990.)

Compiler's Notes. This section (4503-8: amend. Acts 1986, ch. 255, § 1, effective July 15, 1986) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 483, effective July 13, 1990.

Kentucky Law Journal. Taylor, With Temperate Rod: Maintaining Academic Order in Secondary Schools, 58 Ky. L.J. 616 (1970).

Gormley and Hartman, The Kentucky Bill of Rights: A Bicentennial Celebration, 80 Ky. L.J. 1 (1990-91).

Opinions of Attorney General. The public harassment of schoolteachers by pupils could be dealt with under this section or under KRS 161.180 when the misconduct is committed

between the times the pupils leave their homes until they return home. OAG 72-826.

Although this section does not apply to the relationship of a superintendent and a teacher, it is generally recognized that the best professional practice would be for a teacher's faults to be discussed with him privately or at least not before his pupils. OAG 73-825.

Cited: Owens v. Commonwealth, 473 S.W.2d 827 (Ky. 1971).

NOTES TO DECISIONS

1. Constitutionality.

This section is an unconstitutional violation of the First Amendment of the U.S. Constitution and Const., §§ 1(4) and 8. Commonwealth v. Ashcraft, 691 S.W.2d 229 (Ky. Ct. App. 1985) (Decision prior to 1986 amendment and 1990 repeal and reenactment).

Collateral References. Libel and slander: Actionability of statements imputing inefficiency or lack of qualification to public schoolteacher. 40 A.L.R.3d 490.

161.195. Notice to teacher of student's history of physically abusive conduct or carrying a concealed weapon.

Before a student with a documented history of physical abuse of a school employee or of carrying a concealed weapon on school property or at a school function is assigned to work directly with or comes in contact with a teacher, that teacher shall be notified in writing by the principal, guidance counselor, or other school official who has knowledge of the student's behavior. The notice shall describe the nature of the student behavior.

(Enact. Acts 1992, ch. 393, § 2, effective July 14, 1992.)

161.200. Records to be kept by teachers — Exceptions.

(1) Each teacher in the public schools shall keep an approved record which shall be left with the superintendent or as he directs at the close of the term. The record shall show the program of recitations, classification, attendance, and grading of all pupils who attended school at any time during the school year, and such other facts as are required.

(2) Notwithstanding the provisions of subsection (1) of this section, approved pupil attendance records, for state accounting purposes and for the purpose of state computation of pupil attendance, may be kept in a central location in the local elementary or secondary school. After attendance is reported and recorded by the classroom teacher, either a certified or noncertified person shall complete and check records in accordance with the methods and regulations approved by the superintendent of the local school district and the chief state school officer. A designated certified person within the local elementary or secondary school shall be responsible for auditing and certifying state attendance documents to verify their accuracy.

(4503-5: amend. Acts 1978, ch. 312, § 1, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 242, effective July 13, 1990.)

Cross-References. Pupil attendance, 702 KAR 7:125.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 351, 352.

161.210. Reports to be made by teachers.

(1) Each teacher or other person in the public schools shall make reports and inventories to the district superintendent at the time and in the manner prescribed by the district board of education and the Kentucky Board of Education.

(2) No teacher shall willfully make a false monthly or term report of time taught or other item or shall willfully fail to make a required report.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 484, effective July 13, 1990; amend. 1996, ch. 362, § 6, effective July 1, 1996.)

Compiler's Notes. This section (4503-6, 4503-7: amend. Acts 1978, ch. 8, § 1, effective June 17, 1978; 1978, ch. 155, § 82, effective June 17, 1978) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 484, effective July 13, 1990.

Cross-References. Procedure for payment of employees, 702 KAR 3:060.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 351, 352.

Teachers' Retirement

161.220. Definitions for KRS 161.220 to 161.716 and KRS 161.990.

As used in KRS 161.220 to 161.716 and KRS 161.990:

(1) "Retirement system" means the arrangement provided for in KRS 161.230 to 161.716 and KRS 161.990 for payment of allowances to members;

(2) "Retirement allowance" means the amount annually payable during the course of his natural life to a member who has been retired by reason of service;

(3) "Disability allowance" means the amount annually payable to a member retired by reason of disability;

(4) "Member" means the commissioner of education, deputy commissioners, associate commissioners, and all division directors in the State Department of Education, and any full-time teacher or professional occupying a position requiring certification or graduation from a four (4) year college or university, as a condition of employment, and who is employed by public boards, institutions, or agencies as follows:

(a) Local boards of education;

(b) Eastern Kentucky University, Kentucky State University, Morehead State University, Murray State University, Western Kentucky University, and any community colleges established under the control of these universities;

(c) State-operated secondary area vocational education or area technology centers, Kentucky School for the Blind, and Kentucky School for the Deaf;

(d) The State Department of Education, the Education Professional Standards Board, other public education agencies as created by the General Assembly, and those members of the administrative staff of the Teachers' Retirement System of the State of Kentucky whom the board of trustees may designate by administrative regulation;

(e) Regional cooperative organizations formed by local boards of education or other public educational institutions listed in this subsection, for the purpose of providing educational services to the participating organizations;

(f) All full-time members of the staffs of the Kentucky Association of School Administrators, Kentucky Education Association, Kentucky Vocational Association, Kentucky High School Athletic Association, Kentucky Academic Association, and the Kentucky School Boards Association who were members of the Kentucky Teachers' Retirement System or were qualified for a position covered by the system at the time of employment by the association in the event that the board of directors of the respective association petitions to be included. The board of trustees of the Kentucky Teachers' Retirement System may designate by resolution whether part-time employees of the petitioning association are to be included. The state shall make no contributions on account of these employees, either full-time or part-time. The association shall make the employer's contributions, including any contribution that is specified under KRS 161.550. The provisions of this paragraph shall be applicable to persons in the employ of the associations on or subsequent to July 1, 1972;

(g) The Department for Adult Education and Literacy, except that the commissioner shall not be a member;

(h) The Department for Technical Education, except that the commissioner shall not be a member;

(i) The Department of Vocational Rehabilitation;

(j) The Kentucky Educational Collaborative for State Agency Children;

(k) The Governor's Scholars Program;

(l) Any person who is retired for service from the retirement system and is reemployed by an employer identified in this subsection in a position that the board of trustees deems to be a member;

(m) Employees of the Cabinet for Workforce Development who are transferred to the Kentucky Community and Technical College System and who occupy positions covered by the Kentucky Teachers' Retirement System shall remain in the Teachers' Retirement System. New employees occupying these positions, as well as newly created positions qualifying for Teachers' Retirement System coverage that would have previously been included in the Cabinet for Workforce Development, shall be members of the Teachers' Retirement System;

(n) Effective January 1, 1998, employees of state community colleges who are transferred to the Kentucky Community and Technical College System shall continue to participate in federal old age, survivors, disability, and hospital insurance and a retirement plan other than the Kentucky Teachers' Retirement System offered by Kentucky Community and Technical College System. New employees occupying positions in the Kentucky Community and Technical College System as referenced in KRS 164.5807(5) that would not have previously been included in the Cabinet for Workforce Development, shall participate in federal old age, survivors, disability, and hospital insurance and have a choice at the time of employment of participating in a retirement plan provided by the Kentucky Community and Technical College System, including participation in the Kentucky Teachers' Retirement System, on the same basis as faculty of the state universities as provided in KRS 161.540 and 161.620; and

(o) Employees of the Office of General Counsel, the Office of Budget and Administrative Services, and the Office of Quality and Human Resources within the Office of the Secretary of the Cabinet for Workforce Development and the commissioners of the Department for Adult Education and Literacy and the Department for Technical Education who were contributing to the Kentucky Teachers' Retirement System as of July 15, 2000;

(5) "Present teacher" means any teacher who was a teacher on or before July 1, 1940, and became a member of the retirement system created by 1938 (1st Extra. Sess.) Ky. Acts ch. 1, on the date of the inauguration of the system or within one (1) year after that date, and any teacher who was a member of a local teacher retirement system in the public elementary or secondary schools of the state on or before July 1, 1940, and continued to be a member of the system until he, with the membership of the local retirement system, became a member of the state Teachers' Retirement System or who becomes a member under the provisions of KRS 161.470(4);

(6) "New teacher" means any member not a present teacher;

(7) "Prior service" means the number of years during which the member was a teacher in Kentucky prior to July 1, 1941, except that not more than thirty (30) years' prior service shall be allowed or credited to any teacher;

(8) "Subsequent service" means the number of years during which the teacher is a member of the Teachers' Retirement System after July 1, 1941;

(9) "Final average salary" means the average of the five (5) highest annual salaries which the member has received for service in a covered position and on which the member has made contributions, or on which the public board, institution, or agency has picked-up member contributions pursuant to KRS 161.540(2), or the average of the five (5) years of highest salaries as defined in KRS 61.680(2)(a), which shall include picked-up member contributions. Additionally, the board of trustees may approve a final average salary based upon the average of the three (3) highest salaries for members who are at least fifty-five (55) years of age and have a minimum of twenty-seven (27) years of Kentucky

service credit. However, if any of the five (5) or three (3) highest annual salaries used to calculate the final average salary was paid within the three (3) years immediately prior to the date of the member's retirement, the amount of salary to be included for each of those three (3) years for the purpose of calculating the final average salary shall be limited to the lesser of:

(a) The member's actual salary; or

(b) The member's annual salary that was used for retirement purposes during each of the prior three (3) years, plus a percentage increase equal to the percentage increase received by all other members employed by the public board, institution, or agency, or for members of school districts, the highest percentage increase received by members on any one (1) rank and step of the salary schedule of the school district. The increase shall be computed on the salary that was used for retirement purposes.

This limitation shall not apply if the member receives an increase in salary in a percentage exceeding that received by the other members, and this increase was accompanied by a corresponding change in position or in length of employment. This limitation shall also not apply to the payment to a member for accrued annual leave or accrued sick leave which is authorized by statute and which shall be included as part of a retiring member's annual compensation for the member's last year of active service;

(10) "Annual compensation" means the total salary received by a member as compensation for all services performed in employment covered by the retirement system during a fiscal year. Annual compensation shall not include payment for any benefit or salary adjustments made by the public board, institution, or agency to the member or on behalf of the member which is not available as a benefit or salary adjustment to other members employed by that public board, institution, or agency. Annual compensation shall not include the salary supplement received by a member under KRS 158.782 on or after July 1, 1996. Under no circumstances shall annual compensation include compensation that is earned by a member while on assignment to an organization or agency that is not a public board, institution, or agency listed in subsection (4) of this section. In the event that federal law requires that a member continue membership in the retirement system even though the member is on assignment to an organization or agency that is not a public board, institution, or agency listed in subsection (4) of this section, the member's annual compensation for retirement purposes shall be deemed to be the annual compensation, as limited by subsection (9) of this section, last earned by the member while still employed solely by and providing services directly to a public board, institution, or agency listed in subsection (4) of this section. The board of trustees shall determine if any benefit or salary adjustment qualifies as annual compensation;

(11) "Age of member" means the age attained on the first day of the month immediately following the birthdate of the member. This definition is limited to retirement eligibility and does not apply to tenure of members;

(12) "Employ," and derivatives thereof, means relationships under which an individual provides services to an employer as an employee, as an independent contractor, as an employee of a third party, or under any other arrangement as long as the services provided to the employer are provided in a position that would otherwise be covered by the Kentucky Teachers' Retirement System and as long as the services are being provided to a public board, institution, or agency listed in subsection (4) of this section;

(13) "Regular interest" means interest at three percent (3%) per annum;

(14) "Accumulated contributions" means the contributions of a member to the teachers' savings fund, including picked-up member contributions as described in KRS 161.540(2), plus accrued regular interest;

(15) "Annuitant" means a person who receives a retirement allowance or a disability allowance;

(16) "Local retirement system" means any teacher retirement or annuity system created in any public school district in Kentucky in accordance with the laws of Kentucky;

(17) "Fiscal year" means the twelve (12) month period from July 1 to June 30. The retirement plan year is concurrent with this fiscal year. A contract for a member employed by a local board of education may not exceed two hundred sixty-one (261) days in the fiscal year;

(18) "Public schools" means the schools and other institutions mentioned in subsection (4) of this section;

(19) "Dependent" as used in KRS 161.520 and 161.525 means a person who was receiving, at the time of death of the member, at least one-half (½) of the support from the member for maintenance, including board, lodging, medical care, and related costs;

(20) "Active contributing member" means a member currently making contributions to the Teachers' Retirement System, who made contributions in the next preceding fiscal year, for whom picked-up member contributions are currently being made, or for whom these contributions were made in the next preceding fiscal year;

(21) "Full-time" means employment in a position that requires services on a continuing basis equal to at least seven-tenths (7/10) of normal full-time service on a fiscal year basis;

(22) "Full actuarial cost," when used to determine the payment that a member must pay for service credit means the actuarial value of all costs associated with the enhancement of a member's benefits or eligibility for benefit enhancements, including health insurance supplement payments made by the retirement system. The actuary for the retirement system shall determine the full actuarial value costs and actuarial cost factor tables as provided in KRS 161.400; and

(23) "Last annual compensation" means the annual compensation, as defined by subsection (10) of this section and as limited by subsection (9) of this section, earned by the member during the twelve (12) months immediately preceding the member's effective retirement date, excluding bonuses, retirement incentives, payments for accumulated sick, annual, personal and compensatory leave, and any other lump-sum payment.

(4506b-2: amend. Acts 1946, ch. 111, § 1; 1954, ch. 196, § 1, 2; 1960, ch. 44, § 1; 1962, ch. 64, § 1; 1964, ch. 43, § 1; 1966, ch. 16, § 1; 1966, ch. 255, § 152; 1968, ch. 136, § 1; 1972, ch. 82, § 1; 1974, ch. 395, § 1; 1976, ch. 351, § 1, effective July 1, 1976; 1978, ch. 152, § 1, effective March 28, 1978; 1982, ch. 166, § 11, effective July 15, 1982; 1984, ch. 253, § 3, effective July 1, 1984; 1984, ch. 302, § 1, effective July 13, 1984; 1986, ch. 440, § 1, effective July 1, 1986; 1988, ch. 363, § 1, effective July 1, 1988; 1990, ch. 442, § 1, effective July 13, 1990; 1990, ch. 470, § 54, effective July 13, 1990; 1990, ch. 476, Pt. IV, § 243, effective July 13, 1990; 1992, ch. 192, § 1, effective July 1, 1992; 1992, ch. 357, § 2, effective July 14, 1992; 1994, ch. 369, § 1, effective July 1, 1994; 1994, ch. 469, § 34, effective July 15, 1994; 1996, ch. 271, § 10, effective July 15, 1996; 1996, ch. 359, § 2, effective July 1, 1996; 1997 (1st Ex. Sess.), ch. 1, § 68, effective May 30, 1997; 1998, ch. 50, § 3, effective July 15, 1998; 1998, ch. 515, § 2, effective July 1, 1998; 2000, ch. 498, § 5, effective July 1, 2000; 2001, ch. 51, § 1, effective June 21, 2001; 2001, ch. 137, § 15, effective June 21, 2001; 2002, ch. 275, § 3, effective July 1, 2002; 2002, ch. 300, § 4, effective July 15, 2002.)

Legislative Research Commission Note. (7/15/2002). This section was amended by 2002 Ky. Acts chs. 275 and 300, which do not appear to be in conflict and have been codified together.

(7/13/90). This section was amended by three Acts. Where those Acts are not in conflict, they have been compiled together. Where a conflict exists, the Act which was last enacted by the General Assembly prevails.

Cross-References. Additional contributions, 102 KAR 1:130.

Administrative staff membership, 102 KAR 1:037.

Executive secretary's qualifications, 102 KAR 2:025.

Final average salary based on average of three (3) highest salaries, 102 KAR 1:220.

New entrants, 102 KAR 1:039.

Rules and administrative regulations, 102 KAR 1:010.

Kentucky Law Journal. Comments, Constitutional Limitations on Mandatory Teacher Retirement, 67 Ky. L.J. 253 (1978-1979).

Opinions of Attorney General. Under KRS 61.410 participation in the social security program is mandatory for all public employees of the Commonwealth except those employees occupying a position to which the provisions of KRS 161.220 to 161.710 are applicable and consequently, the executive secretary, assistant executive secretary, senior accountant and administrative officer of the teacher's retirement system are neither subject to, nor eligible for, participation in the social security program. OAG 69-355.

If additional teaching activity falls within the category of being in fact a part of the regularly approved program of the public school district or the vocational school for which certification or a professional level of training is required as a condition of employment, then teachers' retirement applies and the teacher would not be eligible for social security participation. The additional hours requiring services beyond the normal teaching day are regarded as an extension of the regular full-time employment. OAG 69-430.

When the professional staff members of the division of disability determinations were a part of the department of education they were allowed to participate in the Kentucky Teachers' Retirement System and were exempt from participation in the federal social security program; however, when this division was transferred to the Department for Human Resources, the members lost their status as professional staff members and, although they had the option of retaining membership in the Kentucky Teachers' Retirement System or joining the Kentucky Employees Retirement System, it was mandatory they participate in the federal social security program. OAG 73-767.

Any employee of the Kentucky Authority for Educational Television currently a member of the Kentucky Employees Retirement System who, because of subsection (4)(d) of this section, may be qualified to participate in the teachers' retirement system has the option of joining the teachers' retirement system as provided by KRS 161.607(3) or retaining membership in Kentucky Employees Retirement System as provided by KRS 61.680. OAG 74-305.

ROTC teachers may be employed without being certified but an uncertified ROTC teacher may not be a member of the Kentucky Teacher's Retirement System. OAG 74-387.

Participation by the faculty of Western Kentucky University in the State Teacher's Retirement System is mandatory and where, as in this case, a majority of the faculty elects under KRS 61.435 to participate in the federal social security program, participation in that program also is mandatory and there is no legal way thereafter that the faculty can withdraw or discontinue its participation. OAG 75-268.

The salary an individual earns as a state legislator does not fall within the statutory definition under KTRS law as "annual compensation" which is subject to employee contributions in the KTRS. OAG 78-226.

Interpretation of what constitutes a "professional level of training" is a responsibility resting with the Board of Trustees of the Teachers Retirement System of the state of Kentucky, which has defined the term to mean graduation from a recognized college or university or its equivalent. OAG 85-133.

Cited: Cooksey v. Board of Educ., 316 S.W.2d 70 (Ky. 1957).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 2, 58, 191.

What constitutes "salary," "wages," "pay," or the like, within pension law basing benefits thereon. 14 A.L.R.2d 634.

161.230. Retirement system — Purpose — Name. The Teachers' Retirement System is established as of July 1, 1940, for the purpose of providing retirement allowances for teachers, their beneficiaries, and survivors under the provisions of KRS 161.155 and 161.220 to 161.714. The Teachers' Retirement System of the State of Kentucky shall be an independent agency and instrumentality of the Commonwealth and this status shall only be amended or changed by the General Assembly. It shall have the powers and the privileges of a corporation and shall be known as the "Teachers' Retirement System of the State of Kentucky." Its business shall be transacted, its funds invested, and its cash and securities held in that name, or in the name of its nominee provided that its nominee is authorized by board of trustees' resolution solely for the purpose of facilitating the transfer of securities. The board of trustees may designate a nominee as provided in KRS 287.225; or it may name as nominee a partnership composed of selected trustees and employees of the system, and formed for the sole purpose of holding legal

or registered title of such securities, and for the transfer of securities in accordance with directions of the board of trustees.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 485, effective July 13, 1990.)

Compiler's Notes. This section (4506b-1: amend. Acts 1972, ch. 82, § 2; 1982, ch. 326, § 2, effective July 1, 1982) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 485, effective July 13, 1994.

Cited: Sherrard v. Jefferson County Bd. of Educ., 294 Ky. 469, 171 S.W.2d 963 (1942).

NOTES TO DECISIONS

1. Purpose.

The purpose of pensions for retired teachers is to provide an inducement to teachers to remain in the profession so that the school system will benefit from having experienced teachers, and to reward faithful service rendered for meager compensation. Board of Educ. v. City of Louisville, 288 Ky. 656, 157 S.W.2d 337 (1941).

Collateral References. 68 Am. Jur. 2d, Schools, § 25.

78 C.J.S., Schools and School Districts, §§ 338-342.

161.240. Districts, institutions and offices included in system — Junior colleges. [Repealed.]

Compiler's Notes. This section (4506b-3: amend. Acts 1948, ch. 194) was repealed by Acts 1964, ch. 43, § 23.

161.250. Board of trustees to control retirement — Membership — Appeals.

(1) The general administration and management of the retirement system, and the responsibility for its proper operation and for making effective provisions of KRS 161.155 and 161.220 to 161.714 are vested in a board of trustees to be known as the "Board of Trustees of the Teachers' Retirement System of the State of Kentucky." The board of trustees shall consist of the chief state school officer, the State Treasurer, and seven (7) other trustees elected as provided in KRS 161.260. Four (4) of the elective trustees shall be members of the retirement system, to be known as teacher trustees, two (2) shall be persons who are not members of the teaching profession, to be known as the lay trustees, and one (1) shall be an annuitant of the retirement system to be known as the retired teacher trustee. One (1) teacher trustee shall be elected annually for a four-year term. The retired teacher trustee shall be elected every four (4) years. The chief state school officer and the State Treasurer are considered ex officio members of the board of trustees and may designate in writing a person to represent them at board meetings.

(2) A member, retired member, or designated beneficiary may appeal the retirement system's decisions that materially affect the amount of service retirement allowance, amount of service credit, eligibility for service retirement, or eligibility for survivorship benefits to which that member, retired member, or designated beneficiary claims to be entitled. All appeals must be in writing and filed with the retirement system within thirty (30) days of the claimant's first notice of the retirement system's decision. For purposes of this section, notice shall be complete and effective upon the date of mailing of the retirement system's decision to the claimant at the claimant's last known address. Failure by the claimant to file a written appeal with the retirement system within the thirty (30) day period shall result in the decision of the retirement system becoming permanent with the effect of a final and unappealable order. Appeals may include a request for an administrative hearing which shall be conducted in accordance with the provisions of KRS Chapter 13B. The board of trustees may establish an appeals committee whose members shall be appointed by the chairperson and who shall have the authority to act upon the report and recommendation of the hearing officer by issuing a final order on behalf of the full board of trustees. A member, retired member, or designated beneficiary who has filed a timely, written appeal of a decision of the retirement system may, following the administrative hearing and issuance of the final order by the board of trustees, appeal the final order of the board of trustees to the Franklin Circuit Court in accordance with the provisions of KRS Chapter 13B.

(4506b-5: amend. Acts 1972, ch. 82, § 3; 1974, ch. 395, § 2, effective July 1, 1974; 1982, ch. 326, § 3, effective July 1, 1982; 1990, ch. 476, Pt. IV, § 244, effective July 13, 1990; 2000, ch. 498, § 6, effective July 1, 2000; 2002, ch. 275, § 4, effective July 1, 2002.)

Opinions of Attorney General. A certified teacher who has taught long enough to acquire a vested interest in the teachers' retirement system but who left teaching for another occupation several years before would be "a member of the teaching profession" and would not be eligible to serve as a lay member of the board of trustees of the teachers' retirement system, since this section envisioned a person with an objective approach who would not be influenced by having a teaching background. OAG 71-150.

Collateral References. 78 C.J.S., Schools and School Districts, § 343.

161.260. Election of members of board of trustees.

An election shall be held on or before June 1 of each year to elect trustees. The trustees to be elected each year shall depend upon the respective terms of the trustees elected under Acts 1938 (1st Ex. Sess.), Ch. 1, paragraph 7 and Acts 1940, Ch. 192, paragraph 7a, and KRS 161.250. Each trustee shall assume office on July 1 following his election and shall serve for a term of four (4) years. The elections shall be conducted by ballot under the supervision of the chief state school officer. Each person who is a contributing member or an annuitant of the retirement system shall have the right to vote. Nominations for trustees shall be made by a nominating committee consisting of one (1) committee member selected by the retirement system membership of each of the districts of the Kentucky Education Association, and one (1) committee member to be selected by retired teachers, on a statewide basis, from among the annuitants of the retirement system. No

person may be a member of the nominating committee who is not a member of the system, except for the committee member to be selected from among the annuitants of the system. The president of the Kentucky Education Association shall preside over the meeting of the nominating committee and the secretary of the Teachers' Retirement System shall act as secretary to the committee. Two (2) persons shall be nominated by the nominating committee for each position to be filled. All expenses of the election shall be paid by the board of trustees out of its general expense fund.
(4506b-6, 4506b-6a: amend. Acts 1960, ch. 44, § 2; 1970, ch. 95, § 1; 1972, ch. 82, § 4; 1990, ch. 476, Pt. IV, § 245, effective July 13, 1990.)

Opinions of Attorney General. The members of the Kentucky Teachers' Retirement System Trustee Nominating Committee are entitled to reimbursement out of the board of trustees' general expenses fund for all reasonable, actual and necessary expenses incurred in attending the nomination meeting. OAG 83-479.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 117-128.

161.270. Vacancies, how filled.

Vacancies occurring during the terms of the elective members shall be filled by the remaining members of the board of trustees by election for the unexpired terms.
(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 486, effective July 13, 1990.)

Compiler's Notes. This section (4506b-7) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 486, effective July 13, 1990.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 138, 139.

161.280. Oath of board members.

Each member of the board of trustees shall, within ten (10) days after his appointment or election, take an oath that he will support the Constitution of the United States and the Constitution of Kentucky, that he will diligently and honestly administer the affairs of the board, and that he will not knowingly violate or willingly permit to be violated any provisions of the law applicable to the retirement system. The oath of office shall be subscribed to by the member making it and certified to by the officer before whom it is taken, and shall be immediately filed in the office of the Secretary of State.
(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 487, effective July 13, 1990.)

Compiler's Notes. This section (4506b-9) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 487, effective July 13, 1990.

Cross-References. Constitutional oath, Const., § 228.
When constitutional oath to be taken, KRS 62.010.

Collateral References. 78 C.J.S., Schools and School Districts, § 114.

161.290. Meetings, compensation, and expenses of board members.

(1) The board of trustees shall meet on the third Monday during the months of March, June, September, and December of each year. Special meetings may be called by the chairperson upon giving adequate notice to each member of the board of trustees. The business to be transacted at special meetings shall be specified in the notice of the meeting.
(2) The members of the board of trustees shall serve without compensation, except that elective trustees shall receive ninety dollars ($90) for each day the board is in session and all elected trustees shall be reimbursed from the expense fund for all necessary expenses they incur through service to the board without limitation of the provisions of KRS Chapters 44 and 45.
(3) The board of trustees may authorize a per diem, not to exceed ninety dollars ($90) per day, for trustees representing the system on committees or commissions established by statute or for service as an official representative of the board of trustees.
(4) The school district which employs a teacher trustee who is required to attend regular or special meetings of the board of trustees, represent the system on committees or commissions, or serve as an official representative of the board of trustees shall provide the teacher trustee with special leave with pay and pay the compensation for a substitute for the teacher trustee during periods of absence upon certification by the teacher trustee that the trustee is performing these duties for the system.
(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 488, effective July 13, 1990; 1992, ch. 192, § 2, effective July 1, 1992.)

Compiler's Notes. This section (4506b-8, 4506b-15: amend. Acts 1960, ch. 44, § 3; 1972, ch. 82, § 5; 1974, ch. 395, § 53; 1974, ch. 395, § 3; 1976, ch. 351, § 2, effective July 1, 1976; 1982, ch. 326, § 4, effective July 1, 1982; 1986, ch. 440, § 2, effective July 1, 1986) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 488, effective July 13, 1990.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 140, 141.

161.300. Quorum.

Five (5) members of the board of trustees shall constitute a quorum. Each trustee shall be entitled to one (1) vote. Four (4) votes or a majority of the trustees present whichever is the larger number shall be necessary for a decision by the trustees at any meeting of the board.
(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 489, effective July 13, 1990.)

Compiler's Notes. This section (4506b-10: amend. Acts 1974, ch. 395, § 4, effective July 1, 1974) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 489, effective July 13, 1990.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 148, 149.

161.310. Administrative regulations — Rules, regulations, and policies of participating employers to conform to chapter.

(1) The board of trustees shall from time to time promulgate administrative regulations for the ad-

ministration of the funds of the retirement system and for the transaction of business.

(2) All rules, regulations, or policies adopted by school districts, universities, or other employers participating in the Teachers' Retirement System that pertain to the retirement system shall conform to this chapter.

(3) All rules, regulations, or policies adopted, or decisions made, by school districts, universities, or other employers participating in the Teachers' Retirement System that pertain to retirement incentives for members as defined in KRS 161.220(4) shall contain provisions for the school district, university, or other employer to make full payment to the retirement system at the time a member retires for all actuarial obligations that occur to the retirement system as a result of retirement incentive payments. This subsection shall not apply to retirement incentive plans adopted by local boards of education prior to December 31, 1997, and to those employees of local school districts who retired on or before July 1, 1998.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 490, effective July 13, 1990; 1994, ch. 369, § 2, effective July 1, 1994; 1998, ch. 515, § 3, effective July 1, 1998; 2002, ch. 275, § 5, effective July 1, 2002.)

Compiler's Notes. This section (4506b-11) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 490, effective July 13, 1990.

Cross-References. Additional contributions, 102 KAR 1:130.
Administrative staff membership, 102 KAR 1:037.
Annuity payments, 102 KAR 1:155.
Annuity tables, 102 KAR 1:160.
Application for retirement, 102 KAR 1:070.
Basis for options, 102 KAR 1:145.
Credit for military service, 102 KAR 1:057.
Disability, 102 KAR 1:140.
Election of chairperson, vice chairperson, 102 KAR 2:010.
Employment by retired members, 102 KAR 1:035.
Executive secretary's qualifications, 102 KAR 2:025.
Final average salary based on average of three (3) highest salaries, 102 KAR 1:220.
Fractional service year, 102 KAR 1:038.
Insurance, 102 KAR 1:100.
Interest credited to accounts, 102 KAR 1:135.
Investment policies, 102 KAR 1:175.
Kentucky Industrial Development Finance Authority investments, 102 KAR 1:180.
Leave of absence, 102 KAR 1:110.
New entrants, 102 KAR 1:039.
Omitted contributions, 102 KAR 1:125.
Optional benefits, 102 KAR 1:150.
Out-of-state service interest rates, 102 KAR 1:050.
Part-time service, 102 KAR 1:036.
Payroll reports, 102 KAR 1:195.
Reciprocal program between County Employees Retirement System, Kentucky Employees Retirement System, State Police Retirement System, Legislators' Retirement Plan, Judicial Retirement System, and Teachers' Retirement System, 102 KAR 1:185.
Refunds, 102 KAR 1:060.
Rules and administrative regulations, 102 KAR 1:010.
Submission of employer data, 102 KAR 1:210.
Substitute teachers, 102 KAR 1:030.
Surviving children's benefits, 102 KAR 1:165.
Transfer to other systems, 102 KAR 1:045.
Value of service performed, 102 KAR 1:200.
Voluntary and tax-sheltered contributions, 102 KAR 1:122.

Collateral References. 78 C.J.S., Schools and School Districts, § 145.

161.320. Record of proceedings — Annual report.

The board of trustees shall keep a record of all its proceedings which shall be open to public inspection. It shall publish on or before January 1 of each year a report giving an account of the operation of the system, showing the fiscal transactions of the system for the preceding year and the amount of the accumulated cash and securities of the system, and containing the last balance sheet showing the financial condition of the system.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 491, effective July 13, 1990.)

Compiler's Notes. This section (4506-17: amend. Acts 1968, ch. 136, § 2) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 491, effective July 13, 1990.

Collateral References. 79 C.J.S., Schools and School Districts, § 502.

161.330. Cost of administration, how paid — Office space.

The cost of administration of the retirement system shall be paid out of the expense fund established for that purpose by the board of trustees. The board of trustees shall be responsible for the approval and administration of the expense fund budget, subject to the limitations imposed by KRS 161.420(1). Expenses for the operation of the retirement system shall be in such amounts as the board of trustees approves. The board of trustees is authorized to purchase or lease suitable office quarters for the operation of the retirement system.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 492, effective July 13, 1990.)

Compiler's Notes. This section (4506b-14: amend. Acts 1972, ch. 82, § 6, 1984, ch. 253, § 4 effective July 1, 1984) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 492, effective July 13, 1990.

161.340. Officers of board — Personnel of system — Contracting for services — Bonds of officers and employees.

(1) The board of trustees shall elect from its membership a chairperson and a vice chairperson on an annual basis as prescribed by the administrative regulations of the board of trustees. The board of trustees shall employ an executive secretary by means of a contract not to exceed a period of four (4) years and fix the compensation and other terms of employment for this position without limitation of the provisions of KRS Chapters 18A, 45A, 56, and KRS 64.640. The executive secretary shall be the chief administrative officer of the board. The executive secretary, at the time of employment, shall be a graduate of a four (4) year college or university, and shall possess qualifications as the board of trustees may require. The executive sec-

retary shall not have held by appointment or election an elective public office within the five (5) year period next preceding the date of employment.

(2) The board shall employ clerical, administrative, and other personnel as are required to transact the business of the retirement system. The compensation of all persons employed by the board shall be paid at the rates and in amounts as the board approves. Anything in the Kentucky Revised Statutes to the contrary notwithstanding, the power over and the control of determining and maintaining an adequate complement of employees in the system shall be under the exclusive jurisdiction of the board of trustees.

(3) The board shall contract for actuarial, auditing, legal, medical, investment counseling, and other professional or technical services as are required to carry out the obligations of the board in accordance with the provisions of this chapter without limitations, including KRS Chapters 12, 13B, 45, 45A, 56, and 57, and shall provide for legal counsel and other legal services as may be required in defense of trustees, officers, and employees of the system who may be subjected to civil action arising from the performance of their legally assigned duties if counsel and services are not provided by the Attorney General.

(4) The board shall require the trustees, executive secretary, and employees it determines proper to execute bonds for the faithful performance of their duties notwithstanding the limitations of KRS Chapter 62.

(5) The board of trustees may expend funds from the expense fund as necessary to insure the trustees, employees, and officials of the Teachers' Retirement System against any liability arising out of an act or omission committed in the scope and course of performing legal duties.

(6) Notwithstanding any statute to the contrary, employees shall not be considered legislative agents as defined in KRS 6.611.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 493, effective July 13, 1990; 1994, ch. 369, § 3, effective July 1, 1994; 1996, ch. 359, § 3, effective July 1, 1996; 1998, ch. 515, § 4, effective July 1, 1998; 2002, ch. 275, § 6, effective July 1, 2002.)

Compiler's Notes. This section (4506b-12: amend. Acts 1958, ch. 8, § 1; 1960, ch. 44, § 4; 1962, ch. 64, § 2; 1964, ch. 43, § 2; 1972, ch. 82, § 7; 1976, ch. 351, § 3, effective July 1, 1976; 1978, ch. 110, § 103, effective January 1, 1979; 1980, ch. 206, § 1, effective July 1, 1980; 1982, ch. 326, § 5, effective July 15, 1982; 1984, ch. 253, § 5, effective July 1, 1984; 1986, ch. 440, § 3, effective July 1, 1986; 1988, ch. 363, § 2, effective July 1, 1988) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 493, effective July 13, 1990.

Cross-References. Election of chairperson, vice chairperson, 102 KAR 2:010.

Opinions of Attorney General. The board of the teachers' retirement system could provide for payment for annual leave for its executive secretary, but such action would be subject to the approval of the commissioner of personnel. OAG 70-470.

Just as KRS 64.640 provides an upper limit for all employees with regard to their potential salary, including any five percent increases, this section must be read into KRS 18A.350 to 18A.360 (now repealed) to provide an absolute upper salary limit for the executive secretary of the Teachers' Retirement System to be the maximum set for commissioners by KRS 64.640(2). OAG 82-355.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 117-128, 175, 177.

161.350. Bonds of employees. [Repealed.]

Compiler's Notes. This section (4506b-13) was repealed by Acts 1946, ch. 27, § 40.

161.360. Workmen's compensation and unemployment compensation may be adopted for employees. [Repealed.]

Compiler's Notes. This section (4506b-35) was repealed by Acts 1956, ch. 154.

161.370. Treasurer, auditor, and legal adviser of board — Annual audit of Teachers' Retirement System.

(1) The State Treasurer, the Auditor of Public Accounts, and the Attorney General shall be treasurer, auditor, and legal adviser, respectively, of the board of trustees, and shall be liable upon their official bonds for the faithful performance of such duties. They shall serve without compensation. When the board of trustees deems it for the best interests of the retirement system, it may employ attorneys and pay reasonable fees for the services rendered.

(2) The board shall annually procure an audit of the Teachers' Retirement System. The audit shall be conducted in accordance with generally accepted auditing standards. The board may select an independent certified public accountant and pay reasonable fees for the services rendered. If the audit is performed by an independent certified public accountant, the Auditor of Public Accounts shall not be required to perform an audit pursuant to KRS 43.050(2)(a), but may perform an audit at his discretion.

(3) The board shall make copies of the audit required by this section available for examination by any active contributing member or annuitant in the office of the executive secretary of the Teachers' Retirement System and in such other places as may be necessary to make the audit available to all active contributing members and annuitants. A copy of the annual audit shall be sent to the Legislative Research Commission no later than ten (10) days after receipt by the board.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 494, effective July 13, 1990.)

Compiler's Notes. This section (4506b-18: amend. Acts 1980, ch. 246, § 7, effective July 15, 1980) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 494, effective July 13, 1990.

Cross-References. Attorneys for state agencies, employment of, KRS 12.210.

Opinions of Attorney General. The teacher's retirement system is not required by law to honor an inter-account bill

from the state auditor for the expense incurred as a consequence of an audit of the system. OAG 74-164.

If the state auditor cannot perform the services requested by the board of the teachers' retirement system, the board may contract with outside auditors to perform these services, but a contract with the state auditor to provide auditing services for the retirement system at a cost equal to or less than that which could be secured from other outside auditors is illegal since, if the state auditor can perform the services, they are to be provided without compensation. OAG 74-564.

161.380. Duties of treasurer — Custodian of securities.

(1) The State Treasurer is the custodian of all cash funds of the retirement system. He shall honor and pay all vouchers drawn on the retirement funds. The Treasurer shall honor and pay all vouchers drawn on the retirement funds for payment of securities purchased upon order of the board. All payments from the several funds of the retirement system shall be made only upon vouchers signed by the executive secretary, the chairman of the board of trustees of the retirement system, or persons delegated in writing by the board.

(2) The board of trustees shall appoint a custodian or custodians of the securities acquired under authority of KRS 161.430 and the custodian or custodians shall be responsible for the safekeeping of all securities placed in his custody. The custodian shall collect dividends, interests, and payments on principal as they become due, and deposit such funds with the State Treasurer for credit to the guarantee fund of the system. The custodian shall, upon delivery of the securities to him, make payment for same as authorized by the board of trustees. When securities are sold by the board of trustees, the custodian shall deliver such securities to the purchaser upon receipt of payment from said purchaser.

(3) The board of trustees may require such surety from the custodian as they deem necessary for the protection of securities held by such custodian.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 495, effective July 13, 1990.)

Compiler's Notes. This section (4506b-22: amend. Acts 1964, ch. 43, § 3; 1974, ch. 395, § 5, effective July 1, 1974; 1982, ch. 414, § 1, effective July 15, 1982) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 495, effective July 13, 1990.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 142, 143.

161.390. Actuarial data to be kept.

The board of trustees shall keep in convenient form the data necessary for the actuarial valuation of the various funds of the retirement system and for determining the administrative costs of the system.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 496, effective July 13, 1990.)

Compiler's Notes. This section (4506b-16) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 496, effective July 13, 1990.

NOTES TO DECISIONS

1. Application.

The Kentucky Education Reform Act (KERA) Board of Education's failure to take official, and presumably final, action in informing school personnel of demotion prior to May 15 as provided by KRS 161.760(3) and thus invalidating the demotion had been changed by the enactment of KRS 160.390 which effectively supersedes the May 15 requirement and under the plain language of KRS 161.760 and 160.390 makes the superintendent's action of demotion effective upon mere written notice to the affected employee of the action. Estreicher v. Board of Educ., 950 S.W.2d 839 (Ky. 1997).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 142, 143.

161.400. Actuary.

(1) The board of trustees shall designate as actuary a competent person who shall be a fellow of the Conference of Consulting Actuaries or a member of the American Academy of Actuaries. He shall be the technical adviser of the board on matters regarding the operation of the funds of the system and shall perform such other duties as are required in connection therewith. At least once in each six (6) year period after the first year of operation of the system, the actuary shall make an actuarial investigation into the actuarial assumptions used, including but not limited to mortality, investment rate of return, and service and compensation of the members and beneficiaries of the retirement system; and make a valuation of the assets and liabilities of the funds of the system. At least annually the actuary shall make an actuarial valuation of the retirement system. The valuation shall include a description of the actuarial assumptions used, and the assumptions shall be reasonably related to the experience of the system and represent the actuary's best estimate of anticipated experience. On the basis of the results of the valuations, the board of trustees shall make necessary changes in the retirement system within the provisions of law and shall recommend the contributions payable by the state within the limits specified in KRS 161.550.

(2) Actuarial factors and actuarial cost factor tables in use by the retirement system for all purposes shall be determined by the actuary of the retirement system and approved by the board of trustees by resolution and implemented without the necessity of an administrative regulation. The assets of the system shall be valued at market value, or at a modified market value determined by the board to be a prudent measure of asset value. Effective July 1, 1992, the spread between investment and salary assumptions shall be reviewed and adjusted at the time of actuarial valuation, based upon the most recent five (5) year experience of the system.

(3) A copy of each actuarial investigation and valuation shall be forwarded to the Legislative Research Commission no later than ten (10) days after receipt by the board.

(4506b-20: amend. Acts 1960, ch. 44, § 5; 1962, ch. 64, § 3; 1976, ch. 351, § 4, effective July 1, 1976; 1978, ch. 152, § 2, effective March 28, 1978; 1980, ch. 246, § 3, effective July 15, 1980; 1990, ch. 442, § 19, effective

July 1, 1990; 1990, ch. 476, Pt. V, § 497, effective July 13, 1990; 2000, ch. 498, § 7, effective July 1, 2000; 2002, ch. 275, § 7, effective July 1, 2002.)

Legislative Research Commission Note. (7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 142, 143.

161.410. Medical review board, designation — Duties. [Repealed.]

Compiler's Notes. This section (4506b-19: amend. Acts 1960, ch. 44, § 6) was repealed by Acts 1964, ch. 43, § 23.

161.420. Funds of retirement system.

All of the assets of the retirement system are for the exclusive purpose of providing benefits to members and annuitants and defraying reasonable expenses of administering the system. The board of trustees shall be the trustee of all funds of the system and shall have full power and responsibility for administering the funds. It is hereby declared that the restrictions and rights provided herein shall not be subject to reduction or impairment by alteration, amendment, or repeal. All the assets of the retirement system shall be credited according to the purpose for which they are held to one (1) of the following funds:

(1) The expense fund shall consist of the funds set aside from year to year by the board of trustees to defray the expenses of the administration of the retirement system. Each fiscal year an amount not greater than four percent (4%) of the dividends and interest income earned from investments during the immediate past fiscal year shall be set aside into the expense fund or expended for the administration of the retirement system;

(2) The teachers' savings fund shall consist of the contributions paid by members of the retirement system into this fund and regular interest assigned by the board of trustees from the guarantee fund. A member may not borrow any amount of his or her accumulated contributions to this fund, or any interest earned thereon. The accumulated contributions of a member returned to him upon his withdrawal or paid to his estate or designated beneficiary in the event of his death shall be paid from the teachers' savings fund. Any accumulated contributions forfeited by a failure of a teacher or his estate to claim these contributions shall be transferred from the teachers' savings fund to the guarantee fund. The accumulated contributions of a member shall be transferred from the teachers' savings fund to the allowance reserve fund in the event of retirement by reason of service or disability;

(3) The state accumulation fund shall consist of funds appropriated by the state for the purpose of providing annuities, survivor benefits, and death benefits, including any sums appropriated for meeting unfunded liabilities, together with regular interest assigned by the board of trustees from the guarantee fund. At the time of retirement or death of a member there shall be transferred from the state accumulation fund to the allowance reserve fund an amount which together with the sum transferred from the teachers' savings fund will be sufficient to provide the member a retirement allowance and provide for benefits under KRS 161.520, 161.525, and 161.655;

(4) The allowance reserve fund shall be the fund from which shall be paid all retirement allowances and benefits provided under KRS 161.520, 161.525, and 161.655. In addition, whenever a change in the status of a member results in an obligation on this fund, there shall be transferred to this fund from the teachers' savings fund and the state accumulation fund, the amounts as may be held in those funds for the account or benefit of the member;

(5) The medical insurance fund shall consist of amounts accumulated for the purpose of providing benefits as provided in KRS 161.675. One and five tenths percent (1.5%) of the gross annual payroll of all members shall be deposited to this fund. One-half (½) of this amount shall derive from member contributions and one-half (½) from a state appropriation. The board of trustees may allocate the three and twenty-five hundredths percent (3.25%) of the total salaries of active members that the state appropriates annually as provided under KRS 161.550. The medical insurance fund shall receive all interest income from the investments of the fund. All claims for benefits under KRS 161.675 shall be paid from this fund. Any amounts not required to meet current costs shall be maintained as a reserve for these benefits;

(6) The guarantee fund shall be maintained to facilitate the crediting of uniform interest on the amounts of the other funds, except the expense fund, to finance operating expenses directly related to investment management services, and to provide a contingent fund out of which special requirements of any of the other funds may be covered. All income, interest, and dividends derived from the authorized deposits and investments shall be paid into the guarantee fund. Any funds received from gifts and bequests, which the board is hereby authorized to accept and expend without limitation in a manner either expressed by the donor or deemed to be in the best interest of the membership, shall be credited to the guarantee fund. Any funds transferred from the teachers' savings fund by reason of lack of claimant or because of a surplus in any fund and any other moneys whose disposition is not otherwise provided for, shall also be credited to the guarantee fund. The interest allowed by the board of trustees to each of the other funds shall be paid to these funds from the guarantee fund. Any deficit occurring in any fund that would not be automatically covered shall be met by the payments from the guarantee fund to that fund. The board of trustees may, at any time during a fiscal year, transfer from the guarantee fund to the medical insurance fund an amount not to exceed four percent (4%) of the income earned from investments during the immediate past year;

(7) The school employee annuity fund shall consist of those funds voluntarily contributed under the provisions of section 403(b) of the Internal Revenue Code by a retired member of the Teachers' Retirement System with accounts that existed on or after July 1, 1996. The contributions shall not be picked up as provided in KRS 161.540(2). Separate member accounts shall be maintained for each member. The board of trustees may promulgate administrative regulations pursuant to KRS Chapter 13A to manage this program;

(8) The supplemental retirement benefit fund shall consist of those funds contributed by the employer for the purpose of constituting a qualified government excess benefit plan as described in Section 415 of the Internal Revenue Code for accounts that existed on or after July 1, 1996. The board of trustees may promulgate administrative regulations pursuant to KRS Chapter 13A to administer this program;

(9) The defined contribution fund shall consist of those funds contributed by retired members who have been approved by the retirement system for full-time reemployment in a position covered by the retirement system and contributions made by the employer for the purpose of providing separate retirement allowances for periods of reemployment. Separate member accounts shall be maintained for each member. The board of trustees may promulgate administrative regulations pursuant to KRS Chapter 13A to administer this program. The contributions shall not be picked up as provided in KRS 161.540(2); and

(10) The life insurance benefit fund shall consist of amounts accumulated for the purpose of providing benefits provided under KRS 161.655. The board of trustees may allocate to this fund a percentage of the employer and state contributions as provided under KRS 161.550. The allocation to this fund will be in an amount that the actuary determines necessary to fund the obligation of providing the benefits provided under KRS 161.655.

(4506b-35: amend. Acts 1964, ch. 43, § 4; 1974, ch. 395, § 6, effective July 1, 1974; 1978, ch. 152, § 3, effective March 28, 1978; 1984, ch. 253, § 6, effective July 1, 1984; 1986, ch. 440, § 4, effective July 1, 1986; 1988, ch. 363, § 3, effective July 1, 1988; 1990, ch. 442, § 2, effective September 1, 1990; 1990, ch. 476, Pt. V, § 498, effective July 13, 1990; 1992, ch. 192, § 3, effective July 1, 1992; 1994, ch. 369, § 4, effective July 1, 1994; 1998, ch. 515, § 5, effective July 1, 1998; 2000, ch. 498, § 8, effective July 1, 2000; 2002, ch. 275, § 8, effective July 1, 2002.)

Compiler's Notes. Section 403(b) of the Internal Revenue Code referred to in subsection (7) of this section is compiled as 26 U.S.C. § 403(b).

Section 415 of the Internal Revenue Code, referred to in subsection (8), is codified as 26 U.S.C. § 415.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 343, 346.

161.430. Investment of funds.

(1) The board of trustees shall be the trustee of the funds of the retirement system and shall have full power and responsibility for the purchase, sale, exchange, transfer, or other disposition of the investments and moneys of the retirement system. The board shall, by administrative regulation, establish investment policies and procedures to carry out their responsibilities. The board shall employ experienced competent investment counselors to advise it on all matters pertaining to investment, except the board may employ qualified investment personnel to advise it on investment matters not to exceed fifty percent (50%) of the book value of the system's assets. All individuals associated with the investment and management of retirement system assets, whether contracted investment advisors or staff employees, shall adhere to "The Code of Ethics" and "The Standards of Professional Conduct" promulgated by the Association for Investment Management and Research. Effective July 1, 1991, no investment counselor shall manage more than forty percent (40%) of the funds of the retirement system. The board may appoint an investment committee consisting of the executive secretary and two (2) trustees to act for the board in all matters of investment, subject to the approval of the board of trustees. The board of trustees, in keeping with their responsibilities as trustees and wherever consistent with their fiduciary responsibilities, shall give priority to the investment of funds in obligations calculated to improve the industrial development and enhance the economic welfare of the Commonwealth. Toward this end, the board shall develop procedures for informing the business community of the potential for in-state investments by the retirement fund, accepting and evaluating applications for the in-state investment of funds, and working with members of the business community in executing in-state investments which are consistent with the board's fiduciary responsibilities. The board shall include in the criteria it uses to evaluate in-state investments their potential for creating new employment opportunities and adding to the total job pool in Kentucky. The board may cooperate with the board of trustees of Kentucky Retirement Systems in developing its program and procedures, and shall report to the Legislative Research Commission annually on its progress in placing in-state investments. The first report shall be submitted by October 1, 1991, and subsequent reports shall be submitted by October 1 of each year thereafter. The report shall include the number of applications for in-state investment received, the nature of the investments proposed, the amount requested, the amount invested, and the percentage of applications which resulted in investments.

(2) The board members and investment counselor shall discharge their duties with respect to the assets of the system solely in the interests of the active contributing members and annuitants and:

(a) For the exclusive purpose of providing benefits to members and annuitants and defraying reasonable expenses of administering the system;

(b) With the care, skill, prudence, and diligence under the circumstances then prevailing that

a prudent man acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims;

(c) By diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(d) In accordance with the laws, administrative regulations, and other instruments governing the system.

(3) (a) In choosing and contracting for professional investment management services the board must do so prudently and in the interest of the members and annuitants. Any contract that the board makes with an investment counselor shall set forth policies and guidelines of the board with reference to standard rating services and specific criteria for determining the quality of investments. Expenses directly related to investment management services shall be financed from the guarantee fund in amounts approved by the board.

(b) An investment counselor appointed under this section shall acknowledge in writing his fiduciary responsibilities to the fund. To be eligible for appointment, an investment counselor must be:

1. Registered under the Federal Investment Advisors Act of 1940; or
2. A bank as defined by that Act; or
3. An insurance company qualified to perform investment services under the laws of more than one (1) state.

(4) No investment or disbursement of funds shall be made unless authorized by the board of trustees, except that the board, in order to ensure timely market transactions, shall establish investment guidelines, by administrative regulation, and may permit its staff and investment counselors employed pursuant to this section to execute purchases and sales of investment instruments within those guidelines without prior board approval.

(4506b-21: amend. Acts 1954, ch. 215; 1958, ch. 8, § 2; 1960, ch. 44, § 7; 1962, ch. 64, § 4; 1964, ch. 43, § 5; 1966, ch. 16, § 2; 1968, ch. 136, § 3; 1972, ch. 82, § 8; 1978, ch. 152, § 4, effective March 28, 1978; 1980, ch. 246, § 10, effective July 15, 1980; 1984, ch. 253, § 7, effective July 1, 1984; 1988, ch. 363, § 4, effective July 1, 1988; 1990, ch. 442, § 18, effective July 1, 1990; 1990, ch. 476, Pt. V, § 499, effective July 13, 1990; 1992, ch. 192, § 4, effective July 1, 1992; 1994, ch. 369, § 5, effective July 1, 1994; 2002, ch. 275, § 9, effective July 1, 2002.)

Compiler's Notes. The Federal Investment Advisors Act of 1940, referred to herein, is compiled as 15 U.S.C. §§ 80b-1 to 80b-21.

Cross-References. Administration of trusts and investment of trust funds, KRS Ch. 386.

Investment policies, 102 KAR 1:175.

Kentucky Industrial Development Finance Authority investments, 102 KAR 1:180.

Opinions of Attorney General. Revenue bonds issued by a municipality for the creation of a parking facility are not public utility revenue bonds as the term is used in the statute. OAG 63-129.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 343, 346.

161.440. Assignment of interest to funds.

At the end of each fiscal year the board of trustees shall assign from the guarantee fund interest at the rate of three percent (3%) to the teachers' savings fund, the state accumulation fund, and the allowance reserve fund. The amounts so allowed shall be due and payable to the funds and shall be annually credited thereto by the board of trustees from interest and other earnings on money of the retirement system.

(4506b-23: amend. Acts 1964, ch. 43, § 6; 1984, ch. 253, § 8, effective July 1, 1984; 1990, ch. 442, § 3, effective July 1, 1990; 1990, ch. 476, Pt. V, § 500, effective July 13, 1990; 2002, ch. 275, § 10, effective July 1, 2002.)

Legislative Research Commission Note. (7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

Cross-References. Interest credited to accounts, 102 KAR 1:135.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 343, 346.

161.450. Cash on deposit. [Repealed.]

Compiler's Notes. This section (4506b-24: repealed and reenact. Acts 1990, ch. 476, Pt. V, § 501, effective July 13, 1990) was repealed by Acts 1996, ch. 359, § 20, effective July 1, 1996.

161.460. Interest in investments.

No member or employee of the board of trustees shall have any interest in the gain or profits of any investment made by the board, or for himself or as an agent for another use any of the assets of the retirement system in any manner except to make current and necessary payments authorized by the board, or become an endorser, surety, or obligor for moneys loaned to or borrowed from the board, or otherwise profit from any transaction of the board.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 502, effective July 13, 1990.)

Compiler's Notes. This section (4506b-25) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 502, effective July 13, 1990.

Collateral References. 67 C.J.S., Officers, § 133.

161.470. Membership — Forfeiture of service credit — Termination of membership — Forfeiture of benefits — Reinstatement — Payment of accumulated contributions.

(1) The membership of the retirement system shall consist of all new members, all present teachers, and all persons participating under the retirement system as of June 30, 1986, except as provided in Acts 1938 (1st Ex. Sess.), Ch. 1, paragraph 29. The board of trustees of the Teachers' Retirement System shall be responsible for final determination of

membership eligibility and may direct employers to take whatever action that may be necessary to correct any error relating to membership.

(2) Service credit shall be forfeited upon withdrawal. If a member again enters service it shall be as a new member, except that any teacher who withdraws by claiming his deposits may repay the system the amount withdrawn plus interest and reestablish his service credit as provided in subsection (3) of this section.

(3) Effective July 1, 1988, and thereafter, an active contributing member of the retirement system with contributing service equal to one (1) year may regain service credit by depositing in the teachers' savings fund the amount withdrawn with interest at the rate to be set by the board of trustees, and computed from the first of the month of withdrawal and including the month of redeposit.

(4) Effective July 1, 1974, any active contributing member with at least two (2) years of contributing service credit who declined membership as provided in Acts 1938 (1st Ex. Sess.), Ch. 1, paragraph 29, may secure service credit for prior service, and for any subsequent service prior to date of membership, by depositing in the teachers' savings fund contributions for each year of subsequent service prior to date of membership, with interest at the rate of eight percent (8%) compounded annually to the date of deposit.

(5) Membership in the retirement system shall be terminated:

(a) By retirement for service;

(b) By death;

(c) By withdrawal of the member's accumulated contributions;

(d) When a member, having less than five (5) years of Kentucky service is absent from service for more than three (3) consecutive years; or

(e) For persons hired on or after August 1, 2000, when a member is convicted, in any state or federal court of competent jurisdiction, of a felony related to his employment as provided in subparagraphs 1. and 2. of this paragraph.

1. Notwithstanding any provision of law to the contrary, a member hired on or after August 1, 2000, who is convicted, in any state or federal court of competent jurisdiction, of a felony related to his employment shall forfeit rights and benefits earned under the retirement system, except for the return of his accumulated contributions and interest credited on those contributions.

2. The payment of retirement benefits ordered forfeited shall be stayed pending any appeal of the conviction. If the conviction is reversed on final judgment, no retirement benefits shall be forfeited.

Except for paragraph (e) of this subsection, upon termination of member accounts under this subsection, funds in the account shall be transferred to the guarantee fund. Inactive members may apply for refunds of these funds at any time. The terminated service shall be reinstated, if not withdrawn by the member, in the event that the member returns to active contributing service.

(6) In case of withdrawal from service prior to eligibility for retirement, the board of trustees shall on request of the member return all of his accumulated contributions with regular interest, including any payments made by the member to the state accumulation fund, but the member shall have no claim on any contributions made by the state with a view to his retirement or to contributions made to the medical insurance fund. If the member is eligible for an immediate service retirement allowance as provided in KRS 161.600, no withdrawal and refund shall be permitted, unless the allowance would prohibit the member from qualifying for Social Security benefits or the member elects to withdraw part or all of his service for the purpose of obtaining credit in another retirement plan. Requests for refund of contributions by the member must be filed on forms prescribed by the Teachers' Retirement System and the employer shall be financially responsible for all information that is certified on the prescribed form. A member may not withdraw any part of his or her contributions to the retirement system except as provided by this subsection.

(7) Except as provided in KRS 161.520 and 161.525, in case of death prior to retirement, the board of trustees shall pay to the estate of the deceased member, unless a beneficiary was otherwise applicably designated by the deceased member, then to the beneficiary, all of his accumulated contributions, with regular interest, including any payments made by the member to the state accumulation fund, but the estate or beneficiary shall have no claim on any contributions made by the state with a view to the retirement of the member or to contributions made to the medical insurance fund.

(8) Any active contributing member of the Kentucky Employees Retirement System, the County Employees Retirement System, the State Police Retirement System, or the Judicial Retirement System may use service, under that retirement system for the purpose of meeting the service requirement of subsections (3) and (4) of this section.

(4506b-27: amend. Acts 1960, ch. 44, § 8; 1962, ch. 64, § 5; 1964, ch. 43, § 7; 1968, ch. 136, § 4; 1972, ch. 82, § 9; 1974, ch. 395, § 7; 1976, ch. 351, § 5, effective July 1, 1976; 1978, ch. 152, § 5, effective March 28, 1978; 1980, ch. 206, § 2, effective July 1, 1980; 1982, ch. 326, § 6, effective July 1, 1982; 1984, ch. 253, § 9, effective July 1, 1984; 1986, ch. 440, § 5, effective July 1, 1986; 1988, ch. 363, § 5, effective July 1, 1988; 1990, ch. 442, § 4, effective July 1, 1990; 1990, ch. 476, Pt. V, § 503, effective July 13, 1990; 2000, ch. 273, § 2, effective July 14, 2000; 2002, ch. 275, § 11, effective July 1, 2002.)

Legislative Research Commission Note. (7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

Cross-References. New entrants, 102 KAR 1:039.

Refunds, 102 KAR 1:060.

Opinions of Attorney General. Where a person elected not to become a member of the State Teachers' Retirement System at its beginning but contributions were taken out of his salary, when he returned to Kentucky after previously withdrawing the contributions, he would return as a former member under subsection (2) of this section. OAG 64-120.

If additional teaching activity falls within the category of being in fact a part of the regularly approved program of the public school district or the vocational school for which certification or a professional level of training is required as a condition of employment, then teachers' retirement applies and the teacher would not be eligible for social security participation. The additional hours requiring services beyond the normal teaching day are regarded as an extension of the regular full-time employment. OAG 69-430.

ROTC teachers may be employed without being certified but an uncertified ROTC teacher may not be a member of the Kentucky Teachers' Retirement System. OAG 74-387.

The two-year service requirement is necessary to reinstate an account with the teachers' retirement system and may be met by any current service accumulated by any active participating member of any of the retirement systems enumerated under this section. OAG 74-565.

While subsection (5) of this section evidences the intent of the legislature that "service retirement" be of such significance so as to terminate membership in the system, "disability retirement" is not cast in such terms of finality. OAG 79-522.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 338-342.

161.480. Statement of member — Designation of beneficiary.

Each person, upon becoming a member of the retirement system, shall file a detailed statement as required by the board of trustees and shall designate a primary beneficiary to receive any benefits accruing from the death of the member. A contingent beneficiary may be designated in addition to the primary beneficiary. Any beneficiary designation made by the member shall remain in effect until changed by the member on forms prescribed by the Kentucky Teachers' Retirement System, except in the event of subsequent marriage or divorce. Subsequent marriage by the member shall void the primary beneficiary designation and the spouse of the member at death shall be considered as the primary beneficiary, unless the member subsequent to marriage designates another beneficiary. A final divorce decree shall terminate an ex-spouse's status as either primary or contingent beneficiary, unless subsequent to divorce the member redesignates the former spouse as primary or contingent beneficiary. To the extent permitted by the Internal Revenue Code, a trust may be designated as beneficiary for receipt of a member's contributions to the retirement system as provided under KRS 161.470(7) and 161.650, and for receipt of the life insurance benefit provided under KRS 161.655. The provisions of this section shall be retroactive as they relate to election of beneficiaries by members still in active status on the effective date of this section.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 504, effective July 13, 1990; 1992, ch. 192, § 5, effective July 1, 1992; 1994, ch. 369, § 6, effective July 1, 1994; 2002, ch. 275, § 12, effective July 1, 2002.)

Compiler's Notes. This section (4506b-29: amend. Acts 1964, ch. 43, § 8; 1966, ch. 16, § 3; 1976, ch. 351, § 6, effective July 1, 1976; 1978, ch. 152, § 6, effective March 28, 1978; 1988, ch. 363, § 6, effective July 1, 1988) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 504, effective July 13, 1990.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 338-342.

161.490. Investigation of statement.

To the extent to which it is used in determining the liability of any fund of the retirement system, the board of trustees shall ascertain the correctness of the statement filed under KRS 161.480 by the best evidence it is able to obtain. If official records are not available as to length of service, age, salary, or other information required for the administration of the retirement system, the board may use its discretion as to the evidence to be accepted.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 505, effective July 13, 1990.)

Compiler's Notes. This section (4506b-30: amend. Acts 1964, ch. 43, § 9) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 505, effective July 13, 1990.

Collateral References. 78 C.J.S., Schools and School Districts, § 343.

161.500. Service credit.

(1) At the close of each fiscal year, the retirement system shall add service credit to the account of each member who made contributions to his or her account during the year. Members shall be entitled to a full year of service credit if their total paid days were not less than one hundred eighty (180) days of a one hundred eighty-five (185) day contract for a regular school or fiscal year. In the event a member is paid for less than one hundred eighty (180) days, the member may purchase credit according to administrative regulations established by the board of trustees. In no case shall more than one (1) year of service be credited for all service performed in one (1) fiscal year. Members who complete their employment contract prior to the close of a fiscal year and elect to retire prior to the close of a fiscal year shall have their service credit reduced by eight percent (8%) for each calendar month that the retirement becomes effective prior to July 1.

(2) Members who are employed and paid for less than the number of days required in their normal employment year shall be entitled to pro rata service credit for the fractional service. Such credit shall be based upon the number of days employed and the number of days in the member's annual employment agreement or normal employment year.

(3) Service credit may not exceed the ratio between the school or fiscal year and the number of months or fraction of a month the member is employed during that year.

(4) No service credit shall be granted in the Teachers' Retirement System for service that has been or will be used in qualifying for annuity benefit payments from another retirement system financed wholly or in part by public funds.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 506, effective July 13, 1990; 1998, ch. 515, § 6, effective July 1, 1998; 2000, ch. 498, § 9, effective July 1, 2000.)

Compiler's Notes. This section (4506b-31: amend. Acts 1962, ch. 64, § 6, 1972, ch. 82, § 10; 1984, ch. 253, § 10; effective July 1, 1984; 1988, ch. 363, § 7, effective July 1, 1988) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 506, effective July 13, 1990.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 338-343.

Services included in computing period of services for purpose of teachers' retirement benefits. 2 A.L.R.2d 1033.

161.505. Prior service credit to war veterans for military service. [Repealed.]

Compiler's Notes. This section (Acts 1954, ch. 64) was repealed by Acts 1976, ch. 351, § 23.

161.507. Prior service credit for veterans — Credit for military service and uniformed service by active contributing member.

(1) An active contributing member of the Teachers' Retirement System may receive service credit for active service rendered in the uniformed services of the Armed Forces of the United States, including the commissioned corps of the Public Health Service, subject to the provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 and to administrative regulations promulgated by the board of trustees. Military service includes service in the uniformed services that occurs before the employment of a member in a position covered by the retirement system or where a member leaves covered employment without giving advance written or verbal notice of performing duty in the uniformed services. Service in the uniformed services also includes uniformed service that occurs after employment in a position covered by the retirement system where the member has given advance written or verbal notice of performing duty in the uniformed services and the member returns directly from uniformed services to covered employment. Military service may be credited only if discharge was honorable or was not terminated upon the occurrence of any of the events listed in 38 U.S.C. sec. 4304. Service shall be considered as Kentucky teaching service, except that service may not be used for meeting the service requirements set forth in KRS 161.600(1)(a) or 161.661(1) unless the service occurred after the member gave written or verbal notice of performing duty in the uniformed services and the member returned directly from uniformed services to covered employment. A maximum of six (6) years of military service may be credited, but in no case a greater number of years than the actual years of contributing service in Kentucky.

(2) No credit shall be granted for military service which has been or will be used in qualifying for annuity benefit payments from another retirement system financed wholly or in part by public funds.

(3) A member having twenty (20) years or more of active duty in the military service, and who is qualified for regular federal retirement benefits based on this military service, may not receive credit for any military service in the Teachers' Retirement System. This subsection shall apply to service presented for credit on July 1, 1975, and after this date.

(4) (a) A member receiving retirement credit for active duty in the armed services of the United States prior to employment in a position covered by the retirement system or where the member leaves covered employment without giving advance written or verbal notice of performing duty in the uniformed services shall pay to the retirement system the full actuarial cost of the service credit purchased as provided under KRS 161.220(22). Two percent (2%) of the required payment shall be allocated to the medical insurance fund. These contributions shall not be picked up, as described in KRS 161.540(2). In purchasing retirement credit for active duty in the armed services, the latest years of service shall be considered first in allowing credit toward retirement. The board of trustees shall adopt a table of actuarial factors to be used in calculating the amount of contribution required for crediting this service.

(b) If military service occurred after the member gave written or verbal notice of performing duty in the uniformed services and the member returns directly from uniformed services to covered employment, the member shall contribute the regular member contribution required by KRS 161.540. The member may make the payment of delayed contributions in a lump sum payment or in installments not to exceed five (5) years beginning with the member's date of reemployment. Interest at the rate of eight percent (8%) per annum shall be charged for delayed contributions beginning with the member's date of reemployment until paid.

(5) An active contributing member of the Teachers' Retirement System may receive service credit for service in the military reserves of the United States or the National Guard. The member may purchase one (1) month of service for each six (6) months of service in the reserves or the National Guard. Notwithstanding any other statute, regulation, or policy to the contrary, the system shall provide a member, upon request, the estimated actuarial cost of the National Guard or military reserves service purchase based upon the information available at the time of the request. The member shall be entitled to enter into a contract with the system at the time of the request to purchase the National Guard or military reserve service by paying to the system the estimated actuarial cost, either by installments or in lump sum. The member shall pay the full actuarial cost of this service in the military reserves or the National Guard as provided in KRS 161.220(22).

Service in the military reserves or the National Guard shall be treated as service earned prior to participation in the system and shall not be used for meeting the service requirements set forth in KRS 161.600(1)(a) or 161.661(1). The payment shall not be picked up by the employer, as described in KRS 161.540(2).

(Enact. Acts 1962, ch. 64, § 20; 1968, ch. 136, § 5; 1972, ch. 82, § 11; 1972, ch. 342, § 1; 1974, ch. 395, § 8; 1976, ch. 351, § 7, effective July 1, 1976; 1980, ch. 206, § 3, effective July 1, 1980; 1982, ch. 166, § 31, effective July 15, 1982; 1984, ch. 253, § 11, effective July 1, 1984; 1984, ch. 302, § 3, effective July 13, 1984; 1986, ch. 440, § 6, effective July 1, 1986; 1990, ch. 442, § 5, effective July 1, 1990; 1990, ch. 476, Pt. V, § 507, effective July 13, 1990; 1992, ch. 293, § 1, effective July 14, 1992; 1996, ch. 359, § 4, effective July 1, 1996; 1998, ch. 105, § 27, effective July 15, 1998; 2000, ch. 385, § 41, effective July 14, 2000; 2000, ch. 498, § 10, effective July 1, 2000; 2002, ch. 275, § 13, effective July 1, 2002.)

Legislative Research Commission Note. (7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

(7/14/2000). This section was amended by 2000 Ky. Acts chs. 385 and 498. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 498, which was last enacted by the General Assembly, prevails under KRS 446.250.

Cross-References. Credit for military service, 102 KAR 1:057.

Opinions of Attorney General. This section could not allow prior service credit where a person was released from active service, subject to call to active service, to follow his own personal pursuits. OAG 72-404.

An active member may receive credit for military service under the Kentucky Teachers' Retirement System although he is drawing benefits from another state based in part upon the same military service. OAG 74-374.

NOTES TO DECISIONS

1. Teacher.

Where the plaintiff was employed as a teacher in this Commonwealth when he was inducted into military service, he was entitled to service credit for his military service, even though he was not reemployed by the same school system. Watkins v. Oldham, 731 S.W.2d 829 (Ky. Ct. App. 1987).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 338-342.

161.510. Prior service allowed new members. [Repealed.]

Compiler's Notes. This section (Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 508, effective July 13, 1990) was repealed by Acts 2000, ch. 498, § 22, effective July 1, 2000.

161.515. Out-of-state service credit — Contribution — Kentucky Peace Corps and federal Peace Corps service credit.

(1) For the purposes of this section, "out-of-state service" shall mean service in any state in a comparable position, which would be covered if in Kentucky.

(2) (a) An active contributing member who has been a contributing member of the retirement system for at least one (1) full scholastic year subsequent to the latest out-of-state service, may present for credit service rendered out of state, not to exceed ten (10) years actually taught as a certified or licensed teacher. With the exception of university faculty members, all members who elect to purchase this service shall pay to the retirement system an amount equal to the current member contribution rate based on the first Kentucky salary of the member subsequent to the out-of-state service, provided this service was rendered after June 30, 1983. In the event this service was rendered prior to July 1, 1983, the contribution rate shall be seven and eighty-four hundredths percent (7.84%). University faculty members shall pay on a contribution rate of seven and eighty-four hundredths percent (7.84%) based on the first Kentucky salary subsequent to the out-of-state service, regardless of when the service was rendered. Members shall pay to the retirement system the employer contribution at the rates set forth in KRS 161.550. In addition, all members shall pay interest on the contributions for this service at a rate to be set by the board of trustees on each annual contribution from the last day of the scholastic year in which the service was rendered to date of payment to the retirement system. The payments shall not be picked up as described in KRS 161.540(2). For each year of which the retirement system shall accept the contribution and interest, one (1) year of service credit shall be given. This credit may not be used to meet the service requirements of KRS 161.525, 161.600, or 161.661, except as provided in subsection (2)(c) of this section. No credit shall be granted for service which has been or will be used in qualifying for annuity benefit payments from another retirement system financed wholly or in part by public funds;

(b) A member of the retirement system having teaching service in the elementary or secondary schools operated by the United States overseas or in this country, or in a public college or university in Kentucky, not included in the Teachers' Retirement System of the State of Kentucky, may present this service for credit in the retirement system on the same basis as provided above for out-of-state service credit; however, no service may be presented which shall be used as a basis for retirement benefits in any program supported wholly or in part by a public institution or governmental agency. This service when added to service credited under subsection (2)(a) of this section shall not exceed a total of ten (10) years' service credit; and

(c) A member having service referred to in subsection (2)(a) or (2)(b) of this section may elect

to use this service for meeting the requirements of KRS 161.600(1)(c) by making an additional contribution to the state accumulation fund equal to a member contribution rate of eight percent (8%) for each year so used. These payments shall not be picked up as described in KRS 161.540(2). The salary base to be used in determining this additional contribution shall be the final average salary which is used in calculating the member's regular retirement annuity.

(3) Members entering the Teachers' Retirement System for the first time, July 1, 1976, and after this date, shall not receive credit for service defined in subsections (2)(a) or (2)(b) of this section in excess of one (1) year of credit for each two (2) years of Kentucky service in a covered position or ten (10) years, whichever is the lesser number.

(4) A member, having completed service as a volunteer in the Kentucky Peace Corps created by KRS 154.01-720, may purchase service credit for the time served in the corps on the same basis as provided in this section for the purchase of out-of-state service credit. A member, having completed service as a federal Peace Corps volunteer, may purchase up to two (2) years of service credit for time served in the Peace Corps on the same basis as provided in this section for the purchase of out-of-state service credit.

(Enact. Acts 1946, ch. 111, § 2; 1960, ch. 44, § 9; 1962, ch. 64, § 8; 1966, ch. 16, § 4; 1972, ch. 82, § 13; 1974, ch. 395, § 9; 1976, ch. 351, § 9, effective July 1, 1976; 1982, ch. 166, § 32, effective July 15, 1982; 1984, ch. 253, § 12, effective July 1, 1984; 1984, ch. 302, § 4, effective July 13, 1984; 1986, ch. 442, § 1, effective July 15, 1986; 1988, ch. 363, § 8, effective July 1, 1988; 1990, ch. 442, § 6, effective July 1, 1990; 1990, ch. 476, Pt. V, § 509, effective July 13, 1990; 1992, ch. 100, § 13, effective July 14, 1992; 1994, ch. 369, § 7, effective July 1, 1994; 1994, ch. 406, § 8, effective July 15, 1994; 1994, ch. 485, § 33, effective July 15, 1994; 1996, ch. 359, § 5, effective July 1, 1996; 2002, ch. 275, § 14, effective July 1, 2002.)

Cross-References. Out-of-state service interest rates, 102 KAR 1:050.

Opinions of Attorney General. A teacher who retires from his Kentucky teaching position without informing the teachers' retirement system of any teaching service he may have accumulated as a teacher outside the state and whose annuity is calculated on the basis of his service in Kentucky cannot be credited with his out-of-state service more than two years after the effective date of his retirement. OAG 74-671.

An individual who taught in schools in East Africa as part of the United States Agency for International Development program in schools which were part of the Uganda and Kenya educational systems and under the direct control of those countries may not be credited by the Teachers' Retirement System for such teaching service. OAG 76-364.

Cited: Watkins v. Oldham, 731 S.W.2d 829 (Ky. Ct. App. 1987).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 338-342.

161.516. Teachers in noneducational state institutions authorized to come into retirement system. [Repealed.]

Compiler's Notes. This section (Acts 1946, ch. 102) was repealed by Acts 1962, ch. 64, § 9.

161.520. Payment of accumulated contribution on death.

Upon the death of an active contributing member or upon the death of a member retired for disability, except as provided in KRS 161.661(6), the survivors of the deceased member in the following named order, may elect to receive a survivor's benefit payable as follows:

(1) Where there is a surviving widow or widower who is named as beneficiary of the member's retirement account, the benefit shall be:

(a) One hundred eighty dollars ($180) per month with no restriction on other income;

(b) Two hundred forty dollars ($240) per month when the surviving widow or widower's total income from all sources does not exceed six thousand six hundred dollars ($6,600) per year or five hundred fifty dollars ($550) per month; or

(c) If the deceased member has a minimum of ten (10) years of service credit with the Teachers' Retirement System, the surviving widow or widower may apply for an annuity actuarially equivalent to the annuity that would have been paid to the deceased member when eligibility conditions were met. Eligibility for payments would begin at the time the age of the deceased member would have met the requirements of KRS 161.600(1). In exercising this right, the surviving widow or widower shall be entitled to receive an annuity for life, except as provided in subsection (6) of this section. This subsection applies to surviving spouses of members who die on or after July 1, 1978. A surviving widow or widower of a member who dies after July 1, 1978, shall be eligible for benefit payments provided under paragraphs (a) and (b) of this subsection until they begin receiving payments under this provision.

(2) Where there are surviving unmarried children under age eighteen (18) or under age nineteen (19) if a full-time student in high school, the benefit shall be two hundred dollars ($200) per month in the case of one (1) child, three hundred forty dollars ($340) per month in the case of two (2) children, four hundred dollars ($400) per month in the case of three (3) children, and four hundred forty dollars ($440) per month in the case of four (4) or more children. Benefits under this subsection shall apply in addition to benefits which may be payable under subsections (1) and (3) of this section.

(3) Where the survivor is a child age eighteen (18) or older whose mental or physical condition is sufficient to cause his dependency on the deceased member at the time of the member's death, the benefit shall be two hundred dollars ($200) per month, payable for the life of the child or until the

time as the mental or physical condition creating the dependency no longer exists or the child marries. Benefits under this subsection and subsection (2) of this section shall apply to legally adopted survivors provided the proceedings for the adoption were initiated at least one (1) year prior to the death of the member. The mental or physical condition of the adult child shall be revealed by a competent examination by a licensed physician and shall be approved by a majority of a medical review committee as defined in KRS 161.661(13). Benefits under this subsection shall apply in addition to benefits which may be payable under subsections (1) and (2) of this section.

(4) Where the sole eligible survivors are dependent parents aged sixty-five (65) or over, the benefit shall be two hundred dollars ($200) per month for one (1) parent or two hundred ninety dollars ($290) per month for two (2) parents. Dependency of a parent shall be established as of the date of the death of the member.

(5) Where the sole eligible survivor is a dependent brother or sister, the benefit shall be one hundred sixty five dollars ($165) per month. In order to qualify the brother or sister must have been a resident of the deceased member's household for at least one (1) full year prior to the member's death or must have been receiving care in a hospital, nursing home, or other institution at the member's expense for same period.

(6) The benefit to a child as defined in subsection (2) of this section shall terminate upon the attainment of age eighteen (18) or upon reaching age nineteen (19), if a full-time student in high school, or upon marriage, except that benefits shall continue until the attainment of age twenty-three (23) for an unmarried child who is a full-time student in a recognized educational program beyond the high school level. The benefit to a widow, widower, dependent parent, or dependent brother or sister or dependent child age eighteen (18) or older shall terminate upon marriage, or upon termination of the condition creating the dependency.

(7) The board of trustees shall be the sole judge of eligibility or dependency of any beneficiary, and may require formal application or information relating to eligibility or dependency, including proof of annual income satisfactory to the board. The board of trustees may subpoena records and individuals whenever it deems this action necessary.

(8) No payment of benefits shall be made unless the board of trustees authorizes the payment. The board shall promulgate administrative regulations for the administration of the provisions in this section and in every case the decision of the board of trustees shall be final as to eligibility, dependency, or disability, and the amount of benefits payable.

(9) In the event that there are no eligible survivors as defined in subsections (1) to (5) of this section, the board of trustees shall pay to the estate or assigns of the deceased member a refund of his accumulated contributions as provided in KRS 161.470(7). If the benefits paid or payable under subsections (1) to (5) of this section and KRS 161.661 shall amount to a sum less than the member's accumulated contributions at the time of death, the board of trustees shall pay to the estate or assigns of the deceased member the balance of the accumulated contributions.

(10) Any person who is receiving benefits and becomes disqualified from receiving those benefits under this section shall immediately notify the Teachers' Retirement System of this disqualification in writing and shall return all benefits paid after the date of disqualification. Failure to comply with these provisions shall create an indebtedness of that person to the Teachers' Retirement System. Interest at the rate of eight percent (8%) per annum shall be charged if the debt is not repaid within sixty (60) days after the date of disqualification. Failure to repay this debt creates a lien in favor of the Teachers' Retirement System upon all property of the person who improperly receives benefits and does not repay those benefits.

(4506b-33: amend. Acts 1958, ch. 7, § 2; 1962, ch. 64, § 10; 1964, ch. 43, § 10; 1966, ch. 16, § 5; 1968, ch. 136, § 6; 1970, ch. 54, § 1; 1972, ch. 82, § 14; 1974, ch. 386, § 31; 1974, ch. 395, § 10; 1976, ch. 351, § 10, effective July 1, 1976; 1978, ch. 152, § 7, effective March 28, 1978; 1980, ch. 206, § 4, effective July 1, 1980; 1980, ch. 246, § 15, effective July 15, 1980; 1984, ch. 253, § 13, effective July 1, 1984; 1986, ch. 440, § 7, effective July 1, 1986; 1988, ch. 363, § 9, effective July 1, 1988; 1990, ch. 442, § 7, effective July 1, 1990; 1990, ch. 476, Pt. V, § 510, effective July 13, 1990; 1992, ch. 192, § 6, effective July 1, 1992; 1994, ch. 369, § 8, effective July 1, 1994.)

Cross-References. "Dependent" defined, KRS 161.220.

Surviving children's benefits, 102 KAR 1:165.

Opinions of Attorney General. An assignment of accumulated contributions is not revoked by marriage. OAG 63-483.

The statute permits a refund of accumulated contributions to the estate of the teacher, if he dies intestate or does not assign such contributions, or to his assigned beneficiary if he names one. OAG 63-483.

A decree of divorce providing for the restoration of property under KRS 403.060 (repealed) operates to extinguish the interest of a deceased teacher's former spouse which arose by virtue of being designated as the named beneficiary of her teachers retirement system benefits prior to the divorce. OAG 67-380.

Survivors who in 1962 elected to remain under the 1958 statute would also be eligible to take advantage of the 1970 increased benefits if they so elected. OAG 70-487.

A widow who would otherwise be entitled to a widow's allowance under this section would not be precluded from such benefit by the fact that a divorce was pending between her and her husband at the time of his death or by the entry of a divorce decree after his death. OAG 70-508.

In the case of a deceased teacher, under this section, either survivors' benefits or a refund of contributions, but not both, is to be paid and the designated beneficiary gets a first chance. OAG 70-625.

A widow would not be entitled to a survivor's benefit under this section if she is convicted of a felony for her husband's death. OAG 70-692.

Where a widow is under indictment resulting from her husband's death, no payments should be made as a widow's benefit under this section until such time as she is acquitted on the charge. OAG 70-692.

Where, following a teacher's death, his children were actually living with their mother but a judgment had been entered granting custody to their grandfather as legal guardian, payments for the children under the survivor's benefits should be made to the grandfather. OAG 70-692.

One or more surviving minor children of deceased parents, both of whom were members of the teachers' retirement system, were entitled to survivor benefits under the statute from the retirement account of each of the parents. OAG 75-184.

Where a teacher applied for service retirement February 17, 1975, to be effective the coming fiscal year and chose a straight life annuity with a refundable balance to her beneficiary, such retirement became effective on July 1, 1975, and the fact that she died July 29, 1975, prior to receiving her first check has no bearing on her retirement and her husband is entitled only to a refund of the balance in her account rather than the amounts provided under this section or KRS 161.525. OAG 75-579.

Cited: Watkins v. Oldham, 731 S.W.2d 829 (Ky. Ct. App. 1987).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 338-349.

161.522. Survivor of member retired for disability may elect annuity.

Upon the death of a member retired for disability who had a minimum of twenty-seven (27) years of service at the time of death, except as provided in KRS 161.661(6), the spouse, if named as the beneficiary of the member's account, shall be entitled to elect, in lieu of a refund of the member's account, an annuity actuarially equivalent to the annuity that would have been paid to the deceased member had retirement for service been effective on the day immediately preceding the member's death. In selecting this right, the spouse shall be limited to selecting an option providing a straight life annuity with refundable balance or a term certain option. There shall be a monthly minimum allowance of three hundred dollars ($300) as the basic straight life annuity. This section applies to surviving spouses of members who were receiving benefit payments under KRS 161.520 as of June 30, 1988, and to surviving spouses of members who die on or after July 1, 1984, except that the member shall have been retired for disability with a minimum of thirty (30) years of service if either of these two (2) conditions were met prior to July 1, 1990.

(Enact. Acts 1984, ch. 253, § 14, effective July 1, 1984; 1990, ch. 442, § 8, effective July 13, 1990; 1990, ch. 476, Pt. V, § 511, effective July 13, 1990; 1994, ch. 369, § 9, effective July 1, 1994; 1996, ch. 359, § 6, effective July 1, 1996; 2002, ch. 275, § 15, effective July 1, 2002.)

161.525. Death of member eligible to retire — Options of beneficiary — Monthly minimum allowance to surviving spouse.

(1) Upon death of a member in active contributing status at the time of death, who was eligible to retire by reason of service, the spouse, if named as beneficiary of the member's retirement account, or in the absence of an eligible spouse a legal dependent of the member, if named as beneficiary, shall be entitled to elect, in lieu of a refund of the member's account or benefits provided in KRS 161.520, an annuity actuarially equivalent at the attained age of the beneficiary to the annuity that would have been paid to the deceased member had retirement been effective on the day immediately preceding the member's death. Under the provisions of KRS 61.680, benefits shall be processed as if the member retired for service. In exercising this right the spouse or legal dependent shall be limited to selecting an option providing either a straight life annuity with refundable balance or a term certain option. A spouse may receive the annuity provided by this section at the same time as children are qualifying for survivors' benefits under the provisions of KRS 161.520; however, a legal dependent, other than a spouse, may not receive these payments if children have qualified for benefits under that section.

(2) A spouse or legal dependent qualifying for an annuity under subsection (1) of this section may defer the payments in order to reduce the actuarial discounts to be applied due to age.

(3) Upon death of a member in active contributing status at the time of his death, who had a minimum of twenty-seven (27) years of service, the spouse, if named as the beneficiary of the member's account shall be entitled to a monthly minimum allowance of three hundred dollars ($300) as the basic straight life annuity. This provision applies to surviving spouses of members who were receiving benefit payments under KRS 161.520 as of June 30, 1986, and to surviving spouses of members who die on or after July 1, 1986.

(Enact. Acts 1964, ch. 43, § 22; 1968, ch. 136, § 7; 1972, ch. 82, § 15; 1976, ch. 351, § 11, effective July 1, 1976; 1986, ch. 440, § 8, effective July 1, 1986; 1990, ch. 442, § 9, effective July 1, 1990; 1990, ch. 476, Pt. V, § 512, effective July 13, 1990; 1994, ch. 369, § 10, effective July 1, 1994; 1996, ch. 359, § 7, effective July 1, 1996.)

Opinions of Attorney General. This section confers upon a deceased teacher's surviving spouse, providing the spouse is the designated beneficiary, the annuity the teacher could have taken the day before his death, and is limited by the provisions of KRS 161.620(4). OAG 67-443.

The survivor of a deceased member who, pursuant to this section, accepts a ten year certain annuity, cannot, without the consent of his beneficiary, change the beneficiary. OAG 70-365.

Where a teacher filed for retirement benefits by electing an annuity while designating her sister as beneficiary and then died two days before her retirement, the designation of beneficiary was effective and the sister was entitled to receive the annuity the deceased teacher would have received. OAG 71-466.

Where a teacher applied for service retirement February 17, 1975, to be effective the coming fiscal year and chose a straight life annuity with a refundable balance to her beneficiary, such retirement became effective on July 1, 1975, and the fact that she died July 29, 1975, prior to receiving her first check has no bearing on her retirement and her husband is entitled only to refund of the balance in her account rather than the amounts provided under KRS 161.520 or this section. OAG 75-579.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 338-342.

161.530. Restoration of forfeited account — Exception.

Except as provided in KRS 6.696, if a member, whose account has been forfeited under previous provisions of this section, shall return to teaching in a covered position in Kentucky, and reinstates the lost service credit as provided in KRS 161.470(3), the funds transferred from the member's account shall be restored to his account, without interest, and shall be credited against the payment required for reinstatement of service credit.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 513, effective July 13, 1990; 1993 (1st Ex. Sess.), ch. 4, § 81, effective September 16, 1993; 1994, ch. 369, § 11, effective July 1, 1994.)

Compiler's Notes. This section (4506b-34: amend. Acts 1972, ch. 82, § 16; 1976, ch. 351, § 12, effective July 1, 1976) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 513, effective July 13, 1990.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 338-342.

161.540. Members' contributions — Picked-up contributions.

(1) Effective July 1, 1988, each member shall contribute to the retirement system nine and eight hundred fifty-five thousandths percent (9.855%) of annual compensation, except that university faculty members shall contribute eight and three hundred seventy-five thousandths percent (8.375%) of annual compensation. Payments authorized by statute that are made to retiring members for not more than sixty (60) days of unused accrued annual leave shall be considered as part of the member's annual compensation, and shall be used only for the member's final year of active service. The contribution of members shall not exceed these applicable percentages on annual compensation. When a member retires, if it is determined that he has made contributions on a salary in excess of the amount to be included for the purpose of calculating his final average salary, any excess contribution shall be refunded to him in a lump sum at the time of the payment of his first retirement allowance. In the event a member is awarded a court-ordered back salary payment the employer shall deduct and remit the member contribution on the salary payment, plus interest to be paid by the employer, to the retirement system unless otherwise specified by the court order.

(2) Each public board, institution, or agency listed in KRS 161.220(4) shall, solely for the purpose of compliance with Section 414(h) of the United States Internal Revenue Code, pick up the member contributions required by this section for all compensation earned after August 1, 1982, and the contributions so picked up shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code and KRS 141.010(10). The picked-up member contribution shall satisfy all obligations to the retirement system satisfied prior to August 1, 1982, by the member contribution, and the picked-up member contribution shall be in lieu of a member contribution. Each employer shall pay these picked-up member contributions from the same source of funds which is used to pay earnings to the member. The member shall have no option to receive the contributed amounts directly instead of having them paid by the employer to the system. Member contributions picked-up after August 1, 1982, shall be treated for all purposes of KRS 161.220 to 161.714 in the same manner and to the same extent as member contributions made prior to August 1, 1982.

(4506b-36: amend. Acts 1946, ch. 111, § 3; 1954, ch. 196, § 3; 1960, ch. 44, § 10; 1964, ch. 43, § 11; 1970, ch. 168, § 2; 1974, ch. 395, § 11; effective July 1, 1974; 1978, ch. 152, § 8, effective March 28, 1978; 1980, ch. 188, § 120, effective July 15, 1980; 1980, ch. 206, § 5, effective July 1, 1980; 1982, ch. 166, § 4, effective July 15, 1982; 1982, ch. 326, § 7, effective July 1, 1982; 1984, ch. 253, § 15, effective July 1, 1984; 1984, ch. 302, § 2, effective July 13, 1984; 1988, ch. 240, § 3, effective July 15, 1988; 1988, ch. 260, § 3, effective July 15, 1988; 1988, ch. 363, § 10, effective July 1, 1988; 1990, ch. 476, Pts. V and VII D, §§ 514, 648, effective April 11, 1990; 1992, ch. 192, § 7, effective July 1, 1992; 1994, ch. 369, § 12, effective July 1, 1994; 1994, ch. 469, § 35, effective July 15, 1994; 1996, ch. 359, § 8, effective July 1, 1996; 2002, ch. 275, § 16, effective July 1, 2002.)

Compiler's Notes. The Internal Revenue Code, referred to herein, is compiled as Title 26, U.S.C.

Cross-References. New entrants, 102 KAR 1:039.

Opinions of Attorney General. Since a state's legislator's salary does not fall within the definition of "annual compensation" in KRS 161.220, a legislator who retains membership in the KTRS cannot legally make contributions to the KTRS or acquire credit in the KTRS, but must, in effect, relinquish his participation in the KTRS and participate in the KERS in order to acquire any service credit in a public retirement system — in this case the KERS. OAG 78-226.

University faculty members of Kentucky Teachers' Retirement System who are also covered by the social security system are not being discriminated against by having smaller contributions and benefits factors than other such members, as of 1980, since the differences are designed to offset social security increases. OAG 78-729.

Subsection (2) of this section and KRS 161.560, which are clear and unequivocal on their face, require an interpretation which would foreclose any direct payment by a local board of education to the Kentucky Teachers' Retirement System of a portion of the employee's contributions to the retirement system; however, these sections would not exclude any arrangement whereby a local board of education would reimburse its employees for a portion of the employee's contributions into the retirement system after the payroll deductions have already been made and credited to the KTRS. OAG 81-373.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 338-342, 344, 346.

161.545. Contributions and service credit for substitute service, part-time service, or leave of absence — Contributions not to be picked up.

(1) Members may make contributions and receive service credit for substitute, part-time, or any service other than regular full-time teaching as provided in the administrative regulations of the board of trustees if contributions were not otherwise made as a result of the service. Members placed on leave of absence may make contributions and receive service credit for this leave only if contributions are made by the end of the fiscal year next succeeding the year in which the leave was effective as provided in administrative regulations promulgated by the board of trustees. Contributions permitted after August 1, 1982, shall not be picked-up pursuant to KRS 161.540(2).

(2) Active contributing members of the Teachers' Retirement System, or former members who are currently participating in a state-administered retirement system, who were granted leaves of absence since July 1, 1964, for reasons of health, child rearing, or to improve their educational qualifications, and did not qualify at the time of the leave of absence to make contributions to the retirement system for the leave of absence as provided in subsection (1) of this section, may obtain credit for the leave of absence under the following conditions:

(a) The leave of absence shall be verified by a copy of the board of education minutes which granted the leave of absence; and

(b) The member shall contribute the required percentage based on the salary received for the year immediately preceding the leave of absence plus interest at the rate of eight percent (8%) compounded annually from the beginning of the school year following the year of the leave of absence, and by depositing in the state accumulation fund an amount equal to this total.

(c) The member shall receive credit for no more than two (2) years under the provisions of this subsection.

(3) Contributions permitted under this section after August 1, 1982, shall not be picked-up pursuant to KRS 161.540(2).

(Enact. Acts 1960, ch. 44, § 14; 1968, ch. 136, § 8; 1974, ch. 395, § 12, effective July 1, 1974; 1978, ch. 152, § 9, effective March 28, 1978; 1980, ch. 206, § 6, effective July 1, 1980; 1982, ch. 166, § 12, effective July 15, 1982; 1984, ch. 253, § 16, effective July 1, 1984; 1984, ch. 302, § 5, effective July 13, 1984; 1986, ch. 440, § 9, effective July 1, 1986; 1988, ch. 363, § 11, effective July 1, 1988; 1988, ch. 373, § 3, effective July 15, 1988; 1990, ch. 442, § 10, effective July 1, 1990; 1990, ch. 476, Pt. V, § 515, effective July 13, 1990; 1992, ch. 192, § 8, effective July 1, 1992; 1994, ch. 369, § 13, effective July 1, 1994; 1996, ch. 259, § 1, effective July 15, 1996; 1996, ch. 359, § 9, effective July 1, 1996; 1998, ch. 515, § 7, effective July 1, 1998; 2002, ch. 275, § 17, effective July 1, 2002.)

Cross-References. Fractional service year, 102 KAR 1:038.

Leave of absence, 102 KAR 1:110.

Part-time service, 102 KAR 1:036.

Substitute teachers, 102 KAR 1:030.

Opinions of Attorney General. The fact a teacher was on unpaid leave of absence under KRS 161.770 may be shown by board minutes even though a specific item cannot be pointed to in the minutes; in this regard, if it can be shown through a composite of board minutes, probably extending over several years, and possibly with the aid of payroll records which would have been approved by board action at a meeting, that the employment status of a teacher could have been nothing other than being on a leave of absence under the authority of KRS 161.770, this would serve as compliance with this section. OAG 78-778. Compare OAG 78-346.

A Kentucky Teacher's Retirement System member who did not officially request a maternity leave, and who did not supply a verified copy of the board minutes granting such leave of absence, may make contributions, if the member can produce board minutes showing that she was not terminated, then rehired. OAG 79-96.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 192, 210, 211, 219, 338-342.

161.546. Member may purchase 4 years' credit in Teachers' Retirement System for teaching in private college or university in Kentucky that accepts students under Kentucky Higher Education Assistance Authority program. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1990, ch. 480, § 4, effective July 13, 1990) was repealed by Acts 1996, ch. 359, § 20, effective July 1, 1996.

161.5461. Purchase of service credit with rolled-over or transferred retirement funds.

(1) Any active contributing member may purchase service credit as authorized under KRS Chapter 161 by rolling over funds from a previous plan to the extent that rollovers are permitted by the rules set forth in the Internal Revenue Code. The rollovers may be made directly from a previous qualified plan or through a conduit individual retirement account as permitted by the rules set forth in the Internal Revenue Code.

(2) Any active contributing member may purchase service credit as authorized under KRS Chapter 161 by transferring funds directly from a retirement plan maintained by the Commonwealth of Kentucky to the extent that transfers are permitted by the rules set forth in the Internal Revenue Code.

(3) The amount of any transfer or rollover purchase as permitted under subsections (1) and (2) of this section, excluding that portion credited to the medical insurance fund under KRS 161.420(5), shall be credited to the individual member's account and shall be considered accumulated contributions of the member.

(Enact. Acts 2000, ch. 498, § 4, effective July 1, 2000; 2002, ch. 275, § 18, effective July 1, 2002.)

Compiler's Notes. Section 401 of the Internal Revenue Code, referred to in subsections (1) and (2), is codified as 26 U.S.C. § 401.

161.5465. Member with twenty years' service credit may purchase five years' service credit.

On or after August 1, 1998, a member of the Teachers' Retirement System in active contributing status who has a minimum of twenty (20) years of service credit may purchase up to a maximum of five (5) years of service credit that is not otherwise purchasable under any of the provisions of KRS 161.230 to 161.716 and that meets the definition of nonqualified service as provided in Section 1526 of the Federal Taxpayer Relief Act of 1997. The member shall pay the full actuarial cost of the service credit as provided in KRS 161.220(22). The payment shall not be picked up by the employer as described in KRS 161.540(2), and the member's payment shall be credited to the member's contribution account and shall be considered accumulated contributions of the member. Payment by the member may be by lump sum or by installment payments as provided in KRS 161.597. Notwithstanding any other statute to the contrary, the Kentucky Teachers' Retirement System shall recognize nonqualified service credit purchased with another retirement system only to the extent that the member had an equivalent number of full months of active employment in the position covered by the other retirement system during the period that the nonqualified service was purchased.

(Enact. Acts 1998, ch. 515, § 16, effective July 1, 1998; 2000, ch. 498, § 11, effective July 1, 2000; 2002, ch. 275, § 19, effective July 1, 2002.)

Opinions of Attorney General. With regard to members who purchase service credit pursuant to the statute and who qualify for retirement pursuant to KRS 161.600, the Kentucky Teachers' Retirement System must provide medical insurance benefits to those members for those years purchased. OAG 99-7.

The purchase of service credits pursuant to the statute cannot be restricted to only those members who are retiring. OAG 99-7.

The payment for the purchase of service credits under the statute is not required to be only by lump sum payment; thus, members may pay for such service credits in installment payments pursuant to KRS 161.597. OAG 99-7.

161.547. Member having service as legislator may purchase 4 years' credit in the retirement system.

A member of the retirement system having service as a Kentucky legislator which is not credited by any retirement system administered by the Commonwealth of Kentucky may present such service, not to exceed four (4) years, for credit in the retirement system by paying the full actuarial cost of the service as determined by the system actuary. The member may purchase all or part of his service as a legislator, but no less than one (1) year of service. The entire payment shall be placed in the teachers' saving fund.

(Enact. Acts 1990, ch. 480, § 5, effective July 13, 1990.)

161.548. Purchase of service credit for service at a regional community mental health and mental retardation service program.

A member of the Teachers' Retirement System who is in an active contributing status with the system, and who was formerly employed in a regional community mental health and mental retardation service program, organized and operated under the provisions of KRS 210.370 to 210.480, which does not participate in a state-administered retirement system, may obtain credit for the period of his service in the regional community mental health and mental retardation program by paying to the Teachers' Retirement System the full actuarial cost of the service credit purchased, as provided in KRS 161.220(22). The service credit purchased may not be used for meeting the service requirements set forth in KRS 161.600(1)(a) or 161.661(1). The payment shall not be picked up, as described in KRS 161.540(2), and the entire payment shall be placed in the teachers' savings fund.

(Enact. Acts 1996, ch. 346, § 2, effective July 15, 1996; 2000, ch. 498, § 12, effective July 1, 2000.)

161.549. Purchase of service credit for service at a Federal Head Start agency.

A member of the Teachers' Retirement System who is in an active contributing status with the system, and who was formerly employed by a Federal Head Start agency, operated under 42 U.S.C. secs. 9831 et seq., which does not participate in a state-administered retirement system, may obtain credit for the period of the member's service in the Head Start program by paying to the Teachers' Retirement System the full actuarial cost of the service credit purchased, as provided in KRS 161.220(22). The service credit purchased may not be used for meeting the service requirements set forth in KRS 161.600(1)(a) or 161.661(1). Payment for the service credit purchased may be made in installments in lieu of a lump-sum payment. The payment shall not be picked up, as described in KRS 161.540(2), and the entire payment shall be placed in the teachers' savings fund.

(Enact. Acts 1998, ch. 268, § 1, effective July 15, 1998; 2000, ch. 498, § 13, effective July 1, 2000.)

161.550. State's contribution to system.

Beginning with July 1, each employer, except as provided under KRS 161.555, shall contribute annually to the retirement system a permanent amount equal to that contributed by members of the retirement system it employs plus an additional three and one-fourths percent (3.25%) of the total of salaries of members of the retirement system it employs to discharge the system's unfunded obligations with interest assumed by the state and to provide funding to the medical insurance fund as provided under KRS 161.420(5). Each employer shall remit the required employer contributions to the retirement system under the terms and conditions specified for member contributions under KRS 161.560. The state shall provide annual appropriations based upon estimated funds needed to meet the requirements of KRS 161.155; 161.507(4);

161.515; 161.545; 161.553; 161.605; 161.612; and 161.620(1), (3), (5), (6), and (7). In the event an annual appropriation is less than the amount of these requirements, the state shall make up the deficit in the next biennium budget appropriation to the retirement system. Employer contributions to the retirement system are for the exclusive purpose of providing benefits to members and annuitants and these contributions shall be considered deferred compensation to the members.
(4507b-37: amend. Acts 1960, ch. 44, § 11; 1976, ch. 351, § 13, effective July 1, 1976; 1978, ch. 152, § 10, effective March 28, 1978; 1982, ch. 326, § 8, effective July 1, 1982; 1984, ch. 253, § 17, effective July 1, 1984; 1986, ch. 440, § 10, effective July 1, 1986; 1988, ch. 363, § 12, effective July 1, 1988; 1990, ch. 442, § 11, effective July 1, 1990; 1990, ch. 476, Pt. V, § 516, effective July 13, 1990; 1992, ch. 192, § 9, effective July 1, 1992; 1996, ch. 359, § 19, effective July 1, 1996; 1998, ch. 515, § 8, effective July 1, 1998; 2002, ch. 275, § 20, effective July 1, 2002.)

Legislative Research Commission Note. (7/13/90). In amending this section, 1990 House Bill 653, Acts Ch. 442, § 11, did not underline the year "1990" which was intended to be added after "July 1," at the beginning of the section. As directed by KRS 446.270, the Reviser of Statutes has deleted this material from the text of this statute. Section 20 of Acts Ch. 442 provides, however, that "the provisions of this Act shall become effective July 1, 1990."

(7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

Cross-References. Actuary to recommend state contributions, KRS 161.400.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 338-342.

161.553. Funding of past statutory benefit improvements — Schedules for appropriations — Cost of living increases.

(1) The cost of providing statutory benefit improvements for annuitants may be funded by annual appropriations from the state on an actuarial amortized basis over the lifetime of the annuitants. The schedules in subsections (1)(a), (1)(b), and (1)(c) of this section are the annual appropriations which shall be made by the state for benefit improvements approved in the respective fiscal years or bienniums prior to July 1, 2004:

(a) Cost of Living Allowance	2002-2003	Each Succeeding Fiscal Year
1988-1990	$ 5,761,700	$ 2,972,700 in 2003-2004
1990-1992	$ 4,901,700	$ 4,901,700 through 2004-2005 and $ 2,486,800 in 2005-2006
1992-1994	$ 2,229,400	$ 2,229,400 through 2006-2007 and $ 1,125,700 in 2007-2008
1994-1996	$ 6,142,000	$ 6,142,000 through 2010-2011
1996-1998	$ 4,459,000	$ 4,459,000 through 2010-2011
1998-2000	$15,333,900	$15,333,900 through 2012-2013 and $ 7,938,600 through 2013-2014
2000-2002	$12,511,400	$12,511,400 through 2014-2015 and $ 7,227,700 in 2015-2016
2002-2004	$ 4,406,000	$ 9,213,400 in 2003-2004 $21,405,600 through 2021-2022 and $11,204,000 in 2022-2023

(b) Minimum Value Annuities	2002-2003	Each Succeeding Fiscal Year
1988-1990	$ 1,718,200	$ 879,500 in 2003-2004
1990-1992	$ 2,246,900	$ 2,246,900 through 2004-2005 and $ 1,232,100 in 2005-2006
1992-1994	$ 2,217,700	$ 2,217,700 through 2006-2007
1994-1996	$ 2,126,000	$ 2,126,000 through 2008-2009
2002-2004	$ 694,800	$1,451,800 in 2003-2004 $3,375,900 through 2016-2017 and $2,027,800 in 2017-2018

(c) Sick Leave Allowance	2002-2003	Each Succeeding Fiscal Year
1998-2000	$ 4,660,300	$ 4,660,300 through 2012-2013 and $ 2,425,900 through 2013-2014
2000-2002	$ 6,167,100	$ 6,167,100 through 2014-2015 and $ 3,579,100 in 2015-2016
2002-2004	$ 3,668,400	$ 7,636,700 through 2021-2022 and $ 3,968,300 in 2022-2023

(2) The present values of providing statutory cost-of-living increases for annuitants not included in subsection (1) of this section are to be assigned to the unfunded obligations of the retirement system and are identified as follows:

1986-1988	$34,689,893
1990-1992	$68,107,473
1992-1994	$15,749,976

(Enact. Acts 1992, ch. 192, § 13, effective July 1, 1992; 1994, ch. 369, § 15, effective July 1, 1994; 1996, ch. 359, § 10, effective July 1, 1996; 1998, ch. 515, § 9, effective July 1, 1998; 2000, ch. 498, § 14, effective July 1, 2000; 2002, ch. 275, § 21, effective July 1, 2002.)

161.555. Employer contributions for members employed in positions established under federal educational acts.

Each employer employing members of the Teachers' Retirement System in positions established under educational acts adopted by the federal Congress shall contribute to the Teachers' Retirement System an amount equal to that contributed by the members of that employer plus an additional two and forty-five hundredths percent (2.45%) for fiscal years 2003 and 2004. Beginning fiscal year 2005 and each year thereafter, each employer shall contribute an amount equal to the employer contribution provided under KRS 161.550.
(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 517, effective July 13, 1990; 1994, ch. 369, § 23, effective July 1, 1994; 2002, ch. 275, § 22, effective July 1, 2002.)

Compiler's Notes. This section (Enact. Acts 1966, ch. 16, § 8; 1974, ch. 395, § 13, effective July 1, 1974; 1988, ch. 363, § 19, effective July 1, 1988) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 517, effective July 13, 1990.

161.556. Employer contributions for members employed by regional educational cooperatives.

Each regional educational cooperative referred to in KRS 161.220(4)(e) employing members of the Teachers' Retirement System shall have the employer contributions provided in the same manner as for members employed by local boards of education.
(Enact. Acts 1994, ch. 369, § 14, effective July 1, 1994.)

161.560. Deduction and forwarding of teachers' contributions — Picked-up employee contributions — Correction of omitted member contributions.

(1) Each agency employing members of the retirement system shall deduct from the compensation of each member for each payroll period subsequent to the date the individual became a member, the percentage of his compensation due under the rates prescribed in KRS 161.540. No later than fifteen (15) days following the end of each payroll period, the agency shall forward all amounts deducted to the Teachers' Retirement System. The retirement system shall charge the employing agency interest at an annual rate not to exceed twelve percent (12%) for deductions not remitted within the specified fifteen (15) days. Payroll reports, contributions lists, and other data required by administrative regulation of the board of trustees shall be submitted. Employers shall submit an annual report, in compliance with requirements of the retirement system, of member contributions and periods employed to the retirement system no later than August 1 following the completion of each fiscal year. The retirement system may impose a penalty on the employer not to exceed one thousand dollars ($1,000) when the employer does not meet the August 1 reporting date. The deductions shall be made notwithstanding the fact that the salary as a result may be less than the minimum compensation provided by law. Every member shall be deemed to consent and agree to the deductions, and the deductions shall be considered as having been paid to the member. After August 1, 1982, member contributions shall be picked up by the agency pursuant to KRS 161.540(2).

(2) If an employer fails to deduct the correct retirement contribution from a member's compensation, the member may make the contribution that should have been deducted by the employer and receive retirement credit for the payment. For correction of omitted member contributions that occur more than one (1) year after the year in which the error was made, the employer shall be responsible for paying interest to the retirement system at a rate of eight percent (8%) from the end of the year in which the service was performed to the date of payment.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 518, effective July 13, 1990; 1996, ch. 359, § 11, effective July 1, 1996; 2002, ch. 275, § 23, effective July 1, 2002.)

Compiler's Notes. This section (4506b-38: amend. Acts 1964, ch. 43, § 12; 1982, ch. 166, § 13, effective July 15, 1982; 1984, ch. 253, § 18, effective July 1, 1984; 1984, ch. 302, § 6, effective July 13, 1984; 1988, ch. 363, § 13, effective July 1, 1988) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 518, effective July 13, 1990.

Cross-References. Omitted contributions, 102 KAR 1:125.

Payroll reports, 102 KAR 1:195.

Submission of employer data, 102 KAR 1:210.

Opinions of Attorney General. ROTC teachers who hold regular teacher's certification are eligible for membership in the Kentucky Teachers' Retirement System and their employing school district is required to deduct from their salary the membership dues as provided by this section. OAG 74-387.

KRS 161.540(2) and this section, which are clear and unequivocal on their face, require an interpretation which would foreclose any direct payment by a local board of education to the Kentucky Teachers' Retirement System (KTRS) of a portion of the employee's contributions to the retirement system; however, these sections would not exclude any arrangement whereby a local board of education would reimburse its employees for a portion of the employee's contributions into the retirement system after the payroll deductions have already been made and credited to the KTRS. OAG 81-373.

Collateral References. 78 C.J.S., Schools and School Districts, § 346.

161.565. Reduction and pick-up of contributions by university faculty members.

Notwithstanding any other provisions of KRS Chapter 161, the contribution of university faculty members may be reduced by amounts up to two and two hundred fifteen thousandths percent (2.215%) if amounts sufficient to replace the reduction are authorized and contributed to the Teachers' Retirement System by the board of regents of the employing university. After August 1, 1982, any contribution by a university faculty member shall be picked up by the employing university pursuant to KRS 161.540(2).

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 519, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1980, ch. 79, § 1, effective July 1, 1980; 1982, ch. 166, § 33, effective July 15, 1982; 1984, ch. 253, § 19, effective July 1, 1984; 1984, ch. 302, § 7, effective July 13, 1984) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 519, effective July 13, 1990.

161.567. Authorization for optional retirement plan for designated employees of certain public universities.

(1) An optional retirement plan is hereby authorized for designated employees of public postsecondary education institutions who are also eligible for membership in the Kentucky Teachers' Retirement System under KRS 161.220(4)(b) and 161.470(1). The purpose of the optional retirement plan shall be to provide suitable retirement and death benefits, while affording the maximum portability of these benefits to the eligible employees as an alternative to membership in the retirement system. Benefits shall be provided by the purchase of annuity contracts, fixed or variable in nature, or a combination thereof, at the option of the participant. The specific provisions of annuity contracts with respect to the benefits payable to members and their beneficiaries shall prevail over specific provisions relating to the same subjects found in KRS 161.220 to 161.716, other than this section.

(2) The boards of regents of those institutions identified in KRS 161.220(4)(b) shall select no less than two (2) but no more than three (3) companies from which to purchase contracts under the optional

retirement plan. As criteria for this selection, the boards of regents shall consider, among other things, the following:

(a) The portability of the contracts offered or to be offered by a company, based on the number of states in which the company provides contracts under similar plans;

(b) The efficacy of the contracts in the recruitment and retention of employees for the various state public postsecondary education institutions;

(c) The nature and extent of the rights and benefits to be provided by the contracts for participating employees and their beneficiaries;

(d) The relation of the rights and benefits to the amount of contributions required;

(e) The suitability of the rights and benefits to the needs and interests of eligible employees and the various state public postsecondary education institutions; and

(f) The ability of the designated companies to provide the rights and benefits under those contracts.

(Enact. Acts 1994, ch. 290, § 1, effective July 15, 1994; 1996, ch. 253, § 1, effective July 15, 1996; 1997 (1st Ex. Sess.), ch. 1, § 69, effective May 30, 1997.)

161.568. Eligibility to participate in optional retirement plan.

(1) Eligibility to participate in the optional retirement plan shall be determined by the board of regents of each of the state public postsecondary education institutions identified in KRS 161.220(4)(b). The employees of these institutions of higher education who are initially employed on or after the implementation date of the optional retirement plan may make an irrevocable election to participate in the optional retirement plan within thirty (30) days after their employment date. No member of the Kentucky Teachers' Retirement System who terminates employment and is subsequently reemployed by the same or another public postsecondary education institution which participates in the Kentucky Teachers' Retirement System may be eligible to elect to participate in the optional retirement plan unless the date of reemployment is at least six (6) months after the date of termination. These elections shall be made in writing and filed with the appropriate officer of the employer institution.

(2) Elections of eligible employees hired on or after the implementation date of the optional retirement plan at their employer institution shall be effective on the date of their employment. If an eligible employee hired subsequent to the implementation date at the employer institution fails to make the election provided for in this section, he shall become a member of the regular retirement plan of the Kentucky Teachers' Retirement System.

(Enact. Acts 1994, ch. 290, § 2, effective July 15, 1994; 1996, ch. 253, § 2, effective July 15, 1996; 1997 (1st Ex. Sess.), ch. 1, § 70, effective May 30, 1997.)

161.569. Effect of election to participate — Payment of benefits — Taxation and attachment of benefits — Employer and employee contributions.

(1) Any person electing to participate in the optional retirement plan shall be ineligible for membership in the regular retirement plan of the Kentucky Teachers' Retirement System for as long as he is employed in a position for which the optional retirement plan is available.

(2) Any person electing to participate in the optional retirement plan shall acknowledge in writing that the benefits payable to participants are not the obligation of the Commonwealth of Kentucky or the Kentucky Teachers' Retirement System, and that these benefits and other rights of the optional retirement plan are the liability and responsibility solely of the designated companies to which contributions have been made.

(3) Benefits shall be payable to optional retirement plan participants or their beneficiaries by the designated companies in accordance with the contracts issued by each company and the retirement plan provisions adopted by each public institution.

(4) Annuity contracts issued under the optional retirement plan and all rights of a participant in the optional retirement plan shall be exempt from any state, local, or municipal tax; assessment for the insolvency of any life, health, or casualty insurance company; any levy or sale, garnishment, or attachment; or any process whatsoever, and shall be unassignable except as otherwise specifically provided by the contracts offered under the optional retirement plan adopted by the respective public institutions of higher education. Except contracts issued and rights accrued in the optional retirement plan on or after January 1, 1998, shall be subject to the tax imposed by KRS 141.020, to the extent provided in KRS 141.010 and 141.0215.

(5) (a) Each institution shall contribute on behalf of each participant in its optional retirement program the following:

1. To the designated company or companies, an amount equal to the amount that would have been payable to the Kentucky Teachers' Retirement System if the member had elected to participate in that plan instead of the optional retirement plan, less the amount contributed to the Kentucky Teachers' Retirement System pursuant to subparagraph 2. of this paragraph; and

2. To the Kentucky Teachers' Retirement System, an amount equal to the contribution which would have been payable to the Kentucky Teachers' Retirement System on account of the unfunded liability if the member had elected to participate in that plan instead of the optional retirement plan. The rate of contribution shall be determined annually by the Kentucky Teachers' Retirement System actuary. This payment shall continue to be made on behalf of all participants in the op-

tional retirement plan until July 1, 2018, the current amortization period of the Kentucky Teachers' Retirement System.

(b) Each participant shall contribute an amount equal to the present member contribution to the Kentucky Teachers' Retirement System. Employee contributions to the optional retirement plan shall be made by salary reduction under either Section 403(b) or 414(h) of the Internal Revenue Code of 1986.

(Enact. Acts 1994, ch. 290, § 3, effective July 15, 1994; 1995 (2nd Ex. Sess.), ch. 1, § 8, effective April 28, 1995; 1996, ch. 253, § 3, effective July 15, 1996.)

161.570. Reports by employing agency. [Repealed.]

Compiler's Notes. This section (4506b-38) was repealed by Acts 1964, ch. 43, § 23.

161.580. Individual accounts to be kept — Other data — Summary plan description — Publication — Recipients.

(1) The board of trustees shall provide for the maintenance of an individual account for each member showing the amount of the member's contribution and interest accumulations. Such individual accounts shall be identified in the records of the system by name, date of birth, and Social Security number. It shall collect and keep in convenient form such data as is necessary for the preparation of the required mortality and service tables and for the compilation of such other information as is required for the actuarial valuation of the assets and liabilities of the various funds of the retirement system.

(2) The board shall prepare and furnish to all active contributing members a summary plan description, written in a manner calculated to be understood by the average member or annuitant, and sufficiently accurate and comprehensive to reasonably apprise them of their rights and obligations under the Teachers' Retirement System.

(3) The summary plan description shall include:

(a) The name of the retirement system, the name and address of the executive secretary, and the name, address, and title of each member of the board of trustees;

(b) The name and address of the person designated for the service of legal process;

(c) The system's requirements for participation and benefits;

(d) A description of retirement formulas for normal, early, and disability retirement, and survivor benefits;

(e) A description of the requirements for vesting of pension benefits;

(f) A list of circumstances which would result in disqualification, ineligibility, or denial or loss of benefits;

(g) The sources of financing retirement benefits, and statutory requirements for funding;

(h) A statement after each actuarial valuation as to whether funding requirements are being met;

(i) The procedures to be followed in presenting claims for benefits under the plan, and the remedies available under the plan for the redress of claims which are denied in whole or in part.

(4) The board may publish the summary plan description in the form of a comprehensive pamphlet or booklet, or in the form of periodic newsletters which shall incorporate all the information required in the summary plan description within a period of two (2) years. Any changes in statutory requirements or administrative practices which alter the provisions of the plan as described in the summary plan description shall be summarized as required in subsection (2) of this section and furnished to active contributing members in the form of a supplement to a comprehensive booklet, or reported in the periodic newsletter.

(5) The board shall provide to annuitants so much of the summary plan description as they need to understand changes in benefits which apply to them.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 520, effective July 13, 1990.)

Compiler's Notes. This section (4506b-39: amend. Acts 1976, ch. 351, § 14, effective July 1, 1976; 1980, ch. 246, § 13, effective July 15, 1980) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 520, effective July 13, 1990.

Cross-References. Interest credited to accounts, 102 KAR 1:135.

161.585. Account of member, and medical records on file, confidential.

(1) Each member's account shall be administered in a confidential manner and specific data regarding a member shall not be released for publication unless authorized by the member; however, the board of trustees may release member account information to the employer or to other state and federal agencies as it deems necessary.

(2) Medical records which are included in a member's file maintained by the Teachers' Retirement System are confidential and shall not be released unless authorized by the member in writing or as otherwise provided by law.

(Enact. Acts 1980, ch. 206, § 16, effective July 1, 1980; 1990, ch. 442, § 12, effective July 1, 1990; 1990, ch. 476, Pt. V, § 521, effective July 13, 1990.)

Legislative Research Commission Note. (7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

161.590. Service credit at retirement.

(1) At retirement the total service credited to a teacher shall consist of prior and subsequent service rendered by him for which service credit has been allowed.

(2) Kentucky service, presented at the time of retirement, may not be used in calculating benefits under KRS 161.525, 161.620, or 161.661, if such service has been used to increase benefits in an-

other retirement system, not including Old Age and Survivors Insurance Benefits under the Social Security Administration.

(3) No service credit shall be added to a member's account after the effective date of retirement for service.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 522, effective July 13, 1990.)

Compiler's Notes. This section (4506b-40: amend. Acts 1962, ch. 64, § 11; 1974, ch. 395, § 14, effective July 1, 1974; 1978, ch. 152, § 11, effective March 28, 1978) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 522, effective July 13, 1990.

Cross-References. Transfer to other systems, 102 KAR 1:045.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 338-342.

161.595. Service credit.

(1) Upon service retirement, a member of the Teachers' Retirement System may obtain credit for all or any part of the service otherwise creditable under the Kentucky Employees Retirement System, the County Employees Retirement System, or in the service of the United States government for which service credit is not otherwise given, upon the payment by the member of the full actuarial cost of the service credit purchased as defined in KRS 161.220(22). Such payments shall not be picked up, as described in KRS 161.540(2).

(2) The amount paid under this section shall be considered as accumulated contributions of the individual member.

(3) No person shall be allowed credit for the same period of service in more than one (1) of these three (3) retirement systems.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 523, effective July 13, 1990; 2000, ch. 498, § 15, effective July 1, 2000.)

Compiler's Notes. This section (Enact. Acts 1962, ch. 107, §§ 3 to 5; 1980, ch. 206, § 7, effective July 1, 1980; 1982, ch. 166, § 34, effective July 15, 1982; 1982, ch. 414, § 3, effective July 15, 1982; 1984, ch. 253, § 20, effective July 1, 1984; 1984, ch. 302, § 8, effective July 13, 1984) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 523, effective July 13, 1990.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 338-342.

161.597. Installment payments for purchase of service credit by active contributing members.

(1) A member in active contributing status may purchase any service credit which the member is authorized to purchase by making installment payments in lieu of a lump-sum payment.

(2) To initiate an installment payment plan, a member shall make a written request to the retirement system for an estimate to purchase service credit by making installment payments.

(3) To qualify for installment payments, the member contribution plus interest of eight percent (8%) per annum shall exceed one thousand dollars ($1000).

(4) A member may select the service credit to be purchased by installment payments and that service credit shall be purchased before any other credit may be purchased by installment payments.

(5) Installment payments shall be at least fifty dollars ($50) per month and shall be made for a period of time which is not less than twelve (12) months nor more than sixty (60) months.

(6) Installment payments shall be made on a monthly basis by payroll deduction or electronic fund transfer and forwarded separately to the Teachers' Retirement System on forms or by computer format not later than fifteen (15) days following the end of each month. The payments shall be considered accumulated contributions and shall not be picked up as provided in KRS 161.560.

(7) A member may elect to terminate payroll deductions at any time and purchase the remaining service credit by lump-sum payment. A member on a leave of absence may make personal installment payments. Termination of employment in a covered position shall terminate installment payments. If the member is later employed by a different employer in a covered position, the member may request a new estimate and reinstate installment payments. A member that misses two (2) consecutive installment payments shall be in default. A member in default shall receive service credit on a pro rata basis for the total amount of contributions made by installment payments. A member in default may not reinstate installment payments for twelve (12) months from the date the member was in default.

(8) If a member dies before completing scheduled installment payments, the named beneficiary of the member's retirement account may pay the remaining balance due by a lump-sum payment within thirty (30) days of the death of the member.

(Enact. Acts 1996, ch. 359, § 1, effective July 1, 1996; 1998, ch. 515, § 10, effective July 1, 1998.)

Opinions of Attorney General. The payment for the purchase of service credits under the statute is not required to be only by lump sum payment; thus, members may pay for such service credits in installment payments pursuant to this section. OAG 99-7.

161.600. Retirement conditions.

(1) Effective July 1, 1988, a member of the retirement system may qualify for service retirement by meeting one (1) of the following requirements:

(a) Attainment of age sixty (60) years and completion of five (5) years of Kentucky service;

(b) Attainment of age fifty-five (55) years and completion of a minimum of five (5) years of Kentucky service with an actuarial reduction of the basic allowance of five percent (5%) for each year the member's age is less than sixty (60) years or for each year the member's years of Kentucky service credit is less than twenty-seven (27), whichever is the lesser number; or

(c) Completion of twenty-seven (27) years of Kentucky service. Out-of-state service earned in accordance with the provisions of KRS

161.515(2) may be used to meet this requirement.

(2) Any person who has been a member in Kentucky for twenty-seven (27) years or more and who withdraws from covered employment may continue to pay into the fund each year until the end of the fiscal year in which he reaches the age of sixty-five (65) years, the current contribution rate based on the annual compensation received during the member's last full year in covered employment, less any payment received for accrued sick leave or accrued leave from an employer. The member shall be entitled to receive a retirement allowance as provided in KRS 161.620 at any time after withdrawing from covered employment and payment of contributions under this subsection. No member shall make contributions as provided for in this subsection if the member is at the same time making contributions to another retirement system in Kentucky supported wholly or in part by public funds.

(3) Service credit in the Kentucky Employees Retirement System, the State Police Retirement System, the Legislators' Retirement Plan, the County Employees Retirement System, or the Judicial Retirement System may be used in meeting the service requirements of subsection (1)(a), (b), and (c) of this section, provided the service is subsequent to July 1, 1956. Upon death, disability, or service retirement, a member's accounts under all state supported retirement systems shall be consolidated, as provided by this section and by KRS 61.680, for the purpose of determining eligibility and amount of benefits, which shall include medical benefits. Upon determination of benefits, each system shall pay the applicable percentage of total benefits. The effective date of retirement under this subsection shall be determined by each retirement system for the portion of the payments that will be made.

(4) No retirement annuity shall be effective until written application and option election forms are filed with the retirement office in accordance with administrative regulations of the board of trustees.

(5) The surviving spouse of an active contributing member, if named as beneficiary of the member's account, may purchase retirement credit that the member was eligible to purchase prior to the member's death.

(4506b-41: amend. Acts 1960, ch. 44, § 12; 1962, ch. 64, § 12; 1964, ch. 43, § 13; 1968, ch. 136, § 9; 1972, ch. 82, § 17; 1974, ch. 395, § 15; 1976, ch. 351, § 15, effective July 1, 1976; 1978, ch. 43, § 1, effective June 17, 1978; 1978, ch. 152, § 12, effective March 28, 1978; 1982, ch. 114, § 1, effective July 15, 1982; 1982, ch. 326, § 14, effective July 1, 1982; 1986, ch. 440, § 11, effective July 1, 1986; 1988, ch. 240, § 1, effective July 15, 1988; 1988, ch. 260, § 1, effective July 15, 1988; 1988, ch. 363, § 14, effective July 1, 1988; 1990, ch. 442, § 13, effective July 1, 1990; 1990, ch. 476, Pt. V, § 524, effective July 13, 1990; 1994, ch. 369, § 16, effective July 1, 1994; 1996, ch. 359, § 12, effective July 1, 1996.)

Legislative Research Commission Note. (7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

This section was amended by three 1988 Acts, part of which conflict and cannot be compiled together. Pursuant to KRS 446.250, the later enactment prevails.

Cross-References. Application for retirement, 102 KAR 1:070.

Reciprocal program between County Employees Retirement System, Kentucky Employees Retirement System, State Police Retirement System, Legislators' Retirement Plan, Judicial Retirement System, and Teachers' Retirement System, 102 KAR 1:185.

Kentucky Law Journal. Comments, Constitutional Limitations on Mandatory Teacher Retirement, 67 Ky. L.J. 253 (1978-1979).

Opinions of Attorney General. That portion of a regulation that fixes the effective date of all applications for service retirement as of July 1 of the fiscal year succeeding the fiscal year in which the application was filed, is valid as an explanation and elaboration of the phrase "end of the current fiscal year" as used in this section, but so much of the regulation as authorizes the executive secretary to make exceptions is invalid. OAG 60-792.

There is no vested right in a pension system until the participant has become an actual beneficiary, and consequently, the General Assembly may change teachers' retirement benefits except where the benefits have become vested through the member's having met the conditions and having become an actual beneficiary; so that a teacher who retires after the effective date of the 1968 amendment to subsection (1) of this section with fewer than five years of Kentucky service will not be entitled to a pension but in lieu thereof will receive a refund of his accumulated employee contributions. OAG 68-316.

A teacher who taught in Kentucky prior to 1941 would fulfill the condition of subsection (2) of this section when her Kentucky service, either prior or subsequent, totaled five years, and when she reached the age of 70. She would of course have to teach subsequently to 1941 in order to receive credit for her prior service under KRS 161.510 (now repealed); however, she would not have to have five (5) years of subsequent service. OAG 70-822.

The mandatory retirement age for teachers is set at 70 by this section and this may not be changed by a regulation of the board of education. OAG 72-363.

There is no age limit requiring retirement of substitute teachers. OAG 73-847.

Seventy is the mandatory retirement age, but a teacher between ages 65 and 70 is on a limited contract and does not have a right to work until age 70 if the school board decides prior to May 15 any year after age 65 not to rehire. OAG 74-454.

Upon reaching the age of 65 a school administrator no longer has a continuing service contract but may be employed on a limited contract from year to year until reaching the age of 70, the mandatory retirement age provided by this section. OAG 75-2.

An individual may serve as a superintendent under contract pursuant to KRS 160.350 until the end of the school year in which the age of 70 is reached. OAG 79-213.

Generally, in order to qualify for retirement, a member of the retirement system must have completed 27 years of service, notwithstanding accumulation of sick leave. OAG 91-219.

One time payments to teachers to induce retirement are constitutional under Const., § 3 as such payments are in consideration of public service. The key fact that makes these payments constitutional is the voluntary retirement of the teacher; such an act is a "present" service for which an emolument is paid, not a past service for which a gratuity is given. OAG 96-23.

Cited: Watkins v. Oldham, 731 S.W.2d 829 (Ky. Ct. App. 1987).

NOTES TO DECISIONS

1. Compulsory Retirement.

A regulation requiring compulsory retirement of teachers at age 65 does not conflict with this section since a teacher's employment between age 65 and age 70, the statutory age for compulsory retirement, is discretionary with the board of education under KRS 161.720. Belcher v. Gish, 555 S.W.2d 264 (Ky. 1977).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 338-342.

161.603. Resumption of teaching by retired member — Waiver of annuity payments.

(1) Any member retired by reason of service may waive his annuity and return to full-time employment in a position covered by the Teachers' Retirement System. The member shall receive no annuity payments while employed in a covered position, shall waive his or her medical insurance coverage with the Kentucky Teachers' Retirement System during the period of reemployment, and shall receive the medical insurance coverage that is generally offered by the member's active employer to the other members of the retirement system employed by the active employer. The member's estate or, if there is a beneficiary applicably designated by the member, then the beneficiary, shall continue to be eligible for life insurance benefits as provided in KRS 161.655. Service subsequent to retirement shall not be used to improve an annuity, except as provided in subsections (2) and (3) of this section.

(2) Any member who waives regular annuity benefits and returns to teaching or covered employment shall be entitled to make contributions on the salaries received for this service and have their retirement annuity recalculated as provided in the regular retirement formula in KRS 161.620(1) less any applicable actuarial discount applied to the original retirement allowance due to the election of a joint and last survivor option. Retirement option and beneficiary designation on original retirement shall not be altered by post-retirement employment nor shall dependents and spouses of the members become eligible for benefits under KRS 161.520, 161.525, and 161.661 because of post-retirement employment.

(3) When a member returns to full-time teaching or covered employment as provided in subsection (2) of this section, the employer is required to withhold and remit regular retirement contributions. The member must be employed full-time for at least one (1) consecutive contract year to be eligible to improve an annuity. The member will be returned to the annuity rolls on July 1 following completion of the contract year or on the first day of the month following the month of termination of service if full-time employment exceeds one (1) consecutive contract year. Any discounts applied at the time of the original retirement due to service or age may be reduced or eliminated due to additional employment if full-time employment is for one (1) contract consecutive year or longer.

(4) A member retired by reason of service who has been employed the equivalent of twenty-five (25) days or more during a school year under the provisions of KRS 161.605 may waive the member's retirement annuity and return to regular employment covered by the Teachers' Retirement System during that school year a maximum of one (1) time during any five (5) year period, beginning with that school year.

(Enact. Acts 1964, ch. 43, § 19; 1972, ch. 82, § 18; 1976, ch. 351, § 16, effective July 1, 1976; 1978, ch. 152, § 13, effective March 28, 1978; 1990, ch. 442, § 14, effective July 1, 1990; 1990, ch. 476, Pt. V, § 525, effective July 13, 1990; 1992, ch. 192, § 10, effective July 14, 1992; 1996, ch. 359, § 13, effective July 1, 1996; 2002, ch. 275, § 24, effective July 1, 2002.)

Legislative Research Commission Note. (7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

Opinions of Attorney General. This section would not prevent a retired teacher from being returned to the annuity rolls prior to July 1 where he had waived his annuity but was unable to complete teaching the entire year. However, if he taught for the entire school year, he could not be returned to the annuity rolls until July 1. OAG 71-140.

Collateral References. Reemployment or reinstatement of teacher as restoration of original status as regards rights in pension fund. 89 A.L.R. 684.

Retirement pension previously granted a public officer or employee as affected by re-entry into public employment. 162 A.L.R. 1469.

161.605. Resumption of employment by retired member — Continuation of retirement allowance — Nonteaching employment.

Any member retired by reason of service may return to work in a position covered by the Kentucky Teachers' Retirement System and continue to receive his or her retirement allowance under the following conditions:

(1) Any member who is retired with thirty (30) or more years of service may return to work in a full-time or a part-time position covered by the Kentucky Teachers' Retirement System and earn up to a maximum of seventy-five percent (75%) of the member's last annual compensation measured on a daily rate to be determined by the board of trustees. For purposes of determining whether the salary of a member returning to work is seventy-five percent (75%) or less of the member's last annual compensation, all remuneration paid and benefits provided to the member, on an actual dollar or fair market value basis as determined by the retirement system, shall be considered. Members who were retired on or before June 30, 2002, shall be entitled to return to work under the provisions of this section as if they had retired with thirty (30) years of service. Service credit purchased under the provisions of KRS 161.5465 may not be used to meet the thirty (30) year requirement set forth in this subsection.

(2) Any member who is retired with less than thirty (30) years of service after June 30, 2002, may return to work in a full-time or part-time position covered by the Kentucky Teachers' Retirement System and earn up to a maximum of sixty-five percent (65%) of the member's last annual compensation measured on a daily rate to be determined by the board of trustees. For purposes of determining whether the salary of a member returning to work is sixty-five percent (65%) or less of the member's last annual compensation, all remuneration paid and benefits provided to the member, on an actual dollar or fair market value basis as determined by the retirement system, shall be considered.

(3) Reemployment of a retired member under subsection (1) or (2) of this section in a full-time teaching or nonteaching position in a local school district shall be permitted only if the employer certifies to the Kentucky Teachers' Retirement System that there are no other qualified applicants available to fill the teaching or nonteaching position. The employer may use any source considered reliable including but not limited to data provided by the Education Professional Standards Board and the Department of Education to determine whether other qualified applicants are available to fill the teaching or nonteaching position. The Kentucky Board of Education shall promulgate administrative regulations to establish procedures to determine whether other qualified applicants are available to fill a teaching or nonteaching position and, if not, for filling the position with a retired member who will then be permitted to return to work in that position under subsection (1) or (2) of this section. The administrative regulations shall assure that a retired member shall not be hired in a teaching or nonteaching position by a local school district until the superintendent of the school district assures the Kentucky Teachers' Retirement System that every reasonable effort has been made to recruit other qualified applicants for the position on an annual basis.

(4) Under this section, an employer may employ full-time a number of retired members not to exceed four percent (4%) of the membership actively employed full-time by that employer. The board of trustees may reduce this four percent (4%) cap upon recommendation of the retirement system's actuary if a reduction is necessary to maintain the actuarial soundness of the retirement system. The board of trustees may increase the four percent (4%) cap upon a determination that an increase is warranted to help address a shortage in the number of available teachers and upon the determination of the retirement system's actuary that the proposed cap increase allows the actuarial soundness of the retirement system to be maintained. For purposes of this subsection, "full-time" means the same as defined by KRS 161.220(21). A local school district may exceed the quota established by this subsection by making an annual written request to the Kentucky Department of Education which the department may approve on a year-by-year basis if the statewide quota has not been met.

(5) A member returning to work in a full-time or part-time position under subsection (1) or (2) of this section will establish a second account with the retirement system that will be administered independently from and with no reciprocal impact with the member's original retirement account. A member returning to work under subsection (1) or (2) of this section shall make contributions to the retirement system at the rate provided under KRS 161.540. The second account shall independently meet the five (5) year vesting requirement as well as all other conditions set forth in KRS 161.600(1) before any retirement allowance is payable from this account. The retirement allowance accruing under this second account shall be calculated pursuant to KRS 161.620(1)(b). This second account shall not entitle the member to a duplication of the benefits offered under KRS 161.655 or 161.675, nor shall this second account provide the benefits offered by KRS 161.520, 161.525, 161.661, or 161.663. A member returning to work under subsection (1) or (2) of this section shall waive his or her medical insurance with the Kentucky Teachers' Retirement System during the period of reemployment and shall receive the medical insurance coverage that is generally provided by the member's active employer to the other members of the retirement system that the active employer employs. If medical insurance coverage is not available from the employer, the Kentucky Teachers' Retirement System may provide coverage for the member. A member returning to work under subsection (1) or (2) of this section shall not be eligible to purchase service credit for any service provided after the member's effective date of retirement but prior to the date that the member returns to work. A member returning to work under subsection (1) or (2) of this section shall not be eligible to purchase service credit that the member would have otherwise been eligible to purchase prior to the member's initial retirement. A member who returns to work under subsection (1) or (2) of this section, or in the event of the death of the member, the member's estate or applicably designated beneficiary, shall be entitled, within ninety (90) days of the posting of the annual report submitted by the employer, to a refund of contributions as permitted and limited by KRS 161.470.

(6) The board of trustees may annually adjust the daily rate of a member's last annual compensation, for each year that the member has been retired for a full twelve (12) month period, by the percentage increase in the annual average of the consumer price index for all urban consumers for the calendar year preceding the adjustment as published by the Federal Bureau of Labor Statistics, not to exceed five percent (5%) annually. Failure to comply with the salary limitations set forth in subsections (1) and (2) of this section as may be adjusted by this subsection shall result in a reduction of the member's retirement allowance or any other benefit to which the member would otherwise be entitled on a dollar-for-dollar basis for each dollar that the member exceeds these salary limitations.

(7) A retired member returning to work under subsection (1) or (2) of this section shall have separated from service for a period of at least one (1) year if returning to work for the same employer on a full-time basis, and at least three (3) months if returning to work for a different employer on a full-time basis. A retired member returning to work under subsection (1) or (2) of this section on a part-time basis shall have separated from service for a period of at least three (3) months before returning to work for any employer. Failure to comply with these separation-from-service requirements voids a member's retirement and the member shall be required to return all the retirement benefits he or she received, with interest, for the period of time that the member returned to work without a sufficient separation from service.

(8) Members who retired on or before June 30, 2002, may, for the fiscal year concluding on June 30, 2007, be reemployed under the one hundred (100) day provisions of this section as they existed on June 30, 2002, except that members returning to work under those provisions shall make contributions to the Kentucky Teachers' Retirement System at the rate provided under KRS 161.540 and members' employers shall make contributions to the Kentucky Teachers' Retirement System at the rates specified under KRS 161.550. Those members returning to work under the one hundred (100) day provisions of this section as they existed on June 30, 2002, shall further waive their medical insurance coverage with the retirement system during the period of reemployment and will instead receive the medical insurance coverage generally provided by their active employer to other members of the retirement system that the active employer employs. If medical insurance coverage is not available from the employer, the Kentucky Teachers' Retirement System may provide coverage for the member. Notwithstanding any other statute to the contrary, retired members returning to work shall under no circumstances be permitted to purchase as service credit service provided under the one hundred (100) day provisions of this section as they existed on June 30, 2002.

(9) The return to work limitations set forth in this section and KRS 161.603 shall apply to retired members who are returning to work in the same position from which they retired, or a position substantially similar to the one from which they retired, or any position listed in KRS 161.220(4) which requires membership in the retirement system. Positions which generally require certification or graduation from a four (4) year college or university as a condition of employment which are created, or changed to remove the position from coverage under KRS 161.220(4) are also subject to the return to work limitations set forth in this section and KRS 161.603. The board of trustees shall determine whether employment in a nonteaching position is subject to this subsection.

(10) The provisions of subsections (1) to (8) of this section are not subject to KRS 161.714.

(11) Members retired from an agency listed in KRS 161.220(4)(b) or (n) may be employed in a part-time teaching capacity by one (1) of the universities or community colleges participating in the Teachers' Retirement System, not to exceed the equivalent of twelve (12) teaching hours in any one (1) fiscal year. Members retired from an agency listed in KRS 161.220(4)(b) or (n) may be employed for a period not to exceed the equivalent of one hundred (100) days in any one (1) fiscal year in a part-time administrative or nonteaching capacity by one (1) of the universities or community colleges participating in the Teachers' Retirement System in a position that would otherwise be covered by the retirement system. None of these members shall be subject to the return to work provisions set forth in subsections (1) to (8) of this section.

Calculation of the number of days for part-time teaching, substitute teaching, or part-time employment in a nonteaching capacity under this section shall not exceed the ratio between a school year and the actual months of retirement for the member during that school year. The board of trustees by administrative regulation may establish fractional equivalents of a day of teaching service.

(12) When a retired member returns to employment in a part-time teaching capacity or in a nonteaching capacity as provided in subsection (11) of this section, the employer shall contribute annually to the retirement system on the compensation paid to the retired member at rates determined by the retirement system actuary that reflect accrued liability for retired members who return to work under subsection (11) of this section.

(Enact. Acts 1952, ch. 226; 1958, ch. 10; 1964, ch. 43, § 14; 1972, ch. 82, § 19; 1980, ch. 102, § 1, effective July 15, 1980; 1990, ch. 442, § 15, effective July 1, 1990; 1990, ch. 476, Pt. V, § 526, effective July 13, 1990; 1992, ch. 192, § 11, effective July 1, 1992; 1996, ch. 359, § 14, effective July 1, 1996; 1998, ch. 515, § 11, effective July 1, 1998; 2000, ch. 477, § 2, effective July 14, 2000; 2000, ch. 498, § 16, effective July 1, 2000; 2002, ch. 275, § 25, effective July 1, 2002.)

Legislative Research Commission Note. (7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

Cross-References. Employment by retired members, 102 KAR 1:035.

Employment of retired teachers in critical shortage areas, 702 KAR 1:150.

Opinions of Attorney General. A "substitute" teacher is one who temporarily substitutes to teach for another regularly employed teacher who is temporarily absent from her work. OAG 64-288.

There is no age limit requiring retirement of substitute teachers. OAG 73-847.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 191, 210, 211, 219.

Reemployment or reinstatement of teacher as restoration of original status as regards rights in pension fund. 89 A.L.R. 684.

Retirement pension previously granted a public officer or employee as affected by re-entry into public employment. 162 A.L.R. 1469.

161.607. Employment in position covered by other Kentucky retirement system.

(1) Any member of the Teachers' Retirement System who enters employment covered by the Kentucky Employees Retirement System, the State Police Retirement System, or the County Employees Retirement System, prior to July 1, 1976, may retain membership in the Teachers' Retirement System instead of joining the new system.

(2) Retention of membership in the Teachers' Retirement System by any member of the General Assembly who upon election is a contributing member of the Teachers' Retirement System shall be effected by conforming with KRS 61.680(4)(c). Members of the General Assembly who retain membership shall make retirement contributions based upon their annual compensation as defined under KRS 161.220 or on their creditable compensation as defined under KRS 61.510, whichever is the larger amount. Service as a member of the General Assembly may be used to meet the service requirements of KRS 61.680(2)(a) regardless of the system to which contributions are made by the member.

(3) Any member of the Teachers' Retirement System entering employment as described in subsection (1) of this section must exercise the option within ninety (90) days of the beginning of such employment.

(4) Persons who enter service covered by the Teachers' Retirement System prior to July 1, 1976, and who hold membership in a Kentucky retirement system financed in whole or part with public funds may retain membership in that system providing the statutes and regulations governing said system make continued membership possible.

(5) Any person who has elected an option provided in this section may cancel such election and gain membership in the system which normally covers the position in which currently employed, provided that such cancellation of option election must be completed prior to January 1, 1977.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 527, effective July 13, 1990; 2000, ch. 498, § 17, effective July 1, 2000.)

Compiler's Notes. This section (Enact. Acts 1964, ch. 43, § 21; 1968, ch. 136, § 10; 1976, ch. 351, § 17, effective July 1, 1976; 1980, ch. 206, § 8, effective July 1, 1980; 1982, ch. 458, § 6, effective April 15, 1982) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 527, effective July 13, 1990.

Opinions of Attorney General. Persons who are covered by any one of the three publicly financed Kentucky retirement systems can maintain their coverage in the system of their choice provided they are qualified when they change jobs. While the statutes do not specifically prohibit a subsequent change after an election has been made, neither do they give a covered employee the unqualified right to make such a change. However, in the absence of a specific provision prohibiting subsequent change after an election, and in view of the broad authorization for reciprocal arrangements, we believe the statutes would permit the various retirement systems to authorize a subsequent change, provided appropriate regulations are promulated. OAG 69-501.

There is no statutory right for an employee who has made an election to remain in one of the three publicly financed Kentucky retirement systems to have his account frozen in that system and be treated as a new employee by the agency which has been employing him. Such procedure could not be permitted without appropriate reciprocal regulations by the retirement systems involved. OAG 69-501.

The term "employment covered by the Kentucky employees retirement system" in this section embraces the term "service" as defined in KRS 61.510(9) and as referred to in KRS 61.595 so that an employee of the Kentucky Department of Agriculture for the three years immediately preceding July 1, 1956, when there was no Kentucky Employees Retirement System in existence, would still be entitled to purchase credit in the Teachers' Retirement System for the three years in question pursuant to the option contained in this section. OAG 73-749.

Any employee of the Kentucky Authority for Educational Television currently a member of the Kentucky Employees Retirement System who, because of KRS 161.220(4), may be qualified to participate in the teachers' retirement system has the option of joining the teachers' retirement system as provided by subsection (3) (now subsection (4)) of this section or retaining membership in Kentucky Employees Retirement System as provided by KRS 61.680. OAG 74-305.

In the present situation, the language of subsection (5) of this section and KRS 61.680(4)(b) is clear and unambiguous, and while these statutes provide that an employee may retain Kentucky Teachers' Retirement System membership upon transfer to another agency covered by other government retirement systems, and that such an employee may cancel his election to retain KTRS membership, it specifically provides that any cancellation of option election must be made prior to January 1, 1977. OAG 78-744.

Collateral References. Re-employment or reinstatement of teacher as restoration of original status as regards rights in pension fund. 89 A.L.R. 684.

Retirement pension previously granted a public officer or employee as affected by re-entry into public employment. 162 A.L.R. 1469.

161.608. Computation of benefits of member who has an account with another state system.

The provisions of KRS 61.680 are hereby recognized and shall be followed in computing benefits of any member of the Teachers' Retirement System who also has an account with the Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 528, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1974, ch. 128, § 38, effective March 26, 1974) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 528, effective July 13, 1990.

Cross-References. Reciprocal program between County Employees Retirement System, Kentucky Employees Retirement System, State Police Retirement System, Legislators' Retirement Plan, Judicial Retirement System, and Teachers' Retirement System, 102 KAR 1:185.

Opinions of Attorney General. This section and KRS 61.680 are to be interpreted to mean that once an individual with joint accounts in the various state retirement systems consolidates those accounts and is eligible to retire in the system under which he is presently covered and does so, all other retirement systems in which he has an account must pay their proportional share of benefits to him even though he might not otherwise be eligible due to his age. OAG 74-904.

161.610. Withdrawal after thirty years — Benefit rights — Options. [Repealed.]

Compiler's Notes. This section (4506b-42: amend. Acts 1950, ch. 194; 1962, ch. 64, § 13) was repealed by Acts 1964, ch. 43, § 23.

161.611. Supplemental retirement benefit plan — Purpose — Administration — Eligibility — Payments.

(1) The board of trustees is authorized to provide a supplemental retirement benefit plan for the sole purpose of enabling the employer to apply the same formula for determining benefits payable to all members of the retirement system employed by the employer, whose benefits under the retirement system are limited by Section 415 of the Internal Revenue Code of 1986, as amended from time to time. This plan is intended to constitute a qualified governmental excess benefit plan as described in Section 415 of the Internal Revenue Code.

(2) The board of trustees shall administer this plan and have full discretionary fiduciary authority to determine all questions in connection with the plan. The board of trustees may adopt procedural rules and administrative regulations and may employ and rely on any legal counsel, actuaries, accountants, and agents as it deems advisable to assist in the administration of this plan.

(3) All members and retired former members in the retirement system shall be eligible to participate in this plan whenever their benefits under the retirement system would exceed the limitation on benefits imposed by Section 415 of the Internal Revenue Code.

(4) On or after the effective date of this plan, the employer shall pay to each eligible member in the retirement system who retires on or after that date and to each former member who retired before that date and his or her beneficiaries a supplemental pension benefit, equal to the amount by which the benefit that would have been payable under the retirement system, without regard to any provision therein incorporating the limitation on benefits imposed by Section 415 of the Internal Revenue Code, exceeds the benefit actually payable, taking into account the limitation imposed on the retirement system by Section 415 of the code. These supplemental pension benefits shall be computed and payable under the same terms and conditions and to the same person as the benefits payable to, or on account of, an eligible member under the retirement system.

(5) Benefits payable under this plan shall not be subject to the dollar limit applicable to eligible deferred compensation plans under Section 457 of the Internal Revenue Code, nor to the "substantial risk or forfeiture" rules of Section 457(f) of the code applicable to ineligible deferred compensation plans. In addition, benefits payable under this plan shall not be taken into account in determining whether any other plan of the employer is an eligible deferred compensation plan under Section 457 of the code.

(6) Funding of benefits payable under this plan shall be provided by the state, as employer, and shall be segregated from funds that are maintained by the retirement system for payment of the regular benefits provided by the retirement system. The employer may establish a grantor trust for payment of benefits provided under this plan, with the employer treated as "grantor" thereof for purposes of Section 677 of the Internal Revenue Code. The rights of any person to receive benefits under this plan are limited to those of a general creditor of the employer.

(Enact. Acts 2000, ch. 498, § 1, effective July 1, 2000; 2002, ch. 275, § 26, effective July 1, 2002.)

Compiler's Notes. Section 415 of the Internal Revenue Code, referred to in subsections (1), (3) and (4), is codified as 26 U.S.C. § 415.

Section 457 of the Internal Revenue Code, referred to in subsection (5), is codified as 26 U.S.C. § 457.

Section 677 of the Internal Revenue Code, referred to in subsection (6), is codified as 26 U.S.C. § 677.

161.612. Membership of individuals providing part-time and substitute services — Service credit — Participation in benefits.

Effective July 1, 2002, any individual occupying a position on a part-time basis that requires certification or graduation from a four (4) year college or university as a condition of employment and any individual providing part-time or substitute teaching services that are the same or similar to those teaching services provided by certified, full-time teachers shall be a member of the Kentucky Teachers' Retirement System, according to the conditions set forth in this section, if the individual is employed by one (1) of the public boards, institutions, or agencies set forth in KRS 161.220. Members providing part-time and substitute services shall participate in the retirement system as follows:

(1) Members providing part-time and substitute services shall accrue service credit as provided under KRS 161.500 and be entitled to a retirement allowance upon meeting the service retirement conditions of KRS 161.600. The board of trustees shall adopt a methodology for accrediting service credit to these members on a pro rata basis. The methodology adopted by the board of trustees may be amended as necessary to ensure its actuarial soundness. The retirement allowance for members providing part-time and substitute services shall be calculated pursuant to KRS 161.620. Members providing part-time and substitute services who meet the service retirement conditions of KRS 161.600 may also be eligible to participate as approved by the board of trustees in the medical insurance program provided by the retirement system under KRS 161.675. Members providing part-time and substitute services shall make contributions to the Kentucky Teachers' Retirement System at the rate provided under KRS 161.540. A member who provides part-time or substitute services, or in the event of the death of the member,

the member's estate or applicably designated beneficiary, will be entitled, within ninety (90) days of the posting of the annual report submitted by the member's employer, to a refund of contributions as permitted and limited by KRS 161.470.

(2) The board of trustees shall adopt eligibility conditions under which members providing part-time and substitute services may participate in the benefits provided under KRS 161.520, 161.555, 161.661, and 161.663. The board of trustees may adopt eligibility conditions under which members providing part-time or substitute services may participate in other benefits offered by the retirement system. All eligibility conditions adopted by the board of trustees pursuant to this subsection may be amended as necessary to ensure their actuarial soundness.

(3) In addition to the pro rata methodology adopted by the board of trustees under subsection (1) of this section, members providing part-time and substitute services shall be subject to all limitations and conditions regarding the accrual, retention, accreditation, and use of service credit that apply to members providing full-time services. In addition to the eligibility conditions set forth by the board of trustees under subsection (2) of this section, members providing part-time and substitute services shall be subject to all limitations and conditions regarding both the eligibility to participate and the extent of participation in any benefit offered under KRS 161.220 to 161.716 that apply to members providing full-time services.

(4) The board of trustees of the Teachers' Retirement System shall be responsible for final determination of membership eligibility and may direct employers to take whatever action that may be necessary to correct any error relating to membership.

(5) The provisions of this section are not subject to KRS 161.714.

(Enact. Acts 2002, ch. 275, § 1, effective July 1, 2002.)

161.614. Court-ordered back salary and reinstatement.

A court order awarding additional back salary to or reinstating a member as a result of employment in a position covered by the Kentucky Teachers' Retirement System shall entitle the member to additional salary or service credit, or both, under the following circumstances:

(1) Members shall make contributions to the Kentucky Teachers' Retirement System at the rate set forth in KRS 161.540 and members' employers shall make contributions at the rate set forth in KRS 161.550, with interest accruing on all contributions at the rate of eight percent (8%) per annum from the end of each fiscal year that back salary or the reinstatement was ordered. Contributions, plus interest, shall be made for each year that back salary or reinstatement was ordered. No service or salary credit shall be credited to a member's account unless full contributions are paid to the Kentucky Teachers' Retirement System.

(2) The member may have court-ordered back salary credited to his or her account only to the extent that the member actually received payment for the back salary and only to the extent that the court-ordered back salary is within the salary scale that was available to the member in the covered position for the years that the back salary was awarded. Court-ordered back salary can be credited to the member's account only as permitted under KRS 161.220(9) and (10).

(3) The member's employer ordered to pay back salary or to reinstate the member by a court of competent jurisdiction shall provide the retirement system with a breakdown of the back salary awarded to the member on a year-by-year basis.

(4) The calculations of the contributions and interest required to be paid for court-ordered back salary or reinstatement shall be provided by the retirement system to the member or the member's employer at the member's or employer's request. Requests for these calculations shall be made with at least two (2) weeks of advance notice to the retirement system to provide these calculations. The retirement system will calculate accrued interest as of the last day of the month during which payment of the full contributions are made.

(5) For purposes of this section, a settlement agreement that provides back salary or reinstatement, and is adopted by order or judgment of a court of competent jurisdiction or is referenced in an order dismissing the action as settled shall have the same effect as a court order adjudicating the matter. Orders entered by a government board or agency as a result of litigation conducted on an administrative hearing level shall be considered as court orders for the purposes of this section.

(6) Under no circumstances shall a member be entitled to service credit as a result of court-ordered reinstatement that is in violation of the provisions of KRS 161.550.

(Enact. Acts 2002, ch. 275, § 2, effective July 1, 2002.)

161.615. Limited defined contribution plan — Purpose — Administration — Eligibility — Payments.

(1) The board of trustees is authorized to implement a limited defined contribution plan for the sole purpose of providing retirement allowance payments for retired members who have been approved by the retirement system for full-time reemployment as provided in KRS 161.605.

(2) The defined contribution plan shall be administered separately from the regular benefits provided for members of the retirement system, except that the contributions to the plan shall be invested in the same manner as other contributions to the retirement system.

(3) The provisions of this section apply only to those retired members who were permitted to return to work under the critical shortage provisions of KRS 161.605(7) as they existed on June 30, 2002. The provisions of this section shall not apply to any retired member returning to work on or after July 1, 2002.

(4) Separate member accounts shall be maintained for participants in this plan which shall reflect the

annual contributions made to the participant's account based on the rates and interest levels specified in KRS 161.605.

(5) When the retiree's reemployment terminates, the total contributions and accrued interest in the participant's account will be paid in a lump-sum payment or on an actuarial straight life monthly basis to the retiree. If the member dies prior to making application for a retirement allowance under this plan, the beneficiary designated by the participant for this plan shall receive a refund of the funds in the account. If there is a remaining balance in the account at the death of the participant after retirement from this plan, it shall be paid to the beneficiary designated by the participant for this benefit.

(6) Retired members shall be eligible to receive their retirement annuity when approved for reemployment and participation in this plan. Service as a reemployed retiree may not be used in any manner for credit under the regular retirement benefit plans provided by the retirement system.

(Enact. Acts 2000, ch. 498, § 2, effective July 1, 2000; 2002, ch. 275, § 27, effective July 1, 2002.)

161.620. Retirement allowances — Amount.

(1) The retirement allowance, in the form of a life annuity with refundable balance, of a member retiring for service shall be calculated as follows:

(a) For retirements effective July 1, 1998, and thereafter, except as otherwise provided by this section, the annual allowance for each year of service shall be two percent (2%) of the final average salary for service performed prior to July 1, 1983, and two and one-half percent (2.5%) of the final average salary for service performed after July 1, 1983, for all members not employed by a state college or university. The annual retirement allowance for each year of service performed by members of the Teachers' Retirement System who are members under the provisions of KRS 161.220(4)(b) or (n) shall be two percent (2%) of the final average salary. Actuarial discounts due to age or service credit at retirement may be applied as provided in this section; and

(b) For individuals who become members of the Kentucky Teachers' Retirement System on or after July 1, 2002, except those persons who become members under KRS 161.220(4)(b) or (n), and who upon retirement have earned less than ten (10) full years of service credit, the retirement allowance shall be two percent (2%) of the member's final average salary for each year of service. For individuals who become members of the Kentucky Teachers' Retirement System on or after July 1, 2002, except those persons who become members under KRS 161.220(4)(b) or (n), and who upon retirement have earned at least ten (10) full years of service credit, the annual allowance for each year of service shall be two and one-half percent (2.5%) of the member's final average salary.

(c) The board of trustees may approve for members who initially retire on or after July 1, 2004, except those persons who are members under KRS 161.220(4)(b) or (n), a retirement allowance of three percent (3%) of the member's final average salary for each year of service credit earned in excess of thirty (30) years. This three percent (3%) factor shall be in lieu of the two and one-half percent (2.5%) factor provided for in paragraph (b) of this subsection for every year or fraction of a year of service in excess of thirty (30) years. Upon approval of this three percent (3%) retirement factor, the board of trustees may establish conditions of eligibility regarding the type of service credit that will qualify for meeting the requirements of this subsection. This subsection is optional with the board of trustees and shall not be subject to KRS 161.714.

(d) The retirement allowance of a member at retirement shall not exceed the member's last annual compensation or the member's final average salary, whichever is the greater amount.

(2) Effective July 1, 2002, and annually on July 1 thereafter, the retirement allowance of each retired member and of each beneficiary of a retirement option shall be increased in the amount of one and one-half percent (1.5%), provided the retired member had been retired for at least the full twelve (12) months immediately preceding the date that the increase is effective. In the event that the retired member had been retired for less than the full twelve (12) months immediately preceding the date that the increase is effective, then the increase shall be reduced on a pro rata basis by each month that the retired member had not been retired for the full twelve (12) months immediately preceding the effective date of the increase.

(3) Any member qualifying for retirement under a life annuity with refundable balance shall be entitled to receive an annual allowance amounting to not less than four hundred dollars ($400) effective July 1, 2002, and not less than four hundred forty dollars ($440) effective July 1, 2003, multiplied by the service credit years of the member. These minimums shall apply to the retired members receiving annuity payments and to those members retiring on or subsequent to the effective dates listed in this subsection.

(4) The minimum retirement allowance provided in this section shall apply in the case of members retired or retiring under an option other than a life annuity with refundable balance in the same proportion to the benefits of the member and his beneficiary or beneficiaries as provided in the duly-adopted option tables at the time of the member's retirement.

(5) Effective July 1, 2002, the monthly allowance of each retired member and each recipient of a retirement option of the retired member may be increased in an amount not to exceed one and four-tenths percent (1.4%) of the monthly allowance in effect the previous month, provided the retired

member had been retired for at least the full twelve (12) months immediately preceding the date that the increase is effective. In the event that the retired member had been retired for less than the full twelve (12) months immediately preceding the date that the increase is effective, then the increase shall be reduced on a pro rata basis by each month that the retired member had not been retired for the full twelve (12) months immediately preceding the effective date of the increase. The level of increase provided for in this subsection shall be determined by the funding provided in the 2002-2004 biennium budget appropriation.

(6) Effective July 1, 2003, the monthly allowance of each retired member and each recipient of a retirement option of the retired member may be increased in an amount not to exceed one and one-half percent (1.5%) of the monthly allowance in effect the previous month, provided the retired member had been retired for at least the full twelve (12) months immediately preceding the date that the increase is effective. In the event that the retired member had been retired for less than the full twelve (12) months immediately preceding the date that the increase is effective, then the increase shall be reduced on a pro rata basis by each month that the retired member had not been retired for the full twelve (12) months immediately preceding the effective date of the increase. The level of increase provided for in this subsection shall be determined by the funding provided in the 2002-2004 biennium budget appropriation.

(7) Effective July 1, 1990, monthly payments of two hundred dollars ($200) shall be payable for the benefit of an adult child of a member retired for service when the child's mental or physical condition is sufficient to cause dependency on the member at the time of retirement. Eligibility for this payment shall continue for the life of the child or until the time the mental or physical condition creating the dependency no longer exists or the child marries. Benefits under this subsection shall apply to legally adopted survivors provided the proceedings for the adoption were initiated at least one (1) year prior to the death of the member. The board of trustees shall be the sole judge of eligibility or dependency and may require formal application or information relating thereto.

(8) Members of the Teachers' Retirement System shall be subject to the annuity income limitations imposed by Section 415 of the Internal Revenue Service Code.

(9) Compensation in excess of the limitations imposed by Section 401(a)(17) of the Internal Revenue Code shall not be used in determining a member's retirement annuity. The limitation on compensation for eligible members shall not be less than the amount which was allowed to be taken into account by the retirement system in effect on July 1, 1993. For this purpose, an eligible member is an individual who was a member of the retirement system before the first plan year beginning after December 31, 1995.

(4506b-43: amend. Acts 1946, ch. 111, § 4; 1950, ch. 78, § 1; 1954, ch. 194; 1954, ch. 196, § 4; 1956, ch. 146; 1960, ch. 44, § 13; 1962, ch. 64, § 14; 1964, ch. 43, § 15; 1966, ch. 16, § 6; 1968, ch. 136, § 11; 1970, ch. 54, § 2; 1970, ch. 168, § 1; 1972, ch. 82, § 20; 1974, ch. 395, § 16; 1976, ch. 351, § 18, effective July 1, 1976; 1978, ch. 43, § 2, effective June 17, 1978; 1978, ch. 152, § 14, effective March 28, 1978; 1980, ch. 206, § 9, effective July 1, 1980; 1982, ch. 326, § 9, effective July 1, 1982; 1982, ch. 414, § 4, effective July 15, 1982; 1984, ch. 104, § 1, effective July 13, 1984; 1984, ch. 253, § 21, effective July 1, 1984; 1986, ch. 440, § 12, effective July 1, 1986; 1988, ch. 240, § 2, effective July 15, 1988; 1988, ch. 260, § 2, effective July 15, 1988; 1988, ch. 363, § 15, effective July 1, 1988; 1990, ch. 131, § 1, effective July 13, 1990; 1990, ch. 442, § 16, effective July 1, 1990; 1990, ch. 476, Pt. V, § 529, effective July 13, 1990; 1992, ch. 192, § 12, effective July 1, 1992; 1994, ch. 369, § 18, effective July 1, 1994; 1996, ch. 359, § 15, effective July 1, 1996; 1998, ch. 515, § 12, effective July 1, 1998; 2000, ch. 498, § 18, effective July 1, 2000; 2002, ch. 275, § 28, effective July 1, 2002.)

Legislative Research Commission Note. (7/13/90). The two Acts amending this section prevail over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476. The two amending Acts have been compiled together where they are not in conflict. Where a conflict exists, the Act which was last enacted by the General Assembly prevails, pursuant to KRS 446.250.

Compiler's Notes. Section 415 of the Internal Revenue Code, referred to in subsection (8), is codified as 26 U.S.C. § 415.

Cross-References. Optional benefits, 102 KAR 1:150.

Value of service performed, 102 KAR 1:200.

Opinions of Attorney General. While subsection (1) of this section provided a mandatory increase applicable to all teachers retired prior to July 1, 1964, the increase must be regarded as increasing the actuarial value and would not necessarily increase monthly payments in benefit options other than the straight life annuity. OAG 68-274.

Cited: Watkins v. Oldham, 731 S.W.2d 829 (Ky. Ct. App. 1987).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 338-342.

161.623. Use of unused sick-leave days to determine service credit.

(1) Effective July 1, 1982, and thereafter, a district board of education or other employer of members of the Teachers' Retirement System may compensate, at the time of retirement for service, an active contributing member for unused sick-leave days in accordance with this section.

(2) Upon the member's application for service retirement, the employer shall certify the retiring member's unused accumulated sick-leave balance to the board of trustees of the Kentucky Teachers' Retirement System. The member's sick-leave balance, expressed in days, shall be divided by one hundred eighty-five (185) days to determine the amount of service credit that may be considered for addition to the member's retirement account for the purpose of determining the retirement allowance under KRS 161.620. Such sick-leave credit shall not be used for the purpose of determining whether the

member is eligible to receive a retirement allowance.

(3) The board shall compute the cost to the retirement system of the sick-leave credit for each retiring member and shall bill the last employer of the retiring member for such cost. The employer shall pay the cost of such service credit to the retirement system within fifteen (15) days after receiving notification of the cost from the board.

(4) Retiring members who receive service credit under this section shall not be eligible to receive compensation for accrued sick leave under KRS 161.155(9) or any other statutory provision.

(5) Employer participation is optional and the employer may opt to purchase less service credit than the member is eligible to receive provided the same percentage of reduction is made applicable to all retiring members of the employer during a school fiscal year.

(6) The board of trustees shall formulate and adopt necessary rules and regulations for the administration of the foregoing provisions.

(7) Payments to the retirement system for service credit obtained under this section or for compensation credit obtained under KRS 161.155(9) shall be based on the full actuarial cost as defined in KRS 161.220(22).

(Enact. Acts 1982, ch. 326, § 10, effective July 1, 1982; 1986, ch. 450, § 2, effective July 15, 1986; 1990, ch. 476, Pt. V, § 530, effective July 13, 1990; 1990, ch. 483, § 5, effective July 13, 1990; 1998, ch. 530, § 2, effective July 15, 1998; 2000, ch. 498, § 19, effective July 1, 2000; 2002, ch. 275, § 29, effective July 1, 2002.)

Legislative Research Commission Note. (7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

Opinions of Attorney General. Generally, in order to qualify for retirement, a member of the retirement system must have completed 27 years of service, notwithstanding accumulation of sick leave. OAG 91-219.

At the death of an employed active public school teacher, a school board may not pay the decedent's estate or named beneficiary the value of the employee's accumulated unused sick leave even if the employee were eligible for retirement; rather, a local school district may only compensate a district employee at the time of retirement for accumulated unused sick leave. OAG 94-39.

161.624. Responsibilities of members.

The employees of the Teachers' Retirement System shall endeavor to provide full and complete information to all inquiries presented by members or beneficiaries of members. The members or beneficiaries of the members shall assume full responsibility for obtaining adequate and sufficient information concerning their eligibility for retirement benefits, for selection of the type of benefit available to them, and for adherence to the employment restrictions applicable to retired members.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 531, effective July 13, 1990; 1994, ch. 369, § 19, effective July 1, 1994.)

Compiler's Notes. This section (Enact. Acts 1982, ch. 326, § 11, effective July 1, 1982) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 531, effective July 13, 1990.

161.625. Increased allowances. [Repealed.]

Compiler's Notes. This section (Acts 1958, ch. 7, § 1) was repealed by Acts 1964, ch. 43, § 23.

161.630. Benefit options — Change in benefit option — Beneficiary redesignation after retirement.

(1) A member, upon retirement, shall receive a retirement allowance in the form of a life annuity, with refundable balance, as provided in KRS 161.620, unless an election is made before the effective date of retirement to receive actuarially equivalent benefits under options which the board of trustees approves. No option shall provide for a benefit with an actuarial value at the age of retirement greater than that provided in KRS 161.620. This section does not apply to disability allowances as provided in KRS 161.661(1).

(2) The benefit option chosen by a retiree at the time of service retirement shall remain in force unless the retiree elects to make a change under the following conditions:

(a) A divorce, annulment, or marriage dissolution following retirement shall, at the election of the retiree, cancel any optional plan selected at retirement to provide continuing benefits to the beneficiary and return the retiree to a single lifetime benefit equivalent as determined by the board; or

(b) Following marriage or remarriage, or the death of a spouse, or the death of any other designated beneficiary, a retiree may elect a new optional plan of payment based on the actuarial equivalent of a single lifetime benefit at the time of the election, as determined by the board. The plan shall become effective the first of the month following receipt of an application on a form approved by the board.

(3) Except as otherwise provided in this section, a beneficiary designation shall not be changed after the effective date of retirement except for retirees who elect the straight life annuity with refundable balance option or the predetermined years certain and life thereafter option.

(4) A member who experiences a qualifying event under subsection (2) of this section and who elects a new optional plan of payment shall make that election within sixty (60) days of the qualifying event.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 532, effective July 13, 1990; 1994, ch. 369, § 20, effective July 1, 1994.)

Compiler's Notes. This section (4506b-48: amend. Acts 1962, ch. 64, § 15; 1976, ch. 351, § 19, effective July 1, 1976; 1978, ch. 152, § 15, effective March 28, 1978; 1988, ch. 363, § 16, effective July 1, 1988) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 532, effective July 13, 1990.

Cross-References. Annuity tables, 102 KAR 1:160.

Basis for options, 102 KAR 1:145.
Optional benefits, 102 KAR 1:150.
Collateral References. 78 C.J.S., Schools and School Districts, §§ 338-342.

161.640. Payment of annuities — Payroll deductions — Electronic fund transfer.

(1) Retirement annuities shall be payable monthly. The first payment to an annuitant shall be made at the payment date at the end of one (1) full payment period after his retirement and shall consist of one (1) regular monthly payment. Retirement for a member receiving one (1) full year of service credit during a fiscal year shall be no earlier than July 1 next following the end of such fiscal year.
(2) The board of trustees may enter into agreements with retired members for payroll deductions when it is deemed in the best interest of the retired members and the retirement system.
(3) All new retirees, on or after July 1, 1998, shall receive their monthly annuity checks by electronic fund transfer. All annuity and survivor monthly allowance payments shall be made by electronic fund transfer by December 31, 1998.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 533, effective July 13, 1990; 1998, ch. 515, § 13, effective July 1, 1998.)

Compiler's Notes. This section (4506b-46: amend. Acts 1952, ch. 144, § 1; 1972, ch. 82, § 21; 1980, ch. 206, § 10, effective July 1, 1980) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 533, effective July 13, 1990.
Cross-References. Annuity payments, 102 KAR 1:155.
Application for retirement, 102 KAR 1:070.
Collateral References. 78 C.J.S., Schools and School Districts, §§ 338-342.

161.643. Records and annual reports for annuitants employed by school districts or agencies — Penalty for noncompliance.

Each school district and agency employing annuitants of the retirement system shall maintain a record of the days employed and the compensation paid to each annuitant and submit an annual report on forms prescribed by the retirement system no later than August 1, following the completion of each fiscal year. The retirement system may impose a penalty on the employer not to exceed one thousand dollars ($1,000) when the employer does not meet the August 1 reporting date or fails to provide the information required for employment of annuitants of the retirement system.

(Enact. Acts 1994, ch. 369, § 17, effective July 1, 1994.)

161.650. Death of retired member — Payment to beneficiary.

In the case of death of a member who has retired by reason of service or disability, any portion of the member's accumulated contributions, including member contributions to the state accumulation fund and regular interest to the date of retirement, that has not, and will not be paid as an allowance or benefit shall be paid to the member's beneficiary in such manner as the board of trustees elects.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 534, effective July 13, 1990.)

Compiler's Notes. This section (4506b-47: amend. Acts 1962, ch. 64, § 16; 1972, ch. 82, § 22; 1976, ch. 35, § 20, effective July 1, 1976) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 534, effective July 13, 1990.
Collateral References. 78 C.J.S., Schools and School Districts, §§ 338-342.

161.655. Life insurance benefit.

(1) Effective July 1, 2000, the Teachers' Retirement System shall provide a life insurance benefit in a minimum amount of five thousand dollars ($5,000) for its members who are retired for service or disability. This life insurance benefit shall be payable upon the death of a member retired for service or disability to the member's estate or to a party designated by the member on a form prescribed by the retirement system. The Teachers' Retirement System shall provide a life insurance benefit in a minimum amount of two thousand dollars ($2,000) for its active contributing members. This life insurance benefit shall be payable upon the death of an active contributing member to the member's estate or to a party designated by the member on a form prescribed by the retirement system. Application for payment of life insurance proceeds shall be made to the Teachers' Retirement System together with acceptable evidence of death and eligibility. The reciprocal provisions of KRS 61.680(2)(a) shall not apply to the coverage and payment of proceeds by the life insurance benefit under this section.
(2) Suit or civil action shall not be required for the collection of the proceeds of the life insurance benefit provided for by this section, but nothing in this section shall prevent the maintenance of suit or civil action against the beneficiary or legal representative receiving the proceeds of the life insurance benefit.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 535, effective July 13, 1990; 1992, ch. 192, § 14, effective July 1, 1992; 1996, ch. 359, § 16, effective July 1, 1996; 1998, ch. 515, § 14, effective July 1, 1998; 2000, ch. 498, § 20, effective July 1, 2000; 2002, ch. 275, § 30, effective July 1, 2002.)

Compiler's Notes. This section (Enact. Acts 1958, ch. 7, § 4; 1962, ch. 64, § 17; 1964, ch. 43, § 16; 1968, ch. 136, § 12; 1970, ch. 54, § 3; 1978, ch. 152, § 16, effective March 28, 1978; 1980, ch. 206, § 11, effective July 1, 1980; 1988, ch. 363, § 17, effective July 1, 1988) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 535, effective July 13, 1990.
Collateral References. 78 C.J.S., Schools and School Districts, §§ 338-342.

161.660. Disability allowance. [Repealed.]

Compiler's Notes. This section (4506b-44: amend. Acts 1946, ch. 111, § 5; 1950, ch. 79, § 1; 1958, ch. 7, § 3; 1962, ch. 64, § 18) was repealed by Acts 1964, ch. 43, § 23.

161.661. Disability retirement.

(1) Any member who has completed five (5) or more years of accredited service in the public schools of

Kentucky after July 1, 1941, may retire for disability and be granted a disability allowance if found to be eligible as provided in this section. Application for disability benefits shall be made within one (1) year of the last contributing service in Kentucky, and the disability must have occurred during the most recent period of employment in a position covered by the Teachers' Retirement System and subsequent to the completion of five (5) years of teaching service in Kentucky. A disability occurring during the regular vacation immediately following the last period of active service in Kentucky or during an official leave for which the member is entitled to make regular contributions to the retirement system, shall be considered as having occurred during a period of active service. The annual disability allowance shall be equal to sixty percent (60%) of the member's final average salary. Members with twenty-seven (27) or more years of service credit are eligible for service retirement only.

(2) The provisions of KRS 161.520, 161.525, and subsections (3), (4), and (5) of this section shall not apply to disability retirees whose benefits were calculated on the service retirement formula nor to survivors of these members.

(3) Members shall earn one (1) year of entitlement to disability retirement, at sixty percent (60%) of the member's final average salary, for each four (4) years of service in a covered position, but any member meeting the service requirement for disability retirement shall be credited with no less than five (5) years of eligibility.

(4) A member retired by reason of disability shall continue to earn service credit at the rate of one (1) year for each year retired for disability. This service shall be credited to the member's account at the expiration of entitlement as defined in subsection (3) of this section, or when the member's eligibility for disability benefits is terminated upon recommendation of a medical review committee, and this service shall be used in calculating benefits as provided in subsection (5) of this section, but under no circumstances shall this service be used to provide the member with more than twenty-seven (27) years of total service credit. The service credit shall be valued at the same level as service earned by active members as provided under KRS 161.600 and 161.620.

(5) Any member retired by reason of disability and remaining disabled at the expiration of the entitlement period shall have his disability benefits recalculated using the service retirement formula with service credit as set out in subsection (4) of this section. The retirement allowance shall be calculated as set forth in KRS 161.620, except that those persons less than sixty (60) years of age shall be considered as sixty (60) years of age. Members having their disability benefits recalculated under this subsection shall not be entitled to a benefit based upon an average of their three (3) highest salaries as set forth in KRS 161.220(9), unless approved otherwise by the board of trustees.

(6) Members who have their disability retirement allowance recalculated at the expiration of the entitlement period shall continue to have coverage under the post-retirement medical insurance program. Restrictions on employment shall remain in effect until the member attains age seventy (70) or until the member's eligibility is discontinued. KRS 161.520 and 161.525 shall not apply to survivors of disability retirees whose retirement allowances have been recalculated at the expiration of the entitlement period. Members who have their disability retirement allowance recalculated at the expiration of their entitlement period shall be entitled to a minimum monthly allowance of five hundred dollars ($500) as the basic straight life annuity. The minimum allowance shall be effective July 1, 1992, and shall apply to those members who have had their allowance recalculated prior to that date and to disability retirees who will have their benefit allowance recalculated on or after that date.

(7) Effective July 1, 1992, members retired for disability prior to July 1, 1964, shall be entitled to a minimum monthly allowance of five hundred dollars ($500) as their basic straight life annuity and their surviving spouse shall be eligible for survivor benefits as provided in KRS 161.520(1)(a) and (b).

(8) Any member retired by reason of disability may voluntarily waive disability benefits and return to teaching or any member, who is age sixty (60) years or older, may elect to waive disability benefits and retire for service on the basis of service credited to the member on the effective date of the disability retirement.

(9) In order to qualify for retirement by reason of disability a member must suffer from a physical or mental condition presumed to be permanent in duration and of a nature as to render the member incapable of being gainfully employed in a covered position. The incapability must be revealed by a competent examination by a licensed physician or physicians and must be approved by a majority of a medical review committee.

(10) A member retired by reason of disability shall be required to undergo periodic examinations at the discretion of the board of trustees to determine whether the disability allowance shall be continued. When examination and recommendation of a medical review committee indicate the disability no longer exists, the allowance shall be discontinued.

(11) Eligibility for payment shall begin on the first day of the month following receipt of the application in the Teachers' Retirement System office, or the first of the month next following the last payment of salary or sick leave benefits by the employer, whichever is the later date.

(12) No person who receives a disability allowance may be employed in a position that entails duties or qualification requirements similar to positions subject to participation in the retirement system either within or without the State of Kentucky. So doing shall constitute a misdemeanor and shall result in loss of the allowance from the first date of this service. A member who applies for and is approved for disability retirement on or after July

1, 2002, and whose annual disability benefit is less than forty thousand dollars ($40,000) may earn income in any occupation other than covered employment only to the extent that the annual income from the other employment when added to the annual disability benefit does not exceed forty thousand dollars ($40,000). For any member who exceeds this limit as a result of income from other employment, the Kentucky Teachers' Retirement System shall reduce the member's disability benefit on a dollar-for-dollar basis for each dollar that the member's combined annual disability benefit and annual income from other employment exceeds forty thousand dollars ($40,000). The board of trustees may annually increase the forty thousand dollar ($40,000) limit by the percentage increase in the annual average of the consumer price index for all urban consumers for the most recent calendar year as published by the Federal Bureau of Labor Statistics, not to exceed five percent (5%). All members who applied for disability retirement before July 1, 2002, and were approved as a result of that application shall be subject to the income limitations as they existed on June 30, 2002. The recipient of a disability allowance who engages in any gainful occupation other than covered employment must make a report of the duties involved, compensation received, and any other pertinent information required by the board of trustees.

(13) The board of trustees shall designate medical review committees, each consisting of three (3) licensed physicians. A medical review committee shall pass upon all applications for disability retirement and upon all applicant statements, medical certifications, and examinations submitted in connection with disability applications. The disposition of each case shall be recommended by a medical review committee in writing to the retirement system. Members of a medical review committee shall follow administrative regulations regarding procedures as the board of trustees may enact and shall be paid reasonable fees and expenses as authorized by the board of trustees in compliance with the provisions of KRS 161.330 and 161.340. The retirement system may secure additional medical examinations and information as it deems necessary. A member may appeal any final agency decision denying his or her disability retirement application pursuant to the provisions of KRS 161.250(2).

(14) A disability may be presumed to be permanent if the condition creating the disability may be reasonably expected to continue for one (1) year or more from the date of application for disability benefits.

(15) Any member who has voluntarily waived disability benefits or whose disability benefits have been discontinued on recommendation of a medical review committee, may apply for reinstatement of disability benefits. The application for reinstatement must be made to the retirement system within twelve (12) months of the date disability benefits terminated. If the termination of benefits were voluntary, the reinstatement may be made without medical examination if application is made within three (3) months of the termination date. Other applications for reinstatement will be processed in the same manner as new applications for benefits.

(16) No person who is receiving disability benefits under this section may be employed in a position which qualifies the person for membership in a retirement system financed wholly or in part with public funds. Employment in a position prohibited by this subsection shall result in disqualification for those disability benefits from the date of employment in the prohibited position.

(17) Any person who is receiving benefits and becomes disqualified from receiving those benefits under this section, or becomes disqualified from receiving a portion of those benefits due to income from other than covered employment, shall immediately notify the Teachers' Retirement System of this disqualification in writing and shall return all benefits paid after the date of disqualification. Failure to comply with these provisions shall create an indebtedness of that person to the Teachers' Retirement System. Interest at the rate of eight percent (8%) per annum shall be charged if the debt is not repaid within sixty (60) days after the date of disqualification. Failure to repay this debt creates a lien in favor of the Teachers' Retirement System upon all property of the person who improperly receives benefits and does not repay those benefits. The Kentucky Teachers' Retirement System may, in order to collect an outstanding debt, reduce or terminate any benefit that a member is otherwise entitled to receive.

(Enact. Acts 1964, ch. 43, § 18; 1966, ch. 16, § 7; 1968, ch. 136, § 13; 1972, ch. 82, § 23; 1974, ch. 395, § 17; 1976, ch. 351, § 21, effective July 1, 1976; 1978, ch. 152, § 17, effective March 28, 1978; 1980, ch. 206, § 12, effective July 1, 1980; 1986, ch. 440, § 13, effective July 1, 1986; 1990, ch. 442, § 17, effective July 1, 1990; 1990, ch. 476, Pt. V, § 536, effective July 13, 1990; 1992, ch. 192, § 15, effective July 1, 1992; 1994, ch. 369, § 21, effective July 1, 1994; 1996, ch. 359, § 17, effective July 1, 1996; 2002, ch. 275, § 31, effective July 1, 2002.)

Cross-References. Disability, 102 KAR 1:140.

Opinions of Attorney General. A teacher retired for disability would remain in disability retirement until her eligibility period had expired, even though she had reached age 60 during such eligibility period. OAG 64-741.

An application for a disability allowance does not have to be made within any specific time. OAG 70-476.

The applicant's condition at the time of the termination of employment would govern in determining whether or not he is disabled. OAG 70-476.

A member of the retirement system who qualifies for and accepts disability retirement may not thereafter during such period of disability elect to qualify and receive regular retirement for service until the period of eligibility for disability benefits has expired. OAG 73-181.

Where a school teacher was terminated in 1976, and instituted suit in an attempt to be reinstated, which suit was finally resolved against him in 1978, he clearly missed the deadline of one year provided in subsection (1) and could not, thereafter, apply for disability retirement. OAG 79-49.

A teacher seeking benefits under subsection (1) of this section while on leave of absence under KRS 161.770 has in effect terminated his or her tenure contract status and accompanying rights with the board of education when the teachers' retirement system approves that teacher's application for disability retirement, which means the teacher has "retired" for the purposes of KRS 161.720 to 161.810; and if the teacher, who has been granted leave of absence and accepted by the teachers' retirement system for disability retirement benefits, then becomes able to return to work, the board of education no longer has to afford to that teacher his or her former tenure rights. OAG 79-157.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 252, 254.

161.662. Status of disabled teachers and superintendents.

(1) Teachers and superintendents with continuing status who retire because of disability shall, notwithstanding provisions of KRS 161.720 to 161.810 to the contrary, retain continuing status in the school district from which they retired for twenty-four (24) calendar months from the date of retirement, if the teacher or superintendent:
   (a) Is approved for disability retirement under the provisions of KRS 161.661, or
   (b) Is approved for disability retirement but elects to have benefits calculated on the service retirement formula under the provisions of KRS 161.661, or
   (c) Is disqualified from receiving disability retirement benefits by KRS 161.661(2) but is otherwise eligible for disability retirement under the remaining provisions of KRS 161.661.

(2) (a) If the superintendent recovers from disability and presents written notice of such recovery, supported by the statement of a licensed physician, to the employing board of education within the twenty-four (24) calendar month period but not later than April 15 prior to the beginning of the school term, the board of education shall reinstate the superintendent to active continuing status at the beginning of the school term. If notice of recovery from disability is not presented to the employing board of education within the twenty-four (24) calendar month period, or if the superintendent states to the board, in a verified document, prior to expiration of the twenty-four (24) calendar month period that he or she will not return to employment in the school system, the continuing service contract of the superintendent shall terminate as by retirement under the provisions of KRS 161.661.
   (b) If the teacher recovers from disability and presents written notice of such recovery, supported by the statement of a licensed physician, to the superintendent within the twenty-four (24) calendar month period but not later than April 15 prior to the beginning of the school term, the superintendent shall reinstate the teacher to active continuing status at the beginning of the school term. If notice of recovery from disability is not presented to the superintendent within the twenty-four (24) calendar month period, or if the teacher states to the superintendent, in a verified document, prior to expiration of the twenty-four (24) calendar month period that he or she will not return to employment in the school system, the continuing service contract of the teacher shall terminate as by retirement under the provisions of KRS 161.661.

(3) Retirement because of disability under this section shall not be cause for termination of the contract of a teacher or superintendent under KRS 161.790 during the twenty-four (24) calendar month period described in this section. A teacher or superintendent who applies for disability retirement under the provisions of KRS 161.661 shall retain continuing service status during the period of time the application for disability retirement is being processed. If the application is not approved, the teacher or superintendent may return to the contract, employment, or leave status held prior to submission of the application.

(4) (a) If the superintendent recovers from the disability and presents written notice of such recovery, supported by the statement of a licensed physician, to the employing board of education within twenty-five (25) through forty-two (42) months from the date of retirement, the board shall give priority consideration to reemployment of the superintendent for the first available position for which the superintendent is qualified and certified.
   (b) If the teacher recovers from the disability and presents written notice of such recovery, supported by the statement of a licensed physician, to the superintendent within twenty-five (25) through forty-two (42) months from the date of retirement, the superintendent shall give priority consideration to reemployment of the teacher for the first available position for which the teacher is qualified and certified.

(Enact. Acts 1982, ch. 219, § 1, effective July 15, 1982; 1990, ch. 476, Pt. IV, § 246, effective July 13, 1990.)

161.663. Disability retirement with less than required years of service.

Any active contributing member with less than five (5) years of Kentucky service may apply and be approved for disability retirement under KRS 161.661 if the member is found to be mentally or physically incapacitated as a result of an injury related directly to their covered employment. All conditions and restrictions specified under KRS 161.661 shall be applicable, except that the initial annual disability allowance shall be equal to fifty percent (50%) of the member's current annual contract salary and the member's last annual contract salary shall be used in lieu of the final average salary in the recalculation of the member's benefit at the expiration of the eligibility period.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 537, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1988, ch. 363, § 18, effective July 1, 1988) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 537, effective July 13, 1990.

161.670. Disability to be established by medical examination. [Repealed.]

Compiler's Notes. This section (4506b-45: amend. Acts 1962, ch. 64, § 19) was repealed by Acts 1964, ch. 43, § 23.

161.675. Hospital and medical benefits for eligible recipients of retirement allowances from Teacher's Retirement System — Health insurance supplement payments — Coverage for spouses, dependents, and disabled children of retirees — Exemption from premium tax.

(1) The board of trustees shall arrange by appropriate contract or on a self-insured basis to provide a broad program of group hospital and medical insurance for present and future eligible recipients of a retirement allowance from the Teachers' Retirement System. The board of trustees may also arrange to provide health insurance coverage by health maintenance organizations as defined in KRS 18A.225 as an alternative to group hospital and medical insurance for persons eligible for hospital and medical benefits under this section. The board of trustees may authorize present and future eligible recipients of a retirement allowance from the Teachers' Retirement System who are less than age sixty-five (65) to be included in the state-sponsored health insurance that is provided to active teachers and state employees under KRS 18A.225. Members who are sixty-five (65) or older and retired for service shall not be eligible to participate in the state employee health insurance program as described in KRS 18A.225.

(2) The coverage provided shall be as set forth in the contracts and the administrative regulations of the board of trustees. The board of trustees may change the levels of coverage and eligibility conditions to meet the changing needs of the annuitants and when necessary to contain the expenses of the insurance program within the funds available to finance the insurance program. The contracts and administrative regulations shall provide for but not be limited to hospital room and board, surgical procedures, doctors' care in the hospital, and miscellaneous hospital costs. An annuitant whose effective date of retirement is July 1, 1974, and thereafter, must have a minimum of five (5) years' creditable Kentucky service in the Teachers' Retirement System or five (5) years of combined creditable service in the state-administered retirement systems if the member is retiring under the reciprocity provisions of KRS 61.680 and 61.702. A member retiring under the reciprocity provisions of KRS 61.680 and 61.702 may not elect coverage through more than one (1) of the state-administered retirement systems. The board of trustees shall offer coverage to the disabled child of an annuitant regardless of the disabled child's age if the annuitant pays the entire premium for the disabled child's coverage. A child shall be considered disabled if he has been determined to be eligible for federal Social Security disability benefits.

(3) All expenses for benefits under this section shall be paid from the funding provisions contained in KRS 161.420(5), premium charges received from the annuitants and the spouses, and from funds that may be appropriated or allocated by statute.

(4) (a) The board of trustees shall determine the amount of health insurance supplement payments that the Teachers' Retirement System will provide to assist eligible annuitants in paying the cost of their health insurance, based on the funds available in the medical insurance fund. The board of trustees shall establish the maximum monthly amounts of health insurance supplement payments that will be made by the retirement system for eligible annuitants. The board of trustees shall annually establish the percentage of the maximum monthly health insurance supplement payment that will be made, based on age and years of service credit of eligible recipients of a retirement allowance. Monthly health insurance supplement payments made by the retirement system may not exceed the amount of the single coverage insurance premium chosen by the eligible annuitants. In order to qualify for health insurance supplements made by the retirement system, the annuitant must agree to pay the difference between the insurance premium and the applicable supplement payment, by payroll deduction from his retirement allowance, or by a payment method approved by the retirement system.

(b) The board of trustees may offer, on a full-cost basis, health care insurance coverage provided by the retirement system to spouses and dependents of eligible annuitants not otherwise eligible for regular coverage. Recipients of a retirement allowance from the retirement system must agree to pay the cost of this coverage by payroll deduction from their retirement allowance or by a payment method approved by the retirement system.

(c) The board of trustees shall offer, on a full-cost basis, health insurance coverage provided by the retirement system to the disabled child of an annuitant, regardless of the age of the disabled child. A child shall be considered disabled for purposes of this section if the child has been determined to be eligible for federal Social Security disability benefits.

(5) The board of trustees is empowered to require the annuitant and the annuitant's spouse to pay a premium charge to assist in the financing of the hospital and medical insurance program. The board of trustees is empowered to pay the expenses for insurance coverage from the medical insurance fund, from the premium charges received from the annuitants and the spouses, and from funds that may be appropriated or allocated by statute. The board may provide insurance coverage by making payment to insurance carriers including health insurance plans that are available to active and

retired state employees and active teachers, institutions, and individuals for services performed, or the board of trustees may elect to provide insurance on a "self-insurance" basis or a combination of these provisions.

(6) The board of trustees may approve health insurance supplement payments to eligible annuitants who are less than sixty-five (65) years of age, as reimbursement for hospital and medical insurance premiums made by annuitants for their individual coverage. Eligible annuitants or recipients are those annuitants who are not eligible for Medicare and who do not reside in Kentucky or in an area outside of Kentucky where comparable coverage is available. The reimbursement payments shall not exceed the minimum supplement payment that would have been made had the annuitant lived in Kentucky. Eligible annuitants or recipients shall submit proof of payment to the retirement system for hospital and medical insurance that they have obtained. Reimbursement payments shall be made on a quarterly basis.

(7) Contracts negotiated may include the provision that a stated amount of hospital cost or period of hospitalization shall incur no obligation on the part of the insurance carrier or the retirement system.

(8) The board of trustees is empowered to promulgate administrative regulations to assure efficient operation of the hospital and medical insurance program.

(9) Premiums paid for hospital and medical insurance coverage procured under authority of this section shall be exempt from any premium tax which might otherwise be required under KRS Chapter 136. The payment of premiums by the insurance fund shall not constitute taxable income to an insured recipient.

(10) In the event that a member is providing services on less than a full-time basis under KRS 161.605, the retirement system may pay the full cost of the member's health insurance coverage for the full fiscal year that the member is providing those services, at the conclusion of which, the retirement system may then bill the active employer and the active employer shall reimburse the retirement system for the cost of the health insurance coverage incurred by the retirement system on a pro rata basis for the time that the member was employed by the active employer.

(Enact. Acts 1964, ch. 43, § 20; 1970, ch. 54, § 4; 1974, ch. 395, § 18; 1976, ch. 351, § 22, effective July 1, 1976; 1978, ch. 43, § 3, effective June 17, 1978; 1978, ch. 152, § 18, effective March 28, 1978; 1980, ch. 206, § 13, effective July 1, 1980; 1984, ch. 253, § 22, effective July 1, 1984; 1986, ch. 440, § 14, effective July 1, 1986; 1990, ch. 476, Pt. V, § 538, effective July 13, 1990; 1990, ch. 489, § 10, effective July 13, 1990; 1992, ch. 192, § 16, effective July 1, 1992; 1994, ch. 369, § 22, effective July 1, 1994; 1996, ch. 359, § 18, effective July 1, 1996; 1998, ch. 515, § 15, effective July 1, 1998; 2000, ch. 438, § 4, effective April 21, 2000; 2000, ch. 498, § 21, effective July 1, 2000; 2002, ch. 275, § 32, effective July 1, 2002.)

Cross-References. Insurance, 102 KAR 1:100.

Opinions of Attorney General. The board of trustees of the teacher's retirement system is authorized to make payment from the hospital and insurance fund of the retirement system directly to an institution or individual who has provided or is providing services to a retired covered member teacher without the necessity of entering a contract. OAG 72-675.

161.680. Mistake in payment — Correction of error.

If any change or error in a record results in any employee or beneficiary receiving from the retirement system more or less than he was entitled to receive, the board of trustees shall, when the error is discovered, correct the error, and as far as practicable adjust the payments so that the actuarial equivalent of the benefit to which he was entitled shall be paid.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 539, effective July 13, 1990.)

Compiler's Notes. This section (4506b-50) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 539, effective July 13, 1990.

Opinions of Attorney General. This section cannot be applied retroactively to correct an error in granting a full year's service credit for half-time teaching, as it was a teachers' retirement system policy during the period of time involved to give such credit and therefore there was no mistake. OAG 73-270.

A teacher who retires from his Kentucky teaching position without informing the teachers' retirement system of any teaching service he may have accumulated as a teacher outside the state and whose annuity is calculated on the basis of his service in Kentucky cannot under this section be credited with his out-of-state service more than two years after the effective date of his retirement since a change or error in a record is not involved. OAG 74-671.

161.690. Falsifying record prohibited.

No person shall knowingly make any false statement, nor shall any person falsify or permit to be falsified any record of the retirement system in an attempt to defraud the system.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 540, effective July 13, 1990.)

Compiler's Notes. This section (4506b-50) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 540, effective July 13, 1990.

161.700. Funds exempt from taxation and process — Taxability after December 31, 1997 — Benefits not considered marital property.

(1) The right of a member to a retirement allowance and to the return of contributions, any benefit or right accrued or accruing to any person under the retirement system, and the money in the various funds of the retirement system are exempt from any state or municipal tax, are not subject to execution, garnishment, attachment, or other process, and are unassignable except as provided in this chapter, and except for court or administratively ordered current child support, owed child support, or to-be-owed child support. Except retire-

ment benefits accrued or accruing to any person under this retirement system on or after January 1, 1998, shall be subject to the tax imposed by KRS 141.020, to the extent provided in KRS 141.010 and 141.0215.

(2) Retirement allowance, disability allowance, accumulated contributions, or any other benefit under the retirement system shall not be classified as marital property pursuant to KRS 403.190(1). Retirement allowance, disability allowance, accumulated contributions, or any other benefit under the retirement system shall not be considered as an economic circumstance during the division of marital property in an action for dissolution of marriage pursuant to KRS 403.190(1)(d).

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 541, effective July 13, 1990; 1995 (2nd Ex. Sess.), ch. 1, § 6, effective April 28, 1995; 1998, ch. 255, § 36, effective July 15, 1998; 2002, ch. 275, § 33, effective July 1, 2002.)

Compiler's Notes. This section (4506b-51: amend. Acts 1980, ch. 206, § 14, effective July 1, 1980) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 541, effective July 13, 1990.

Kentucky Bench & Bar. Bland, The Bankruptcy Reform Act of 1978: An Overview, Vol. 44, No. 1, January 1980, Ky. Bench & Bar 8.

Northern Kentucky Law Review. Schechter, Survey of Kentucky Family Law Cases, 20 N. Ky. L. Rev. 645 (1993).

Wintersheimer, State Constitutional Law Survey, 21 N. Ky. L. Rev. 257 (1994).

Schechter, Survey of Kentucky Family Law Decisions Rendered In 1993, 21 N. Ky. L. Rev. 387 (1994).

Opinions of Attorney General. Teachers are not required to pay the Kentucky income tax on amounts received by virtue of the "teachers' retirement system." OAG 65-69.

The exemption granted by this section is inoperative against a levy properly made by the United States Internal Revenue Service under the Internal Revenue Code. OAG 67-424.

The clear language of this section dictates that all allowances from retirement accounts be excluded from consideration during the division of marital property in a divorce action, regardless of the date of the deposit of said retirement funds. OAG 83-192.

Subsection (2) of this section clearly specifies that any "retirement allowance" shall not be considered as marital property; therefore, any allowance that is owed and payable to the member after the effective date of that subsection (July 1, 1980), cannot be considered in a divorce proceeding. This section does not speak to the date of deposit of the retirement fund, only the date of allowance; therefore there is no authority for a court to consider any retirement funds, even those funds deposited prior to July 1, 1980, in a decision regarding the division of marital property in a divorce proceeding taking place after July 1, 1980. OAG 83-192.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Application.
3. Federal taxes.
4. Pensions.

1. Constitutionality.

Subsection (2) of this section is not a prohibited special law under Const., § 59. Waggoner v. Waggoner, 846 S.W.2d 704 (Ky. 1992), cert. denied, 510 U.S. 932, 114 S. Ct. 346, 126 L. Ed. 2d 310 (1993).

Since subsection (2) of this section is rationally related to the legitimate objective of protecting teachers upon retirement, no infringement of spouse's rights under equal protection was present. Waggoner v. Waggoner, 846 S.W.2d 704 (Ky. 1992), cert. denied, 510 U.S. 932, 114 S. Ct. 346, 126 L. Ed. 2d 310 (1993).

2. Application.

The application of subsection (2) of this section was not invalidly retrospective. Waggoner v. Waggoner, 846 S.W.2d 704 (Ky. 1992), cert. denied, 510 U.S. 932, 114 S. Ct. 346, 126 L. Ed. 2d 310 (1993).

3. Federal Taxes.

A state cannot exempt property from the federal income tax created by Congress, and therefore, a teacher's retirement benefits were properly subject to garnishment by the IRS. United States v. McGuire, 552 F. Supp. 503 (E.D. Ky. 1982).

4. Pensions.

Where the words in a statute are clear and unambiguous and express the legislative intent, there is no room for construction and the statute must be accepted as it is written; therefore as both subsection (2) of this section and KRS 403.190(4) are unambiguous in their language leaving no doubt that the legislature intended to exempt, as marital property, the entire pensions of a teacher and his/her spouse upon divorce. Turner v. Turner, 908 S.W.2d 124 (Ky. Ct. App. 1995).

That part of a teacher's spouse's pension which is over and above the value of the teacher's plan should not be considered marital property; thus, even in a situation where the teacher/spouse has taught only a short time and has accrued a correspondingly small pension, and the other spouse has a large pension amassed after many years of work, the court is powerless to consider this "economic circumstance" when deciding how the other marital property is to be divided. Turner v. Turner, 908 S.W.2d 124 (Ky. Ct. App. 1995).

Collateral References. 84, 85 C.J.S., Taxation, §§ 247, 1098.

161.705. Voluntary contributions by or for member. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1950, ch. 79, § 2; 1964, ch. 43, § 17; 1974, ch. 395, § 19, effective July 1, 1974; 1978, ch. 152, § 19, effective March 28, 1978; 1982, ch. 166, § 35, effective July 15, 1982; 1984, ch. 302, § 9, effective July 13, 1984 which was repealed and reenacted by Acts 1990, ch. 476, Pt. V, § 542, effective July 13, 1990) was repealed by Acts 1992, ch. 192, § 18, effective July 1, 1992.

161.710. Local system merged with state system.

(1) The local retirement systems merged with the state retirement system under the provisions of 1938 Ky. Acts (1st Ex. Sess.), ch. 1, sec. 49, shall be discontinued. The payment of all benefits to members on the retired roll at the time of discontinuance shall become the obligation of the school district in which the local system was operated prior to its discontinuance. The method of determining and paying refundable deposits due members of the local system shall be as provided in 1938 Ky. Acts (1st Ex. Sess.), ch. 1, sec. 49.

(2) Payments to annuitants in cities of the first class or in areas formerly constituting a city of the first class which have been consolidated with their

county shall not exceed the amount being received by them at the time the local retirement system is discontinued. The sum that remains after the death of all annuitants shall be used by the local board of education for general school purposes.

(3) The local board of education shall continue to invest the funds transferred to it for the benefit of the existing annuitants as long as such annuitants live. Such investment shall be governed by 1934 Ky. Acts, ch. 65, Art. IX, except that the local board of education is substituted for the board of trustees of the local retirement system. The local board of education shall keep all funds transferred to it by the local retirement system and all income from the investment of such funds in a separate fund to be known as the annuity fund. The local board of education may pay from the fund any reasonable expenses necessary for the fund's administration and general management. The local board of education shall safeguard the fund by requiring such additional surety bond of the treasurer as it deems necessary, by providing for an annual audit by a reputable auditing firm, by spreading on the minutes of the board of education at least annually a report of investments, assets, and liabilities, and the names, addresses, and annuities of annuitants, and by making such an appropriation to the fund from local school revenues as will guarantee the full and complete discharge of all obligations to annuitants.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 543, effective July 13, 1990; 2002, ch. 346, § 175, effective July 15, 2002.)

Compiler's Notes. This section (4506b-49) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 543, effective July 13, 1990.

NOTES TO DECISIONS

ANALYSIS

1. Constitutionality.
2. Purpose.
3. Rights of employees on merger.
4. Payment from general funds.

1. Constitutionality.

That portion of this section which authorized a special levy by the local board of education violated Const., § 51. Board of Educ. v. City of Louisville, 288 Ky. 656, 157 S.W.2d 337 (1941).

Payment of teachers' retirement pensions does not violate Const., §§ 3, 179, 181 nor 181a (now 181). Board of Educ. v. City of Louisville, 288 Ky. 656, 157 S.W.2d 337 (1941).

2. Purpose.

This section is intended to recognize rather than impair the right of retired teachers. Board of Educ. v. City of Louisville, 288 Ky. 656, 157 S.W.2d 337 (1941).

3. Rights of Employees on Merger.

Retired teachers belonging to a local system who have made mandatory contributions have a vested contract right to payment which may not be revoked or impaired. Board of Educ. v. City of Louisville, 288 Ky. 656, 157 S.W.2d 337 (1941).

Merger of Louisville system with state system caused cessation of conditions for which Louisville retirement trust fund was created, justifying precipitation of right of beneficiaries. City of Louisville v. Board of Educ., 291 Ky. 7, 163 S.W.2d 23 (1942).

Where law under which Louisville teachers' retirement system was established provided that teachers terminating their employment or dying before receiving any benefits should be entitled to the return of one-half of the contributions paid in by them, such teachers were entitled, upon the merging of the Louisville system with the state system, to an immediate return of one-half of their contributions, by virtue of the provisions of Acts 1938 (1st Ex. Sess.), ch. 1, § 49, without being required to wait until their employment was terminated. City of Louisville v. Board of Educ., 291 Ky. 7, 163 S.W.2d 23 (1942).

4. Payment from General Funds.

The intention of the legislature that local school districts shall continue liable for pensions due retired teachers under local retirement systems is so strong that, even though a special tax authorized for that purpose is unconstitutional, the districts must necessarily pay said obligations from general funds in order to effectuate said intention. Board of Educ. v. City of Louisville, 288 Ky. 656, 157 S.W.2d 337 (1941).

Payments to retired teachers of pensions out of general school funds are for school purposes, and the legislature is authorized to so provide. Board of Educ. v. City of Louisville, 288 Ky. 656, 157 S.W.2d 337 (1941).

161.712. Payments to teachers who worked prior to July 1, 1940. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1980, ch. 206, § 15, effective July 1, 1980, repealed and reenact. Acts 1990, ch. 476, Pt. V, § 544, effective July 13, 1990) was repealed by Acts 1996, ch. 359, § 20, effective July 1, 1996.

161.714. Inviolable contract — Exception.

It is hereby declared that in consideration of the contributions by members and in further consideration of benefits received by the state from the member's employment, KRS 161.220 to 161.710 shall constitute, except as provided in KRS 6.696, an inviolable contract of the Commonwealth, and the benefits provided herein shall, except as provided in KRS 6.696, not be subject to reduction or impairment by alteration, amendment, or repeal.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 545, effective July 13, 1990; 1992, ch. 192, § 17, effective July 1, 1992; 1993 (1st Ex. Sess.), ch. 4, § 82, effective September 16, 1993.)

Compiler's Notes. This section (Enact. Acts 1978, ch. 152, § 20, effective March 28, 1978) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 545, effective July 13, 1990.

Opinions of Attorney General. Since the membership of the system is composed of all new teachers and all present teachers, the contract is not merely between the retired members of the system and the Commonwealth, but between the present teachers and all new teachers and the Commonwealth. OAG 81-416.

The General Assembly is prohibited by this section, Const., § 19 and U.S. Const., art. I, § 10, from enacting any law which would impair or reduce the expected retirement benefit of any present or new teacher, or those benefits received by retired members; however, any amendment which would not reduce or impair benefits is not prohibited and the retirement system statutes may also be amended to affect those individuals who will become members of the system at a future date. OAG 81-416.

161.715. Pensions for certain teachers not eligible for benefits under teachers' retirement system. [Repealed.]

Compiler's Notes. This section (Acts 1962, ch. 140, §§ 1, 2) was repealed by Acts 1976, ch. 351, § 23.

161.716. Federal laws take precedence over Kentucky statutes pertaining to Teachers' Retirement System.

In the event that federal laws are in conflict with the Kentucky Revised Statutes pertaining to the Teachers' Retirement System, federal laws shall take precedence. When necessary to comply with federal laws, the board of trustees may defer or stop payments of allowances until the conflict is resolved. The board of trustees shall adopt such regulations as are necessary to remove any conflicts with federal laws and to protect the interests of the members, survivors of members and the system. (Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 546, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1984, ch. 253, § 23, effective July 1, 1984) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 546, effective July 13, 1990.

TEACHERS' TENURE

161.720. Definitions for teachers' tenure law.

(1) The term "teacher" for the purpose of KRS 161.730 to 161.810 shall mean any person for whom certification is required as a basis of employment in the public schools of the state, with the exception of the superintendent.

(2) The term "year" as applied to terms of service means actual service of not less than seven (7) school months within a school year; provided, however, that any board of education may grant a leave of absence for professional advancement with full credit for service.

(3) The term "limited contract" shall mean a contract for the employment of a teacher for a term of one (1) year only or for that portion of the school year that remains at the time of employment.

(4) The term "continuing service contract" shall mean a contract for the employment of a teacher which shall remain in full force and effect until the teacher resigns or retires, or until it is terminated or suspended as provided in KRS 161.790 and 161.800.

(5) The term "continuing status" means employment of a teacher under a continuing contract.

(6) The term "standard" or "college" certificate for the purpose of KRS 161.730 to 161.810 shall mean any certificate issued upon the basis of graduation from a standard four (4) year college or completion of a local district alternative certification training program.

(7) The term "superintendent" for the purpose of KRS 161.765 shall mean the school officer appointed by a board of education under the authority of KRS 160.350 or any person authorized by law to perform the duties of that officer.

(8) The term "administrator" for the purpose of KRS 161.765 shall mean a certified employee, below the rank of superintendent, who devotes the majority of his employed time to service as a principal, assistant principal, supervisor, coordinator, director, assistant director, administrative assistant, finance officer, pupil personnel worker, guidance counselor, school psychologist, or school business administrator. The term "administrator" shall also include those assistant, associate, or deputy superintendents who do not fall within the definition of "superintendent" as set forth in subsection (7) of this section.

(9) The terms "demote" or "demotion" for the purpose of KRS 161.765 shall mean a reduction in rank from one position on the school district salary schedule to a different position on that schedule for which a lower salary is paid. The terms shall not include lateral transfers to positions of similar rank and pay or minor alterations in pay increments required by the salary schedule.

(Enact. Acts 1942, ch. 113, § 1; 1944, ch. 98; 1964, ch. 41, § 1; 1974, ch. 356, § 1; 1988, ch. 50, § 1, effective July 15, 1988; 1990, ch. 518, § 8, effective July 13, 1990; 1990, ch. 476, § 80, effective July 13, 1990; 1992, ch. 85, § 1, effective July 14, 1992; 1998, ch. 176, § 1, effective July 15, 1998.)

Kentucky Bench & Bar. Wolnitzek, The Fair Demotion Act, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 23.

Kentucky Law Journal. Kentucky Law Survey, Bratt, Education, 64 Ky. L.J. 293 (1975-76).

Comments, Constitutional Limitations on Mandatory Teacher Retirement, 67 Ky. L.J. 253 (1978-1979).

Kentucky Law Survey, Hanley and Schwemm, Education: Teacher's Rights, 67 Ky. L.J. 721 (1978-1979).

Northern Kentucky Law Review. Notes, School Law — Nonrenewal of Nontenured Teacher's Contract — Procedural Due Process — Wells v. Board of Regents, 545 F.2d 15 (6th Cir. 1976) and Plummer v. Board of Regents, 552 F.2d 716 (6th Cir. 1977), 5 Northern Ky. L. Rev. 141 (1978).

Opinions of Attorney General. Teachers at the Kentucky School for the blind are protected by the tenure law. OAG 60-1043.

The tenure law only guarantees a teacher the right to continued employment within the school system of the contracting district and consequently a board of education may transfer a teacher from one position and/or school to another within the district. OAG 61-559.

Since under KRS 161.760(3), a teacher has no right to employment in a particular position or school within the school district, the refusal to assume a tendered position, pursuant to the provisions of subsection (4) of this section, works a forfeiture of the right of continued employment, and a teacher who rejected tendered employment at the beginning of the school year but assumed another position in the same school district one month after the opening of school, is not entitled to be paid for the first month of the school year. OAG 70-150.

A principal who has tenure in a school district who wishes to resign his supervisory position and retain tenure status by accepting a teaching position should request the school board for such a reassignment in order that his continuing service contract will remain in effect, but if the board denies the request for reassignment, he will have to continue to work at his principal's post to keep his continuing service contract in effect. OAG 72-214.

It is clear under subsections (1) and (4) of this section that resignation ends the continuing service contract provided for each teacher. OAG 72-214.

Under subsection (4) of this section, a teacher's right to tenure under a continuing service contract terminates on his sixty-fifth birthday and, if the employing board gives notice by May 15 that the teacher will not be employed after age 65, the teacher does not have either a continuing or a limited contract after age 65. OAG 73-232.

Under this section and KRS 161.740, a local board of education may not require a master's degree of a teacher in order to qualify for a continuing contract and, since teachers' tenure is regulated by statute, it may not be altered by any regulations of a local board of education. OAG 73-421.

It is within the legal discretion of the board of education to adopt a policy of compulsory retirement at age 65 or at any age between 65 and 70. OAG 73-456.

Teachers who were not granted professional leaves of absence and who obtained other employment forfeited their rights under the teachers' tenure law. OAG 74-311.

A person who has reached the age of 65 no longer has a continuing contract and therefore has no vested right to be employed or reemployed as a teacher. OAG 74-638.

Where the particular local board of education has adopted a policy of not employing any person 65 years of age or older, it may employ a person as director of pupil personnel under the implementation of state board of education regulation 40.220(2) rather than employ a fully certified and experienced person who is available in the county but who has attained the age of 65 years. OAG 74-638.

Upon reaching the age of 65 a school administrator no longer has a continuing service contract but may be employed on a limited contract from year to year until reaching the age of 70, the mandatory retirement age provided by KRS 161.600. OAG 75-2.

Although KRS 161.765 applies to guidance counsellors, where a counsellor is reassigned as a teacher at the same salary he is not entitled to a hearing under KRS 161.765 since he has not been demoted within the meaning of this section. OAG 75-368.

When a teacher transfers from the local board of education to the vocational school system, none of the teacher's accrued benefits are carried over to the new position. OAG 76-151.

Neither a teacher who has taught three hours per day for 185 school days nor a teacher who has taught full time for 94 school days may be considered to have a year of actual service for tenure purposes. OAG 76-278.

A teacher who was employed as a substitute teacher for at least 140 school days in the 1972-73 and 1973-74 school years and who was employed as a regular teacher during the 1974-75 and 1975-76 school years would have tenure in the school system if employed by the board of education for the academic year of 1976-77. OAG 76-282.

A teacher must be certified before commencing service which is to be credited toward the four years actual service in the same school district required for continuing service status. OAG 76-284.

Where a teacher taught regularly in the school system for four years and received a continuing education contract and then during the next three years taught but was required to take many days leave of absence due to illness, was on maternity leave and then resigned from her teaching position and such resignation was accepted and the following year she requested to be considered for a position and was reemployed, such teacher should be reemployed and given a limited contract for the school year; however, if such teacher is recommended to the board by the superintendent for a contract for the following school year that contract will be for a continuing service status. OAG 76-490.

The transfer from assistant principal to guidance counselor with an accompanying withdrawal of the pay increment provided for the position of assistant principal does not amount to a demotion. OAG 77-332.

It would appear that a demotion involves at least two positions and, accordingly, when a school board changes only contract characteristics, specifically duration of the contract, of a single administrative position, this action does not constitute a demotion for the purposes of KRS 161.765. OAG 78-148.

A superintendent is specifically excluded from the definition of the term "administrator" in subsection (8) of this section. OAG 79-111.

A teacher seeking benefits under KRS 161.661(1) while on leave of absence under KRS 161.770 has in effect terminated his or her tenure contract status and accompanying rights with the board of education when the teachers' retirement system approves that teacher's application for disability retirement, which means the teacher has "retired" for the purposes of KRS 161.720 to 161.810; and if the teacher, who has been granted leave of absence and accepted by the teachers' retirement system for disability retirement benefits, then becomes able to return to work, the board of education no longer has to afford to that teacher his or her former tenure rights. OAG 79-157.

There are no provisions in the tenure laws to preclude a teacher from being employed for additional years of employment past the age of 70 years on a limited year-to-year contract basis under this section. OAG 81-72.

A teacher must teach at least 140 six-hour days in a 185-day school term in order to be given credit for a year under the tenure law. OAG 82-614.

Where a teacher worked only one-half time in the school years 1976-77, 1977-78, 1978-79 and 1979-80 and did not in any school year teach at least 140 six-hour school days so as to be entitled to a year of credit towards tenure, the board of education had no legal right to award a continuing service contract to her after she had completed four years of part-time teaching and such contract was not binding and was void and could have no legal effect; in such instance, the board should issue a limited contract to such teacher after a majority vote on a motion before the board to do so and the minutes of the board should reference the previous minutes when the unlawful tenure contract had been approved. OAG 82-614.

A teacher on a limited teaching contract only has a statutorily protected expectation of employment for a one-year term. OAG 84-43.

The federal Age Discrimination in Employment Act, (ADEA) as amended effective January 1, 1987, preempts and makes invalid the upper age restrictions found in subsection (4) of this section; school boards may not have any employment practice affecting employees in the protected age range (which is age 40 and over) that is motivated by or the result of age, and tenured school employees in the protected age range may hold that tenure status or merit status until they resign, retire, or until their contracts are lawfully terminated or suspended. OAG 87-12 (withdrawing OAG 79-204; opinion prior to 1988 amendment.)

A teacher with tenure in one district must achieve tenure in the second district within the statutory time period. OAG 91-189.

Under subsection (2) of this section, the part-time service of a teacher for school years 1988-1990 does not qualify for consideration for eligibility for tenure. OAG 91-189.

Cited: Redding v. Fincel, 311 Ky. 534, 224 S.W.2d 671 (1949); Board of Educ. v. Moore, 264 S.W.2d 292 (Ky. 1953); Lewis v. Board of Educ., 348 S.W.2d 921 (Ky. 1961); Miller v. Noe, 432 S.W.2d 818 (Ky. 1968); Bates v. Dause, 502 F.2d 865 (6th Cir. 1974), rev'g 369 F. Supp. 139 (W.D. Ky. 1973); Settle v. Camic, 552 S.W.2d 693 (Ky. Ct. App. 1977); Gaines v. Board of Educ., 554 S.W.2d 394 (Ky. Ct. App. 1977); Kelly v. Board of Educ., 566 S.W.2d 165 (Ky. Ct. App. 1977); Miller v. Board of Educ., 610 S.W.2d 935 (Ky. Ct. App. 1980); Board of Educ. v.

Rothfuss, 639 S.W.2d 545 (Ky. 1982); Banks v. Board of Educ., 648 S.W.2d 542 (Ky. Ct. App. 1983); Young v. Board of Educ., 661 S.W.2d 787 (Ky. Ct. App. 1983); Daugherty v. Hunt, 694 S.W.2d 719 (Ky. Ct. App. 1985); Matthews v. Holland, 912 S.W.2d 459 (Ky. Ct. App. 1995); Bailey v. Floyd County Bd. of Educ., 106 F.3d 135, 1997 Fed. App. 39 (6th Cir. 1997).

NOTES TO DECISIONS

ANALYSIS

1. Legislative intent.
2. Nature of tenure.
3. Continuing service contract.
4. Certificate.
5. Less than four year degree.
6. Enforcement.
7. Administrator.
8. Resignation.
9. Superintendent.
10. Transfer to noncertified position.
11. Demotion.
12. Notification requirements.
13. Determining type of contract.
14. Limited contract.

1. Legislative Intent.

The legislative intent of subsection (8) of this section was not to classify as an administrator one who, incidental to his primary duties which are not administrative in nature, occasionally evaluates or supervises other board employees. Bradshaw v. Board of Educ., 607 S.W.2d 427 (Ky. Ct. App. 1979).

2. Nature of Tenure.

Teacher tenure is statutory and not contractual, and the legislature may abridge or destroy it. Gullett v. Sparks, 444 S.W.2d 901 (Ky. 1969).

3. Continuing Service Contract.

Where continuing contract under teacher's tenure law provided that services under the contract "are to be performed in such school or schools and/or in such position and at such place or places as may be designated by the superintendent of the district and approved by the board," the board of education had the right to transfer the principal from one position to another and from one school to another on recommendation of the superintendent but his salary could not be reduced even though the contract stated it could be increased or decreased. Board of Educ. v. Hogge, 239 S.W.2d 459 (Ky. 1951).

Board of education could transfer teacher under continuing service contract but could not reduce his salary unless the contract had been modified by mutual consent in writing. Huff v. Harlan County Bd. of Educ., 408 S.W.2d 457 (Ky. 1966).

Where teacher employed under continuing service contract as an elementary school principal, refused to accept transfer to position as principal of high school at same salary on ground he was not qualified and then was given position as teacher at reduced salary, he was entitled to judgment for difference between the old and new salaries. Huff v. Harlan County Bd. of Educ., 408 S.W.2d 457 (Ky. 1966).

A continuing service contract is a legislatively granted status rather than a real contractual right, and the legislature having created the status could abolish it regardless of any papers that the parties executed. Gullett v. Sparks, 444 S.W.2d 901 (Ky. 1969).

The board of education improperly denied a continuing service contract to a teacher who taught continuously in the same district from 1958 through 1971 except for the 1966-67 school year, since under the provisions of KRS 161.740(1)(b) he was eligible for such a contract. Estill County Bd. of Educ. v. Rose, 518 S.W.2d 341 (Ky. 1974).

Under subsection (4), a continuing service contract ends by operation of law on a teacher's 65th birthday so that the teacher reverts to a nontenure status and may be employed at the discretion of the board of education upon a limited contract for one year at a time. Belcher v. Gish, 555 S.W.2d 264 (Ky. 1977).

Tenured school teachers who were suspended because of decreased enrollment did not have a property right in continued employment and its benefits to entitle them to a pre-suspension hearing. Downs v. Henry County Bd. of Educ., 769 S.W.2d 49 (Ky. Ct. App. 1988).

4. Certificate.

A certificate of professional standing may be abolished or limited by the legislature. Gullett v. Sparks, 444 S.W.2d 901 (Ky. 1969).

5. Less Than Four Year Degree.

The General Assembly has the power to provide that teachers with less qualification than a four-year degree shall receive only a minimum salary and the fact that the motive of such a provision might be to make teaching so economically unattractive as to discourage the less-qualified teachers from continuing in service does not make the provision unfair. Gullett v. Sparks, 444 S.W.2d 901 (Ky. 1969).

6. Enforcement.

The State Department of Education should use the means at its disposal to see that the provisions of the teachers' tenure law are observed. Marshall v. Conley, 258 S.W.2d 911 (Ky. 1953).

A teacher's salary is established and paid by public officials and, as such, injunctive relief in the form of mandamus is an appropriate means of enforcing rights to salary during a teacher's tenure in office. White v. Board of Educ., 697 S.W.2d 161 (Ky. Ct. App. 1985).

7. Administrator.

An assistant principal with administrative tenure was an "administrator" within the meaning of subsection (8). Harlan County Bd. of Educ. v. Stagnolia, 555 S.W.2d 828 (Ky. Ct. App. 1977).

Where a high school classroom teacher also served as the head football coach at the school, the fact that during the time he was coach he had assistant coaches who were under his supervision was not enough to classify him as an administrator within subsection (8) of this section for the purpose of KRS 161.765 relating to the demotion of administrators, since his occasional supervision of other board employees was merely incidental to his primary duties which were not administrative in nature. Bradshaw v. Board of Educ., 607 S.W.2d 427 (Ky. Ct. App. 1979).

An administrator is one who (1) holds a position categorized as an administrative position pursuant to subsection (8) of this section, or pursuant to approval by the State Board of Education of the position as a certified administrative position; and (2) is duly certified by the State Board of Education as an administrator. Petett v. Board of Educ., 684 S.W.2d 7 (Ky. Ct. App. 1984).

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

In suit by principal who was demoted to teacher, alleging that denial of his right to the pre-demotion hearing provided for administrators in KRS 161.765 deprived him of equal

protection of the laws guaranteed by the Fourteenth Amendment of the U.S. Constitution and an exercise of arbitrary power prohibited by Const., § 2, since "administrators" as defined by subsection (8) of this section as it existed prior to its 1992 amendment did not include "principals" as "administrators", the court employing the "rational basis scrutiny" held that since there were several distinctions between "principals" and "administrators", there was a rational basis for the exclusion of "principals" from the definition of "administrators" and thus such exclusion did violate the Fourteenth Amendment of the U.S. Constitution or Const., § 2. Roberts v. Mooneyhan, 902 S.W.2d 842 (Ky. Ct. App. 1995).

8. Resignation.

Where plaintiff, a teacher, had been employed in one school district for six successive years, resigned, taught in another school system the following year, again resigned, took a year off and then taught for three years in a third school district before being released, he was entitled to no hearing under KRS 161.790, since, although he had achieved tenure at his first position, when he resigned he lost his tenure by reason of subsection (4) of this section and subdivision (1)(c) of KRS 161.740 is inapplicable. Carpenter v. Board of Educ., 582 S.W.2d 645 (Ky. 1979).

9. Superintendent.

A superintendent is not afforded the protection of KRS 161.765 which deals exclusively with the procedure for demotion of administrative personnel. Floyd v. Board of Educ., 598 S.W.2d 460 (Ky. Ct. App. 1979).

The office of superintendent is outside the scope of the provisions of the Teacher Tenure Act. Floyd v. Board of Educ., 598 S.W.2d 460 (Ky. Ct. App. 1979).

10. Transfer to Noncertified Position.

Where a high school principal was transferred, at the same pay level, to a newly created position, as the supervisor of transportation for the school system, the transfer from a certified to a noncertified position amounted to "termination" as a "teacher" under subsections (1) and (4) of this section; accordingly the principal was entitled to a hearing as required by KRS 161.790. Crawley v. Board of Educ., 658 F.2d 450 (6th Cir. 1981).

11. Demotion.

Where an educator is transferred to a position of less responsibility, and the transfer is not accompanied by an immediate major reduction in pay, but there is to be a reduction in a subsequent year, the transfer becomes a demotion when (and if) that reduction takes place. Accordingly, where principal was transferred to less responsible post but his salary remained the same, it could not be said that he had been demoted from one position on the salary schedule to a position for which a lower salary was paid. Stafford v. Board of Educ., 642 S.W.2d 596 (Ky. Ct. App. 1982).

In the case of the demotion or reassignment of a probationary administrator, the provision in the definition of a school year covering seven months' service only has meaning when coupled with the words "within a school year." Thus an administrator must only serve seven months "within each school year" beginning July 1 and ending June 30 in order to have worked "three years" as an administrator. If such administrator has already worked seven months during his third school year or will have worked seven months before June 30 of his third year of administrative service, he must be notified of a demotion before May 15 of that year, under this section. Board of Educ. v. Paul, 846 S.W.2d 675 (Ky. 1992).

12. Notification Requirements.

A full-time teacher in 1986-87 who had her 1987-88 contract reduced to half time, but received no notification of the reduction in responsibilities, was deemed reemployed for the succeeding school year which constituted her fourth year and satisfied the service requirement under the tenure law. Board of Educ. v. Powell, 792 S.W.2d 376 (Ky. Ct. App. 1990).

13. Determining Type of Contract.

Where the school board minutes did not disclose whether teacher/plaintiff's contract was continuing or limited, resorting to other pertinent records was permissible. Board of Educ. v. Jones, 823 S.W.2d 457 (Ky. 1992).

Where dismissed bus driver's lack of legitimate expectation of continued employment within the Whitley County Schools was evidenced by both his contract of employment and by this section, he could not pursue a due process claim based upon the assertion of a property right. Creager v. Board of Educ., 914 F. Supp. 1457 (E.D. Ky. 1996).

14. Limited Contract.

Where the employment contract signed by teacher was clearly designated a "Limited Contract of Employment" appearing in large block letters and in bold type, the document unequivocally designated the period of employment under the contract as one year and nowhere provided that her contract was one of a continuing nature or tenured status. Board of Educ. v. Jones, 823 S.W.2d 457 (Ky. 1992).

Collateral References. 78 C.J.S., Schools and School Districts, § 191.

161.721. Superintendent eligible for continuing contract status.

The superintendent shall be eligible for continuing contract status when he meets all requirements prescribed in KRS 161.720 to 161.810 for continuing contracts for teachers.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 615, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1944, ch. 98) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 615, effective July 13, 1990.

Opinions of Attorney General. There is no conflict between this section and KRS 160.350 as, irrespective of when a superintendent becomes eligible for continuing contract status in the district, such status is not as to the position of superintendent of the school but just to employment in the school district. OAG 76-82; 76-99.

A local board of education may give a superintendent who is over 65 a contract for more than one year. OAG 79-213.

While a superintendent is eligible for tenure in a school system, a person holding the position of local school superintendent is not per se covered by the teacher tenure laws. OAG 79-213.

While a superintendent may acquire tenure in the same manner as for teachers, that does not make an appointment as a superintendent under KRS 160.350, which is under an entirely different contractual basis and which may be for one, two, three or four years, employment where "teacher tenure" may be transferred to the position pursuant to KRS 161.740; thus, where a teacher attains tenure in one school system and then accepts the position of superintendent of schools in another school district, the superintendent would be required to attain tenure in the new school system by following this section. OAG 80-147.

Collateral References. 78 C.J.S., Schools and School Districts, §§ 222-225, 228-235, 238, 239.

161.730. Limited or continuing contract with teachers required.

Each local district shall enter into written contracts, either limited or continuing, for the employment of all teachers.

(Enact. Acts 1942, ch. 113, § 2; 1944, ch. 98; 1964, ch. 41, § 2; 1990, ch. 476, Pt. II, § 81, effective July 13, 1990.)

Cross-References. Appointment of school employees, KRS 160.380.

Opinions of Attorney General. That a certain anticipated source or revenue fails to materialize cannot authorize a refusal by the local boards to honor the legal contractual obligations that exist with their teachers for at least a minimum school term. OAG 82-106.

Even though the contracts entered into between local boards and their teachers fail to reference the minimum 185 day school term, these contracts could not be construed to cover any period less than the 185 school days established by statute since all full-time teachers in the public common schools have, by operation of law, a contract that entitles them to be paid for 185 school days, four of which are to be utilized as in-service and professional development and planning activities; accordingly, the teachers employed by the local school boards for the 1981-82 school year had a vested right to employment and salary for at least 185 school days and the possible reduction in state funds for teachers' salaries for two mandated in-service days in no way could be used to divorce the local school districts from their preexisting obligation of contracts for a minimum school term of 185 days. OAG 82-106.

Cited: Beverly v. Highfield, 307 Ky. 179, 209 S.W.2d 739 (1948); Ford v. Jones, 372 F. Supp. 1187 (E.D. Ky. 1974).

NOTES TO DECISIONS

Analysis

1. Right to continuing contract.
2. Length of contract.

1. Right to Continuing Contract.

A teacher, eligible for a continuing contract, after having taught two years under a limited contract, acquires no absolute right to a continuing contract upon subsequent reemployment under a limited contract. Payne v. Bush, 249 S.W.2d 789 (Ky. 1952).

2. Length of Contract.

Where there was no formal contract of employment between assistant supervisor and the board as contemplated by this section, his reemployment could not be for less than two years as provided by KRS 161.750 and although the board had the unquestioned right to transfer him from position of assistant supervisor to teacher it had no authority to reduce his salary for the second year. (Decision prior to 1964 amendment to KRS 161.750). Board of Educ. v. Moore, 264 S.W.2d 292 (Ky. 1953).

Where board reemployed principal year by year by accepting the recommendation of the superintendent and making a minute thereof despite the mandatory provision of KRS 161.750 that the reemployment may be for not less than two years, his contract extended through two school years and his salary could not be reduced during the second year upon transfer to a position paying less compensation without charges being preferred against him under KRS 161.790. Board of Educ. v. Justice, 268 S.W.2d 648 (Ky. 1954) (Decision prior to 1964 amendment of KRS 161.750).

161.740. Eligibility for continuing service status — Transfer teachers — Reinstatement after service in Armed Forces.

(1) Teachers eligible for continuing service status in any school district shall be those teachers who meet qualifications listed in this section:

(a) Hold a standard or college certificate as defined in KRS 161.720 or meet the certification standards for vocational education teachers established by the Education Professional Standards Board.

(b) When a currently employed teacher is reemployed by the superintendent after teaching four (4) consecutive years in the same district, or after teaching four (4) years which shall fall within a period not to exceed six (6) years in the same district, the year of present employment included, the superintendent shall issue a written continuing contract if the teacher assumes his duties, and the superintendent shall notify the board of the action taken. Each day served in the General Assembly by a board of education employee during a regular or extraordinary session shall be included in the computation of a year as defined in KRS 161.720(2).

(c) When a teacher has attained continuing contract status in one district and becomes employed in another district, the teacher shall retain that status. However, a district may require a one (1) year probationary period of service in that district before granting that status. For purposes of this subsection, the continuing contract of a teacher shall not be terminated when the teacher leaves employment, all provisions of KRS 161.720 to 161.810 to the contrary notwithstanding, and the continuing service contract shall be transferred to the next school district, under conditions set forth in this section, for a period of up to seven (7) months from the time employment in the first school district has terminated. Nothing contained herein shall be construed to give a teacher a right to reemployment in the first school district during the seven (7) month period following termination.

(d) Service credit toward a continuing contract shall begin only when a teacher is properly certified as defined in KRS 161.720(6) or, in the case of a vocational education teacher, when the required certification standards established by the Education Professional Standards Board have been met.

(2) Vocational education teachers fulfilling the requirements in subsection (1) of this section as of July 15, 1982, shall be eligible for continuing service status.

(3) Any teacher or superintendent who has been or may be hereafter inducted into the Armed Forces of this country, shall at the expiration of service be reemployed or reinstated in a comparable position as of the beginning of the next school year, provided application is made at least thirty (30) days before the opening of school, unless physically or mentally incapacitated according to medical notations on official discharge papers. Vacancies created by military leaves shall be filled by teachers or superintendents employed by the board of education under a limited contract of one (1) year or less.

(Enact. Acts 1942, ch. 113, § 3; 1944, ch. 98; 1954, ch. 60; 1964, ch. 41, § 3; 1974, ch. 185, § 1; 1982, ch. 354, § 1, effective July 15, 1982; 1982, ch. 401, § 1, effective July 15, 1982; 1990, ch. 476, Pt. II, § 82, effective July 13, 1990; 2001, ch. 136, § 3, effective June 21, 2001.)

Cross-References. Appointment of school employees, KRS 160.380.

Kentucky Law Journal. Kentucky Law Survey, Bratt, Education, 64 Ky. L.J. 293 (1975-76).

Kentucky Law Survey, Hanley and Schwemm, Education: Teacher's Rights, 67 Ky. L.J. 721 (1978-1979).

Northern Kentucky Law Review. Notes, School Law — Nonrenewal of Nontenured Teacher's Contract — Procedural Due Process — Wells v. Board of Regents, 545 F.2d 15 (6th Cir. 1976) and Plummer v. Board of Regents, 552 F.2d 716 (6th Cir. 1977), 5 Northern Ky. L. Rev. 141 (1978).

Opinions of Attorney General. The board may, without cause, refuse to reemploy a teacher who has taught only two years in the school district. OAG 61-567.

This section does not require that the procurement of the college or standard certificate precede the four-year period of teaching within the district, and if a teacher who has taught four years in a school district and subsequently received his college certificate is recommended for reemployment, he is eligible for a continuing contract. OAG 61-567.

Under subsection (1)(b) of this section, a teacher who has four years of service within the district and who satisfied the other requirements is eligible for continuing contract status, if he is recommended for reemployment, whether that service be consecutive or not. OAG 61-597.

A teacher who holds a life extended teaching certificate based on less than graduation from a standard four-year college and who also holds an AB degree but has no teaching certificate based on that degree, does not meet the eligibility requirements for a continuing service contract, and the erroneous issue of such contract by a board of education is void. OAG 67-24.

A teacher returning to employment with a board of education after being discharged from military service is entitled to those increments which normally would have accrued if employment with the board had not been interrupted by military service. OAG 70-709.

The principles applicable to reinstatement of veterans in employment by the central branch of state government are equally applicable to employment with a board of education. OAG 70-709.

Where a teacher left his teaching position to enter military service and remained in the service for 25 years, on his return to teaching he was not entitled to credit military service in determining his salary increments. OAG 71-416.

A teacher who has taught in the same district and is recommended by the superintendent to be reemployed is issued a written continuing contract and the application blank a school board requires to be filled out and submitted each year does not constitute a contract. OAG 72-349.

A teacher acquires tenure even while teaching out of his qualified field if he has been doing so upon a provisional certificate. OAG 72-637.

A teacher who has taught four out of the last six years, is reemployed for a fifth year and who has a standard certificate has acquired tenure. OAG 72-637.

A teacher who taught on a limited contract for four years and was asked to resign after her fourth year with the understanding that she would be rehired and who was in fact rehired on her fifth limited contract would be eligible for tenure. OAG 72-664.

Subsection (2) (now (3)) of this section which contains the term "reemployed or reinstated in a comparable position" means that the employment after military service must be comparable to the prior employment only as to compensation and employee benefits but the employment assignment need not be the same or comparable to the employment assignment prior to military service and the reemployed teacher is entitled to be credited with the same seniority he would have gained upon proper performance of his employment if it had not been interrupted for military duty and to receive the same increments he would have received. OAG 73-266.

Subsection (2) (now (3)) of this section refers only to the armed forces of the United States, and has no reference to an elementary school principal being elected to the state legislature. OAG 73-322.

When a shortage of funds necessitates the reduction of teaching personnel, the only statutory preference granted is to teachers with a continuing contract, and the school board upon the recommendation of the superintendent may reemploy or not reemploy such teachers as have a limited contract provided those not to be reemployed are notified by May 15th. OAG 73-383.

Since teachers' tenure is regulated by statute it may not be altered by any regulation of a local board of education and under this section and KRS 161.720 a local board of education may not require a master's degree of a teacher in order to qualify for a continuing contract. OAG 73-421.

When a teacher taught for four consecutive years in a school district, took a leave of absence for three years, returned from her leave and taught two consecutive years in the same district, she has by law a continuing service contract and is legally entitled to be reemployed in the coming year regardless of the notice she has received unless her contract is terminated for cause or her contract is suspended. OAG 73-486; 73-702.

Where a teacher with two years' teaching experience in the county school system immediately prior to serving two years in the armed forces from which he was recently discharged timely applied for reemployment in the school system, said teacher should be "reinstated or reemployed in a comparable position" in conformity with the interpretation of that phrase and it was improper to notify this veteran that he would not be reemployed as a teacher because of loss of units and funds in the school system. OAG 73-513.

A teacher who had been employed for five consecutive years in one school district prior to July 1973, resigned his position in August 1973, and returned to his teaching position in January 1974 would be eligible for a limited contract but if at the end of the 1973-74 school year was reemployed, would then be eligible for a continuing contract by operation of law since he would meet all of the criteria of subsection (1)(b) of this section. OAG 74-31.

When a teacher is relieved from military service and makes proper application to be reemployed, the school district is required to promptly reinstate the teacher with all the rights and benefits provided public employees by KRS 61.371-61.379 which supersedes KRS 161.740(2). OAG 74-258.

The board does not have the option to delay, for one year, awarding a teacher who has served on four limited contracts, a continuing contract. OAG 74-290.

A teacher who has tenure after the effective date of the 1974 amendment cannot be placed on probationary status in any school district in the state. OAG 74-370.

When a teacher who has a continuing contract in one district transfers to another school district in the state, the employing district may employ the teacher with the understanding he is to be on probation for one year, but the employing board should include such a provision in the teacher's contract and also record the condition in its official minutes. OAG 74-396, modifying OAG 74-370.

A teacher who had tenure but did not teach during the prior year because of dismissal or resignation can regain tenure in one year only by reemployment in the original district, and only then can the move be made to a new district without loss of the original tenure. OAG 74-421.

A school board cannot confer tenure upon a teacher as a teacher acquires tenure by operation of law when the conditions of this section are fulfilled. OAG 74-580.

Teachers who have not been on tenure in any system since the 1970-71 school year cannot be on tenure in the 1974-75 school year unless they have taught in the school district for four consecutive years or four out of the last six years and are

now reemployed by the school district upon recommendation of the superintendent. OAG 74-580.

There is only one class of tenure and it includes school administrators who are required to have certification by the state department of education and are therefore included under the term "teachers" under KRS 161.720 for the purpose of a continuing service contract. OAG 75-2.

An individual, who has completed one year as an assistant principal and who for ten years just prior to said year was not employed in education and prior to the ten-year period, was a teacher on tenure, cannot be demoted without following the procedures of KRS 161.765 but under KRS 161.740 does not have tenure or a continuing contract and could be dismissed upon recommendation of the superintendent at the end of the school year without going through the procedures of KRS 161.790. OAG 75-413.

A teacher, after being employed for four years as principal in a school which has now been closed and then being demoted to an elementary teacher, cannot be given a one-year contract for the coming year as this section provides that when a currently employed teacher is reemployed after teaching four consecutive years in the same district, he shall have a continuing contract. OAG 75-492.

Where a teacher was employed by a board of education for four consecutive years from the 1970-71 school year through the 1973-74 school year, and where the teacher was rehired by the school board for the 1975-76 school year following his employment as a teacher in Ohio during the 1974-75 school year, the teacher was only eligible for a limited contract by the 1975-76 academic year, but upon reemployment for 1976-77, the teacher was entitled to a continuing status contract. OAG 76-277.

Neither a teacher who has taught three hours per day for 185 days nor a teacher who has taught full time for 94 school days may be considered to have a year of actual service for tenure purposes. OAG 76-278.

A teacher who was employed as a substitute teacher for at least 140 school days in the 1972-73 and 1973-74 school years and who was employed as a regular teacher during the 1974-75 and 1975-76 school years would have tenure in the school system if employed by the board of education for the academic year of 1976-77. OAG 76-282.

A board of education may not legally grant a continuing service contract to a teacher after only three years of service in the district. OAG 76-282.

A teacher must be certified before commencing service which is to be credited toward the four years actual service in the same school district required for continuing service status. OAG 76-284.

Years spent in military service are not to be considered toward the four-year requirement for tenure status. OAG 76-316.

Where a teacher taught regularly in the school system for four years and received a continuing education contract and then during the next three years taught but was required to take many days leave of absence due to illness, was on maternity leave and then resigned from her teaching position and such resignation was accepted and the following year she requested to be considered for a position and was reemployed, such teacher should be reemployed and given a limited contract for the school year; however, if such teacher is recommended to the board by the superintendent for a contract for the following school year that contract will be for a continuing service status. OAG 76-490.

In a renewal of a limited contract situation, the absence of a recommendation to the board not to renew must be considered as a positive recommendation for renewal of the contract and those teachers in that situation would have a teaching contract for the ensuing year. OAG 77-308.

When a currently employed teacher who is eligible for continuing contract status is recommended for reemployment by the superintendent and the board votes favorably on that recommendation, the teacher is rehired and is entitled to tenure in the school system. OAG 77-413.

Where a teacher, who had attained tenure with a common school system, left to teach for seven years at a state correctional facility, and then rejoined the common school system, he lost his tenure when he resigned the county teaching position to accept employment with the state and since he had not been employed by another public common school the provision of subsection (1)(c) of this section is inapplicable and thus he must satisfy the requirements for securing tenure. OAG 78-319.

The language of subsection (1)(c) of this section calls for continuity of teacher service from one school district to another, and any other construction would permit lapse of unlimited time between teaching service in one school district and another; if the lapse has been long enough, a one-year probationary period could be wholly insufficient to afford an opportunity for the second school district to evaluate the teacher's performance before a tenure contract would have to be considered. OAG 78-320.

Although the chairman and secretary of the board of education, and the teacher, each signed a continuing service contract, the action would be ultra vires and void where the teacher had three years of experience teaching, and a limited contract must issue. OAG 78-831.

If a teacher moved from one school system where a tenure status contract was enjoyed in the 1973-1974 school year to another school system for the 1974-1975 school year, tenure status could have been given immediately or after a one-year probation but if the move had been made in the 1972-1973 school year, the school system would not have been at liberty to give a tenured contract two years hence for 1974-1975 and a full four years' service would have been required before a teacher would have been eligible for a tenure contract. OAG 79-28.

Subsection (1)(c) of this section and KRS 161.155(3) are quite similar and should be construed consistently one with the other. OAG 79-148.

Where a school teacher has obtained tenure in a continuing service contract in one school district and becomes employed in another district, he can either be immediately granted a tenured contract without a probationary one-year period in the new district or can be placed on a one-year probation period, but the new superintendent and board cannot, under this section, wait two, three or four years before granting tenure in a continuing service contract. OAG 81-68.

A teacher must teach at least 140 six-hour days in a 185-day school term in order to be given credit for a year under the tenure law. OAG 82-614.

Where a teacher worked only one-half time in the school years 1976-77, 1977-78, 1978-79 and 1979-80 and did not in any school year teach at least 140 six-hour school days so as to be entitled to a year of credit towards tenure, the board of education had no legal right to award a continuing service contract to her after she had completed four years of part-time teaching and such contract was not binding and was void and could have no legal effect; in such instance, the board should issue a limited contract to such teacher after a majority vote on a motion before the board to do so and the minutes of the board should reference the previous minutes when the unlawful tenure contract had been approved. OAG 82-614.

Subdivision (1)(c) of this section, as amended in 1982, may be applied to any teacher who either had already resigned or who, since July 15, 1982, has resigned and seven months have not elapsed since the resignation; in either situation, at the time of the resignation, the teacher must have enjoyed continuing service contract status with the school district resigned from. OAG 82-619.

A teacher who had taught the prerequisite four years and had been reemployed by a board for the fifth year but who

resigned before signing a continuing contract, and before performing any work at the beginning of the fifth year, acquired tenure and where such teacher had resigned after accepting employment with second school system, which system required teachers who had tenure in another district to serve a one-year probationary period before being placed on tenure or continuing contract status, the teacher was entitled to a continuing service contract and tenure upon being reemployed by the second school system after serving the one-year's probationary service. OAG 82-619.

When a teacher with tenure in one district resigns and becomes employed in a second district, if the second district requires a year of probation, the teacher must complete probation during the time period that the teacher retains status in the former district. OAG 91-189.

One time payments to teachers to induce retirement are constitutional under Const., § 3 as such payments are in consideration of public service. The key fact that makes these payments constitutional is the voluntary retirement of the teacher; such an act is a "present" service for which an emolument is paid, not a past service for which a gratuity is given. OAG 96-23.

Cited: Lone Jack Graded Sch. Dist. v. Hendrickson, 304 Ky. 317, 200 S.W.2d 736 (1947); Beverly v. Highfield, 307 Ky. 179, 209 S.W.2d 739 (1948); Redding v. Fincel, 311 Ky. 534, 224 S.W.2d 671 (1949); Welch v. Board of Educ., 247 S.W.2d 536 (Ky. 1952); Payne v. Stevens, 251 S.W.2d 469 (Ky. 1952); Babb v. Moore, 374 S.W.2d 516 (Ky. 1964); Snapp v. Deskins, 450 S.W.2d 246 (Ky. 1970); Ford v. Jones, 372 F. Supp. 1187 (E.D. Ky. 1974); Settle v. Camic, 552 S.W.2d 693 (Ky. Ct. App. 1977).

NOTES TO DECISIONS

Analysis

1. Eligibility.
2. Continuing contract.
3. Approval by board.
4. Reemployment.
5. Waiver of rights.
6. Nonrenewal of contract.
7. Transfer of accumulated benefits.
8. Administrator.
9. Reduction of responsibilities.
10. Determining contract.

1. Eligibility.

This section does not require teaching in the six successive years immediately preceding the 1955-56 school year in its eligibility provisions. Cooksey v. Board of Educ., 316 S.W.2d 70 (Ky. 1957).

It is sufficient under this section for a teacher to have taught any six years, hold a certificate as defined in KRS 161.720 and be employed for the school year 1955-56. Cooksey v. Board of Educ., 316 S.W.2d 70 (Ky. 1957).

Where teacher had taught three consecutive years before signing a limited contract of two years, she was entitled under the law to a continuing service contract at the end of the first year of the limited two-year contract. Moore v. Babb, 343 S.W.2d 373 (Ky. 1960).

In 1963, to be eligible for continuing service status, the four years of service required did not need to be accumulated after a certificate had been obtained but could include years of service acquired prior to the time of obtaining a certificate. Whitley County Bd. of Educ. v. Meadors, 444 S.W.2d 890 (Ky. 1969).

In 1971, a board of education improperly denied a continuing service contract to a teacher who had taught continuously in the same district from 1958 through 1971 except for the 1966-67 school year, since under the provisions of subsection (1)(b) of this section he was eligible for such a contract. Estill County Bd. of Educ. v. Rose, 518 S.W.2d 341 (Ky. 1974).

This section is applicable only during the fourth year of employment and not after that year is completed and a subsequent year begun. Singleton v. Board of Educ., 553 S.W.2d 848 (Ky. Ct. App. 1977).

Where a teacher has completed the four-year probationary period under a limited contract, thus attaining eligibility for a continuing contract, this section and not KRS 161.750 is the controlling statute regarding notice and the giving of reasons requirements. Singleton v. Board of Educ., 553 S.W.2d 848 (Ky. Ct. App. 1977).

2. Continuing Contract.

The law will not step in and vitiate an agreement limited as to time, which the teacher consented to teach under, and automatically enlarge it into a contract of unrestricted duration. Payne v. Bush, 249 S.W.2d 789 (Ky. 1952).

Under this section tenure of teachers with seven years of consecutive service extended beyond the time that the board of education had any authority to enter into limited contract, and when after such time had elapsed, new contracts were entered into, such new contracts could only have been continuing contracts. Taylor v. Hampton, 271 S.W.2d 887 (Ky. 1954).

Where teacher was employed under limited contract for four years and her name was on the superintendent's list of teachers eligible for continuing contracts but the school board voted not to hire her, in which action the superintendent acquiesced, such refusal to renew the contract was proper. Dorr v. Fitzer, 525 S.W.2d 462 (Ky. 1975).

Where a teacher's contract for one school year called for his services as a half-day assistant principal, along with being the track coach and the assistant football coach, his contract as such required him to expend hours appreciably less than the regular school hours, and therefore, his contract for that year would not be credited toward a continuing service contract and would not be used in computing his tenure. Board of Educ. v. Rothfuss, 639 S.W.2d 545 (Ky. 1982).

A contract of employment for a period of time other than a regular school year, except for excused absences, does not qualify the teacher toward continuing contract status. Board of Educ. v. Rothfuss, 639 S.W.2d 545 (Ky. 1982).

Tenured school teachers who were suspended because of decreased enrollment did not have a property right in continued employment and its benefits to entitle them to a pre-suspension hearing. Downs v. Henry County Bd. of Educ., 769 S.W.2d 49 (Ky. Ct. App. 1988).

3. Approval by Board.

The provision that "if the teacher is employed by the board" a continuing contract shall be issued, when construed in relation with KRS 160.380 which provides for recommended appointments of teachers, means that the board has an open choice whether or not to make the employment that will result in a continuation contract. Dorr v. Fitzer, 525 S.W.2d 462 (Ky. 1975).

School board was entitled to reject a recommendation for a continuing contract for a teacher without a finding of cause. Dorr v. Fitzer, 525 S.W.2d 462 (Ky. 1975).

4. Reemployment.

This section provides that upon the recommendation of the superintendent of schools a teacher eligible for continuing service status shall be reemployed but this does not mean that he must be employed to teach in the same school in which he taught the preceding year. Ritchie v. Dunn, 297 Ky. 410, 180 S.W.2d 284 (1944).

Where the plaintiff was employed as a teacher in this Commonwealth when he was inducted into military service, he was entitled to service credit for his military service, even though he was not reemployed by the same school system. Watkins v. Oldham, 731 S.W.2d 829 (Ky. Ct. App. 1987).

5. Waiver of Rights.

Though teacher who had not worked the requisite four years

to attain tenure had received a tenure contract by mistake, school board did not waive its right to insist upon the qualifications in this section. Dause v. Bates, 369 F. Supp. 139 (W.D. Ky. 1973), rev'd on other grounds, 502 F.2d 865 (6th Cir. 1974).

6. Nonrenewal of Contract.

Although teacher had not yet completed four years employment, she was entitled to notice and a statement of the reasons for the decision of the school board not to renew her contract. Sparks v. Board of Educ., 549 S.W.2d 323 (Ky. Ct. App. 1977), overruled on other grounds, Singleton v. Board of Educ., 553 S.W.2d 848 (Ky. Ct. App. 1977).

Teachers under limited contracts who completed four years of teaching had neither a statutory nor an implied right under the Fourteenth Amendment to a statement of specific reasons for the failure of the board of education to extend a continuing contract. Singleton v. Board of Educ., 553 S.W.2d 848 (Ky. Ct. App. 1977).

Where plaintiff, a teacher, was employed in one school district for six successive years, resigned, taught in another school system the following year, again resigned, took a year off and then taught for three years in a third school district before being released, he was entitled to no hearing under KRS 161.790, since, although he had achieved tenure at his first position, when he resigned he lost his tenure by reason of subsection (4) of KRS 161.720 and subdivision (1)(c) of this section is inapplicable. Carpenter v. Board of Educ., 582 S.W.2d 645 (Ky. 1979).

7. Transfer of Accumulated Benefits.

The sick leave statute and the tenure statute, as embodied in KRS 161.155 and in this section respectively, are both designed to protect a teacher by allowing transfer from one school district to another without losing accumulated benefits. Young v. Board of Educ., 661 S.W.2d 787 (Ky. Ct. App. 1983).

8. Administrator.

Unlike a teacher, a school administrator, even one who has completed three years administrative service, is not ever granted a continuing service contract as an administrator. Hooks v. Smith, 781 S.W.2d 522 (Ky. Ct. App. 1989).

9. Reduction of Responsibilities.

A full-time teacher in 1986-87 who had her 1987-88 contract reduced to half time, but received no notification of the reduction in responsibilities, was deemed reemployed for the succeeding school year which constituted her fourth year and satisfied the service requirement under the tenure law. Board of Educ. v. Powell, 792 S.W.2d 376 (Ky. Ct. App. 1990).

Where a teacher had a reduction of responsibilities without proper statutory notification for both the 1987-88 and 1988-89 school years, she was entitled to a full-time contract and full pay and benefits commensurate with her educational rank and teaching experience as determined by the school district's approved salary schedule for the school years in question. Omitted contributions to the Kentucky Teachers Retirement System for 1987-88 and 1988-89 should also have been paid by the board and teacher in their proper proportions as determined by statutory law. Board of Educ. v. Powell, 792 S.W.2d 376 (Ky. Ct. App. 1990).

10. Determining Contract.

Where the school board minutes did not disclose whether teacher/plaintiff's contract was continuing or limited, resorting to other pertinent records was permissible. Board of Educ. v. Jones, 823 S.W.2d 457 (Ky. 1992).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 222-225, 228, 235, 238, 239, 249-251.

161.750. Nonrenewal of limited contracts.

(1) Any teacher employed under a limited contract may be reemployed under the provisions of KRS 161.720 to 161.810 for the succeeding school year at the same salary, plus any increment or decrease as provided by the salary schedule, upon notification of the board by the superintendent of schools that the contract of the teacher is renewed.

(2) If the superintendent does not renew the contract he shall present written notice to the teacher that the contract will not be renewed no later than April 30 of the school year during which the contract is in effect. Upon receipt of a request by the teacher, the superintendent shall provide a written statement containing the specific, detailed, and complete statement of grounds upon which the nonrenewal of contract is based.

(3) The teacher shall be presumed to have accepted employment, unless he notifies the superintendent of schools in writing to the contrary on or before the fifteenth day of June, and a written contract for the succeeding year shall be executed accordingly.

(Enact. Acts 1942, ch. 113, § 4; 1944, ch. 98; 1964, ch. 41, § 4; 1970, ch. 169, § 1; 1976, ch. 103, § 1; 1990, ch. 476, Pt. II, § 83, effective July 13, 1990.)

Cross-References. Teachers to be appointed after February 1, KRS 160.380.

Kentucky Law Journal. Kentucky Law Survey, Bratt, Education, 64 Ky. L.J. 293 (1975-76).

Comments, Constitutional Limitations on Mandatory Teacher Retirement, 67 Ky. L.J. 253 (1978-1979).

Kentucky Law Survey, Hanley and Schwemm, Education: Teacher's Rights, 67 Ky. L.J. 721 (1978-1979).

Northern Kentucky Law Review. Notes, School Law — Nonrenewal of Nontenured Teacher's Contract — Procedural Due Process — Wells v. Board of Regents, 545 F.2d 15 (6th Cir. 1976) and Plummer v. Board of Regents, 552 F.2d 716 (6th Cir. 1977), 5 Northern Ky. L. Rev. 141 (1978).

Opinions of Attorney General. Mailing notice on May 15 to a teacher on a limited contract that his contract would not be renewed for the following year would not be effective where the notice could not possibly be received by him until a day or two later. OAG 71-338.

When a continuing service contract terminates by operation of law at age 65 the status of the teacher then becomes the same as one who is employed under a limited contract, and unless notified before May 15 that he is not reemployed for the ensuing year the teacher has a limited contract for the next year. OAG 72-363.

If a school board has given a written limited contract to a teacher between the ages of 65 and 70, but chooses in a subsequent year not to renew said contract, a statement that the board has a policy against employing teachers who have reached the age of 65 years is a sufficient reason for not renewing the teacher's contract. OAG 73-231.

If a superintendent does not recommend a teacher for reemployment, that teacher's contract does not automatically end with the school year as board of education action is absolutely necessary in order to create a contract or to deny a renewal of a contract which will otherwise be renewed by operation of law. OAG 74-661.

A local board of education can direct the superintendent to make a recommendation relative to a teacher's contract since a recommendation is required by law and may be a part of appropriately adopted local board policies; the refusal by a superintendent to make a recommendation could be considered legal cause for the superintendent's removal. OAG 80-205.

Although a superintendent could refuse to make a recommendation to the board of education regarding the renewal or

not of a teacher's contract, such refusal would be a neglect of a lawfully imposed duty. OAG 80-205.

If there is no recommendation by a superintendent and no action by the board of education, the teacher will be deemed reemployed since the board of education unequivocally cannot vote for nonrenewal of a teacher's contract absent a recommendation of the superintendent. OAG 80-205.

The effect of a tie vote by a board of education on the renewal of a teacher's contract is that the matter being voted upon has not been passed or approved. OAG 80-205.

Where a board of education member abstains from voting in a rehire or fire situation, the member's "pass" vote is to be counted as voting with the majority of those present and voting. OAG 80-205.

A teacher who had taught the prerequisite four years and had been reemployed by a board for the fifth year but who resigned before signing a continuing contract, and before performing any work at the beginning of the fifth year, acquired tenure and where such teacher had resigned after accepting employment with second school system, which system required teachers who had tenure in another district to serve a one-year probationary period before being placed on tenure or continuing contract status, was entitled to a continuing service contract and tenure upon being reemployed by the second school system after serving the one-year's probationary service. OAG 82-619.

Cited: Welch v. Board of Educ., 247 S.W.2d 536 (Ky. 1952); Cooksey v. Board of Educ., 316 S.W.2d 70 (Ky. 1957); Ford v. Jones, 372 F. Supp. 1187 (E.D. Ky. 1974); Estill County Bd. of Educ. v. Rose, 518 S.W.2d 341 (Ky. 1974); Fayette County Educ. Ass'n v. Hardy, 626 S.W.2d 217 (Ky. Ct. App. 1980); Evans v. Montgomery County Bd. of Educ., 712 S.W.2d 358 (Ky. Ct. App. 1986); Matthews v. Holland, 912 S.W.2d 459 (Ky. Ct. App. 1995).

NOTES TO DECISIONS

ANALYSIS

1. Constitutionality.
2. Construction.
3. Notice.
4. Reemployment.
5. Action against board.
6. Statement of grounds.
7. Hearing.

1. Constitutionality.

Absent any showing of a compelling governmental interest, the alleged policy of a school board in showing preference for hiring natives of its county would have constituted an inherently suspect classification and, therefore, would have been unconstitutionally discriminatory and preferential in violation of Const., §§ 1, 2, and 3. Johnson v. Dixon, 501 S.W.2d 256 (Ky. 1973).

2. Construction.

In this section, "may" has reference to the discretion of the board in employing teachers under limited contracts within the minimum and maximum limits provided by the statute. Board of Educ. v. Moore, 264 S.W.2d 292 (Ky. 1953) (decision prior to 1964 amendment).

If the school board had reemployed a nontenured teacher for an additional school year or if he had not received written notice prior to May 15 of the year for which he was employed, then he would have a contract valid for the succeeding school year as provided by this section and his salary could not have been reduced except pursuant to KRS 161.760. Bowlin v. Thomas, 548 S.W.2d 515 (Ky. Ct. App. 1977).

3. Notice.

Where board did not give teacher notice as required by this section of intention not to reemploy her a short delay in obtaining a renewal certificate from the state superintendent did not justify the board in denying her the right to teach and it was liable for her salary as teacher for the school term which she would have earned if she had taught. Ball v. Bunch, 324 S.W.2d 828 (Ky. 1959).

Registered letters sent on May 1, 1973, to inform three teachers that their continuing service contract would expire on July 1, 1973, and would not be renewed met the requirements of subsection (2). Belcher v. Gish, 555 S.W.2d 264 (Ky. 1977), (decision prior to 1976 amendment).

Although teacher had not yet completed four years employment, she was entitled to notice and a statement of the reasons for the decision of the school board not to renew her contract. Sparks v. Board of Educ., 549 S.W.2d 323 (Ky. Ct. App. 1977), overruled on other grounds, Singleton v. Board of Educ., 553 S.W.2d 848 (Ky. Ct. App. 1977).

Requirement of giving specific reasons upon request is not a condition of the validity of the school board's action in not renewing a contract. Sparks v. Board of Educ., 549 S.W.2d 323 (Ky. Ct. App. 1977), overruled on other grounds, Singleton v. Board of Educ., 553 S.W.2d 848 (Ky. Ct. App. 1977).

Where a teacher has completed the four-year probationary period under a limited contract, thus attaining eligibility for a continuing contract, KRS 161.740 and not this section is the controlling statute regarding notice and the giving of reasons requirements. Singleton v. Board of Educ., 553 S.W.2d 848 (Ky. Ct. App. 1977).

The underlying intent of subsection (2) is to insure untenured teachers ample notice of not being reemployed so that they will have adequate time to obtain employment elsewhere for the coming school year, and that the teacher has a right to know why he is not being reemployed, so that the situation may be corrected if it is within the power of the teacher to do so. Gaines v. Board of Educ., 554 S.W.2d 394 (Ky. Ct. App. 1977).

The giving of timely written notice by the local superintendent of schools to two untenured teachers that their contracts would not be renewed was sufficient to terminate their employment without the approval of the board of education. Gaines v. Board of Educ., 554 S.W.2d 394 (Ky. Ct. App. 1977).

A full-time teacher in 1986-87 who had her 1987-88 contract reduced to half time, but received no notification of the reduction in responsibilities, was deemed reemployed for the succeeding school year which constituted her fourth year and satisfied the service requirement under the tenure law. Board of Educ. v. Powell, 792 S.W.2d 376 (Ky. Ct. App. 1990).

Where a teacher had a reduction of responsibilities without proper statutory notification for both the 1987-88 and 1988-89 school years, she was entitled to a full-time contract and full pay and benefits commensurate with her educational rank and teaching experience as determined by the school district's approved salary schedule for the school years in question. Omitted contributions to the Kentucky Teachers Retirement System for 1987-88 and 1988-89 should also have been paid by the board and Powell in their proper proportions as determined by statutory law. Board of Educ. v. Powell, 792 S.W.2d 376 (Ky. Ct. App. 1990).

County's procedure of notifying all nontenured teachers that they will not be rehired, when in practice most are, is obviously an attempt to "circumvent" this section. Gibson v. Board of Educ., 805 S.W.2d 673 (Ky. Ct. App. 1991).

Had the board of education provided a written statement of the actual reasons for refusing to rehire a nontenured teacher, as contemplated by subsection (2) of this section, its duty to him would have been fulfilled by the mailing of same to the teacher's current address. Gibson v. Board of Educ., 805 S.W.2d 673 (Ky. Ct. App. 1991).

Subsection (2) of this section requires a statement, if requested, from the school board to the nontenured teacher giving the specific, detailed and complete reasons why the teacher is not being reemployed. Failure to provide the state-

ment results in the nontenured teacher being reemployed automatically by operation of law in the school system. Thompson v. Board of Educ., 838 S.W.2d 390 (Ky. 1992).

4. Reemployment.

Board has no right to contract for reemployment for one year only after employee has had a year's service or after the termination of the first contract and such reemployment contracts will be held to be for successive two-year periods commencing from the expiration of the year's service or after termination of the first contract. Board of Educ. v. Justice, 268 S.W.2d 648 (Ky. 1954) (decision prior to 1964 amendment).

Where the defendant board of education entered into a "professional agreement" with the plaintiff education association outlining a five-step grievance procedure, this need not be utilized in a case where the board decides "not to reemploy" a teacher pursuant to subsection (2) of this section, since the board has an absolute right of dismissal which cannot be limited by contract. Board of Educ. v. Louisville Educ. Ass'n, 574 S.W.2d 310 (Ky. Ct. App. 1977).

5. Action Against Board.

Nontenured teacher who brought suit alleging that the school board wrongfully failed to renew his teaching contract was not required to go through the useless act of requesting the board to give him specific reasons for his not being reemployed when the board had already stated its reasons in a letter notifying him of the nonrenewal of his contract. Bowlin v. Thomas, 548 S.W.2d 515 (Ky. Ct. App. 1977).

6. Statement of Grounds.

Subsection (2) of this section requires a board of education to do more than merely recite its provision, it requires a board to provide substantive reasons for nonrenewal of a nontenured teacher's contract. Phillips v. Board of Educ., 580 S.W.2d 730 (Ky. Ct. App. 1979).

7. Hearing.

A school board neither has to rehire a teacher on a limited contract nor provide him with a hearing if he is not rehired. Gibson v. Board of Educ., 805 S.W.2d 673 (Ky. Ct. App. 1991).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 222-225, 228-235, 238, 239.

161.760. Notice of salary to be paid to teacher — Increases — Reductions in responsibility.

(1) The superintendent of schools shall give notice not later than forty-five (45) days before the first student attendance day of the succeeding school year to each teacher who holds a contract valid for the succeeding school year, stating the best estimate as to the salary to be paid the teacher during the year. The salary shall not be lower than the salary paid during the preceding school year, unless the reduction is a part of a uniform plan affecting all teachers in the entire district, or unless there is a reduction of responsibilities. Nothing herein shall prevent increases of salary after the superintendent's annual notice has been given. All teachers who refuse assignment shall notify the superintendent in writing not later than thirty (30) days before the first student attendance day of the school year.

(2) Transfer or change in appointment of teachers later than thirty (30) days before the first student attendance day of the school year shall be made only to fill vacancies created by illness, death, or resignations; to reduce or increase personnel because of a shift in school population; to make personnel adjustments after consolidation or merger; or to assign personnel according to their certification pursuant to KRS 161.010 to 161.120 provided, in the latter instance, that the teacher was appointed to a position outside his or her field of certification in the previous year.

(3) Reduction of responsibility for a teacher may be accompanied by a corresponding reduction in salary provided that written notification stating the specific reason for the reduction shall be furnished to the teacher not later than ninety (90) days before the first student attendance day of the school year.

(4) Employment of a teacher, under either a limited or a continuing contract, is employment in the school district only and not in a particular position or school.

(Enact. Acts 1942, ch. 113, § 5; 1944, ch. 98; 1964, ch. 41, § 5; 1970, ch. 169, § 2; 1982, ch. 338, § 1, effective July 15, 1982; 1982, ch. 362, § 1, effective July 15, 1982; 1990, ch. 476, Pt. II, § 84, effective July 13, 1990; 2002, ch. 78, § 1, effective July 15, 2002.)

Kentucky Bench & Bar. Wolnitzek, The Fair Demotion Act, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 23.

Opinions of Attorney General. There is no reduction in the salary of a coach who is transferred to a teaching position if the compensation paid for the extra duty of coaching is terminated when he stops performing coaching services. OAG 61-559.

This section and KRS 161.780 are not in conflict since this section concerns termination of employment only and KRS 161.780 concerns refusal of an assignment. OAG 64-576.

An individual who served as a principal of a high school during the 1970-71 school year, and was reduced to the position of a teacher in an elementary school for the school year of 1971-72, was entitled to the same salary he received as a high school principal, since he was not notified of the reduction until after May 15, 1971, as required by this section. OAG 72-72.

A principal may not be given less increase in his over-all salary than the basic salary increase passed by the legislature for all teachers when all other teachers have received the stipulated increase. OAG 72-390.

A school board may not reduce a principal's extra pay for extra services without also making a reduction in the extra services accordingly. OAG 72-390.

If an elementary school principal was granted a leave of absence to serve in an elective office, he would not be entitled to his original position upon the termination of his leave of absence, but could be assigned by the board of education to any position. OAG 73-322.

No right upon the part of the teacher to have a hearing against the decision of the board in making the reassignment is implicit in this section and such decision can only be challenged upon the grounds that it is arbitrary. OAG 73-342.

When a school board decides to demote a principal or teacher it should give him notice prior to May 15th as provided by this section, together with a statement of the causes for demotion, and within a reasonable time it should notify him of a given date between May 15th and July 1st upon which he may have a hearing if he desires one. OAG 74-96, modifying OAG 73-342.

As the superintendent is the executive agent of the board of education and has the responsibility to carry out the lawful orders of the board, the order of the board eliminating the position of deputy superintendent for the year 1973-74 and to

so notify the incumbent is a lawful order but the incumbent must be notified by May 15 that his salary for the next year will be reduced or he will be entitled to at least the same salary he received during the present year. OAG 73-378.

When a board of education officially decides to eliminate a position or not to fill a position for the coming year and to employ the person filling the eliminated position in a position of reduced responsibility and salary, it is necessary that the employee be notified that his position and salary will be reduced for the coming year before May 15 and the superintendent and the board will than have until July 1 to decide on the new position for said employee. OAG 73-378; OAG 76-360.

School board may withhold an increment from a teacher's salary where teacher did not conform to board policy requiring normal progress toward an M.A. degree, subject to the provisions of former KRS 157.420. OAG 74-290.

When the superintendent has not recommended a reduction in duties and salary and when a proper notice has not been given stating the reasons therefor by May 15, the board of education may not on its own volition vote a reduction in salary. OAG 74-625.

There is no provision in this section which gives a teacher a right to a supervisory position because of his seniority, since the assignment of teachers and principals is entirely within the discretion of the school board. OAG 74-757.

Notice of the amount of a reduction in compensation due to the reduction or elimination of extra service must be given along with the notice of the reduction in extra service by May 15. OAG 75-339.

Serving as a coach or assistant coach of a school team is extra service as contemplated in this section. OAG 75-339.

A teacher who also is a coach may resign his coaching duties without resigning as a teacher and upon such resignation may be assigned to teach in another school in the district. OAG 75-397.

Not permitting a husband and wife to teach in the same building is a legitimate exercise of the power of the school board. OAG 75-532.

Although an outgoing superintendent of a county school system had the responsibility for making the recommendations for contracts for the limited contract personnel for the next school term by May 15, the new superintendent could determine position assignments of the certified personnel in the school system up to July 15. OAG 76-290.

A teacher who was hired to teach and placed in a reading position by the board does not have a claim to that position and her rights would not be violated if the principal and the superintendent later feeling it would be in the best interest of the school transferred the teacher to a fifth grade class in the same school, for a teacher, whether under limited or continuing contract, is employed in the school district only and not in a particular position or school and a teacher may be reassigned by the school board, upon recommendation by the superintendent, up to July 15 and after this date reassignment of certified personnel may be made only under the limited circumstances provided for in subsection (1) (now (2)) of this section. OAG 76-436.

Where because of budgetary considerations a county board of education must reduce the number of administrative personnel through the elimination of administrative positions, those individuals who have not completed three years of administrative service in the school system must first be recommended for demotion. OAG 77-282.

If by May 15 a county board of education has not notified a certified employee who has held the position of athletic director that he will no longer be assigned that position and the reasons therefor and that there will be a reduction in pay, the board would be foreclosed from reducing that employee's salary for the upcoming school year. OAG 77-573.

The dates specified in subsection (1) of this section are actual and no changes in the salary schedule may be made for the following school year thereafter, unless a deficit would otherwise result. OAG 78-641.

While a clear obligation rests with the local school superintendent to professionally advise and to prepare salary schedules, the local board is in a position of adopting as is or modifying the tendered salary schedule as it, in exercising its discretion consistent with state laws and budgetary constraints, deems necessary. OAG 78-641.

If employment of a teacher is going to be linked to a particular position or responsibility, such as coaching, the superintendent should recommend accordingly; and by like token the board of education is not at liberty to, in essence, vote upon only part of the recommendation. OAG 80-205.

For individuals who have failed to hold administrative positions in a school district for at least three years, the school district is not required to implement the due process procedures including a hearing outlined in KRS 161.765, but must only follow this section. OAG 82-135.

Seniority is not required by statute to come into play in deciding which administrative employees to transfer as a result of reductions; however, school districts may adopt a procedure of considering seniority as a factor in a reduction of administrators situation. OAG 82-135.

Since the Court of Appeals has concluded that an administrator protected by KRS 161.765 should also have the benefit of the procedural safeguards of subsection (2) (now subsection (3)) of this section, if a school district, with the recommendation of the local superintendent, intends to demote an administrator with three or more years administrative service, the written notice of demotion and the opportunity for a due process hearing under KRS 161.765 must be completed before May 15. OAG 82-135.

Teachers and administrators, even those with more than three years of administrative service who are protected under KRS 161.765, do not have a statutorily protected right to a particular teaching or administrative position. OAG 82-135.

Where a local board of education has been paying a supplement to a teacher or a specific group of teachers for a period of several years, and then decides to reduce the supplement by a small amount over a period of years, with the intent to eliminating it, the board is not required to show that reduction when providing its July 1st best estimate of salaries or salaries to be paid to the teacher or group of teachers. OAG 85-87.

A superintendent may change assignments of personnel prior to July 16 without creating "vacancies" as defined by KRS 160.380(1)(b), but after July 15, when positions are occupied by personnel as assigned by the superintendent, and when certified position openings occur due to resignation, dismissal, transfer, death, nonrenewal of contract, or creation of new positions, those openings constitute "vacancies" under KRS 160.380(1)(b). OAG 91-149.

Employment of teachers is deemed to be employment in the district, not in a particular position or school, consequently, assignments of position and school, under certain conditions, do not constitute transfers when those assignments are different from previous assignments of position and school. OAG 91-149.

While the superintendent is responsible for personnel actions including, among other things, hiring and assignments, to the extent that the local board is responsible for control and management of school funds, the board may determine the amount of extended employment and compensation for personnel employed beyond the 185 day period; any reduction in salary to a teacher (which includes most administrators for purposes of the teachers tenure law), must be accompanied by appropriate notice. OAG 92-29.

Cited: Board of Educ. v. Moore, 264 S.W.2d 292 (Ky. 1953); Board of Educ. v. Justice, 268 S.W.2d 648 (Ky. 1954); Fayette County Educ. Ass'n v. Hardy, 626 S.W.2d 217 (Ky. Ct. App. 1980); Board of Educ. v. Code, 57 S.W.3d 820 (Ky. 2001); Pigue

v. Christian County Bd. of Educ., 65 S.W.3d 540 (Ky. Ct. App. 2001).

NOTES TO DECISIONS

ANALYSIS

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1. Application.

This section applies to annual contract teachers and the notice required to alter their pay or reassign them; it does not apply to the demotion of tenured administrative personnel. Frisby v. Board of Educ., 707 S.W.2d 359 (Ky. Ct. App. 1986).

The Kentucky Education Reform Act (KERA) Board of Education's failure to take official, and presumably final, action in informing school personnel of demotion prior to May 15 as provided by subsection (3) of this section and thus invalidating the demotion had been changed by the enactment of KRS 160.390 which effectively supersedes the May 15 requirement and under the plain language of this section and KRS 160.390 makes the superintendent's action of demotion effective upon mere written notice to the affected employee of the action. Estreicher v. Board of Educ., 950 S.W.2d 839 (Ky. 1997).

While this section is couched in terms only of "teachers" its provisions apply to school administrators as well, since, by definition, administrators are also teachers. Estreicher v. Board of Educ., 950 S.W.2d 839 (Ky. 1997).

Since superintendent's action in demoting school administrator was effective when administrator received notice of demotion from superintendent, while KRS 161.765 admittedly provides administrators with enhanced procedural protections, it does nothing to change the effective date of a demotion, and it is that effective date that controls for the purpose of the May 15 deadline set forth in this section and the fact that an administrator might contest the demotion, and thus the action might not become final for some time is of no consequence under KRS 160.390(2). Estreicher v. Board of Educ., 950 S.W.2d 839 (Ky. 1997).

Subsection (2) of this section does not require finality to effect a reduction in salary and by its very terms KRS 160.390(2) makes the superintendent's personnel action effective upon receipt of the written notice by the affected employee; therefore, where administrator received notice of demotion on April 26 followed by a specific statement of reasons for the demotion on May 9, the requirements of subsection (3) of this section have been met. Estreicher v. Board of Educ., 950 S.W.2d 839 (Ky. 1997).

2. Reduction of Salary.

County board of education could not predicate any right to reduce school principal's salary after August 1st upon the mere absence of a formal order reinstating his continuing contract suspended in March based on an order discontinuing school which order was rescinded in May and the board thereafter had a position in its school system for which he was qualified and to which the board assigned him in July. Board of Educ. v. Hogge, 239 S.W.2d 459 (Ky. 1951) (decision prior to 1964 amendment).

While a principal holding a continuing contract under teacher's tenure law could be transferred to a teaching position in another school his salary could not be reduced even though he was employed under a continuing contract stating his salary could be increased or decreased. Board of Educ. v. Hogge, 239 S.W.2d 459 (Ky. 1951) (decision prior to 1964 amendment).

A board of education does not have the right to reduce the salaries of its school principals without a reduction in the salaries of its other teaching personnel, since the reduction of salaries of all principals in the district did not constitute a uniform plan affecting the entire teaching staff. Greenup County Bd. of Educ. v. Harper, 256 S.W.2d 37 (Ky. 1953), but see Preuss v. Board of Educ., 667 S.W.2d 391 (Ky. Ct. App. 1984).

This section says that if a teacher having continuing service status has been entrusted with a position of extra responsibility which carries extra compensation above the base salary, she shall be deemed to possess such experience, training and other qualifications as to command the higher pay, and is entitled to continue to receive the higher compensation by reason of such qualifications, without regard to whether she continues to be assigned extra duties. Board of Educ. v. Lawrence, 375 S.W.2d 830 (Ky. 1963).

Although he had refused a position as high school principal on the ground he was not qualified and later learned he was qualified, the board of education could transfer an employe whose continuing service contract did not specify the school or class of position from elementary principal of one school to high school teacher in another school but it could not reduce his salary where the reduction was not part of a uniform plan affecting the entire district unless the continuing service contract was modified by mutual consent in writing. Huff v. Harlan County Bd. of Educ., 408 S.W.2d 457 (Ky. 1966).

A teacher was not estopped, by continuing to teach, from claiming his full former salary where his duties were reduced, but this section was not complied with as to salary reduction notification. Board of Educ. v. Stephens, 449 S.W.2d 421 (Ky. 1970).

The failure of the board of education to notify a teacher by May 15 foreclosed the board's right to reduce the teacher's salary for the ensuing school year, even though it had reduced his duties from those of a principal to a teacher. Board of Educ. v. Stephens, 449 S.W.2d 421 (Ky. 1970).

If the school board had reemployed a nontenured teacher for an additional school year or if he had not received written notice prior to May 15 of the year for which he was employed then he would have had a contract valid for the succeeding school year and his salary could not have been reduced except pursuant to the provisions of this section. Bowlin v. Thomas, 548 S.W.2d 515 (Ky. Ct. App. 1977).

Even though tenured teacher was aware of reduction in duties and salary for ensuing year by May 15 of preceding year, the board of education had no right to reduce his salary for the ensuing school year where it failed to give him timely notice in writing of the proposed reduction in salary. Settle v. Camic, 552 S.W.2d 693 (Ky. Ct. App. 1977).

Where a school board hired a math and science coordinator for 11 months, rather than nine and one-fourth months at an increased salary, and therefore was aware of his position despite their claims that he was not officially hired in a capacity as a math and science coordinator, and where the board subsequently stripped him of his coordinating duties and reduced his salary without the recommendation of the superintendent, its action was arbitrary, capricious and void. Board of Educ. v. Garner, 556 S.W.2d 453 (Ky. Ct. App. 1977).

The notice required by this section to notify a teacher of the reason for reduction in his salary need not contain a specific reason for the reduction of that teacher's responsibility.

Bradshaw v. Board of Educ., 607 S.W.2d 427 (Ky. Ct. App. 1979).

Where a notice of proposed demotion was sent to a school principal three days after the May 15 statutory deadline for notice of reduction in salary under this section, there was no valid notice of reduction in salary or reassignment since the notice was only superintendent's recommendation that she be demoted and the board of education had not yet acted on the superintendent's recommendation. Miller v. Board of Educ., 610 S.W.2d 935 (Ky. Ct. App. 1980).

A school board must affirmatively act on a superintendent's recommendation of a proposed demotion and notify the teacher involved of such action before May 15 in order for it to be effective; accordingly, where the superintendent's recommendation that the administrator be demoted from director of pupil personnel to a position as a classroom teacher was made in April, but the board of education failed to act on the recommendation until June, the notice requirements of subsection (2) (now (3)) of this section were not complied with and the board's action was void. Banks v. Board of Educ., 648 S.W.2d 542 (Ky. Ct. App. 1983).

Although statutes do not require a school district to compensate its certified personnel for extra services, once extra compensation is paid, no reduction thereof may be made except in the two situations allowed by subsection (1) of this section. Preuss v. Board of Educ., 667 S.W.2d 391 (Ky. Ct. App. 1984).

Where school system adopted new method of paying administrators which did not use the three components of base pay, extended pay and extra service pay, and principal's extra service pay was thereby reduced even though his total salary increased, principal, and others in same position, did incur a salary reduction under this section; since administrators' duties were not decreased and as they were not provided notice of the reduction in salary, the reductions were validly made only if the administrative salary schedule was a part of a uniform plan affecting the entire district. Preuss v. Board of Educ., 667 S.W.2d 391 (Ky. Ct. App. 1984).

Where a reduction decreased a component of salary paid only to principals and not to teachers, i.e., the extra service component, it was necessary, in order to be uniform, only that all principals with the same education, experience and other classifying factors received the same pay throughout the entire system; where that was done the reduction in the salary component did not violate this section even though it applied only to administrators and not to teachers. Preuss v. Board of Educ., 667 S.W.2d 391 (Ky. Ct. App. 1984).

3. "Major" Reduction.

A 25 percent reduction in earnings as a result of transfer would be a major, as opposed to a minor, reduction in earnings. Cooper v. Board of Educ., 587 S.W.2d 845 (Ky. Ct. App. 1979).

4. Uniform Plan of Reduction.

The specific notice of the nature of that provided in subsection (3) of this section is not required as a condition precedent to implementation of a state-mandated plan encompassing all teachers simply because some teachers are affected more than others or perhaps some teachers are not affected at all. White v. Board of Educ., 697 S.W.2d 161 (Ky. Ct. App. 1985).

"A uniform plan affecting all teachers in the entire district" does not mean that every teacher must suffer a like impact from a plan, or indeed any impact at all, rather, it means that a plan encompassing every teacher is valid notwithstanding that some teachers may be situated outside the scope of impact. White v. Board of Educ., 697 S.W.2d 161 (Ky. Ct. App. 1985).

The clear wording of this section mandates that reductions in salary which are a part of "a uniform plan affecting all teachers in the entire district" may be had without the specific notice required in subsection (3) of this section; this latter section is designed to give notice only to those persons who have suffered a reduction in responsibility and corresponding reduction in salary outside of an overall plan affecting all teachers. White v. Board of Educ., 697 S.W.2d 161 (Ky. Ct. App. 1985).

5. Employment for Less Than One Year.

Contract of employment from September 3, 1949 to June 30, 1950 at annual salary of $3,200 paid in monthly instalments entitled school principal to 10/12 of $3,200 for ten months. Welch v. Board of Educ., 247 S.W.2d 536 (Ky. 1952).

6. Demotion.

Where an assistant principal was simply transferred to a position of less responsibility, which would command substantially less pay, but the transfer was not accompanied by an immediate major reduction in pay (and thus was not a demotion as defined), it nevertheless became a demotion when the pay was reduced in a subsequent year. Cooper v. Board of Educ., 587 S.W.2d 845 (Ky. Ct. App. 1979).

The Circuit Court did not err in requiring the county board of education to pay a school principal who had been demoted to classroom teacher the same salary in the succeeding year after the demotion as he was paid in his last year as principal, where the school board had not yet acted on the superintendent's recommendation and reduced the principal's salary by May 15 of his last year as principal. Daugherty v. Hunt, 694 S.W.2d 719 (Ky. Ct. App. 1985).

In the case of the demotion or reassignment of a probationary administrator, the provision in the definition of a school year covering seven months' service only has meaning when coupled with the words "within a school year." Thus an administrator must only serve seven months "within each school year" beginning July 1 and ending June 30 in order to have worked "three years" as an administrator. If such administrator has already worked seven months during his third school year or will have worked seven months before June 30 of his third year of administrative service, he must be notified of a demotion before May 15 of that year, under KRS 161.760. Board of Educ. v. Paul, 846 S.W.2d 675 (Ky. 1992).

7. Superintendent.

The office of superintendent is outside the scope of the provisions of the Teacher Tenure Act. Floyd v. Board of Educ., 598 S.W.2d 460 (Ky. Ct. App. 1979).

8. Administrators With Longer Tenure.

Where subsection (1) of KRS 161.765, which applies to an administrator with less than three years of administrative service, provides that procedural safeguards of this section concerning notice and reassignment must be complied with, subsection (2) of KRS 161.765, which provides no such express requirement, must be read together with this section in order to furnish administrators of longer tenure with procedural safeguards in addition to those provided under this section. Miller v. Board of Educ., 610 S.W.2d 935 (Ky. Ct. App. 1980).

9. Transfer.

The provisions of this section prohibiting the transfer of a teacher after July 15, except for specific, statutory exceptions, are to be strictly construed; accordingly, where the superintendent, in early July, recommended the transfer of two teachers but the board failed to approve the transfer, consistently deadlocking on a 2-2 vote for several days beyond July 15, the board, in effect, failed to act on the recommendation and consequently, the circuit court's finding that a de facto transfer had occurred was without authority and erroneous. Burkhart v. Board of Educ., 649 S.W.2d 855 (Ky. Ct. App. 1983).

By the enactment of this statute the General Assembly of Kentucky clearly established that a teacher who has a contract to teach, has no absolute right to a particular teaching job in a particular school and the school boards have discretion

to transfer teachers within their district. Board of Educ. v. Jayne, 812 S.W.2d 129 (Ky. 1991).

Two teachers who were transferred to other schools after failing to improve their pass/failure rate, suffered no injury as they suffered no loss of pay, and no loss of fringe benefits, nor was there evidence indicating that the decision of the superintendent and the school board was based on racial discrimination, gender discrimination, religious discrimination, or political activity discrimination and therefore Const., § 2 was not invoked. Board of Educ. v. Jayne, 812 S.W.2d 129 (Ky. 1991).

10. Property Interest.

Employment of a teacher is employment in the school district only and not in a particular position or school; therefore, a teacher has no constitutionally protected property interest in his or her present position. Banks v. Burkich, 788 F.2d 1161 (6th Cir. 1986).

11. Reduction of Responsibility.

Where a teacher had a reduction of responsibilities without proper statutory notification for both the 1987-88 and 1988-89 school years, she was entitled to a full-time contract and full pay and benefits commensurate with her educational rank and teaching experience as determined by the school district's approved salary schedule for the school years in question. Omitted contributions to the Kentucky Teachers Retirement System for 1987-88 and 1988-89 should also have been paid by the board and Powell in their proper proportions as determined by statutory law. Board of Educ. v. Powell, 792 S.W.2d 376 (Ky. Ct. App. 1990).

12. —Reason.

Where letter informing teacher of removal as a coordinator and of a corresponding reduction in salary stated that the reason for such replacement was that the position would be incorporated into the central office staff but superintendent in his disposition, stated that the reason for transferring the duties was that he had had "numerous complaints among the vocational staff there" but declined to identify who had complained or what the complaints involved, the reason stated in the letter was not the reason underlying the action, and the notification does not satisfy subsection (3) of this section. Board of Educ. v. Williams, 806 S.W.2d 649 (Ky. Ct. App. 1991).

When this section requires reasons, it means true reasons. Charges against a teacher must be specific enough for him to prepare a defense. Board of Educ. v. Williams, 806 S.W.2d 649 (Ky. Ct. App. 1991).

13. —Notice.

Regarding notice of reduction of responsibility, actual notice is not sufficient to satisfy this section; written notification is required. Board of Educ. v. Williams, 806 S.W.2d 649 (Ky. Ct. App. 1991).

Where certified letter notifying teacher of his removal as vocational coordination and of a corresponding reduction in salary was delivered to the post office on May 13 and a return receipt placed in teacher's box on that date but teacher did not pick up the letter until May 17, written notification was furnished teacher prior to May 15 as required by this section and his own failure to collect and read his mail does not negate that fact. Board of Educ. v. Williams, 806 S.W.2d 649 (Ky. Ct. App. 1991).

14. Grounds.

The grounds for a demotion of an administrator are left to the sound discretion of the superintendent and board of education so long as they do not act in an arbitrary or unreasonable manner. Board of Educ. v. Williams, 806 S.W.2d 649 (Ky. Ct. App. 1991).

15. Arbitrary Action.

It is clear from the language of this section that the prohibition against arbitrary action applies to all public bodies and all public officials, e.g., school boards and school superintendents, in their assertion or attempted exercise of political power. Board of Educ. v. Jayne, 812 S.W.2d 129 (Ky. 1991).

Collateral References. 68 Am. Jur. 2d, Schools, § 157.

78, C.J.S., Schools and School Districts, §§ 248-251.

161.765. Procedures for demotion of administrative personnel — Appeal.

(1) A superintendent may demote an administrator who has not completed three (3) years of administrative service, not including leave granted under KRS 161.770, by complying with the requirements of KRS 161.760.

(2) An administrator who has completed three years of administrative service, not including leave granted under KRS 161.770, cannot be demoted unless the following procedures have been complied with:

(a) The superintendent shall give written notice of the demotion to the board of education and to the administrator. If the administrator wishes to contest the demotion, he shall, within ten (10) days of receipt of the notice, file a written statement of his intent to contest with the superintendent. If the administrator does not make timely filing of his statement of intent to contest, the action shall be final.

(b) Upon receipt of the notice of intent to contest the demotion, a written statement of grounds for demotion, signed by the superintendent, shall be served on the administrator. The statement shall contain:

1. A specific and complete statement of grounds upon which the proposed demotion is based, including, where appropriate, dates, times, names, places, and circumstances;
2. The date, time, and place for a hearing, the date to be not less than twenty (20) nor more than thirty (30) days from the date of service of the statement of grounds for demotion upon the administrator.

(c) Upon receipt of the statement of grounds for demotion the administrator shall, within ten (10) days, file a written answer. Failure to file such answer, within the stated period, will relieve the board of any further obligation to hold a hearing and the action shall be final. The board shall issue subpoenas as are requested.

(d) The hearing on the demotion shall be public or private, at the discretion of the administrator and shall be limited to the matters set forth in the written statement of grounds for demotion. The board shall provide to the administrator a verbatim transcript of the hearing. The board of education shall hear the case, with the board chairman presiding. The board, upon hearing the evidence and argument presented, shall retire to private chambers to arrive at a decision. Counsel or representatives for either party in the hearing shall not be consulted by the board unless the corresponding counsel or representatives for the other party are present

and unless a verbatim transcript of such consultation is made for the record.

(e) Within five (5) days from the close of the hearing, the board of education shall advise the parties of its decision and shall take official action in the case.

(f) Appeal from final board action may be taken in the same manner and under the same provisions as an appeal from tribunal action under KRS 161.790.

(Enact. Acts 1974, ch. 356, § 2; 1990, ch. 476, Pt. IV, § 283, effective July 13, 1990.)

Kentucky Bench & Bar. Wolnitzek, The Fair Demotion Act, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 23.

Opinions of Attorney General. This section has no application to personnel action taken before June 21, 1974. OAG 74-370.

This section deals only with demotion and not with dismissal. OAG 75-2.

Although this section applies to guidance counselors, where a counselor is reassigned as a teacher at the same salary he is not entitled to a hearing under this section since, in view of KRS 161.720, he has not been demoted within the meaning of the law. OAG 75-368.

An individual, who has completed one year as an assistant principal and who for ten years just prior to said year was not employed in education and prior to the ten-year period, was a teacher on tenure and had had at least three years' experience as an administrator comes under this section and cannot be demoted without following the procedures of this section. OAG 75-413; 76-99.

An athletic director would be an administrator for the purposes of this section. OAG 77-114.

Inasmuch as administrative service in another school system is of no consequence whatsoever as concerns this section, a certified employee who has in excess of three years of administrative experience but who has served only two years as a principal in the school system where presently employed would not be entitled to a hearing if demoted by the board. OAG 77-157.

The assignment of an administrator with at least three years' administrative service in the same school system to a teaching position or any position not having administrative responsibilities would be a demotion, irrespective of the similarity of salary. OAG 77-328.

Since years of service as superintendent of schools would not be counted for purposes of this section, a school business administrator who has completed two years of service following a four-year term as superintendent could be demoted. OAG 77-493.

A board of education could reduce the term of an elementary school principal's contract from 12 months to a lesser number of months, but could not reduce his salary without giving written notice as required by subsection (2) of this section. OAG 78-148.

An elementary school principal could not be demoted to a classroom teacher with a reduction in salary unless the procedures of this section were followed. OAG 78-148.

It would appear that a demotion involves at least two positions and, accordingly, when a school board changes only contract characteristics, specifically duration of the contract, of a single administrative position, this action does not constitute a demotion for the purposes of this section. OAG 78-148.

While upon timely recommendation by the superintendent and approval by the board of education (before May 15), an administrator serving a school system protected under the provisions of this section may still be assigned to a different administrative position in the school system, the new administrative position may not subject the individual to a substantial alteration in pay received for performing administrative services in the school system. OAG 78-793.

A demotion can be made, after a full following of the procedures mandated in the statute, on strictly economic and nonpersonal grounds. OAG 79-111.

If the reasons for the reduction in expenditures are fully given, the requirements of subdivision (2)(b) of this section will have been met. OAG 79-111.

This section does not give one protected by its provisions any right to a particular administrative position in the school system. OAG 79-111.

This section is not a "tenure" statute. OAG 79-111.

This section provides administrative procedural due process which must be complied with before a certified employee who has been an administrator in a school system for three years may be demoted. OAG 79-111.

For individuals who have failed to hold administrative positions in a school district for at least three years, the school district is not required to implement the due process procedures including a hearing outlined in this section, but must only follow KRS 161.760. OAG 82-135.

For those administrators who have the requisite three years or more administrative experience in a school district, which years need not be in the same administrative position, the detailed due process procedures of subsection (2) of this section must be followed before a school district may demote them back into the classroom. OAG 82-135.

Seniority is not required by statute to come into play in deciding which administrative employees to transfer as a result of reductions; however, school districts may adopt a procedure of considering seniority as a factor in a reduction of administrators situation. OAG 82-135.

Since the Court of Appeals has concluded that an administrator protected by this section should also have the benefit of the procedural safeguards of KRS 161.760(2), if a school district, with the recommendation of the local superintendent, intends to demote an administrator with three or more years administrative service, the written notice of demotion and the opportunity for a due process hearing must be completed before May 15. OAG 82-135.

Teachers and administrators, even those with more than three years of administrative service, do not have a statutorily protected right to a particular teaching or administrative position. OAG 82-135.

The demotion process under this section was not intended by the general assembly to be available solely as a disciplinary measure to be taken only if an administrator was not adequately performing expected administrative services. "Grounds" can also be premised upon budgetary problems. OAG 82-135.

A teacher may take an unpaid leave of absence for maternity, which may properly include time for care of a newborn infant, even if there is no disability, and this maternity leave shall be granted by the local board of education for a reasonable period of time on an individual basis, considering individual circumstances. OAG 86-66.

Effective July 13, 1990, the Kentucky Education Reform Act, House Bill 940, Acts Chapter 476, removed responsibility for personnel decisions from the local school board and placed that responsibility with the superintendent. Accordingly, the superintendent may legally demote a principal who has served three or more years in administrative service only upon fully abiding by this section. Similarly, the superintendent may legally demote a central office administrator (such as an assistant superintendent, general supervisor, director of pupil personnel, etc.) only upon fully abiding by this section. OAG 91-119.

Cited: Bradshaw v. Board of Educ., 607 S.W.2d 427 (Ky. Ct. App. 1979); Fayette County Educ. Ass'n v. Hardy, 626 S.W.2d 217 (Ky. Ct. App. 1980); Board of Educ. v. Rothfuss, 639 S.W.2d

545 (Ky. 1982); Shepherd v. Boysen, 849 F. Supp. 1168 (E.D. Ky. 1994).

NOTES TO DECISIONS

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1. Application.

The language of this section would seem to indicate that it was intended to apply to disciplinary actions against tenured school administrators for it refers to giving complete and specific grounds upon which the proposed demotion is based including dates, names, places and circumstances; provides for a hearing of the grounds which may be in private at the request of the administrator; and provides that the board, upon hearing the evidence and argument of counsel, shall decide the issue. Cooper v. Board of Educ., 587 S.W.2d 845 (Ky. Ct. App. 1979).

The Kentucky Education Reform Act (KERA) Board of Education's failure to take official, and presumably final, action in informing school personnel of demotion prior to May 15 as provided by KRS 161.760(3) and thus invalidating the demotion had been changed by the enactment of KRS 160.390 which effectively supersedes the May 15 requirement and under the plain language of KRS 161.760 and 160.390 makes the superintendent's action of demotion effective upon mere written notice to the affected employee of the action. Estreicher v. Board of Educ., 950 S.W.2d 839 (Ky. 1997).

Since superintendent's action in demoting school administrator was effective when administrator received notice of demotion from superintendent, while this section admittedly provides administrators with enhanced procedural protections, it does nothing to change the effective date of a demotion, and it is that effective date that controls for the purpose of the May 15 deadline set forth in KRS 161.760 and the fact that an administrator might contest the demotion, and thus the action might not become final for some time is of no consequence under KRS 160.390(2). Estreicher v. Board of Educ., 950 S.W.2d 839 (Ky. 1997).

2. Hearing.

Under this section, an administrator must be afforded a hearing in the event of demotion regardless of the reason for the demotion. Harlan County Bd. of Educ. v. Stagnolia, 555 S.W.2d 828 (Ky. Ct. App. 1977).

Where an assistant principal was an administrator with tenure and, subsequent to his termination, was reemployed as an elementary school teacher, he was in fact demoted and was entitled to a hearing. Harlan County Bd. of Educ. v. Stagnolia, 555 S.W.2d 828 (Ky. Ct. App. 1977).

The vote of the board of education to demote a school principal need not be held in public. Miller v. Board of Educ., 610 S.W.2d 935 (Ky. Ct. App. 1980).

This section, as amended in 1990 to eliminate principals' right to a hearing before demotion while protecting lesser administrators, did not deny equal protection where one basis for eliminating the right of principals to the cumbersome procedural safeguards of other administrators was to permit the swift removal of principals who may be in a unique position to hinder easy implementation of the Kentucky Education Reform Act (KERA); therefore, there was a legitimate distinction between principals and other administrators supporting the sweep of the tenure statute. Arney v. Campbell, 856 F. Supp. 1203 (W.D. Ky. 1994).

3. Statement of Grounds for Demotion.

Where notice to school counselors only stated that demotion was based upon required reduction of expenditures and did not say why expenditures were required to be reduced, why the reduction should be applied to the counselors as opposed to reducing some other expenditure, why a particular counselor was selected as opposed to another counselor or other administrator of equal pay and rank, where the specific budget adjustment was made nor when a budget would be adopted for that year or if one had been adopted, such notice was inadequate. Hartman v. Board of Educ., 562 S.W.2d 674 (Ky. Ct. App. 1978).

Where superintendent's letter to administrator, while arguably containing only general statements of charges against administrator alluded to past correspondence between the two that set forth in some detail the source of the superintendent's dissatisfaction with administrator's performance, administrator was sufficiently informed of the specific reasons for his demotion and corresponding reduction in salary. Estreicher v. Board of Educ., 950 S.W.2d 839 (Ky. 1997).

Subsection (2)(b)(1) of this section protects administrators from demotions based on vague, unsubstantiated or generalized allegations of misconduct. The provision exists to allow administrators to know the specific nature of the charges against them, in order to evaluate the accusation intelligently and prepare for a hearing on the matter. Estreicher v. Board of Educ., 950 S.W.2d 839 (Ky. 1997).

Although superintendent failed to set out a date, time and place for the hearing on the demotion of the administrator in letter sent to administrator informing him of the reasons for his demotion, where administrator requested and received a twenty-five day continuance, the failure to comply with the technical requirements of subsection (2)(b)(2) of this section in no way compromised his defense, and no prejudice resulted. Estreicher v. Board of Educ., 950 S.W.2d 839 (Ky. 1997).

4. Reinstatement.

Where school principal had been demoted after a Roman circus type hearing by a school board biased against him, and based on testimony of a group of teachers similarly biased against him to the point they had agitated for his removal, the board's decision was arbitrary and unreasonable and the trial court's order reinstating the principal would be affirmed. Hart County Bd. of Educ. v. Broady, 577 S.W.2d 423 (Ky. Ct. App. 1979).

5. Lateral Transfer.

This section cannot be evaded by the expedient of a lateral transfer to a position of less responsibility in one year followed by a reduction in pay in a succeeding year when the duties of the new position at the time of the transfer were so significantly less as to have justified a major reduction in pay at the time of transfer. Cooper v. Board of Educ., 587 S.W.2d 845 (Ky. Ct. App. 1979).

6. Demotion.

Where an assistant principal was simply transferred to a position of less responsibility, which would command substantially less pay, but the transfer was not accompanied by an immediate major reduction in pay (and thus was not a demotion as defined), it nevertheless became a demotion when

the pay was reduced in a subsequent year. Cooper v. Board of Educ., 587 S.W.2d 845 (Ky. Ct. App. 1979).

Where statement of grounds for school principal's demotion gave specific occasions with dates in some instances and in others, where dates were not given, the nature of the allegations were such that citing specific dates or occasions would not seem necessary to permit principal to formulate a defense, the statement sufficiently complies with the specificity and completeness of subsection (2)(b) of this section. Miller v. Board of Educ., 610 S.W.2d 935 (Ky. Ct. App. 1980).

Since this section does not set forth the grounds necessary to demote a school administrator who has completed three years of administrative service nor even state a specific requirement of "cause" for demotion, the grounds are left to the sound discretion of the local superintendent and board of education, subject to the limitation that the grounds not be arbitrary or unreasonable or otherwise violative of a right protected by the state or federal Constitution. Miller v. Board of Educ., 610 S.W.2d 935 (Ky. Ct. App. 1980).

Where an educator is transferred to a position of less responsibility, and the transfer is not accompanied by an immediate major reduction in pay, but there is to be a reduction in a subsequent year, the transfer becomes a demotion when (and if) that reduction takes place. Accordingly, where principal was transferred to less responsible post but his salary remained the same, it could not be said that he had been demoted from one position on the salary schedule to a position for which a lower salary was paid. Stafford v. Board of Educ., 642 S.W.2d 596 (Ky. Ct. App. 1982).

The Circuit Court did not err in requiring the county board of education to pay a school principal who had been demoted to classroom teacher the same salary in the succeeding year after the demotion as he was paid in his last year as principal, where the school board had not yet acted on the superintendent's recommendation and reduced the principal's salary by May 15 of his last year as principal. Daugherty v. Hunt, 694 S.W.2d 719 (Ky. Ct. App. 1985).

In suit by principal who was demoted to teacher, alleging that denial of his right to the pre-demotion hearing provided for administrators in this section deprived him of equal protection of the laws guaranteed by the Fourteenth Amendment of the U.S. Constitution and an exercise of arbitrary power prohibited by Const., § 2, since "administrators" as defined by subsection (8) of KRS 161.720 as it existed prior to its 1992 amendment did not include "principals" as "administrators", the court employing the "rational basis scrutiny" held that since there were several distinctions between "principals" and "administrators", there was a rational basis for the exclusion of "principals" from the definition of "administrators" and thus such exclusion did violate the Fourteenth Amendment of the U.S. Constitution or Const., § 2. Roberts v. Mooneyhan, 902 S.W.2d 842 (Ky. Ct. App. 1995).

7. Untimely Notification of Demotion.

A school board must affirmatively act on a superintendent's recommendation of a proposed demotion and notify the teacher involved of such action before May 15 in order for it to be effective; accordingly, where the superintendent's recommendation that the administrator be demoted from director of pupil personnel to a position as a classroom teacher was made in April, but the board of education failed to act on the recommendation until June, the notice requirements of subsection (2) (now (3)) of KRS 161.760 were not complied with and the board's action was void. Banks v. Board of Educ., 648 S.W.2d 542 (Ky. Ct. App. 1983).

8. —Reduction in Earnings.

9. ——"Major" Reduction.

A 25 percent reduction in earnings as a result of transfer would be a major, as opposed to a minor, reduction in earnings. Cooper v. Board of Educ., 587 S.W.2d 845 (Ky. Ct. App. 1979).

10. Superintendent.

A superintendent is not afforded the protection of this section which deals exclusively with the procedure for demotion of administrative personnel. Floyd v. Board of Educ., 598 S.W.2d 460 (Ky. Ct. App. 1979).

11. Administrators.

12. —Longer Tenure.

Where subsection (1) of this section, which applies to an administrator with less than three years of administrative service, provides that procedural safeguards of KRS 161.760 concerning notice and reassignment must be complied with, subsection (2) of this section, which provides no such express requirement, must be read together with KRS 161.760 in order to furnish administrators of longer tenure with procedural safeguards in addition to those provided under KRS 161.760. Miller v. Board of Educ., 610 S.W.2d 935 (Ky. Ct. App. 1980).

13. —Generally.

An administrator is one who (1) holds a position categorized as an administrative position pursuant to KRS 161.720(8), or pursuant to approval by the State Board of Education of the position as a certified administrative position; and (2) is duly certified by the State Board of Education as an administrator. Petett v. Board of Educ., 684 S.W.2d 7 (Ky. Ct. App. 1984).

This section requires that an administrative position itself be certificated and that the employee also be specifically certified for the position, before the due process provisions of this section are triggered; thus, where the employee held an administrative position, but he was not certified as such by the State Board of Education, he was therefore not technically qualified for such position, so that his transfer from the position of health coordinator to teacher was made according to law, and his due process rights were not offended. Petett v. Board of Educ., 684 S.W.2d 7 (Ky. Ct. App. 1984).

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

14. Probationary.

In the case of the demotion or reassignment of a probationary administrator, the provision in the definition of a school year covering seven months' service only has meaning when coupled with the words "within a school year." Thus an administrator must only serve seven months "within each school year" beginning July 1 and ending June 30 in order to have worked "three years" as an administrator. If such administrator has already worked seven months during his third school year or will have worked seven months before June 30 of his third year of administrative service, he must be notified of a demotion before May 15 of that year, under KRS 161.760. Board of Educ. v. Paul, 846 S.W.2d 675 (Ky. 1992).

15. Appeal.

Where a teacher received unequivocal notice that she would be demoted from an administrative position and reassigned as a special education teacher, and she failed to appeal the school board's action for approximately 15 months, her claim was properly dismissed. Frisby v. Board of Educ., 707 S.W.2d 359 (Ky. Ct. App. 1986).

At best, this section gives an administrator with at least three years experience an additional procedural opportunity to convince the board of the lack of merit in the superinten-

dent's recommendation of demotion, or that it violates a constitutional or statutory right. Hooks v. Smith, 781 S.W.2d 522 (Ky. Ct. App. 1989).

16. Continuing Service Contract.

Unlike a teacher, a school administrator, even one who has completed three years administrative service, is not ever granted a continuing service contract as an administrator. Hooks v. Smith, 781 S.W.2d 522 (Ky. Ct. App. 1989).

17. Removal.

An administrator has been given no right of tenure to an administrative position and may be removed from such position by the local board of education upon recommendation of the superintendent for any reason not offending some right protected by the state or federal constitutions or KRS 161.162 (repealed). Hooks v. Smith, 781 S.W.2d 522 (Ky. Ct. App. 1989).

161.770. Leaves of absence.

(1) Upon written request of a teacher or superintendent, a board of education may grant a leave of absence for a period of not more than two (2) consecutive school years for educational or professional purposes, and shall grant such leave where illness, maternity, adoption of a child or children, or other disability is the reason for the request. Upon subsequent request, such leave may be renewed by the board. A board of education may pay a sum of money equivalent to all or any portion of salary to a teacher or superintendent who has been granted leave for educational or professional purposes if the person taking said leave agrees in writing to return to employment with the board for no less than two (2) years.

(2) Without request, a board of education may grant leave of absence and renewals thereof to any teacher or superintendent because of physical or mental disability, but such teacher or superintendent shall have the right to a hearing and appeal on such unrequested leave of absence or its renewal in accordance with the provisions for hearing and appeal in KRS 161.790.

(3) Upon the return to service of a teacher or superintendent at the expiration of a leave of absence, he shall resume the contract status which he held prior to such leave.

(4) Payments to any teacher or superintendent under this section by a local district are intended and presumed to be for and in consideration of services rendered and for the benefit of the common schools and such payments do not affect the eligibility of any school district to share in the distribution of funds from the public school funds as established in KRS Chapter 157.

(Enact. Acts 1942, ch. 113, § 6; 1944, ch. 98; 1976, ch. 158, § 1; 1986, ch. 395, § 2, effective July 15, 1986; 1990, ch. 476, Pt. IV, § 247, effective July 13, 1990.)

Cross-References. Teacher disciplinary hearings, 701 KAR 5:090.

Kentucky Bench & Bar. Whalen, The Kentucky Education Reform Act of 1990 and Local Boards of Education, Vol. 57, No. 1, Winter 1993, Ky. Bench & Bar 11.

Opinions of Attorney General. It is not an abuse of discretion for the board to grant a leave of absence to a teacher who, while unable to perform his duties because of illness, did not make a written request for leave until about seven or eight months after the inception of the illness, when the teacher had previously advised the superintendent orally of his illness. OAG 60-472.

A local board of education may not grant a teacher leave of absence with pay to serve on a committee appointed by the Commission on Public Education. OAG 60-1152.

The provisions of this section concerning the granting of leave of absence for illness are mandatory and the board must grant the leave on written request. OAG 61-633.

A board of education has adequate authority to adopt regulations which would require teachers to submit to periodic physical examinations, if it appears that they are physically unable to discharge their duties as a teacher. OAG 65-560.

The fact that a teacher has taught for several years possessing a disability which is actually sufficient to impair his teaching services does not estop the teacher from requesting a leave of absence because of that disability. OAG 68-586.

The phrase "other disability" as used in this section encompasses any disability which would substantially impair the effective performance by a teacher of the full scope of duties involved in the teaching assignments for which he is qualified and the fact that a teacher is able to perform satisfactorily in some other line of work which may be more sedentary and less strenuous, specifically having been elected to the office of county judge (now county judge/executive), would not in and of itself be conclusive as to lack of disability for teaching. OAG 68-586.

Maternity leave is not "sick leave" within the meaning of KRS 161.155 but a "leave of absence" under this section and as such it results in a cessation of salary benefits during the period of absence. OAG 70-730.

This section is to be regarded as exclusive and takes precedence over KRS 160.290. OAG 70-771.

Within the purview of this section, a district board of education may, in its discretion, grant a leave of absence to a superintendent for the purpose of his seeking and/or accepting the office of state superintendent of public instruction. OAG 70-771.

A board of education has discretion in granting leave for professional or educational purposes, but it has no discretion and must grant leave where illness, maternity, or other disability is the reason, if the request is the first request. OAG 71-303.

Where a teacher neither resigned nor requested maternity leave but merely informed the board that she could not teach the following year and was subsequently employed by the board on a continuing contract which provided that the teacher was entitled to accumulated leave, the board waived any contention that the teacher did not request maternity leave in writing. OAG 71-303.

A teacher on leave of absence could not be paid for "calamity days" which were granted during the time of his leave. OAG 72-554.

A school board may grant a leave of absence, without loss of tenure, to an employee who takes employment with another educationally related system even though the teacher states that he may not return to employment in the school district at the end of his leave of absence, but such a statement could very well have an influence on the board's decision as to whether or not to grant the leave of absence. OAG 73-377.

A school board would not be authorized to grant a leave of absence to a teacher who is going to work outside of the educational field, as this section which permits the granting of a privilege to a public employee should be narrowly construed in the interest of the public and the board would not be authorized to grant a leave of absence for any purpose except an "educational or professional purpose." OAG 73-377.

When a teacher taught for four consecutive years in a school district, took a leave of absence for three years, returned from her leave and taught two consecutive years in the same district, she has by law a continuing service contract and is

legally entitled to be reemployed in the coming year regardless of the notice she has received, unless her contract is terminated for cause or her contract is suspended. OAG 73-486.

As a leave of absence from the school system can only be granted for illness, maternity or other disability, and educational or professional purposes and as operating a garbage service is not one of these statutory reasons, the school board should not have granted a leave of absence but should have required the teacher to resign or continue working and, if the teacher is on a bona fide leave of absence, he would be violating KRS 156.480 by selling his garbage service to the school system. OAG 73-651.

The board of education should deal with requests for maternity leave on an individual basis considering the time of the year in which the birth occurs and the physical condition of the teacher as reported by the teacher and her doctor, and keeping in mind that the only statutory purposes for leave are educational or professional purposes and where illness, maternity or other disability is the reason for the request. OAG 73-665.

Board of education may not grant a leave of absence to a teacher for one semester for the purpose of attending a professional baseball umpires school. OAG 74-157.

Although accumulated sick leave may not be granted for child care following childbirth, a leave of absence is appropriate for that purpose. OAG 75-259 (withdrawing OAG 73-585 and 74-274).

A board of education is not required to grant leave for child rearing as such is not a disability. OAG 76-18.

It would be a reasonable board requirement to have a teacher submit a statement of disability from a personal doctor when requesting disability leave although a board probably cannot require examination by a board appointed doctor. OAG 76-18.

A continued absence for disability not supported by a doctor's statement is neglect of duty by a teacher. OAG 76-18.

A local board of education, in its reasonable exercise of discretion to grant a leave of absence for educational or professional reasons, may include working elsewhere in the teaching profession. OAG 79-106.

A local board of education may grant a leave of absence under this section without the local superintendent's recommendation. OAG 79-106.

Where a teacher talked about resigning, or requesting a leave of absence, less than a month before school was to open, so as to accept a teaching position elsewhere, but eventually just left to accept that position, and where the local board of education, upon learning of this, at first voted to terminate her, but then, before notifying her, reversed itself and voted to grant her an unrequested leave of absence for the year, although there was no legally supportable reason why the teacher should not be denied a teaching position for the following year, since she never requested a leave as required by subsection (1) of this section, nevertheless the board's action in granting the leave meant that the teacher would be entitled to resume her original status, at the end of the year, if she elected to return. OAG 79-106.

A teacher seeking benefits under KRS 161.661(1) while on leave of absence under this section has in effect terminated his or her tenure contract status and accompanying rights with the board of education when the teachers' retirement system approves that teacher's application for disability retirement, which means the teacher has "retired" for the purposes of KRS 161.720 to 161.810; and if the teacher, who has been granted leave of absence and accepted by the teachers' retirement system for disability retirement benefits, then becomes able to return to work, the board of education no longer has to afford to that teacher his or her former tenure rights. OAG 79-157.

While participation as a representative in the General Assembly does not fall within the exact perimeters of this section, a local board of education could not legally deny an individual board employee a leave to serve in the General Assembly. OAG 80-18.

A board of education may require a physician's certificate of medical disability for purposes of this section so long as such certificate is required of all persons requesting leave for "illness, maternity or other disability." OAG 80-151.

A father is not eligible for leave under this section to care for a newborn child. OAG 80-151.

A request for leave by reason of "illness, maternity or other disability" may continue so long as a disability continues to exist and there is no two-year limit. OAG 80-151.

A teacher is not entitled to a maternity leave under this section if the teacher simply wants to stay home to take care of a child since a maternity leave is only available for a medical disability condition; when the teacher is no longer disabled from the pregnancy, childbirth and recovery therefrom, the teacher's leave of absence without pay should terminate, and she should commence her teaching duties. OAG 80-151.

Although KRS 161.155 will not permit a school board requirement of a physician's certificate of an employee's disability to work in that an affidavit of the teacher will suffice, there is nothing in this section to preclude a board of education from requiring a physician's certificate; a school board could adopt such a policy pursuant to KRS 160.340(2)(e) which requires the board to adopt personnel policies that apply to certified employees. OAG 80-151.

This section places no duration limitation on a request for a leave due to "illness, maternity or other disability" since the two-year language is germane only to the educational or professional leave request as is the renewal language. OAG 80-151.

When a teacher has been approved to go on an unpaid leave of absence pursuant to this section for disability reasons, he or she is no longer entitled to use accumulated sick leave days, and is not entitled to pay for any holidays occurring during that absence. OAG 83-457.

The teacher on a leave of absence is subject to the usual application of school laws as to his or her employment contract status. OAG 84-43.

Subsection (3) of this section may not be construed so as to place a limited contract teacher on leave of absence in a different position than every other limited contract teacher in a school system; therefore, a nontenured teacher on leave of absence at the time renewal of his or her contract comes under consideration (before April 30th), may be recommended by a superintendent for nonrenewal the same as all other limited contract teachers in the school system. OAG 84-43.

The language in subsection (3) of this section is applicable and limited to a return to education responsibilities from a leave of absence during a given contract period, which, for a limited contract teacher is for a one year period only. OAG 84-43.

Payment by a board of education for the sabbatical leave of a teacher or superintendent is constitutional so long as the teacher or superintendent agrees to extend at least two years of future services to the school board. OAG 88-29.

When subsection (1) of this section authorizes a leave of absence for not more than "two (2) consecutive school years," that period of time encompasses two consecutive time periods beginning on July 1 and ending on June 30. Therefore, this language does not authorize the granting of a leave of absence that spans three consecutive school years, although the leave may only last two consecutive calendar years. OAG 91-134.

Both this section and KRS 158.782(2) provide for the granting of a leave for a period of not more than two consecutive school years; however, both statutes authorize renewal of a leave of absence, upon approval. OAG 91-134.

A school board may grant an unpaid leave of absence only if it determines that the leave of absence falls within one or more of the statutory categories, i.e., educational or professional

purposes, illness, maternity, adoption of a child, or other disability. OAG 01-9.

Cited: Estill County Bd. of Educ. v. Rose, 518 S.W.2d 341 (Ky. 1974).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 221, 255, 257, 258, 280-286.

161.780. Termination of contract by teacher or superintendent — Resignation binding as of date of acceptance.

(1) No teacher shall be permitted to terminate his or her contract within thirty (30) days prior to the beginning of the school term or during the school term without the consent of the superintendent. No superintendent shall be permitted to terminate his or her contract within thirty (30) days prior to the beginning of the school term or during the school term without the consent of the employing board of education. A teacher shall be permitted to terminate his or her contract at any other time when schools are not in session by giving two (2) weeks written notice to the employing superintendent. A superintendent shall be permitted to terminate his or her contract at any other time when schools are not in session by giving two (2) weeks written notice to the employing board of education. Upon complaint by the employing board or superintendent to the Education Professional Standards Board, the certificate of a teacher or superintendent terminating his contract in any manner other than provided in this section may be suspended for not more than one (1) year, pursuant to the hearing procedures set forth in KRS 161.120.

(2) If a teacher voluntarily resigns his contract during the school term, the resignation shall be in writing and shall become binding on the date the resignation is accepted by the superintendent. No further action by the employing board is necessary. The resignation is effective on the date specified in the letter of resignation. A resignation, once accepted, may be withdrawn only with the approval of the employing board of education. Nothing in this subsection shall release the teacher from liability to the local board of education for breach of contract.

(Enact. Acts 1942, ch. 113, § 7; 1944, ch. 98; 1978, ch. 57, § 1, effective June 17, 1978; 1990, ch. 56, § 1, effective July 13, 1990; 1990, ch. 476, Pt. IV, § 248, effective July 13, 1990; 1992, ch. 326, § 1, effective July 14, 1992; 2000, ch. 269, § 2, effective July 14, 2000.)

Compiler's Notes. Section 2 of Acts 1990, ch. 56 provided that the provisions of KRS 161.780 shall apply to any litigation in progress on July 13, 1990.

Opinions of Attorney General. KRS 161.760(1) and this section are not in conflict since KRS 161.760(1) concerns termination of employment only and this section concerns refusal of an assignment. OAG 64-576.

Although neither this section nor the regulation governing the procedure for suspending a certificate after a breach of contract provides any guidelines for when the complaint is to be made by the employing board, a local board of education should present the matter to the superintendent of public instruction within a reasonable period following the occurrence of the wrongful termination; the board would not be acting conscionably to delay its complaint since the one-year suspension period was meant to coincide with the school year prior to which the wrongful termination took place. OAG 80-120.

The provisions of this section do not apply to terminations by teachers of their contracts while schools are in session during the regular school term. OAG 80-120.

Cited: Commonwealth ex rel. Funk v. Robinson, 314 Ky. 344, 235 S.W.2d 780 (1950).

161.790. Termination of contract by board — Administrative hearing tribunal — Sanctions.

(1) The contract of a teacher shall remain in force during good behavior and efficient and competent service by the teacher and shall not be terminated except for any of the following causes:

(a) Insubordination, including but not limited to violation of the school laws of the state or administrative regulations adopted by the Kentucky Board of Education, the Education Professional Standards Board, or lawful rules and regulations established by the local board of education for the operation of schools, or refusal to recognize or obey the authority of the superintendent, principal, or any other supervisory personnel of the board in the performance of their duties;

(b) Immoral character or conduct unbecoming a teacher;

(c) Physical or mental disability; or

(d) Inefficiency, incompetency, or neglect of duty, when a written statement identifying the problems or difficulties has been furnished the teacher or teachers involved.

(2) Charges under subsections (1)(a) and (1)(d) of this section shall be supported by a written record of teacher performance by the superintendent, principal, or other supervisory personnel of the district, except when the charges are brought as a result of a recommendation made under KRS 158.6455.

(3) No contract shall be terminated except upon notification of the board by the superintendent. Prior to notification of the board, the superintendent shall furnish the teacher with a written statement specifying in detail the charge against the teacher. The teacher may within ten (10) days after receiving the charge notify the commissioner of education and the superintendent of his intention to answer the charge, and upon failure of the teacher to give notice within ten (10) days, the dismissal shall be final.

(4) Upon receiving the teacher's notice of his intention to answer the charge, the commissioner of education shall appoint a three (3) member tribunal, consisting of one (1) teacher, who may be retired, one (1) administrator, who may be retired, and one (1) lay person, none of whom reside in the district, to conduct an administrative hearing in accordance with KRS Chapter 13B within the district. Priority for selection as a tribunal member shall be from a pool of potential tribunal members who have been designated and trained to serve as tribunal members on a regular and ongoing basis, pursuant to administrative regulations promulgated by the Kentucky Board of Education. Funds

appropriated to the Department of Education for professional development may be used to provide tribunal member training. The commissioner of education shall name the chairman and set the date and time for the hearing. The hearing shall begin no later than forty-five (45) days after the teacher files the notice of intent to answer the charge.

(5) A hearing officer shall have final authority to rule on dispositive prehearing motions.

(6) The hearing may be public or private at the discretion of the teacher. At the hearing, a hearing officer appointed by the commissioner of education shall preside with authority to rule on procedural matters, but the tribunal shall be the ultimate trier of fact. The local board shall pay each member of the tribunal a per diem of one hundred dollars ($100) and travel expenses.

(7) Upon hearing both sides of the case, the tribunal may by a majority vote render its decision or may defer its action for not more than five (5) days. Provisions of KRS Chapter 13B notwithstanding, the tribunal decision shall be a final order and may be rendered on the record.

(8) The superintendent may suspend the teacher pending final action to terminate the contract, if, in his judgment, the character of the charge warrants the action. If after the hearing the decision of the tribunal is against termination of the contract, the suspended teacher shall be paid his full salary for any period of suspension.

(9) The teacher shall have the right to make an appeal to the Circuit Court having jurisdiction in the county where the school district is located in accordance with KRS Chapter 13B. The review of the final order shall be conducted by the Circuit Court as required by KRS 13B.150.

(10) As an alternative to termination of a teacher's contract, the superintendent upon notifying the board and providing written notification to the teacher of the charge may impose other sanctions, including suspension without pay, public reprimand, or private reprimand. The procedures set out in subsection (3) of this section shall apply if the teacher is suspended without pay or publicly reprimanded. The teacher may appeal the action of the superintendent if these sanctions are imposed in the same manner as established in subsections (4) to (9) of this section. Upon completion of a suspension period, the teacher may be reinstated.

(Enact. Acts 1942, ch. 113, § 8; 1944, ch. 98; 1964, ch. 41, § 6; 1988, ch. 370, § 1, effective July 15, 1988; 1990, ch. 476, Pt. II, § 85, effective July 13, 1990; 1996, ch. 318, § 53, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 598, § 16, effective April 14, 1998; 2000, ch. 200, § 1, effective July 14, 2000; 2002, ch. 141, § 1, effective July 15, 2002.)

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Wright, Fowler v. Board of Education: The Scope of Teachers' Free Speech Rights, 15 N. Ky. L. Rev. 279 (1988).

Edmondson and Rylee, Termination of the Tenured Teacher in Kentucky: Does K.R.S. 161.790 Provide Adequate Due Process?, 23 N. Ky. L. Rev. 263 (1996).

Opinions of Attorney General. A school employee could not without the permission of the board and superintendent sign a letter in his capacity as an employee of the school system recommending that an individual be reelected to the General Assembly. OAG 63-572.

A board of education has adequate authority to adopt regulations which would require teachers to submit to periodic physical examinations, if it appears that they are physically unable to discharge their duties as a teacher. OAG 65-560.

A teacher under a continuing service contract may not be dismissed without cause and without following the provisions of this section. OAG 72-363.

This section does not apply to the assignment of duties and reduction in salary but it applies only to the termination of a contract for one of the causes specified in the statute as authorizing termination. OAG 73-342.

When a teacher taught for four consecutive years in a school district, took a leave of absence for three years, returned from her leave and taught two consecutive years in the same district, she has by law a continuing service contract and is legally entitled to be reemployed in the coming year regardless of the notice she has received, unless her contract is terminated for cause or her contract is suspended. OAG 73-486.

Since, under this section, the only way the continuing contract of tenured personnel can be terminated is by resignation, retirement or for cause, it is not necessary for the board of education to take any formal action at a board meeting relative to the continuing employment of tenured personnel, although there is no objection to incorporating into the minutes of the board the designation of names and positions of all tenured personnel in the school district for the ensuing school year. OAG 73-523.

Where a teacher was dismissed by the school board and accepted such termination voluntarily by not demanding or receiving a hearing upon notification of termination, if such teacher's civil rights were violated, not just contractual rights, any action for redress would have to be made in the courts but the present board would not be authorized to make a decision on such a matter or to grant tenure or restore sick leave. OAG 73-697.

An individual, who has completed one year as an assistant principal, who for ten years just prior to said year was not employed in education and prior to the ten-year period, was a teacher on tenure and has had at least three years' experience as an administrator, cannot be demoted without following the procedures of KRS 161.765 but under KRS 161.740 does not have tenure or a continuing contract and could be dismissed upon recommendation of the superintendent at the end of the school year without going through the procedures of KRS 161.790. OAG 75-413.

A board of education may not pay a suspended teacher any salary accumulated during his suspension unless it is determined at a hearing that the teacher's contract will not be terminated. OAG 76-102.

An order requesting a teacher to search for a bomb or other such device would be both unreasonable and dangerous and therefore a teacher's refusal to obey such an order would not be insubordination. OAG 77-254.

A local board of education may terminate the employment of a teacher under this section within the protected 40-70 age range based upon individual assessment of the teacher's ability, capabilities, etc. OAG 79-204.

If a superintendent determines that grounds exist for cause for contract termination, the procedures specified in this section are to be followed. OAG 83-362.

The term "teacher" in this statute embraces all certified employees in a school system below the superintendent. A principal or other administrator, in the context of school law, is first a teacher; in other words, the school administrator is a teacher assigned to administrative responsibilities in a school system. OAG 83-362.

As with the other listed discharge for cause categories, there are no definitions in subdivision (1)(b) of this section to guide a local superintendent and board of education relative to the scope of the terms "immoral" or "conduct unbecoming a teacher"; obviously then there is some discretion to be exercised in a fair and reasonable manner by a superintendent and subsequently by a board of education in commencing and conducting a proceeding to terminate a teacher's contract based upon one or more of these general legal cause categories. It is not believed the lack of definitions or need for exercising such discretion presents a problem of vagueness in this section. OAG 83-362.

A single act showing immoral character or conduct unbecoming a teacher may be sufficiently serious enough on its own to stand as the basis for termination of teacher contract proceedings under subdivision (1)(b) of this section; the fulfillment of the requirements of subdivision (2)(a) (deleted by 1990 amendment) in situations of this sort would be accomplished by some supervisory personnel of the board, superintendent or principal, preparing in writing the manner in which it is believed the teacher's performance will be compromised or in whatever way adversely affected by the act showing immoral character or unbecoming conduct. OAG 83-362.

Since a trait of character is the issue under subdivision (1)(b) of this section, one method of proving character would be by a showing of a specific act or acts; thus, a charge of "immoral character," as used in that subdivision, may be based upon a specific act inimical to the public welfare and perhaps more importantly the welfare of a community school system. OAG 83-362.

Acts involving dishonesty, sexual misconduct or criminal action may be considered as either immoral conduct or conduct unbecoming a teacher within the scope of the causes for discharge; however, not every act involving dishonesty, sexual misconduct or criminal action can be deemed to impair the services of the teacher or administrator in instructing and supervising students or other school employees. School officials must be able to show that a nexus, or as it is sometimes referred to "rational connection," exists between the conduct and school purposes such as to justify the discharge of a school employee. OAG 83-362.

The tapes of the hearing concerning a teacher contract termination proceeding conducted pursuant to this section were available for public inspection under the Open Records Law, even though the tapes were in the possession of the reporter-transcriber rather than the Board of Education, as the teacher requested a public hearing and the matter had not reached the courts. OAG 87-62.

A recommendation of dismissal of a certified staff member from a distinguished educator is binding on the superintendent. Upon receiving the recommendation, the superintendent is required to notify the staff member pursuant to this section. OAG 92-135.

A tribunal is required to be appointed under subsection (4) of this section upon receipt of the teacher's notice of intention to answer the charge. OAG 92-135.

Teachers dismissed upon recommendation of a distinguished educator continue to have a statutory right to be given cause for their dismissal and a right of appeal. OAG 92-135.

Teachers retain the right to an individual determination of competence and compliance with school laws. The fact that the teachers are evaluated by the distinguished educator does not change the fact that, utlimately, dismissal occurs under this section for the reasons set forth therein. OAG 92-135.

Termination of a teacher who is placed on probation under the criteria of KRS 158.6455(5) constitutes termination for cause under this section, and accordingly invokes a right of appeal. OAG 92-135.

When a distinguished educator makes a dismissal recommendation to the superintendent pursuant to KRS 158.6455, that recommendation is binding on the superintendent. The recommendation is based on an individual evaluation of the teacher by the distinguished educator after a minimum of six months of evaluation. In view of the fact that the termination is for cause, based on an evaluation of the teacher, some documentation or evidence is required. OAG 92-135.

One time payments to teachers to induce retirement are constitutional under Const., § 3 as such payments are in consideration of public service. The key fact that makes these payments constitutional is the voluntary retirement of the teacher; such an act is a "present" service for which an emolument is paid, not a past service for which a gratuity is given. OAG 96-23.

A school district's denial of access to a settlement agreement with a former employee could not be justified by KRS 61.878(1)(l), operating in tandem with subsection (5) of this section, since the latter statute does not shield from disclosure a settlement agreement entered into by a teacher and a school district. OAG 00-ORD-5.

Cited: Redding v. Fincel, 311 Ky. 534, 224 S.W.2d 671 (1949); Board of Educ. v. Justice, 268 S.W.2d 648 (Ky. 1954); Taylor v. Hampton, 271 S.W.2d 887 (Ky. 1954); Hogan v. Kentucky State Bd. of Educ., 329 S.W.2d 563 (Ky. 1959); Moore v. Babb, 343 S.W.2d 373 (Ky. 1960); Bates v. Dause, 502 F.2d 865 (6th Cir. 1974), rev'g 369 F. Supp. (W.D. Ky. 1973); Ford v. Jones, 372 F. Supp. 1187 (E.D. Ky. 1974); Settle v. Camic, 552 S.W.2d 693 (Ky. Ct. App. 1977); Singleton v. Board of Educ., 553 S.W.2d 848 (Ky. Ct. App. 1977); Burkett v. Board of Educ., 558 S.W.2d 626 (Ky. Ct. App. 1977); Hart County Bd. of Educ. v. Broady, 577 S.W.2d 423 (Ky. Ct. App. 1979); Miller v. Board of Educ., 610 S.W.2d 935 (Ky. Ct. App. 1980); Fayette County Educ. Ass'n v. Hardy, 626 S.W.2d 217 (Ky. Ct. App. 1980); Board of Educ. v. Rothfuss, 639 S.W.2d 545 (Ky. 1982); Banks v. Board of Educ., 648 S.W.2d 542 (Ky. Ct. App. 1983); Evans v. Montgomery County Bd. of Educ., 712 S.W.2d 358 (Ky. Ct. App. 1986); Wicker v. Board of Educ., 826 F.2d 442 (6th Cir. 1987).

NOTES TO DECISIONS

ANALYSIS

1. Constitutionality.
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1. Constitutionality.

Termination of a "tenured teacher" does not deprive the teacher of property interests and contract rights without procedural due process merely because the school board is cast into and occupies the roles of employer, accuser, investigator, prosecutor, judge and jury. Board of Educ. v. Burkett, 525 S.W.2d 747 (Ky. 1975).

Where the teacher had a 15-year-old student show a controversial, highly suggestive, and somewhat sexually explicit movie to a group of high school students aged 14 to 17, she did not preview the movie, despite the fact that she had been warned that portions were unsuitable for viewing in this context, and she made no attempt at any time to explain the meaning of the movie or to use it as an educational tool, this section proscribing "conduct unbecoming a teacher" gave her adequate notice that such conduct would subject her to discipline; accordingly, this section was not unconstitutionally vague as applied to her conduct. Fowler v. Board of Educ., 819 F.2d 657 (6th Cir. 1987), cert. denied, 484 U.S. 986, 108 S. Ct. 502, 98 L. Ed. 2d 501 (1987).

2. Voluntary Leave of Absence.

Where a teacher took an indeterminate voluntary leave of absence without the consent of the school board, an act of resignation occurred and the school board was under no obligation to take the teacher back. Miller v. Noe, 432 S.W.2d 818 (Ky. 1968).

3. Charges.

Where written charges against teacher were so vague and indefinite so that they did not furnish teacher sufficient information upon which he could base a defense such charges were not sufficient to support order of dismissal. Osborne v. Bullitt County Bd. of Educ., 415 S.W.2d 607 (Ky. 1967).

A tenured teacher has the right to contest the truth of the grounds alleged for termination in a hearing before the school board and, if successful, in a trial de novo before the Circuit Court. Bowlin v. Thomas, 548 S.W.2d 515 (Ky. Ct. App. 1977).

Where the school board did not make any written findings indicating which charge it found to be grounds for termination but the record showed that the charges were proven by ample evidence, the dismissal was supported by the evidence and written findings were not required. Bell v. Board of Educ., 557 S.W.2d 433 (Ky. Ct. App. 1977).

The board was not required to issue findings as to the particular charges of which a tenured teacher was deemed guilty, where there were only two charges, and the evidence supported a finding of guilt on each charge. Mavis v. Board of Educ., 563 S.W.2d 738 (Ky. Ct. App. 1977).

The charges against a teacher were not supported by written records of teacher performance, as required by this section, where the teacher had been employed in the school system for nine years and no written evaluation of his performance had been prepared during those years until only a few weeks before his discharge. Blackburn v. Board of Educ., 564 S.W.2d 35 (Ky. Ct. App. 1978).

A petition signed by parents of children in a teacher's class complaining of corporal punishment she inflicted on the children is not "written records" within subsection (2) (a) (deleted by 1990 amendment) of this section. Carter v. Craig, 574 S.W.2d 352 (Ky. Ct. App. 1978).

One purpose of the requirements of subsection (2) (a) (deleted by 1990 amendment) of this section is to make the teacher aware of deficiencies so that she or he may correct same before being terminated. Carter v. Craig, 574 S.W.2d 352 (Ky. Ct. App. 1978).

Tape recordings and notes of student interviews made by the school superintendent of which a teacher was uninformed prior to a hearing to determine whether to continue her services are not "written records" within the meaning of subsection (2) (a) (deleted by 1990 amendment) of this section. Carter v. Craig, 574 S.W.2d 352 (Ky. Ct. App. 1978).

4. Undesirable Reassignment.

The statutory method of terminating a teacher's tenure contract under this section and KRS 161.800 should be used rather than the indirect means of unworthy or undesirable reassignment. Lewis v. Board of Educ., 348 S.W.2d 921 (Ky. 1961).

5. Notice.

This section does not require greater exactitude than a civil complaint and fair notice of the essential notice and bases is sufficient. Board of Educ. v. Chattin, 376 S.W.2d 693 (Ky. 1964), overruled on other grounds, Osborne v. Bullitt County Bd. of Educ., 415 S.W.2d 607 (Ky. 1967).

Where formal notice of termination of contract referred to a supervisor's report for details of charges against teacher and it gave adequate notice of such details, the notice was sufficient. Knox County Bd. of Educ. v. Willis, 405 S.W.2d 952 (Ky. 1966).

Requirement of a very particular statement is a prerequisite to termination of an existing contract but does not apply to failure to renew a contract. Sparks v. Board of Educ., 549 S.W.2d 323 (Ky. Ct. App. 1977), overruled on other grounds, Singleton v. Board of Educ., 553 S.W.2d 848 (Ky. Ct. App. 1977).

Where a charge of insubordination specified that a tenured teacher failed to obey the instruction of the superintendent that he cease and desist all forms of physical and mental punishment of students and where the charge of conduct unbecoming a teacher specified abusive treatment of young students, the charges and specifications coupled with the information furnished appellant as to the nature of anticipated testimony were sufficiently specific as to inform him of the acts which he had to defend against. Mavis v. Board of Educ., 563 S.W.2d 738 (Ky. Ct. App. 1977).

The allegations made against a teacher were not in sufficient detail to satisfy the statutory requirements, and they did not afford him the notice to adequately prepare a defense where he was not told the names, dates, occurrences or other data upon which his supervisor relied to prove his inefficiency as a classroom teacher. Blackburn v. Board of Educ., 564 S.W.2d 35 (Ky. Ct. App. 1978).

The giving of mere notice of a general grounds for termination in the language used in the statute, such as inefficiency or incompetency, is not sufficient to inform a teacher of the specific nature of the charges against him, so as to permit the preparation of an adequate defense. Blackburn v. Board of Educ., 564 S.W.2d 35 (Ky. Ct. App. 1978).

6. Liability of Board Members.

The individual members of a school board are liable in damages for breaching a contract with a teacher employed by them. Race v. Humphrey, 301 Ky. 10, 190 S.W.2d 686 (1945).

7. Appeal.

The findings of the court on review should be given the same consideration as in the cases where the court acts in place of a properly instructed jury and unless the decision is flagrantly or palpably against the evidence the Court of Appeals will not set it aside. Hapner v. Carlisle County Bd. of Educ., 305 Ky. 858, 205 S.W.2d 325 (1947).

The Circuit Court is not confined to the record of the administrative body nor bound by its decision but may require

a trial de novo especially where due process has not been observed in the administrative proceedings. Osborne v. Bullitt County Bd. of Educ., 415 S.W.2d 607 (Ky. 1967). See Story v. Simpson County Bd. of Educ., 420 S.W.2d 578 (Ky. 1967).

Provision authorizing court on appeal to hear additional evidence is valid, (overruling holding to contrary in Board of Educ. v. Chattin, 376 S.W.2d 693 (Ky. Ct. App. 1964)). Osborne v. Bullitt County Bd. of Educ., 415 S.W.2d 607 (Ky. 1967). See Story v. Simpson County Bd. of Educ., 420 S.W.2d 578 (Ky. 1967).

The opportunity for a de novo hearing at the Circuit Court level with the right to offer additional evidence, if so desired, was intended by the legislature to cure any deficiencies in the due process hearing at the board level. Kelly v. Board of Educ., 566 S.W.2d 165 (Ky. Ct. App. 1977).

Where a teacher received unequivocal notice that she would be demoted from an administrative position and reassigned as a special education teacher, and she failed to appeal the school board's action for approximately 15 months, her claim was properly dismissed. Frisby v. Board of Educ., 707 S.W.2d 359 (Ky. Ct. App. 1986).

8. Insubordination.

Where teacher was denied reemployment after taking an unauthorized leave of absence, which demonstrated rank insubordination and amounted to neglect of duty on his part, his allegation that the defendants were motivated by political considerations was an unsupported legal conclusion and was insufficient to withstand the motion for summary judgment. Miller v. Board of Educ., 54 F.R.D. 393 (W.D. Ky.), aff'd, 452 F.2d 894 (6th Cir. 1971).

9. Misconduct.

This section applies only where there is an element of misconduct on the part of the teacher which gives rise to the termination. Harlan County Bd. of Educ. v. Stagnolia, 555 S.W.2d 828 (Ky. Ct. App. 1977).

Contracts of tenured teachers may be terminated for conduct unbecoming a teacher or immoral conduct involving off-campus activities involving students, notwithstanding written records indicating a satisfactory teacher performance. Board of Educ. v. Wood, 717 S.W.2d 837 (Ky. 1986).

Great care must be taken to ensure that proof of conduct of an immoral nature or conduct unbecoming a teacher which is sufficient to merit discharge of a tenured teacher should be of the same quality as required by other subsections of this section, that is, written documentation from impartial sources to substantiate the charges or its substantial equivalent. Board of Educ. v. Wood, 717 S.W.2d 837 (Ky. 1986).

Conduct of an immoral nature or conduct unbecoming a teacher which is sufficient to merit discharge of a tenured teacher, when it occurs in a context other than professional competency in the classroom, should have some nexus to the teacher's occupation, as was true where the defendant smoked marijuana with two students. Board of Educ. v. Wood, 717 S.W.2d 837 (Ky. 1986).

A teacher is held to a standard of personal conduct which does not permit the commission of immoral or criminal acts because of the harmful impression made on the students. Board of Educ. v. McCollum, 721 S.W.2d 703 (Ky. 1986).

Where the teacher deliberately and intentionally took sick leave from his employment for the purpose of driving a coal truck to another state, he executed a false affidavit in regard to the sick day, and he failed to visit a homebound student for the minimum required time, there was substantial evidence supporting the termination of the teacher for conduct unbecoming a teacher under subdivision (1)(b) of this section. Board of Educ. v. McCollum, 721 S.W.2d 703 (Ky. 1986).

Where the teacher introduced a controversial and sexually explicit movie into a classroom of adolescents without preview, preparation, or discussion, her conduct constituted "conduct unbecoming a teacher" within the meaning of subdivision (1)(b) of this section. Fowler v. Board of Educ., 819 F.2d 657 (6th Cir. 1987), cert. denied, 484 U.S. 986, 108 S. Ct. 502, 98 L. Ed. 2d 501 (1987).

Statements made by education association, its representative and teacher at public meetings and hearings were protected by the First Amendment to the United States Constitution, where association and teacher at school board meetings called for the termination of principal accused of using a racial epithet to introduce a school employee. Eaton v. Newport Bd. of Educ., 975 F.2d 292 (6th Cir. 1992), cert. denied, 508 U.S. 957, 113 S. Ct. 2459, 124 L. Ed. 2d 674 (1993).

10. —Dismissal of Former Superintendent.

It was not arbitrary and capricious for Commissioner of Education to require acting county school superintendent to dismiss former school superintendent who had been reassigned as an at-will employee and against whom serious charges of financial misconduct had been brought while formerly employed as superintendent. Shepherd v. Boysen, 849 F. Supp. 1168 (E.D. Ky. 1994).

11. Power of Board.

It was the intention of the legislature in enacting this section to allow the local board of education to make the final determination of dismissal and once the board's hearing is commenced, the superintendent may not attempt to terminate the proceedings by withdrawing his recommendation. Bell v. Board of Educ., 557 S.W.2d 433 (Ky. Ct. App. 1977).

This section does not require that the board's deliberations and decision on termination must be held at a public meeting and, accordingly, a decision to dismiss two teachers was not void because it was taken during a closed session. Bell v. Board of Educ., 557 S.W.2d 433 (Ky. Ct. App. 1977); Carter v. Craig, 574 S.W.2d 352 (Ky. Ct. App. 1978).

The power of the board of education to discipline teachers is not based on personal moral judgments by board members; it exists only because of the legitimate interests of the government in protecting the school community and the students from harm. Board of Educ. v. Wood, 717 S.W.2d 837 (Ky. 1986).

It was not the intention of the legislature to subject every teacher to discipline or dismissal for private shortcomings that might come to the attention of the board of education but have no relation to the teacher's involvement or example to the school community. Board of Educ. v. Wood, 717 S.W.2d 837 (Ky. 1986).

County board of education had an inherent right to appeal decision of tribunal's that teacher should not have been terminated on grounds that tribunal decision was arbitrary even though the board did not have a liberty interest at stake. Reis v. Campbell County Bd. of Educ., 938 S.W.2d 880 (Ky. 1996).

Although no express right of appeal was given board of education under subsection (8) of this section, since the three-member tribunal created in subsection (4) of this section is a separate and distinguishable entity from the county board of education and thus the tribunal is not an agent of the board, the board is not barred from appealing the tribunal's decision that a teacher's contract should not be terminated. Reis v. Campbell County Bd. of Educ., 938 S.W.2d 880 (Ky. 1996).

12. —Constitutional Protection.

County board of education is a political body with a corporate structure and is entitled to the protection of Const., § 2. Reis v. Campbell County Bd. of Educ., 938 S.W.2d 880 (Ky. 1996).

13. Reviewing Tribunal.

Although a tribunal established pursuant to this section had authority to modify penalty imposed by superintendent, it did not have the authority to reduce teacher's termination to a lesser sanction where the tribunal made specific findings that the teacher's insubordination and conduct unbecoming a teacher merited termination, made no mitigating findings on

behalf of teacher or any findings that superintendent had acted arbitrarily, and gave no reason for its reduction of the penalty. Gallatin County Bd. of Educ. v. Mann, 971 S.W.2d 295 (Ky. Ct. App. 1998).

Substantial evidence in the record supported the hearing tribunal's conclusion that the school employee's two violations of the teacher tenure statute warranted a reprimand and suspension, and not the termination recommended by superintendent; the tribunal alone had the right under the statute to decide the appropriate sanction, thus, its other finding that denied the school employee's motion for directed verdict on the issue of the termination of her contract as a teacher also had to be upheld since substantial evidence supported that decision as well. Fankhauser v. Cobb, — S.W.3d —, 2002 Ky. App. LEXIS 587 (Ky. Ct. App. Mar. 29, 2002).

14. Absence Due to Illness.

Where a teacher had frequently been unable to attend classes because of his illnesses, and had been granted a leave of absence to allow psychiatric care on at least one occasion and where he would be able to work only on a part-time basis and was still a patient in the University of Kentucky Medical Center, such evidence supported the board's decision to terminate his contract. Kelly v. Board of Educ., 566 S.W.2d 165 (Ky. Ct. App. 1977).

15. Incompetency as Grounds.

When the charges upon which the teacher is to be dismissed involve inefficiency, incompetency or neglect of duty, a written statement identifying the problem or problems must have been previously furnished to the teacher and it is clear that some opportunity for the teacher to correct the problem should be permitted. Blackburn v. Board of Educ., 564 S.W.2d 35 (Ky. Ct. App. 1978).

Written charges, furnished to the teacher at the time of a termination, do not fulfill the requirement of a written statement identifying the problem when incompetency, inefficiency or neglect of duty are the grounds for such termination. Blackburn v. Board of Educ., 564 S.W.2d 35 (Ky. Ct. App. 1978).

Where a year had passed since a teacher had been transferred, and she had subsequently been rehired, whatever notice of problems and difficulties she may have had then had dissipated, since the rehiring indicated the board was not too dissatisfied by her performance. Carter v. Craig, 574 S.W.2d 352 (Ky. Ct. App. 1978).

16. Resignation.

Where plaintiff, a teacher, was employed in one school district for six successive years, resigned, taught in another school system the following year, again resigned, took a year off and then taught for three years in a third school district before being released, he was entitled to no hearing under this section, since, although he had achieved tenure at his first position, when he resigned he lost his tenure by reason of subsection (4) of KRS 161.720 and subdivision (1)(c) of KRS 161.740 is inapplicable. Carpenter v. Board of Educ., 582 S.W.2d 645 (Ky. 1979).

17. Transfer to Noncertified Position.

Where a high school principal was transferred, at the same pay level, to a newly created position as supervisor of transportation for the school system, the transfer from a certified to a noncertified position amounted to "termination" as a "teacher" under subsections (1) and (4) of KRS 161.720; accordingly, the principal was entitled to a hearing as required by this section. Crawley v. Board of Educ., 658 F.2d 450 (6th Cir. 1981).

18. Written Records of Teacher Performance.

Where the charge for termination of a tenured teacher is based on evidence of immoral character or conduct unbecoming a teacher, the requirement of former subdivision (2)(a) of this section, that the charge be supported by written records of teacher performance, did not require an evaluation of the teacher during the tenure of employment. Board of Educ. v. McCollum, 721 S.W.2d 703 (Ky. 1986).

19. Job Protection.

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

20. Appeal.

Although no express right of appeal was given board of education under subsection (8) of this section, under the Constitution it had such right to appeal three-member tribunal's decision that teacher's contract should not have been terminated. Reis v. Campbell County Bd. of Educ., 938 S.W.2d 880 (Ky. 1996).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 220, 252, 254, 280-287, 310-314.

161.795. Investigation of and records that school employee acted improperly relating to statewide assessment program — Certain records to be expunged.

(1) In cases where a decision or judgment was tendered in an administrative or judicial proceeding before July 15, 1998, in an investigation of allegations that a teacher, administrator, or other school employee acted improperly relating to the statewide assessment program required by KRS 158.6453, all references relating to the investigation, findings, and disciplinary actions shall be expunged from the individual's personnel file by the local school district, and the Kentucky Department of Education and the Education Professional Standards Board shall expunge any references to the investigation and findings in all agency files. This shall apply to all affected persons found not guilty of the allegations.

(2) After July 15, 1998, allegations that a teacher, administrator, or other school employee has acted improperly relating to the statewide assessment program required by KRS 158.6453 shall be investigated. If the individual is found not guilty of the allegations, all references to the charges shall be immediately expunged from the individual's personnel file in the local school district, and the Kentucky Department of Education and the Education Professional Standards Board shall expunge all references to the investigation from all agency files.

(Enact. Acts 1998, ch. 465, § 1, effective July 15, 1998.)

161.800. Suspension of contracts on reducing number of teachers.

When by reason of decreased enrollment of pupils, or by reason of suspension of schools or territorial changes affecting the district, a local superintendent decides

that it shall be necessary to reduce the number of teachers, he shall have full authority to make reasonable reduction. But, in making such reduction, the local superintendent shall, within each teaching field affected, give preference to teachers on continuing contracts and to teachers who have greater seniority. Teachers whose continuing contracts are suspended shall have the right of restoration in continuing service status in the order of seniority of service in the district if teaching positions become vacant or are created for which any of the teachers are or become qualified.
(Enact. Acts 1942, ch. 113, § 9; 1944, ch. 98; Enact. Acts 1942, ch. 113, § 9; 1944, ch. 98; 1990, ch. 476, Pt. IV, § 249, effective July 13, 1990.)

Kentucky Law Journal. Kentucky Law Survey, Bratt, Education, 64 Ky. L.J. 293 (1975-76).

Opinions of Attorney General. Under this section a teacher with a lifetime certificate based on 64 college hours and ten years' experience has seniority over the teacher who possesses a temporary certificate with 120 college hours and only three years' experience. OAG 61-528.

This section is applicable to both teachers with limited contracts and teachers with continuing contracts. OAG 61-528.

Seniority gives no special preference on nontenure teachers. OAG 73-383; 73-702.

When a shortage of funds necessitates the reduction of teaching personnel the only statutory preference granted is to teachers with a continuing contract, and the school board upon the recommendation of the superintendent may reemploy or not reemploy such teachers as have a limited contract provided those not to be reemployed are notified by May 15th. OAG 73-383; 73-702.

When a teacher taught for four consecutive years in a school district, took a leave of absence for three years, returned from her leave and taught two consecutive years in the same district, she has by law a continuing service contract and is legally entitled to be reemployed in the coming year regardless of the notice she has received, unless her contract is terminated for cause or her contract is suspended. OAG 73-486.

The suspension of contracts under this section must be based upon continuing contracts and seniority and further, the certification of the teacher must be taken into account. OAG 80-150.

The term "qualified" at the end of this section must be construed as equivalent to certification, thus, if a teacher suspended from the teaching field affected is properly certified to teach in another teaching field in the school system and the suspended teacher has greater seniority than teachers in the field for which he or she is also qualified, then the continuing contract status teacher with the least seniority in that teaching field may be suspended under this section and so on. OAG 80-150.

Seniority is not required by statute to come into play in deciding which administrative employees to transfer as a result of reductions; however, school districts may adopt a procedure of considering seniority as a factor in a reduction of administrators situation. OAG 82-135.

Cited: Taylor v. Hampton, 271 S.W.2d 887 (Ky. 1954); Moore v. Babb, 343 S.W.2d 373 (Ky. 1960); Settle v. Camic, 552 S.W.2d 693 (Ky. Ct. App. 1977); Harlan County Bd. of Educ. v. Stagnolia, 555 S.W.2d 828 (Ky. Ct. App. 1977).

NOTES TO DECISIONS

ANALYSIS

1. Construction.
2. Pre-suspension hearing.

1. Construction.

This section deals with seniority only as it affects employment and not as it affects position. Marshall v. Conley, 258 S.W.2d 911 (Ky. 1953).

2. Pre-Suspension Hearing.

Tenured school teachers who were suspended because of decreased enrollment did not have a property right in continued employment and its benefits to entitle them to a pre-suspension hearing. Downs v. Henry County Bd. of Educ., 769 S.W.2d 49 (Ky. Ct. App. 1988).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 255, 259.

161.810. Continuance of status in case of annexation or consolidation of schools.

If an entire school district or that part of a school district which comprises the territory in which a school or schools are situated is transferred to any other district, or if the schools in an independent or county school district are consolidated or centralized, the teachers in such consolidated or centralized schools employed on continuing contracts immediately prior to such transfer, consolidation, or centralization shall, subject to the limitations imposed by KRS 161.800, have continuing service status in the newly centralized or consolidated school, or in the district to which the territory is transferred.
(Enact. Acts 1942, ch. 113, § 10; 1944, ch. 98; Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 547, effective July 13, 1990.)

Cited: Taylor v. Hampton, 271 S.W.2d 887 (Ky. 1954).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 222-225, 228-235, 238, 239.

CIVIL SERVICE FOR NONINSTRUCTIONAL EMPLOYEES OF BOARD OF EDUCATION OF CITY OF SECOND CLASS

161.821. Definitions for KRS 161.822 to 161.837. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1946, ch. 201, § 1) was repealed by Acts 1978, ch. 274, § 2, effective June 17, 1978.

161.822. Board of education in city of second class authorized to establish civil service system for noninstructional employes — Petition — Resolution — Creation of commission. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1946, ch. 201, § 2) was repealed by Acts 1978, ch. 274, § 2, effective June 17, 1978.

161.823. Civil service commission — Membership — Appointment — Term — Vacancies — Compensation — Meetings — Quorum. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1946, ch. 201, § 3) was repealed by Acts 1978, ch. 274, § 2, effective June 17, 1978.

161.824. Employes of commission — Appropriation for expenses. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1946, ch. 201, § 4) was repealed by Acts 1978, ch. 274, § 2, effective June 17, 1978.

161.825. Noninstructional employes of board of education to be appointed from eligibility lists. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1946, ch. 201, § 4) was repealed by Acts 1978, ch. 274, § 2, effective June 17, 1978.

161.826. Rules and regulations governing civil service system. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1946, ch. 201, § 5; 1966, ch. 239, § 147) was repealed by Acts 1978, ch. 274, § 2, effective June 17, 1978.

161.827. Emergency appointments — Promotions — Classification of present employes. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1946, ch. 201, § 6) was repealed by Acts 1978, ch. 274, § 2, effective June 17, 1978.

161.828. Tenure of employes — Dismissal or suspension. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1946, ch. 201, § 7) was repealed by Acts 1978, ch. 274, § 2, effective June 17, 1978.

161.829. Prohibition against solicitation or assessment, political activity or acceptance of compensation other than salary. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1946, ch. 201, §§ 8 and 12) was repealed by Acts 1978, ch. 274, § 2, effective June 17, 1978.

161.830. Political or religious opinions not to be given consideration. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1946, ch. 201, § 9) was repealed by Acts 1978, ch. 274, § 2, effective June 17, 1978.

161.831. Manual of instructions. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1946, ch. 201, § 11) was repealed by Acts 1978, ch. 274, § 2, effective June 17, 1978.

161.832. Annual notice to employes of salary for coming year — Increase or decrease of salary. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1946, ch. 201, § 13) was repealed by Acts 1978, ch. 274, § 2, effective June 17, 1978.

161.833. Leave of absence. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1946, ch. 201, § 14) was repealed by Acts 1978, ch. 274, § 2, effective June 17, 1978.

161.834. Transfer of employes to other positions. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1946, ch. 201, § 15) was repealed by Acts 1978, ch. 274, § 2, effective June 17, 1978.

161.835. Corrupt action, impersonation or giving of false information forbidden. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1946, ch. 201, § 16) was repealed by Acts 1978, ch. 274, § 2, effective June 17, 1978.

161.836. Giving consideration for appointment or promotion forbidden. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1946, ch. 201, § 17) was repealed by Acts 1978, ch. 274, § 2, effective June 17, 1978.

161.837. Prosecution of violations of KRS 161.821 to 161.836. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1946, ch. 201, § 18) was repealed by Acts 1978, ch. 274, § 2, effective June 17, 1978.

161.841. Retirement plan for noninstructional school employees. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1950, ch. 197) was repealed by Acts 1990, ch. 476, § 616, effective July 13, 1990.

PENALTIES

161.990. Penalties.

(1) Any person who violates any provisions of KRS 161.164 shall be guilty of a Class A misdemeanor. Any school board candidate or school board member who willfully violates any provision of KRS 161.164 shall also be disqualified from holding the office of school board member.

(2) Any teacher or employee of a district who willfully violates any provision of KRS 161.164 shall be ineligible for employment in the common schools for a period of five (5) years.

(3) Any person who violates any of the provisions of KRS 161.190 shall be guilty of a Class A misdemeanor.

(4) Any teacher who violates any of the provisions of subsection (2) of KRS 161.210 shall be subject to a fine of fifty dollars ($50) and upon conviction his certificate shall be revoked.

(5) A violation of any of the provisions of KRS 161.661 or 161.690 is a misdemeanor and upon conviction shall be punished by a fine of not more than five thousand dollars ($5,000).

(4503-6, 4503-8, 4506b-50: amend. Acts 1946, ch. 201, § 10; 1962, ch. 244, Art. IV, § 3; 1972, ch. 82, § 24; 1978, ch. 274, § 1, effective June 17, 1978; 1982, ch. 36, § 1, effective July 15, 1982; 1986, ch. 255, § 3, effective July 15, 1986; 1990, ch. 476, Pt. II, § 87, effective July 13, 1990.)

Kentucky Law Journal. Taylor, With Temperate Rod: Maintaining Academic Order in Secondary Schools, 58 Ky. L.J. 616 (1970).

Cited: Cooksey v. Board of Educ., 316 S.W.2d 70 (Ky. 1957).

NOTES TO DECISIONS

1. Purpose.

Constitution § 183 places a duty on the General Assembly to establish an efficient common school system free from political influence and this section and KRS 161.164 were enacted by the General Assembly in an effort to comply with this directive. State Bd. for Elementary & Secondary Educ. v. Howard, 834 S.W.2d 657 (Ky. 1992).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 77, 78.

CHAPTER 162

SCHOOL PROPERTY AND BUILDINGS

SECTION.

School Property

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162.050. Use of school property for public purposes.

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162.330. Lease of building — Option to purchase.
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162.360. Revenues from building — Determination and use.
162.370. Maintenance fund surplus.
162.380. Bonds are obligations of governing body — Resolution constitutes contract.
162.385. School district finance corporation — Definitions — Construction bonds.
162.390. [Repealed.]
162.400. [Repealed.]
162.410. [Repealed.]
162.420. [Repealed.]
162.430. [Repealed.]
162.431. [Repealed.]
162.432. [Repealed.]
162.433. [Repealed.]
162.434. [Repealed.]
162.435. [Repealed.]

Insurance Funds

162.440. Insurance fund for boards of education in cities of the second class or counties containing cities of the second class.
162.450. Payments into fund — Replacement of expenditures — Use of interest.
162.460. Investment and care of insurance fund.
162.470. Insurance inspector to examine buildings annually.
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162.500. Prohibited appropriations.

State Property and Buildings Commission

162.510. [Repealed.]
162.520. Definitions for KRS 162.520 to 162.620.
162.530. [Repealed.]
162.540. Interpretation of terms in KRS 162.120 to 162.300 when applied to KRS 162.520 to 162.620.
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162.560. [Repealed.]
162.570. [Repealed.]
162.580. Duty of authority as to each bond issue.

SECTION.
162.590. Duty of department on request of authority.
162.600. Bonds to issue in name of authority — Identification — Investment designation.
162.610. [Repealed.]
162.620. Sale of bonds — Conditions.

PENALTIES

162.990. Penalties.

SCHOOL PROPERTY

162.010. Title to school property.

The title to all property owned by a school district is vested in the Commonwealth for the benefit of the district board of education. In the acquisition of land for school purposes, whether by purchase or condemnation, or otherwise, the title obtained shall be in fee simple, except that title to land received from the federal government or any agency thereof can be received in other than fee simple with the approval of the Attorney General of the Commonwealth. Any reversionary interest in any land held by boards of education on June 14, 1934, shall not deprive such boards of the ownership of the buildings or other improvements thereon.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 548, effective July 13, 1990.)

Compiler's Notes. This section (4399-19: amend. Acts 1954, ch. 20, § 1; 1958, ch. 136, § 1) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 548, effective July 13, 1990.

Cross-References. Commonwealth to be named as grantee in deed of land to state agency or to land paid for from state funds, KRS 56.030.

Flag of Commonwealth, flying at public schools, KRS 2.030.

Gifts and devises, acceptance of, KRS 160.580.

Proceeds of sale of school property may be credited to building funds, KRS 160.476.

School building fund taxes, KRS 160.476.

State support of education, KRS Ch. 157.

Textbooks are property of state, KRS 157.150.

Building sites; inspection, approval, 702 KAR 4:050.

Kentucky Law Journal. Martin, Administrative Action for Efficient Debt Management: The Kentucky Case, 49 Ky. L.J. 505 (1961).

Opinions of Attorney General. Under this section, the title to land acquired for school purposes is required to be in fee simple, and the acquisition of land by deed of easement is not permitted. OAG 60-423.

A municipality may not erect a water tank on school premises without the consent of the board of education and the payment of fair compensation for the use of school property. OAG 63-1060.

The right of the grantor to place and use mining entries through the surface of the land adjacent to school buildings and near which school children might be playing would violate the statute. OAG 65-345.

The intent and purpose of the statute are satisfied if title is taken in fee simple only to the surface rights which are unlimited as to duration and descendibility. OAG 65-345.

Purchases of athletic equipment of over $1,000 by a district school board would have to be made by the bidding procedure even though the purchase money was derived from admissions to athletic exhibitions. OAG 69-327.

A school board is not required to obtain prior approval of the local planning unit in order to construct a new school building. OAG 69-659.

The exemption for schools contained in KRS 100.361(2) would not apply until the property is acquired. OAG 69-659.

A city could not require a contractor to obtain a building permit for the construction of a county school within the city limits. OAG 70-636.

A city could legally deed property for $1.00 to the Commonwealth for the benefit of the school board, with a reverter provision which would give a fee simple title subject to a right of entry (reverter), unless construction of a school building has begun within five years of the date of the deed's execution, but if construction has begun within five years, the title would become a fee simple absolute. OAG 70-797.

Where a school board bought land, the deed to which contained a covenant running with the land that the buyer would maintain a fence for the benefit of the adjoining tract, the covenant did not violate this section. OAG 71-407.

Where title to property conveyed by the United States to a local board of education was a fee simple title, the transaction did not require the specific approval of the Attorney General even though the deed to the United States by its grantor contained a special warranty. OAG 72-316.

It would be allowable for a transfer of property from the federal government to a Commonwealth school board to contain a right of entry clause so long as that right of entry is not carried beyond the 30-year limit set out in KRS 381.219. OAG 72-477.

Subsection (1) of KRS 156.070 does not give the State Board of Education the authority to enact an administrative regulation requiring that surplus property be disposed of either through sealed bids or by public auction, as the legal obligation of a school board in selling property is to get the fair market value for the property sold in order that its value will not be lost to the district and to school purposes and a school board has the legal authority to convey good title under this section to the surplus property it has agreed to sell. OAG 73-204.

Since public common school buildings and school property are public property, no alcoholic beverages may be consumed in public school buildings or on public school property at any time. OAG 76-266.

Once approval to sell school property as surplus is given by the Superintendent of Public Instruction, there is no legal requirement that a board of education must dispose of the property by public auction or advertisement of sealed bids and the board may establish a price for the land and sell to any purchaser willing and able to meet that price if the figure represents at least the appraised fair market value of the property. OAG 76-291.

A deed of property to a local school board, subject to the grant of a prior 20-year lease of a portion of the property, to a local community action agency, at an annual rental of $1.00 but with the requirement that the lessee keep the leasehold in good repair, does not destroy or impair severely the fee title received. OAG 79-543.

Cited: Schuerman v. State Bd. of Educ., 284 Ky. 556, 145 S.W.2d 42 (1940); City of Louisville v. Manning, 309 Ky. 789, 219 S.W.2d 13 (Ct. App. 1949); Hopkins County Fiscal Court v. Commonwealth ex rel. Att'y Gen., 252 S.W.2d 875 (Ky. 1952); Employers Liab. Assurance Corp. v. Johnson County, 262 S.W.2d 367 (Ky. 1953); Robertson v. City of Danville, 291 S.W.2d 816 (Ky. 1956).

NOTES TO DECISIONS

ANALYSIS

1. Purpose of acquisition.
2. School purposes.
3. Title in commonwealth.
4. Abolishment of school district.
5. Conveyance.
6. —Warranty deed.

7. Reversionary interest.
8. —Creation.
9. —Trustee as grantor.
10. —Buildings and improvements.
11. Decisions made by local school board.

1. Purpose of Acquisition.
The board of education had no power under this section to acquire any land except for school purposes. Ford v. Pike County Bd. of Educ., 310 Ky. 177, 220 S.W.2d 389 (1949).

2. School Purposes.
The phrase "school purposes" was broad and comprehensive and included building living quarters for teachers and custodial employes, where conditions warranted. Ford v. Pike County Bd. of Educ., 310 Ky. 177, 220 S.W.2d 389 (1949).

3. Title in Commonwealth.
Where property conveyed to private trustees in trust "for school purposes" was operated for many years by county board of education under agreement with trustees, the law vesting title to all school property in the Commonwealth operated to transfer title to the property from the trustees to the Commonwealth. Subsequent legislation requiring city independent district in which property was located to provide school service of the type being furnished in the school located on the property did not affect the title, which remained in the Commonwealth. Board of Educ. v. Board of Educ., 292 Ky. 261, 166 S.W.2d 295 (1942).

4. Abolishment of School District.
When duty to provide school service for colored children in cities of fifth and sixth classes was transferred from county board to city board, city board was entitled to use school building formerly used by county board for colored children. Board of Educ. v. Board of Educ., 292 Ky. 261, 166 S.W.2d 295 (1942).

5. Conveyance.

6. —Warranty Deed.
Where grantor, who had only a life estate, conveyed land to a school district under a general warranty deed, subsequent acquisition of the fee by the grantor inured to the benefit of the school district. Hollon v. Wolfe County Bd. of Educ., 307 Ky. 671, 212 S.W.2d 129 (1948).

7. Reversionary Interest.
This section did not bar operation of a reversionary clause in deed conveying land to school district for school purposes. Lykins v. Wolfe County Bd. of Educ., 307 Ky. 24, 209 S.W.2d 717 (1948).

Reversionary interest in school property will be enforced. Board of Educ. v. Society of Alumni of Louisville Male High Sch., Inc., 239 S.W.2d 931 (Ky. 1951).

8. —Creation.
A deed to school district containing a clause of reversion created in the trustees a determinable or qualified fee. Fayette County Bd. of Educ. v. Bryan, 263 Ky. 61, 91 S.W.2d 990 (1936).

A conveyance to be held so long as the property was used for school purposes did create a reversionary interest. Fayette County Bd. of Educ. v. Bryan, 263 Ky. 61, 91 S.W.2d 990 (1936).

Title to land should have reverted to grantor's descendants where deed to school district, by describing land as that on which new school house "now stands," and by providing that it was not to be conveyed for use of individual, created limitation or condition, and school district thereafter abandoned land and conveyed it to individual. Devine v. Isham, 284 Ky. 587, 145 S.W.2d 529 (1940).

9. —Trustee As Grantor.
Provision in deed of land made by grantor, who was member of trustees of school district, that land should revert to donors, their heirs and assigns, as soon as school site was changed, was void, since it was duty of trustees under this section to acquire title to school sites in fee simple, and hence successors of grantor could not recover land notwithstanding trustees had abandoned land for school purposes. Keeton v. Wayne County Bd. of Educ., 287 Ky. 174, 152 S.W.2d 595 (1941).

10. —Buildings and Improvements.
Where county board of education in violation of statute took title to school lot with a reversion to grantors or their legal heirs when it ceased to be used for school purposes and later sold original school building which was removed from land after suit was filed by grantors' successors, there was an abandonment or cessation of use in the absence of affirmative showing of plan to erect a new building within a reasonable time and grantors' successors could have recovered land and building. Webster County Bd. of Educ. v. Wynn, 303 Ky. 110, 196 S.W.2d 983 (1946).

While lands might have reverted to heirs or grantees of the original grantor, the title to buildings and other improvements remained in the Commonwealth for the benefit of the proper school district authorities. Cole v. Shockley, 309 Ky. 313, 217 S.W.2d 649 (1949).

Statute in existence at time a deed of land to school district was executed, and reading substantially as this section, was construed to prevent title to abandoned school building or equipment from passing to owner of reversionary interest in the land. Cole v. Shockley, 309 Ky. 313, 217 S.W.2d 649 (1949).

Provision providing that any reversionary interest in land used for school purposes should not deprive board of education of buildings or other improvements thereon, was not applicable to deed executed prior to passing of statute. Barren County Bd. of Educ. v. Jordan, 249 S.W.2d 814 (Ky. 1952).

11. Decisions Made by Local School Board.
The underlying theme of this section is that the actual decisions addressed hereunder are to be made by the local school board, not the state. Blackburn v. Floyd County Bd. of Educ., 749 F. Supp. 159 (E.D. Ky. 1990).

DECISIONS UNDER PRIOR LAW

ANALYSIS

1. Adverse possession.
2. School district abolished.
3. Conveyance.
4. Reversionary interest.

1. Adverse Possession.
Title to property for school purposes may have been acquired by adverse possession. County Bd. of Educ. v. Mill Creek Methodist Church, 242 Ky. 147, 45 S.W.2d 1026 (1932).

2. School District Abolished.
When a district was abolished, title to its property passed to the successor district. Breathitt County Bd. of Educ. v. Back, 214 Ky. 284, 283 S.W. 99 (1926).

3. Conveyance.
Boards of education had statutory authority to convey property. Bellamy v. Board of Educ., 255 Ky. 447, 74 S.W.2d 920 (1934).

A board of education could not rescind a conveyance made five years earlier by a former board on the mere ground that it was a bad bargain. Trustees of Congregational Church v. Board of Trustees, 230 Ky. 94, 18 S.W.2d 887 (1929).

Law that provided for acquisition of land for school in fee simple in school board while binding on the school board, did not bind the grantor and his privies, and did not invest a school board with better title than the deed purported to

convey. Webster County Bd. of Educ. v. Gentry, 233 Ky. 35, 24 S.W.2d 910 (1930).

4. Reversionary Interest.

A conveyance "for school purposes" did not, in and of itself, create a reversionary interest. Binder v. County Bd. of Educ., 224 Ky. 143, 5 S.W.2d 903 (1928).

When the grantor of a lot to a school district was also one of the trustees, and received a valuable consideration, a clause of reversion could not have been enforced by him or a grantee without consideration. Terry v. Rose, 251 Ky. 314, 64 S.W.2d 909 (1933).

Collateral References. 68 Am. Jur. 2d, Schools, §§ 71-86. 78 C.J.S., Schools and School Districts, § 358.

162.020. Transfer of property from one district to another — Title not affected — District may own school in another district.

(1) The title to school property in territory transferred from one (1) school district to another shall not be affected by the transfer. In case of the sale of such property the board of education to which the property belongs may allow a credit on the sale price of the property in proportion to the ratio which the school population of the transferred territory is to the total school population of the district from which the territory was transferred before the transfer was made.

(2) A board of education owning and operating a school plant in another district on June 14, 1934, may continue to own and operate the plant, and a county board of education may establish and maintain a school in an independent school district. Any independent school district may purchase school sites and establish and maintain schools outside the limits of the independent district, but independent districts containing cities of the first or second class shall not purchase school sites or establish or maintain schools outside the county in which the independent district is located.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 549, effective July 13, 1990.)

Compiler's Notes. This section (4399-5) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 549, effective July 13, 1990.

Cross-References. Liability for indebtedness on transfer or annexation of school property, KRS 160.065.

NOTES TO DECISIONS

Analysis

1. Construction.
2. Merger with two districts.

1. Construction.

This section contemplates a situation in which the district from which territory was transferred would continue to operate as a school district. Board of Educ. v. Board of Educ., 284 Ky. 774, 146 S.W.2d 30 (1940).

2. Merger with Two Districts.

Where town independent school district was dissolved and part of it went to city district and part to county district resulting in merger with those districts, equitable disposition of property of former town district would be to divide it between city and county districts in proportion of population which became part of city district to that which became part of county district; liabilities of former town district being assumed by city and county districts in same proportion. Board of Educ. v. Board of Educ., 284 Ky. 774, 146 S.W.2d 30 (1940).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 357, 358.

162.030. Condemnation of property for school purposes.

Each board of education may, when unable to make a contract satisfactory to the board with the owner for the purchase of real estate to be used for school purposes, initiate condemnation proceedings pursuant to the Eminent Domain Act of Kentucky (KRS 416.540 to 416.670), and the title to land so obtained shall be vested in fee simple.

(4399-21: amend. Acts 1954, ch. 20, § 2; 1976, ch. 140, § 67; 1990, ch. 476, Pt. IV, § 250, effective July 13, 1990.)

Cross-References. Eminent Domain Act of Kentucky, KRS 416.540 to 416.680.

Opinions of Attorney General. A city cannot require a subdivider to dedicate certain lands, shown or not shown on the master plan of current adoption, to the public for use as a site for schools and/or parks. OAG 65-417.

The discretion in the matter of the use of a school house is given to the board of education and not the principal, but, unless there is some good reason to refuse the use of the property to a particular organization, the board should allow requesting organizations the use of the property under uniform conditions. OAG 74-362.

Cited: Crawford v. Murphy, 296 S.W.2d 738 (Ky. 1956); Commonwealth, Dep't of Hwys. v. McGeorge, 369 S.W.2d 126 (Ky. 1963).

NOTES TO DECISIONS

Analysis

1. Future needs.
2. Resolution of board.
3. Negotiations.
4. School purposes.
5. Compensation.

1. Future Needs.

Authority of school board to condemn is not limited to immediate needs only, but it may, and indeed should give consideration to future needs and the fact that a portion of the land taken will continue to be put to private use by a public utility holding a lease thereon until the needs of the board require its use does not destroy the right of eminent domain. Pike County Bd. of Educ. v. Ford, 279 S.W.2d 245 (Ky. 1955).

2. Resolution of Board.

Technical strictness in the language of resolution adopted by board of education in condemnation proceedings is not required. Pike County Bd. of Educ. v. Ford, 279 S.W.2d 245 (Ky. 1955).

3. Negotiations.

Where board made an inadequate offer but left the matter open to further negotiation by "if they feel that they can make some offer with some degree of reasonableness attached thereto, we shall be happy to receive and consider their offer" there was a good faith effort to negotiate and the board's offer was not a "take it or leave it" offer. Pike County Bd. of Educ. v. Ford, 279 S.W.2d 245 (Ky. 1955).

Where the board offered $150,000 for a 43.3-acre parcel when the owner had assessed the value of the entire 103-acre

tract at $122,600, the condemnor made all the effort required by this section. Usher & Gardner, Inc. v. Mayfield Indep. Bd. of Educ., 461 S.W.2d 560 (Ky. 1970).

4. School Purposes.

Where the approval of the proposed site by the Superintendent of Public Instruction and the State Department of Education was clearly proved, there was ample evidence to support the finding of the trial judge that the proposed acquisition was for school purposes. Usher & Gardner, Inc. v. Mayfield Indep. Bd. of Educ., 461 S.W.2d 560 (Ky. 1970).

5. Compensation.

The landowner was entitled to receive as just compensation the difference in the fair market value of the total tract of land immediately before and immediately after the taking of a portion of the land for school purposes. Usher & Gardner, Inc. v. Mayfield Indep. Bd. of Educ., 461 S.W.2d 560 (Ky. 1970).

Collateral References. 78 C.J.S., Schools and School Districts, § 357.

162.040. Escheated property.

So much property in each school district as escheats to the state, and is not required by the provisions of KRS Chapter 393 to be disposed of in some other manner, shall vest in the state for the use and benefit of the public schools in the district. The board of education of the district may, in the name of the state and for the use and benefit of the schools of the district, by its chairman or other officer designated by it, enter upon and take possession of the property, or sue for and recover the property by action at law or in equity. The board may sell and convey any of the property by warranty deed or otherwise.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 550, effective July 13, 1990.)

Compiler's Notes. This section (4399-56) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 550, effective July 13, 1990.

Opinions of Attorney General. Where escheated property formerly owned by a noncitizen of the United States is auctioned by the state with the state retaining the proceeds therefrom, the proceeds from the sale of the land are applied for the use and benefit of the public schools in the district in which the property is located, pursuant to this section. OAG 81-248.

Cited: City of Louisville v. Manning, 309 Ky. 789, 219 S.W.2d 13 (Ct. App. 1949).

NOTES TO DECISIONS

Analysis

1. Undevised property.
2. Property owned by alien.

1. Undevised Property.

In the case of undevised property, the eight-year waiting period prescribed by KRS 393.020 is not necessary. Commonwealth ex rel. Bd. of Educ. v. Schultz's Unknown Heirs, 268 Ky. 806, 105 S.W.2d 1067 (1937).

2. Property Owned by Alien.

The board of education of the school district in which property owned by an alien is situated may institute an action in the name of the Commonwealth to escheat the property. If the board has authorized the action, it is proper for the action to be brought by the Attorney General as relator. Commonwealth ex rel. Att'y Gen. v. Tamer, 293 Ky. 357, 169 S.W.2d 19 (1943).

Collateral References. 78 C.J.S., Schools and School Districts, § 10.

162.050. Use of school property for public purposes.

The board of education of any school district may permit the use of the schoolhouse, while school is not in session, by any lawful public assembly of educational, religious, agricultural, political, civic, or social bodies under rules and regulations which the board deems proper.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 551, effective July 13, 1990.)

Compiler's Notes. This section (4399-53) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 551, effective July 13, 1990.

Opinions of Attorney General. The utterance of prayers or the reading of the Bible can continue in PTA meetings and voluntary Bible classes held without the regular school hours or school curriculum. OAG 64-111.

An independent school district can construct an auditorium-gymnasium and, after its completion, use the money which the city wishes to contribute as rent for the times when the building could be leased to the city. OAG 64-475.

A district school board could not give approval to a ministerial association to distribute New Testaments to pupils in their classrooms. OAG 68-452.

This section envisions occasional or spasmodic usage for short periods of time. OAG 71-212.

Under this section school students who voluntarily out of spontaneous wishes hold prayer sessions outside of regular school hours on school property may be permitted to continue to do so, as the school board is not violating constitutional principles in allowing this specific activity. OAG 72-386.

The use of school facilities is subject to the determination of a local board of education and it is paramount that the board adopt rules and regulations regarding the permitting of the use of school property so that such use does not in any way interfere with the conducting of any school program, curricular or co-curricular. OAG 79-321.

A local board of education has the lawful authority and duty to prescribe the manner in which school buildings and facilities may be used by groups during nonschool hours. OAG 80-78.

Cited: City of Louisville v. Manning, 309 Ky. 789, 219 S.W.2d 13 (Ct. App. 1949); Hall v. Shelby County Bd. of Educ., 472 S.W.2d 489 (Ky. 1971).

Collateral References. 68 Am. Jur. 2d, Schools, § 73.

78 C.J.S., Schools and School Districts, § 359.

Religious meeting in schoolhouse. 141 A.L.R. 1153.

Use of public school premises for religious purposes during nonschool time. 79 A.L.R.2d 1148.

Use of school property for other than public school or religious purposes. 94 A.L.R.2d 1274.

School Buildings

162.060. Plans for school buildings to be approved.

The chief state school officer shall be furnished a copy of all plans and specifications for new public school buildings contemplated by boards of education and for all additions to or alterations of old buildings. He shall examine or cause to be examined all such plans and specifications and shall approve or disapprove them in accordance with the rules and regulations of the Ken-

tucky Board of Education. Plan reviews for conformance with the Uniform State Building Code shall be conducted only by the Department of Housing, Buildings and Construction. No board of education may award a contract for the erection of a new building or contract for an addition to or alteration of an old building until the plan has been approved by the chief state school officer.

(4384-23: amend. Acts 1978, ch. 117, § 17, effective February 28, 1980; 1978, ch. 155, § 82, effective June 17, 1978; 1990, ch. 476, Pt. IV, § 251, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

Cross-References. Sanitary and protective construction of school buildings to be regulated by State Board of Education, KRS 156.160.

Building sites; inspection, approval, 702 KAR 4:050.

Capital construction process, 702 KAR 4:160.

Facility programming and construction criteria, 702 KAR 4:170.

Kentucky Law Journal. Russo, School-Based Decision Making in Kentucky: Dawn of a New Era or Nothing New Under the Sun?, 83 Ky. L.J. 123 (1994-95).

Cited: Pike County Bd. of Educ. v. Ford, 279 S.W.2d 245 (Ky. 1955); Kentucky State Bd. of Educ. v. Isenberg, 421 S.W.2d 81 (Ky. 1967); Usher & Gardner, Inc. v. Mayfield Indep. Bd. of Educ., 461 S.W.2d 560 (Ky. 1970).

NOTES TO DECISIONS

ANALYSIS

1. Discretion of board and superintendent.
2. Contract for construction.
3. Decisions made by local school board.

1. Discretion of Board and Superintendent.

When the board has obtained the approval of the Superintendent of Public Instruction of its plans for a new building, courts will not interfere with the proposed plans unless there is positive proof of fraud, collusion or a clear abuse of discretion since the obligation of locating school sites rests with the county board of education and it is not for the courts to say whether the board has acted wisely or unwisely in determining where the school should be located but the only question for the court's determination is whether the board is exceeding its authority or is acting arbitrarily. Perry County Bd. of Educ. v. Deaton, 311 Ky. 227, 223 S.W.2d 882 (1949).

2. Contract for Construction.

A board of education lacks the power or capacity to enter a contract for school construction where the revenue bond method provided in KRS 162.120 to 162.290 is utilized. Hacker Bros. Constr. Co. v. Board of Educ., 590 S.W.2d 897 (Ky. Ct. App. 1979).

3. Decisions Made by Local School Board.

The underlying theme of this section is that the actual decisions addressed hereunder are to be made by the local school board, not the state. Blackburn v. Floyd County Bd. of Educ., 749 F. Supp. 159 (E.D. Ky. 1990).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 407, 408.

162.065. Administrative regulations for use by local school boards when constructing schools using construction managers.

The State Board of Education shall promulgate administrative regulations for use by local school boards when constructing school buildings using construction managers. A construction manager is an experienced and qualified construction contracting organization that is paid a fee for its professional management and supervision services. The regulations shall include, but not be limited to:

(1) A standard "Request for Proposal" form, including appropriate criteria for use by local school boards to ensure only qualified construction managers are considered:
   (a) A list of successfully completed projects or a demonstrated capability to perform projects of a similar type;
   (b) A descriptive detail of projects showing the experience and the ability to perform budget estimating, value engineering, and scheduling; and
   (c) A list of experienced and qualified personnel with a track record of achieved quality and the capability to provide bidder solicitation;
(2) Adequate public notice of the invitation for proposals shall be given a sufficient time prior to the date set for the opening of proposals;
(3) A requirement for bids, when requested by a construction manager, be submitted to the architect or owner and opened in public;
(4) A requirement that all bids for school construction projects be advertised in newspapers with the largest local circulation;
(5) A sample fee schedule for construction manager services shall be developed by recommendation of a diversified committee consisting of Department of Education personnel, architects, and construction managers for the guidance of local school boards;
(6) A requirement that established qualifications-based selection procedures be implemented by local boards when selecting firms to provide architectural and engineering services.

(Enact. Acts 1992, ch. 379, § 1, effective July 14, 1992.)

Cross-References. Capital construction process, 702 KAR 4:160.

162.066. Restriction on award of contracts by construction manager.

When a construction manager is utilized in construction, maintenance, repairs, or renovation or expansion of school facilities the construction manager shall not award construction contracts to any company which the manager owns or in which the manager has a financial interest if less than two (2) bids are accepted.

(Enact. Acts 1992, ch. 379, § 2, effective July 14, 1992.)

162.067. Application of KRS 162.065 and 162.066.

KRS 162.065 and 162.066 shall apply to all construction of new school facilities, maintenance, and repair of existing school facilities, renovation of existing school facilities, or expansion of existing school facilities.

(Enact. Acts 1992, ch. 379, § 3, effective July 14, 1992.)

162.070. Contracts for buildings, improvements, and materials to be let on competitive bidding — When advertisements not required.

The contracts for the erection of new school buildings, additions and repairs to old buildings, except additions

or repairs not exceeding seven thousand five hundred dollars ($7,500), shall be made by the board of education with the lowest and best responsible bidder complying with the terms of the letting, after advertisement for competitive bids pursuant to KRS Chapter 424, but the board may reject any or all bids. All necessary specifications and drawings shall be prepared for all such work. The board shall advertise for bids on all supplies and equipment that it desires to purchase, except where the amount of the purchase does not exceed seven thousand five hundred dollars ($7,500), and shall accept the bid of the lowest and best bidder, but the board may reject any and all bids.
(Enact. Acts 1980, ch. 250, § 1, effective April 9, 1980; 1990, ch. 476, Pt. IV, § 252, effective July 13, 1990.)

Compiler's Notes. A former identical section (4399-48: amend. Acts 1954, ch. 172; 1966, ch. 239, § 148; 1976, ch. 185, § 1; 1978, ch. 58, § 1) was repealed by Acts 1978, ch. 110, § 106, effective January 1, 1980.

Cross-References. Capital construction process, 702 KAR 4:160.

Opinions of Attorney General. Under the wording "lowest and best responsible bidder," as set forth in this section, it means not only the lowest monetary bid, but it means that the factors of business judgment, capacity, skill, and responsibility of the bidder must be carefully assessed in awarding the bid. OAG 80-396.

Although site work can be and is usually interpreted to be a part of a project involving school building construction or remodeling, site work unrelated to school building construction does not come within the scope of this section. Thus, where a school district wished to correct a drainage problem at one of its schools, KRS 424.260 and the $7,500 "small purchases" ceiling was applicable to the contract for drainage site work. OAG 82-407.

To the extent this section and KRS 424.260 are in conflict, the provisions and therefore the $7,500 amount found in KRS 424.260, as amended in 1982, must be deemed to prevail over the lower $5,000 amount remaining in this section. OAG 82-407.

162.075. Compliance with code not necessary on purchases from federal government.

The provisions of KRS Chapter 45A and KRS 162.070 shall not apply to purchases made by the boards of education within the Commonwealth of Kentucky from the United States of America, or any agency thereof.
(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 552, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1946, ch. 187, § 1; 1978, ch. 110, § 104, effective January 1, 1980; ch. 250, § 18, effective April 9, 1980) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 552, effective July 13, 1990.

Cross-References. Political subdivision may purchase from federal government without taking bids, KRS 66.470.

Collateral References. 78 C.J.S., Schools and School Districts, § 409.

162.080. Bond issues for school sites and buildings — Authorization — Election.

(1) Whenever a board of education deems it necessary for the proper accommodation of the schools of its district to enlarge sites for school buildings, to purchase new sites, which in the case of independent districts may be not more than two (2) miles without the boundary lines of the district, to improve, remodel, or restore school buildings, to erect or equip new school buildings, or for any or all of these purposes, and the annual funds raised from other sources are not sufficient to accomplish the purpose, the board shall make a careful estimate of the amount of money required for the purpose and shall determine the amount of money for which bonds shall be issued and the purpose to which the proceeds shall be applied. Upon request of the board of education of any district, the county clerk shall submit to the qualified voters of the district, the question as to whether bonds shall be issued for the purpose. The question shall be so framed that the voter may by his vote answer "for" or "against."

(2) The request shall be accompanied by an ordinance or resolution which shall fix the time the bonds shall run and, if a serial issue, the amount to mature at each time. It shall limit the rate of interest to be permitted on the bonds, which shall not exceed the amount permitted by law, and the total amount of bonds to be issued, and shall provide for the levy of a tax to pay the interest and to create a sinking fund to retire them at their maturity.

(3) The election shall be held not less than fifteen (15) nor more than thirty (30) days from the time the request of the board of education is filed with the county clerk, and reasonable notice of the election shall be given. The election shall be conducted and carried out in the school district in all respects as required by the general election laws, and shall be held by the same officers as required by the general election laws. The expense of the election shall be borne by the school district.

(4399-47: amend. Acts 1962, ch. 180, § 1; 1976, ch. 127, § 20; 1990, ch. 48, § 86, effective July 13, 1990; 1990, ch. 476, Pt. V, § 553, effective July 13, 1990.)

Legislative Research Commission Note. (7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

Cross-References. School building funds may be established with special taxes, KRS 160.476, 160.477.

Bond issue approval, 702 KAR 3:020.

Document filing dates, 702 KAR 3:110.

Guidelines for use of capital outlay funds, 702 KAR 3:010.

Restructuring revenue bond issues, 702 KAR 3:260.

Cited: Runyon v. Simpson, 270 Ky. 646, 110 S.W.2d 440 (1937); Caddell v. Board of Educ., 282 Ky. 646, 139 S.W.2d 739 (1940); Gill v. Board of Educ., 288 Ky. 790, 156 S.W.2d 844 (1941); Cole v. McCracken County, 297 Ky. 797, 181 S.W.2d 461 (1944); City of Louisville v. Kesselring, 257 S.W.2d 599 (Ky. 1953).

NOTES TO DECISIONS

ANALYSIS

1. Authority of board.
2. Stadium.
3. Application of proceeds.
4. Resolution.
5. Time of maturity.

6. Voting in accordance with ordinance.
7. Submission.
8. Election.
9. —Time for holding.
10. —Notice.

1. Authority of Board.
Where school board was renting school building constructed under holding company plan, and one of buildings was destroyed by fire, school board had no authority to issue funding bonds to enable building to be reconstructed. Stith v. Board of Educ., 292 Ky. 91, 166 S.W.2d 58 (1942).

2. Stadium.
A board is not authorized to expend funds for a high school stadium, as the latter is not a "school building" within the meaning of this statute. Board of Educ. v. Williams, 256 S.W.2d 29 (Ky. 1953).

3. Application of Proceeds.
When the question submitted concerns only sites and buildings, no part of the bond proceeds may be used to equip buildings. Hager v. Board of Educ., 254 Ky. 791, 72 S.W.2d 475 (1934).

4. Resolution.
Omissions in the resolution of the school board may be supplied by the ordinance or resolution of the taxing authority. Mollette v. Board of Educ., 260 Ky. 737, 86 S.W.2d 990 (1935).
Where resolution of board provided for issuance of serial bonds and ordinance provided for issuance of bonds in the amount of $1,000 each to mature in not exceeding 40 years the bonds were invalid as the resolution did not comply with the ordinance. Suratt v. Board of Educ., 313 Ky. 343, 231 S.W.2d 88 (1950).

5. Time of Maturity.
The question as to whether school improvement bonds should be callable before maturity is one of time of payment as dealt with in this section and not merely a mechanical detail as dealt with in KRS 162.090. Howard v. Board of Educ., 311 Ky. 130, 223 S.W.2d 721 (1949).

6. Voting in Accordance with Ordinance.
All of the authority vested in the board as to the sale and handling of the bonds and their payment is predicated upon the manner in which they are voted, which must be in accordance with the ordinance of the fiscal court providing for the bond election. Howard v. Board of Educ., 311 Ky. 130, 223 S.W.2d 721 (1949).

7. Submission.
Where board of education followed the procedure of this section and certified its action to the board of aldermen of city of first class, the proper tax levying authority, it was the duty of the board of aldermen to provide for the submission of the question of their issuance to the people and take other consistent proceedings. City of Louisville v. Board of Educ., 302 Ky. 647, 195 S.W.2d 291 (1946).

8. Election.

9. —Time for Holding.
The date of school elections is not controlled by Const., § 148. Mollette v. Board of Educ., 260 Ky. 737, 86 S.W.2d 990 (1935).
Although polling hours are from six a.m. to four p.m., when an election is held at different hours it must be shown that such hours affected the result of the election. Mollette v. Board of Educ., 260 Ky. 737, 86 S.W.2d 990 (1935).
It will be presumed that the election was held at the proper hours, even though call and notice provided otherwise. Mollette v. Board of Educ., 260 Ky. 737, 86 S.W.2d 990 (1935).

10. —Notice.
Publication of notice of election in one issue of a newspaper of general circulation in the district, and posting in six public places 15 days before the election, constituted sufficient notice. Mollette v. Board of Educ., 260 Ky. 737, 86 S.W.2d 990 (1935).

Decisions Under Prior Law

Analysis

1. Authority of board.
2. Election.

1. Authority of Board.
The kind and cost of a school building are matters to be determined by the board of education. Boll v. City of Ludlow, 234 Ky. 812, 29 S.W.2d 547 (1930).

2. Election.
Provision of law requiring election to be held in not less than 15 nor more than 30 days after filing of certificate, was merely directory, and an election held 33 days thereafter was a substantial compliance with the law and was valid. Davidson v. Board of Educ., 225 Ky. 165, 7 S.W.2d 1056 (1928).
Collateral References. 79 C.J.S., Schools and School Districts, §§ 523-526.

162.090. Issuance and sale of bonds — Proceeds — Tax to pay.

(1) If two-thirds (⅔) of those voting on the question vote in favor of the proposition, the bonds shall be issued. The bonds shall be designated "school improvement bonds." They shall be placed under the control of the board of education, and the board shall determine when, at what price and how the bonds shall be sold, the date, number of bonds, denomination, whether coupon or registered, the rate of interest, the frequency and place of payment of principal and interest, and other details as desired, embodied in the bonds or in the request providing for their issue. The board shall at once adopt a resolution in conformity therewith. The bonds shall be signed by the chairman and secretary of the board of education. As the bonds are sold, their proceeds shall be placed to the credit of the board of education in a depository designated by the board of education, and shall be kept in a separate account. The depository shall be required to execute proper bond covering the funds.
(2) The board of education of the district shall, in addition to the levy made for the maintenance of schools, levy annually a tax sufficient to raise a sum for the payment of the interest and to create a sinking fund for the payment of the bonds at maturity. The bonds shall be a charge upon the school district.
(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 554, effective July 13, 1990.)

Compiler's Notes. This section (4399-47: amend. Acts 1976, ch. 127, § 21) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 554, effective July 13, 1990.
Cross-References. Liability for indebtedness on transfer or annexation of school property, KRS 160.065.
Bond issue approval, 702 KAR 3:020.
Document filing dates, 702 KAR 3:110.
Restructuring revenue bond issues, 702 KAR 3:260.

Opinions of Attorney General. Local boards of education must assume all administrative responsibility concerning bond issues for school sites and buildings; however, since school financing is done almost exclusively through school building revenue bonds pursuant to KRS 162.210 through 162.300 and KRS 58.010 through 58.120 inclusive, there is no authority for any change in the preexisting procedure used for school revenue bonds and the fiscal courts and county treasurers must continue to perform the customary functions heretofore served by them in that regard. OAG 76-711, modified by OAG 77-139.

Cited: Suratt v. Board of Educ., 313 Ky. 343, 231 S.W.2d 88 (1950).

NOTES TO DECISIONS

ANALYSIS

1. Sale and issuance.
2. —Ordinance.
3. —Time.
4. Obligations.
5. —School district.
6. —Board of education.
7. —City.
8. Competitive bidding.
9. Tax levy.

1. Sale and Issuance.

All of the authority vested in the board as to the sale and handling of the bonds and their payment is predicated upon the manner in which they are voted, which must be in accordance with the ordinance of the fiscal court providing for the bond election. Howard v. Board of Educ., 311 Ky. 130, 223 S.W.2d 721 (1949).

2. —Ordinance.

Absence of details in ordinance is not fatal in absence of showing that they were also omitted from bonds. Mollette v. Board of Educ., 260 Ky. 737, 86 S.W.2d 990 (1935).

3. —Time.

It is unnecessary that all bonds voted be issued and sold at the same time. Hager v. Board of Educ., 254 Ky. 791, 72 S.W.2d 475 (1934). See Runyon v. Simpson, 270 Ky. 646, 110 S.W.2d 440 (1937).

Lapse of more than four years from date of election authorizing a bond issue does not preclude issuance of part or all of said issue. Hager v. Board of Educ., 254 Ky. 791, 72 S.W.2d 475 (1934). See Runyon v. Simpson, 270 Ky. 646, 110 S.W.2d 440 (1937).

4. Obligations.

5. —School District.

The provisions of this section, making school bonds the obligation of the city in cases where the city school district embraces the city, cannot constitutionally be applied where the city boundaries extend beyond those of the school district, therefore the bonds constitute obligations of the school district, for which only property within the district may be taxed and for which only voters in the district may vote on the question of issuance of bonds. Board of Educ. v. City of Louisville, 258 S.W.2d 707 (Ky. 1953).

6. —Board of Education.

This section expressly makes the bonds a charge or obligation of the board of education except where the school district embraces a city of the first or second class. City of Louisville v. Board of Educ., 302 Ky. 647, 195 S.W.2d 291 (1946).

7. —City.

In independent districts embracing a city of the second class the bonds are bonds of the city. Hager v. Board of Educ., 254 Ky. 791, 72 S.W.2d 475 (1934). See Hager v. Cisco, 256 Ky. 708, 76 S.W.2d 614 (1934).

8. Competitive Bidding.

Bonds can be sold only upon competitive bidding after public and reasonable advertisement or a proposal to receive bids or offers for bonds proposed to be issued and sold; however, this decision is not retroactive, and applies only to future transactions. Eagle v. City of Corbin, 275 Ky. 808, 122 S.W.2d 798 (1938).

Where contract of board of education to issue bonds to purchaser was made before the effective date of Eagle v. City of Corbin, 275 Ky. 808, 122 S.W.2d 798 (1938), such contract was not invalidated by failure to advertise bonds for competitive bidding, since the decision in Eagle v. Corbin does not have retroactive effect. Ebert v. Board of Educ., 277 Ky. 633, 126 S.W.2d 1111 (1939).

The decision in Eagle v. City of Corbin, 275 Ky. 808, 122 S.W.2d 798 (1938), does not prohibit the sale of bonds upon competitive bids upon interest rates, as long as the ordinance states the maximum rate of interest. Funk v. Strathmoor Village, 278 Ky. 627, 129 S.W.2d 151 (1939).

9. Tax Levy.

An attempt by school board to levy tax for retirement of bonds will be deemed a request to the tax levying authority to levy such a tax. Mollette v. Board of Educ., 260 Ky. 737, 86 S.W.2d 990 (1935).

DECISIONS UNDER PRIOR LAW

1. Misapplication of Sinking Fund.

The fact that board had been enjoined, in suit by taxpayers, from further collection of original tax for bonds, was no defense where board had misapplied from sinking fund more than enough to pay the bonds. Board of Educ. v. Highland Cem., 292 Ky. 374, 166 S.W.2d 854 (1942).

Where school subdistrict used, for general school purposes, the proceeds of a tax levied to pay bonds, which proceeds would have been sufficient to pay bonds in full, bondholders were entitled to judgment requiring school board to pay bonds out of board's general fund, and to levy a tax to pay the balance of the bonds if the amount in the general fund was not sufficient to pay the bonds in full. Board of Educ. v. Highland Cem., 292 Ky. 374, 166 S.W.2d 854 (1942).

Collateral References. 79 C.J.S., Schools and School Districts, §§ 546-552, 555, 636, 637.

162.100. Limitation on amount of bond issue — Effect of bonds issued under former laws.

(1) The bond issue of any district shall not exceed the limits provided in the Constitution, such limitation to be estimated upon the assessment next before the last assessment previous to the incurring of the indebtedness.

(2) All of the bonds voted by the various types of school districts and subdistricts prior to June 14, 1934, shall be retired and the interest paid thereon in accordance with the laws under which they were voted, and nothing in KRS 162.080 to 162.100 shall in any way impair any of such bond obligations or the interest thereon.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 555, effective July 13, 1990.)

Compiler's Notes. This section (4399-47) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 555, effective July 13, 1990.

Cross-References. Constitutional limits on indebtedness, Const., §§ 157, 158.

Bond issue approval, 702 KAR 3:020.

Kentucky Law Journal. Morrow, County Debt Difficulties in Kentucky, 31 Ky. L.J. 122 (1943).

Cited: Morgan v. Fayette County Bd. of Educ., 294 Ky. 597, 172 S.W.2d 64 (1943); Board of Educ. v. City of Louisville, 258 S.W.2d 707 (Ky. 1953).

NOTES TO DECISIONS

Analysis

1. Application.
2. Districts for debt limit.
3. Exceeding debt limit.
4. Basis of indebtedness.
5. Refunding bonds.

1. Application.

Subsection (2) applies to all bonds theretofore voted, even though not issued until after its passage. Hager v. Cisco, 256 Ky. 708, 76 S.W.2d 614 (1934).

2. Districts for Debt Limit.

Although boundaries of city and school district are coterminous, each constitutes a separate taxing district as far as constitutional debt limits are concerned. Jackson v. First Nat'l Bank, 289 Ky. 1, 157 S.W.2d 321 (1941).

3. Exceeding Debt Limit.

When a portion of the bond issue voted was in excess of the constitutional limitation, the excess is void, and the district cannot postpone issuance of the excess bonds until part of the issue has been retired. Nelson v. Williamsburg Indep. Graded Sch. Dist., 265 Ky. 792, 97 S.W.2d 814 (1936).

4. Basis of Indebtedness.

Estimates of future assessments are not competent evidence to determine limitation on indebtedness. Nelson v. Williamsburg Indep. Graded Sch. Dist., 265 Ky. 792, 97 S.W.2d 814 (1936).

5. Refunding Bonds.

Where three independent school districts merged with county school district prior to enactment of KRS 160.040 county board of education could issue refunding bonds to pay off indebtedness of merged districts and county was not required to levy a tax on properties in the districts to pay off the indebtedness. Webster County Bd. of Educ. v. Hocket, 267 Ky. 498, 102 S.W.2d 1018 (1937).

Decisions Under Prior Law

Analysis

1. Time of sale.
2. Exceeding debt limit.

1. Time of Sale.

The time of the sale of the bonds and not the time of election determined whether Const., § 158 was violated. Boll v. Ludlow, 234 Ky. 812, 29 S.W.2d 547 (1930).

2. Exceeding Debt Limit.

If a bond issue exceeded the constitutional limits only the excess was void. Boll v. Ludlow, 234 Ky. 812, 29 S.W.2d 547 (1930).

162.110. Bonds of subdistricts. [Repealed.]

Compiler's Notes. This section (4399-13) was repealed by Acts 1966, ch. 255, § 283.

162.120. Independent district in city may convey property to city to provide buildings.

To provide buildings for school purposes, boards of education of school districts embracing a city of any class may convey to the city a fee simple title with covenant of general warranty to a site now held or hereafter acquired by the boards of education.

(4421-1: amend. Acts 1990, ch. 476, § 253, effective July 13, 1990.)

Cross-References. City of first class may set apart land for municipal university, KRS 165.060.

Bond issue approval, 702 KAR 3:020.

Document filing dates, 702 KAR 3:110.

Kentucky Law Journal. Meuth, The Development of Financing Public Improvements by Kentucky Municipalities, 25 Ky. L.J. 230 (1937).

Opinions of Attorney General. Where the fee simple title to school property was owned by the county and the city wanted to blacktop certain roads on the property, the county was liable for its apportionate cost of the improvement as a benefited property owner. OAG 60-377.

A fund resulting from the sale of school property could be used for the purchase of sites for school buildings, for the erection and complete equipping of school buildings, and for the major alteration, enlargement and complete equipping of buildings, in accordance with the provisions of KRS 160.476, even though refunding revenue bonds were outstanding on other school property. OAG 66-224.

Other school property, title to which has been retained by the school district, does not represent part of the security for refunding revenue bonds issued to provide for a specific building. OAG 66-224.

Although, under this section through KRS 162.300, a certificate from the trustee stating certain bonds and coupons were redeemed and canceled is sufficient evidence that the bonds and coupons have been paid and properly canceled, the school board treasurer should normally visually inspect the bonds and coupons before incineration. OAG 72-487.

Under the provisions of this section through KRS 162.300 a school board may not relieve itself of liability for the bonds and coupons by a transfer of the "rental" money to a trustee since the board is contractually responsible for taking steps to insure that the debt service and liquidation of coupons and bonds for the benefit of bondholders is effectively secured. OAG 72-487.

Under the provisions of this section through KRS 162.300 the school board should require the trustee to make an accounting each year of money received and bonds and coupons paid. OAG 72-487.

Under this section through KRS 162.300 any excess money left after liability for the bonds has ceased would revert to the school board treasury. OAG 72-487.

Under this section through KRS 162.300 if a paying agent or trustee pays a wrong bond or coupon the improper payment is the liability of the trustee and not the school as the board does not insure the trustee's acts in this regard; therefore, the trustee is liable to the board but the board is liable to the holder. OAG 72-487.

Under this section through KRS 162.300 when bonds or coupons are not presented at maturity liability for these items would continue subject to the applicable statute of limitations. OAG 72-487.

Since financing of school bonds is done almost exclusively through the authority of KRS 162.120 through 162.300 and KRS 58.010 through 58.120, there is no authority for any change in the preexisting administration procedure used for school building revenue bonds and fiscal courts and county treasurers must continue to perform the customary functions

heretofore served by them in that regard. OAG 77-139, modifying OAG 76-711.

The Kentucky School Facilities Construction Commission Act, KRS 157.611 to 157.640, does not give the Commission unilateral power to choose whether that Act or KRS 162.120 to 162.300 will be used to finance school building construction. OAG 86-50.

Cited: Cole v. McCracken County, 297 Ky. 797, 181 S.W.2d 461 (1944); Fyfe v. Hardin County Bd. of Educ., 305 Ky. 589, 205 S.W.2d 165 (1947); Bell v. Board of Educ., 308 Ky. 848, 215 S.W.2d 1007 (1948); Fendley v. Board of Educ., 240 S.W.2d 837 (Ky. Ct. App. 1951); Wagner v. Fiscal Court, 306 S.W.2d 288 (Ky. 1957); Stull v. Webster County Bd. of Educ., 339 S.W.2d 189 (Ky. Ct. App. 1960); Fosson v. Fiscal Court, 369 S.W.2d 108 (Ky. 1963).

NOTES TO DECISIONS

ANALYSIS

1. Conveyance and lease back.
2. Selection of site.
3. School building.
4. Merger with county after conveyance to city.
5. Acquisition of property and buildings.
6. Liability for tax.
7. Revenue bonds.
8. Contract for construction.
9. —Unenforceable.

1. Conveyance and Lease Back.

Bonds issued by a city as a conduit of independent school district pursuant to KRS 162.120 to 162.300 to pay costs of school auditorium-gymnasium to be erected on site conveyed by county board of education to the independent school district which was to convey it to the city which was to lease it back to school district until retirement of the bonds would not constitute direct obligations of the city or of the independent school district but would be secured by a first lien upon the auditorium-gymnasium and the right of the bondholders to enforce the lien would in no way be affected by a merger of independent school district and county school district. Ranier v. Board of Educ., 273 S.W.2d 577 (Ky. 1954).

The school board had the right to convey a school site to the city and then lease back the site and improvements thereon. City of Bowling Green v. Board of Educ., 443 S.W.2d 243 (Ky. 1969).

The school board is authorized to convey a building site to the city and lease it back with improvements financed by city's bonds. City of Bowling Green v. Board of Educ., 443 S.W.2d 243 (Ky. 1969).

The authority of the school board to convey property to the city and then lease back the property with improvements was not conditioned upon financing under any particular statutory authority. City of Bowling Green v. Board of Educ., 443 S.W.2d 243 (Ky. 1969).

2. Selection of Site.

The selection of the site is to be made by the board of education. Franklin County v. Franklin County Bd. of Educ., 267 Ky. 554, 102 S.W.2d 1024 (1937).

3. School Building.

An auditorium-gymnasium is a school building within the meaning of KRS 162.120 to 162.300. Ranier v. Board of Educ., 273 S.W.2d 577 (Ky. 1954).

4. Merger with County after Conveyance to City.

The fact that after conveyance to the city, the independent district was merged with the county district does not affect the right of the city to consummate the original plan. Piggott v. Kasey, 271 Ky. 651, 113 S.W.2d 5 (1938).

5. Acquisition of Property and Buildings.

A county or city may acquire property on which school buildings have already been erected and finance the cost of acquisition under the provisions of KRS 162.120 to 162.300. Morgan v. Fayette County Bd. of Educ., 294 Ky. 597, 172 S.W.2d 64 (1943).

6. Liability for Tax.

Regardless of time or amount, the voting of a tax to pay revenue bonds issued for school construction does not impose a tax in futuro but merely grants authority to the taxing power to increase the amount of annual tax that the law otherwise authorized to be levied and property transferred by county school board to city school district is not liable for county school building tax voted prior to the transfer. Board of Educ. v. Board of Educ., 250 S.W.2d 1017 (Ky. 1952).

7. Revenue Bonds.

Revenue bonds issued under KRS 162.120 to 162.300 did not constitute an indebtedness of county school district so city school district to which territory was transferred from county school district after voters of county district authorized a special school building tax to pay rentals for the school buildings to be erected and financed by the bonds was not liable for any part of the revenue bonds under proportional assumption statute KRS 160.065. Board of Educ. v. Board of Educ., 250 S.W.2d 1017 (Ky. 1952).

City is required to cooperate with independent school district in the issuance and sale of bonds but it is merely a conduit through which the board of education acts to have the bonds issued and sold and has no discretion in the matter. Ranier v. Board of Educ., 273 S.W.2d 577 (Ky. 1954).

8. Contract for Construction.

A board of education lacks the power or capacity to enter a contract for school construction where the revenue bond method provided in KRS 162.120 to 162.290 is utilized. Hacker Bros. Constr. Co. v. Board of Educ., 590 S.W.2d 897 (Ky. Ct. App. 1979).

9. —Unenforceable.

Where a construction company was attempting to maintain an action on the basis that it had a valid contract with the school board, the contract was unenforceable because the approval of the voters of the county was not obtained, as required by § 157 of the Constitution; on the other hand, if the construction company was attempting to maintain the action on the basis that the revenue bond methods provided for in KRS 162.120 to 162.290 were followed, the contract was unenforceable because the only government agency possessing the power and authority to execute such a contract failed to do so. Hacker Bros. Constr. Co. v. Board of Educ., 590 S.W.2d 897 (Ky. Ct. App. 1979).

Collateral References. 78 C.J.S., Schools and School Districts, § 357.

162.130. City to contract for erection of building.

Every city to which a site for a building has been conveyed, as provided in KRS 162.120, shall enter into a contract or contracts with some person for the erection on the site of a building with the necessary appurtenances, according to plans and specifications adopted by the city and approved by the board of education and the chief state school officer.

(4421-2: amend. Acts 1990, ch. 476, § 254, effective July 13, 1990.)

Cross-References. Bond issue approval, 702 KAR 3:020.

Cited: Fyfe v. Hardin County Bd. of Educ., 305 Ky. 589, 205 S.W.2d 165 (1947).

NOTES TO DECISIONS

ANALYSIS

1. Financing improvements.
2. Contract for construction.

1. Financing Improvements.

The authority of the school board to convey property to the city and then lease back the property with improvements was not conditioned upon financing under any particular statutory authority. City of Bowling Green v. Board of Educ., 443 S.W.2d 243 (Ky. 1969).

2. Contract for Construction.

A board of education lacks the power or capacity to enter a contract for school construction where the revenue bond method provided in KRS 162.120 to 162.290 is utilized. Hacker Bros. Constr. Co. v. Board of Educ., 590 S.W.2d 897 (Ky. Ct. App. 1979).

162.140. Lease of building by board of education.

Immediately upon the approval of the plans and specifications as provided in KRS 162.130, the board of education shall offer to lease the building for a term of one (1) year from the time the building is completed and ready for occupancy. The lease by its terms shall give the lessee the right and option to extend the term of the lease from year to year, for periods of one (1) year, until the original term of the lease has been extended for a total number of years, acceptable to the city, not exceeding thirty (30) years, at a rental which, if paid for the original term and for each of the full number of years for which the term is extended, will amortize the total cost of the erection of the building and appurtenances, provide an adequate maintenance fund and, in addition thereto, a sum sufficient to pay the cost of insuring the building against loss or damage by fire and windstorm or other calamity in such sum as may be agreed by the parties thereto.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 556, effective July 13, 1990.)

Compiler's Notes. This section (4421-3) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 556, effective July 13, 1990.

Cross-References. Bond issue approval, 702 KAR 3:020.

Opinions of Attorney General. The school board has broad discretion under KRS 160.160 and 160.290 in the selection of school sites and the establishment of schools so that even if the county is the legal owner of the property and is leasing it to the the school board under this section, as the school district holds equitable title, the fiscal court has no rights relative to a high school building which the board of education plans to tear down and replace with a new building, unless the county could negotiate to purchase the property from the school board. OAG 74-221.

A school board should not tie up school property for a period exceeding a year but should, instead, provide for an extension of the term of the lease from year to year, for periods of one year, for a specified number of total years. OAG 77-771.

Cited: Fyfe v. Hardin County Bd. of Educ., 305 Ky. 589, 205 S.W.2d 165 (1947); Fosson v. Fiscal Court, 369 S.W.2d 108 (Ky. 1963).

NOTES TO DECISIONS

ANALYSIS

1. Authority to lease.
2. Abuse of board's discretion.
3. Lease for thirty years invalid.

1. Authority to Lease.

The authority of the school board to convey property to the city and then lease back the property with improvements was not conditioned upon financing under any particular statutory authority. City of Bowling Green v. Board of Educ., 443 S.W.2d 243 (Ky. 1969).

The school board had the right to convey a school site to the city and then lease back the site and improvements thereon. City of Bowling Green v. Board of Educ., 443 S.W.2d 243 (Ky. 1969).

The school board is authorized to convey a building site to the city and lease it back with improvements financed by city's bonds. City of Bowling Green v. Board of Educ., 443 S.W.2d 243 (Ky. 1969).

2. Abuse of Board's Discretion.

Where county had existing bonded debt of $225,000 and the county board of education a debt of nearly $100,000 and estimates of future revenue indicated there would be available $2,000 to $5,600 more than necessary for servicing existing debts and meeting obligations incurred in building proposed new school, approval of plan by which county board of education and fiscal court proposed to erect a new high school and issue $250,000 in bonds payable from rents received annually from school board over 20-year period was not an abuse of discretion. Carter v. Taylor, 313 Ky. 445, 231 S.W.2d 601 (1950).

3. Lease for Thirty Years Invalid.

A lease for one year with annual renewal option is valid, when rental involved does not result in violation of Const., § 157. However a 30-year lease is invalid since it does result in a violation of said constitutional section. Davis v. Board of Educ., 260 Ky. 294, 83 S.W.2d 34 (1935).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 381-384, 391.

Lease of school property, power of school or local authorities as to grant of. 111 A.L.R. 1051.

162.150. City may erect school buildings.

Any city may establish and erect school buildings and necessary appurtenances within the corporate limits under the provisions of KRS 162.160 to 162.280, for the purpose of supplying the board of education of the independent district embracing the city with adequate buildings necessary to carry out its duties and powers.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 557, effective July 13, 1990.)

Compiler's Notes. This section (4421-5) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 557, effective July 13, 1990.

Cross-References. City of first class may set apart land for municipal university, KRS 165.060.

Bond issue approval, 702 KAR 3:020.

Kentucky Law Journal. Meuth, The Development of Financing Public Improvements by Kentucky Municipalities, 25 Ky. L.J. 230 (1937).

Opinions of Attorney General. Other school property, title to which has been retained by the school district, does not represent part of the security for refunding revenue bonds issued to provide for a specific building. OAG 66-224.

A fund resulting from the sale of school property could be used for the purchase of sites for school buildings, for the erection and complete equipping of school buildings, and for the major alteration, enlargement and complete equipping of buildings, in accordance with the provisions of KRS 160.476, even though refunding revenue bonds were outstanding on other school property. OAG 66-224.

A city may establish and erect school buildings within its corporate limits for the purpose of supplying the board of education of an independent school district embracing the city with adequate buildings necessary to carry out its powers and duties. OAG 72-796.

Cited: City of Bowling Green v. Board of Educ., 443 S.W.2d 243 (Ky. 1969).

NOTES TO DECISIONS

ANALYSIS

1. Acquisition of property and buildings.
2. Contract for construction.

1. Acquisition of Property and Buildings.

A county or city may acquire property on which school buildings have already been erected and finance the cost of acquisition under the provisions of KRS 162.120 to 162.300 and several buildings or properties may be included in one mortgage and bond issue. Morgan v. Fayette County Bd. of Educ., 294 Ky. 597, 172 S.W.2d 64 (1943).

2. Contract for Construction.

A board of education lacks the power or capacity to enter a contract for school construction where the revenue bond method provided in KRS 162.120 to 162.290 is utilized. Hacker Bros. Constr. Co. v. Board of Educ., 590 S.W.2d 897 (Ky. Ct. App. 1979).

Collateral References. 68 Am. Jur. 2d, Schools, § 70.

78 C.J.S., Schools and School Districts, §§ 381-384.

162.160. Plans and specifications for buildings — Boards of education must offer to lease buildings before construction contract is made.

(1) When any city desires to construct a school building, under the provisions of KRS 162.150, the governing body of the city shall, by ordinance, cause plans and specifications for the building to be duly made and filed in the office of the city clerk. The plans and specifications shall give a full description of the building to be constructed, the details thereof and the manner of construction. The plans and specifications shall be prepared by an architect selected by the city and approved by the board of education of the school district, and shall be submitted to the board of education of the school district and to the chief state school officer for approval.

(2) If the plans and specifications are approved, and if the board of education of the school district offers to lease the building under a lease of the kind provided in KRS 162.140, the city governing body shall cause the city clerk to advertise for bids, and thereafter the city governing body, through the mayor, may contract for the construction of the building.

(4421-12: amend. Acts 1986, ch. 23, § 11, effective July 15, 1986; 1990, ch. 476, Pt. IV, § 255, effective July 13, 1990.)

Cross-References. Public works involving $2,000 or more to be under supervision of registered engineer or architect, KRS 322.360.

Bond issue approval, 702 KAR 3:020.

Capital construction process, 702 KAR 4:160.

Cited: Bell v. Board of Educ., 308 Ky. 848, 215 S.W.2d 1007 (1948); City of Louisville v. Manning, 309 Ky. 789, 219 S.W.2d 13 (Ct. App. 1949).

NOTES TO DECISIONS

1. Contract for Construction.

A board of education lacks the power or capacity to enter a contract for school construction where the revenue bond method provided in KRS 162.120 to 162.290 is utilized. Hacker Bros. Constr. Co. v. Board of Educ., 590 S.W.2d 897 (Ky. Ct. App. 1979).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 381-384, 391, 407, 410.

162.170. Financing construction of buildings.

For the purpose of defraying the cost of constructing or acquiring any school buildings and appurtenances for common school purposes under the provisions of KRS 162.150, any city may borrow money and issue negotiable revenue bonds. No bonds for common school purposes shall be issued until the conditions of KRS 162.160 have been complied with, and until authorized by an ordinance specifying the proposed undertaking, the amount of bonds to be issued, and the maximum rate of interest the bonds are to bear. The ordinance shall further provide that the buildings and appurtenant facilities are to be constructed or acquired under the provisions of KRS 162.150 to 162.280.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 558, effective July 13, 1990; 1996, ch. 274, § 34, effective July 15, 1996.)

Compiler's Notes. This section (4421-6, 4421-12: amend. Acts 1970, ch. 137, § 1; 1978, ch. 155, § 82, effective June 17, 1978) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 558, effective July 13, 1990.

Cross-References. Governmental agency may issue revenue bonds for any public project, KRS 58.010 to 58.120.

Bond issue approval, 702 KAR 3:020.

Kentucky Law Journal. Martin, Administrative Action for Efficient Debt Management: The Kentucky Case, 49 Ky. L.J. 505 (1961).

Opinions of Attorney General. The Kentucky statutes do not authorize the expending of bonds proceeds to renovate school buildings presently existing and already acquired. OAG 71-107.

The statutory sections relating to acquisition of existing buildings in this chapter and KRS Chapter 58 are broad enough to include, by reasonable implication, whatever may be properly spent for the functional adaptation of purchased buildings to school purposes. OAG 71-107.

NOTES TO DECISIONS

ANALYSIS

1. Sale of bonds.
2. Sources of loans.

1. Sale of Bonds.

Bonds issued hereunder may be sold directly to private individual by the city. J.D. Van Hooser & Co. v. University of Ky., 262 Ky. 581, 90 S.W.2d 1029 (1936). See Piggott v. Kasey, 271 Ky. 651, 113 S.W.2d 5 (1938). But see Eagle v. City of Corbin, 275 Ky. 808, 122 S.W.2d 798 (1938).

2. Sources of Loans.

Counties and cities, in financing construction of school buildings, may borrow money from sources other than the

federal government. Morgan v. Fayette County Bd. of Educ., 294 Ky. 597, 172 S.W.2d 64 (1943).

Collateral References. 78A C.J.S., Schools and School Districts, §§ 478-499.

162.180. Bonds — Interest on — When payable — How sold.

All bonds issued under the provisions of KRS 162.170 for common school purposes may bear interest at a rate or rates or method of determining rates, payable at least annually, and shall be executed in a manner and be payable at times, not exceeding thirty (30) years from the date of issue, and at a place as the governing body of the city determines. The bonds shall be sold in a manner and upon terms as the governing body of the city deems for the best interest of the city.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 559, effective July 13, 1990; 1996, ch. 274, § 35, effective July 15, 1996.)

Compiler's Notes. This section (4421-7, 4421-8: amend. Acts 1970, ch. 137, § 2; 1978, ch. 155, § 82, effective June 17, 1978) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 559, effective July 13, 1990.

Cross-References. Bond issue approval, 702 KAR 3:020.

Kentucky Law Journal. Martin, Administrative Action for Efficient Debt Management: The Kentucky Case, 49 Ky. L.J. 505 (1961).

Cited: Morgan v. Fayette County Bd. of Educ., 294 Ky. 597, 172 S.W.2d 64 (1943); City of Bowling Green v. Board of Educ., 443 S.W.2d 243 (Ky. 1969).

162.185. Applicability of KRS 162.170 and 162.180.

Nothing contained in KRS 162.170 or 162.180 is intended to or shall be construed to make interest rates applicable to revenue bonds issued by the governing bodies of state institutions of higher learning under KRS 162.340 to 162.380, inclusive, subject to regulation, establishment, limitation, or approval by the Kentucky Board of Education.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 560, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

Compiler's Notes. This section (Enact. Acts 1970, ch. 137, § 3; 1978, ch. 155, § 82, effective June 17, 1978) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 560, effective July 13, 1990.

Cross-References. Bond issue approval, 702 KAR 3:020.

162.190. Bonds negotiable — Tax-exempt — Signatures — Not city debt.

All bonds issued under the provisions of KRS 162.170 shall have all of the qualities of negotiable instruments, and shall not be subject to taxation. If any of the officers whose signatures appear on the bonds or coupons cease to be such officers before delivery of the bonds, the signatures shall nevertheless be valid for all purposes the same as if the officers had remained in office until delivery. The bonds shall be payable solely from the revenue derived from the school building as provided in KRS 162.230, and shall not constitute an indebtedness of the city within the meaning of the constitutional provisions or limitations. It shall be plainly stated on the face of each bond that it was issued under the provisions of KRS 162.150 to 162.280 and that it does not constitute an indebtedness of the city.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 561, effective July 13, 1990.)

Compiler's Notes. This section (4421-8) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 561, effective July 13, 1990.

Cross-References. Bond issue approval, 702 KAR 3:020.

Cited: Pulaski County v. Ben Hur Life Ass'n, 286 Ky. 119, 149 S.W.2d 738 (1941); Fyfe v. Hardin County Bd. of Educ., 305 Ky. 589, 205 S.W.2d 165 (1947); Board of Educ. v. Board of Educ., 250 S.W.2d 1017 (Ky. 1952).

NOTES TO DECISIONS

1. Constitutionality.

The tax exemption feature does not violate Const., §§ 3, 170 or 171. J.D. Van Hooser & Co. v. University of Ky., 262 Ky. 581, 90 S.W.2d 1029 (1936).

Collateral References. 78A C.J.S., Schools and School Districts, §§ 522, 551, 552, 554.

162.200. Use of funds — Lien on building.

All money received from any bonds issued pursuant to KRS 162.170 shall be used solely for the establishment or erection of the school building and necessary appurtenances, except that the money may be used also to advance the payment of the interest on bonds during the first three (3) years following the date of the bonds. There shall be a statutory mortgage lien upon the school building and appurtenances in favor of the holders of the bonds and coupons.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 562, effective July 13, 1990.)

Compiler's Notes. This section (4421-9) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 562, effective July 13, 1990.

Cross-References. Bond issue approval, 702 KAR 3:020.

Kentucky Law Journal. Martin, Administrative Action for Efficient Debt Management: The Kentucky Case, 49 Ky. L.J. 505 (1961).

Opinions of Attorney General. A fund resulting from the sale of school property could be used for the purchase of sites for school buildings, for the erection and complete equipping of school buildings, and for the major alteration, enlargement and complete equipping of buildings, in accordance with the provisions of KRS 160.476, even though refunding revenue bonds were outstanding on other school property. OAG 66-224.

Other school property, title to which has been retained by the school district, does not represent part of the security for refunding revenue bonds issued to provide for a specific building. OAG 66-224.

NOTES TO DECISIONS

1. Lien on Reversionary Interest.

The lien created by this section is only as good as the title to the property offered as security and subject to the terms of that title and where deed to school board provided it was not to be sold to anyone for residence purposes but was to remain a part of the colored school property so long as the school remained where then located and the colored school was abandoned and the property offered for sale by the board, the board's title terminated and the ownership of the property reverted to the grantor since the deed was a fee simple with

special limitation or a determinable fee and the possibility of reverter remained in grantor. Fleming County Bd. of Educ. v. Hall, 380 S.W.2d 273 (Ky. 1964).

Collateral References. 78A C.J.S., Schools and School Districts, §§ 450, 451, 636, 637.

162.210. Rights of bondholders to enforce lien.

The school building and appurtenances shall remain subject to the statutory lien provided by KRS 162.200 until the payment in full of the principal and interest of the bonds. Any holder of the bonds or of any of the coupons may, either at law or in equity, protect and enforce the lien, and may by action enforce and compel performance of all duties required by KRS 162.150 to 162.280, including the making and collecting of sufficient rents, the segregation of the income and revenue, and the application thereof.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 563, effective July 13, 1990.)

Compiler's Notes. This section (4421-10) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 563, effective July 13, 1990.

Cross-References. Bond issue approval, 702 KAR 3:020.

Opinions of Attorney General. A fund resulting from the sale of school property could be used for the purchase of sites for school buildings, for the erection and complete equipping of school buildings, and for the major alteration, enlargement and complete equipping of buildings, in accordance with the provisions of KRS 160.476, even though refunding revenue bonds were outstanding on other school property. OAG 66-224.

Other school property, title to which has been retained by the school district, does not represent part of the security for refunding revenue bonds issued to provide for a specific building. OAG 66-224.

Cited: Burkhart v. Blanton, 635 S.W.2d 328 (Ky. Ct. App. 1982).

Collateral References. 78A C.J.S., Schools and School Districts, §§ 450, 451.

162.220. Receiver in case of default.

If there is any default in the payment of the principal or interest on any of the bonds, any court having jurisdiction of the action may appoint a receiver to administer the school building on behalf of the city, with power to charge and collect rentals sufficient to provide for the payment of any bonds or obligations outstanding against the school building and for the payment of the operating expenses, and to apply the income and revenues in conformity with KRS 162.150 to 162.280, and the ordinance referred to in KRS 162.170 and 162.230.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 564, effective July 13, 1990.)

Compiler's Notes. This section (4421-11) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 564, effective July 13, 1990.

Cross-References. Bond issue approval, 702 KAR 3:020.

162.230. Rent — Disposition to be fixed by ordinance.

At or before the issuance of the bonds, the governing body of the city shall, by ordinance, set aside and pledge the income of the building into a special fund to be used and applied in payment of the cost and maintenance of the building. The ordinance shall definitely fix the amount of revenue necessary to be set aside and applied for the payment of the principal and interest of the bonds. The balance of the income shall be set aside for the reasonable and proper maintenance of the building, including a sufficient sum to pay the cost of insurance. The city governing body may provide by ordinance any provision and stipulation it deems necessary for the administration of the income for the security of the bondholders.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 565, effective July 13, 1990.)

Compiler's Notes. This section (4421-13, 4421-17) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 565, effective July 13, 1990.

Cross-References. Bond issue approval, 702 KAR 3:020.

Collateral References. 78A C.J.S., Schools and School Districts, § 555.

162.240. Deposit and investment of sinking fund.

The sinking fund shall be deposited in a depository selected by the governing body of the city. The deposit, where practicable, shall be continuously secured by a pledge to the city of direct obligations of the United States, exclusive of accrued interest, at all times at least equal to the balance on deposit in the account, or in some other manner acceptable to the purchasers or holders of the bonds. The securities shall be deposited with the city or held by a trustee or agent satisfactory to the governing body of the city. The sinking fund may be invested in direct obligations of the United States.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 566, effective July 13, 1990.)

Compiler's Notes. This section (4421-17) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 566, effective July 13, 1990.

Cross-References. Sinking funds may be invested in bonds secured by credit of United States, KRS 386.050.

Bond issue approval, 702 KAR 3:020.

Opinions of Attorney General. Boards of education may place their general funds in banks designated as depositories pursuant to KRS 160.570 and obtain from such banks certificates of deposit representing time deposits of surplus funds subject to withdrawal on demand. OAG 64-70.

The "school building revenue bond and interest redemption fund" mentioned on the face of the specimen copy of a typical school bond is really a part and parcel of the "sinking fund" mentioned in this section, and the transfer of such funds finally to the trustee of the bonds does not automatically relieve the board of education of liability, since the board is contractually responsible for taking steps to insure that the debt service and liquidation of coupons and bonds for the benefit of bondholders is effectively secured. OAG 73-188.

Collateral References. 78A C.J.S., Schools and School Districts, § 555.

162.250. Maintenance fund surplus to be transferred to sinking fund.

If a surplus is accumulated in the maintenance fund equal to the cost of maintaining the building during the remainder of the calendar or fiscal year, as may be provided by the ordinance required by KRS 162.230, and the cost of maintaining and operating the building for the succeeding like calendar or fiscal year, the

excess over such amount shall be transferred to the sinking fund.
(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 567, effective July 13, 1990.)

Compiler's Notes. This section (4421-14) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 567, effective July 13, 1990.
Cross-References. Bond issue approval, 702 KAR 3:020.
Collateral References. 78A C.J.S., Schools and School Districts, §§ 507, 555.

162.260. Refunding bonds may be issued.

The city may issue refunding bonds to provide funds for the payment of any outstanding bonds, in accordance with the procedure prescribed for the issuance of the original bonds. The refunding bonds shall be secured to the same extent and shall have the same source of payment as the bonds which are refunded.
(4421-15: amend. Acts 1990, ch. 476, § 256, effective July 13, 1990.)

Cross-References. Bond issue approval, 702 KAR 3:020.
Opinions of Attorney General. A fund resulting from the sale of school property could be used for the purchase of sites for school buildings, for the erection and complete equipping of school buildings, and for the major alteration, enlargement and complete equipping of buildings, in accordance with the provisions of KRS 160.476, even though refunding revenue bonds were outstanding on other school property. OAG 66-224.
Other school property, title to which has been retained by the school district, does not represent part of the security for refunding revenue bonds issued to provide for a specific building. OAG 66-224.
Cited: Morgan v. Fayette County Bd. of Educ., 294 Ky. 597, 172 S.W.2d 64 (1943).

NOTES TO DECISIONS

1. New Obligations.
Refunding bonds always create a new obligation, but the issue, if otherwise proper, is authorized by this section. Hemlepp v. Aronberg, 369 S.W.2d 121 (Ky. 1963).
Collateral References. 78A C.J.S., Schools and School Districts, §§ 546-550.

162.270. Additional bonds authorized.

If the governing body of the city finds that the bonds authorized will be insufficient to accomplish the purpose desired, additional bonds may be authorized and issued subject to the same procedure.
(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 568, effective July 13, 1990.)

Compiler's Notes. This section (4421-16) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 568, effective July 13, 1990.
Cross-References. Bond issue approval, 702 KAR 3:020.
Collateral References. 78A C.J.S., Schools and School Districts, § 522.

162.280. When city to convey property to board.

When the board of education of the school district has paid rent, as provided in KRS 162.160, sufficient to amortize the cost of erection of the building and appurtenances and to maintain the building and pay the cost of insurance, the city shall thereupon convey the premises to the board, and shall transfer any balance remaining in the funds provided for in KRS 162.230 to 162.250 to the account of the board of education.
(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 569, effective July 13, 1990.)

Compiler's Notes. This section (4421-18) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 569, effective July 13, 1990.
Cross-References. Bond issue approval, 702 KAR 3:020.
Collateral References. 78 C.J.S., Schools and School Districts, §§ 357, 358, 361.

162.290. Alternative methods — Other procedure not required.

KRS 162.120 to 162.140 and KRS 162.150 to 162.280 are additional and alternate methods for the acquisition of school buildings by boards of education of independent districts embracing cities of any class, and do not include, alter, amend, or repeal any other statute. No proceeding shall be required for the acquisition of any school building or the issuance of bonds under KRS 162.150 to 162.280 except such as are prescribed by those sections.
(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 570, effective July 13, 1990.)

Compiler's Notes. This section (4421-4, 4421-19) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 570, effective July 13, 1990.
Cross-References. Bond issue approval, 702 KAR 3:020.

NOTES TO DECISIONS

1. Contract for Construction.
A board of education lacks the power or capacity to enter a contract for school construction where the revenue bond method provided in KRS 162.120 to 162.290 is utilized. Hacker Bros. Constr. Co. v. Board of Educ., 590 S.W.2d 897 (Ky. Ct. App. 1979).
Collateral References. 78 C.J.S., Schools and School Districts, §§ 357, 358, 361.

162.300. Certain boards may obtain school buildings as provided in KRS 162.120 to 162.290.

County boards of education and boards of education of independent districts not embracing a city of any class may obtain buildings for school purposes by proceeding under the provisions of KRS 162.120 to 162.290. When applied to such boards of education, KRS 162.120 to 162.290 shall be so read that the term:
(1) "City" means "county," including a county containing a consolidated local government, or "urban-county," as the case may be;
(2) "City clerk" means "county clerk" or the appropriate recordkeeping officer in an urban-county government or a consolidated local government;
(3) "Governing body of the city" means "fiscal court" or the governing body of an urban-county government or a consolidated local government, as the case may be;
(4) "Mayor" means "county judge/executive," "chief executive officer of the urban-county government,"

or "mayor of a consolidated local government," as the case may be; and

(5) "Ordinance" means either "ordinance" or "resolution."

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 571, effective July 13, 1990; 2002, ch. 346, § 176, effective July 15, 2002.)

Compiler's Notes. This section (4421-20 to 4421-38: amend. Acts 1974, ch. 367, § 1; 1986, ch. 23, § 12, effective July 15, 1986) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 571, effective July 13, 1990.

Cross-References. Governmental agency may issue revenue bonds for any public project, KRS 58.010 to 58.120.

Bond issue approval, 702 KAR 3:020.

Kentucky Law Journal. Meuth, The Development of Financing Public Improvements by Kentucky Municipalities, 25 Ky. L.J. 230 (1937).

Opinions of Attorney General. Where the fee simple title to school property was owned by the county and the city wanted to blacktop certain roads on the property, the county was liable for its apportionate cost of the improvement as a benefited property owner. OAG 60-377.

A fund resulting from the sale of school property could be used for the purchase of sites for school buildings, for the erection and complete equipping of school buildings, and for the major alteration, enlargement and complete equipping of buildings, in accordance with the provisions of KRS 160.476, even though refunding revenue bonds were outstanding on other school property. OAG 66-224.

Other school property, title to which has been retained by the school district, does not represent part of the security for refunding revenue bonds issued to provide for a specific building. OAG 66-224.

Where the construction of a school building and later lease back to the school district was to be assumed by the county, a company in which the county judge (now county judge/executive) was the principal stockholder would be prohibited from selling materials to private contractors building the school. OAG 66-564.

After merger, an urban-county government would stand in the place of the fiscal court as far as the agency to contract with the county board of education in connection with the construction of school facilities in the county and the issuance of bonds for such construction. OAG 74-187.

Cited: City of Louisville v. Manning, 309 Ky. 789, 219 S.W.2d 13 (Ct. App. 1949); Fosson v. Fiscal Court, 369 S.W.2d 108 (Ky. 1963).

NOTES TO DECISIONS

Analysis

1. Authority of board.
2. Determination of site.
3. Acquisition of school buildings.
4. Borrowing money.
5. Lease of school building.
6. Power of fiscal court.
7. Bondholders' rights.

1. Authority of Board.

The authority vested in the school board is clearly a general and comprehensive power, given it without limitation, express or implied, effective to forbid it from making its financing plan of a group conveyance of three school properties and providing for a refund of all taxes paid by holders of its school bonds where amount was within its annual income. Scott County Bd. of Educ. v. McMillen, 270 Ky. 483, 109 S.W.2d 1201 (1937).

County board of education is vested with the broad power and authority to control, buy and sell real estate for school sites, and to control and manage all public school property of its district and to use such school funds and property to promote public education in such ways as it deems necessary and proper in the exercise of its judgment and discretion. Scott County Bd. of Educ. v. McMillen, 270 Ky. 483, 109 S.W.2d 1201 (1937).

A county board of education had no authority to execute a plan by which board was to convey to a nonprofit corporation 20 percent of school property in county, but not site on which school building was to be erected, and corporation was to erect building and execute lease-option contract to board by which, after payment of rental for period of years, board was to become owner of all property conveyed to corporation. Weaks v. Board of Educ., 282 Ky. 241, 137 S.W.2d 1094 (1940).

Board of education is naked trustee of school property and the real beneficiaries are the pupils for whose benefit school property is donated and the board could not appropriate the proceeds of fire policy taken out by it on colored schoolhouse which had been donated to it for exclusive benefit of the colored school district to the public school funds for the benefit of all public schools within its jurisdiction. Board of Educ. v. Todd County Bd. of Educ., 289 Ky. 803, 160 S.W.2d 170 (1942).

Where school board was renting school building constructed under holding company plan, and one of buildings was destroyed by fire, school board had no authority to issue funding bonds to enable building to be reconstructed. Stith v. Board of Educ., 292 Ky. 91, 166 S.W.2d 58 (1942).

2. Determination of Site.

Board of education and not the fiscal court has both the power and the duty to determine the site upon which school building will be erected. Franklin County v. Franklin County Bd. of Educ., 267 Ky. 554, 102 S.W.2d 1024 (1937).

3. Acquisition of School Buildings.

A county or city may acquire property on which school buildings have already been erected and finance the cost of acquisition under the provisions of KRS 162.120 to 162.300. Morgan v. Fayette County Bd. of Educ., 294 Ky. 597, 172 S.W.2d 64 (1943).

County had authority to acquire school buildings from private holding company, and issue bonds in exchange for outstanding bonds of holding company and in such case several buildings or properties may be included in one mortgage and bond issue. Morgan v. Fayette County Bd. of Educ., 294 Ky. 597, 172 S.W.2d 64 (1943).

4. Borrowing Money.

Counties and cities, in financing construction of school buildings, may borrow money from sources other than the federal government. Morgan v. Fayette County Bd. of Educ., 294 Ky. 597, 172 S.W.2d 64 (1943).

5. Lease of School Building.

Provision that lease of school building by fiscal court to school district would continue from year to year for a rental sufficient to pay interest on the bonds and eventually retire the bonds violated the constitutional limitation on indebtedness but it could be changed to one year with the privilege of renewal and the school board would not be presently bound for the entire period required for the rentals to liquidate the proposed indebtedness but would be bound only for one year at a time as renewed which would be within the income of the board for each particular year. Fiscal Court v. Board of Educ., 268 Ky. 336, 104 S.W.2d 1103 (1937).

6. Power of Fiscal Court.

When the legislature enacted this section it did not intend that the acts of a county board of education might be vetoed by the fiscal court. Fyfe v. Hardin County Bd. of Educ., 305 Ky. 589, 205 S.W.2d 165 (1947).

Fiscal court must comply with request of county board of education for issuance of revenue bonds for school buildings

under this section, and cannot question need for buildings or use its own judgment as to whether bonds shall be issued. Fyfe v. Hardin County Bd. of Educ., 305 Ky. 589, 205 S.W.2d 165 (1947).

7. Bondholders' Rights.

Where county had issued revenue bonds pursuant to this section under a plan where the school board conveyed a tract of land to the fiscal court which issued revenue bonds and constructed a school building and then leased the building to the school board for one year with option to renew for successive one year periods and when sufficient rentals were paid over a period of years to retire the bonds the land and building were to be conveyed by the fiscal court to the school board, one of the bondholders could not attack a proposed new bond issue on the same plan for an entirely separate school to be erected on a separate tract of land on the basis the board did not have enough finances since under the plan the bondholder was not concerned with the future soundness of the school system but took the risk that the school board could abandon the school building at the end of any year. Wagner v. Fiscal Court, 306 S.W.2d 288 (Ky. 1957).

Collateral References. 78 C.J.S., Schools and School Districts, § 357.

162.310. State educational institution may convey building site.

For the purpose of providing buildings to be used in connection with any state educational institution, the governing body of the institution may convey to any person complying with KRS 162.320 and 162.330 a fee simple title, with covenant of general warranty of title, to real estate held by or for the institution, as a site for the buildings.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 572, effective July 13, 1990.)

Compiler's Notes. This section (4535cc-1) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 572, effective July 13, 1990.

Kentucky Law Journal. Martin, Administrative Action for Efficient Debt Management: The Kentucky Case, 49 Ky. L.J. 505 (1961).

Cited: City of Louisville v. Manning, 309 Ky. 789, 219 S.W.2d 13 (Ct. App. 1949).

NOTES TO DECISIONS

1. Constitutionality.

This section and KRS 162.320 and 162.330 do not violate Const., § 51, or any other constitutional provision. McDonald v. University of Ky., 225 Ky. 205, 7 S.W.2d 1046 (1928).

State educational institutions are not within the purview of Const., § 157. McDonald v. University of Ky., 225 Ky. 205, 7 S.W.2d 1046 (1928). See Clay v. Board of Regents, 255 Ky. 846, 75 S.W.2d 550 (1934); J.D. Van Hooser & Co. v. University of Ky., 262 Ky. 581, 90 S.W.2d 1029 (1936).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 357, 358.

162.320. Contract for erection of building.

Every person to whom a site for a building is conveyed pursuant to KRS 162.310 shall immediately enter into a written contract with some person approved by the governing body of the state educational institution, for the immediate erection on the site of a building with the necessary appurtenances, according to plans and specifications approved by the governing body of the state educational institution. The contract shall provide the time when the building shall be completed. The contractor shall enter into bond with the Commonwealth for the benefit of the state educational institution in the penal sum of not less than twenty-five percent (25%) of the contract price for the completion of the work in the manner and within the time set out in the contract.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 573, effective July 13, 1990.)

Compiler's Notes. This section (4535cc-2) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 573, effective July 13, 1990.

Cited: City of Louisville v. Manning, 309 Ky. 789, 219 S.W.2d 13 (Ct. App. 1949).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 407-409.

162.330. Lease of building — Option to purchase.

Immediately upon the execution of the contract provided for by KRS 162.320, the person to whom the site is conveyed shall execute, acknowledge, and deliver to the governing body of the state educational institution, a lease of the site and the building to be erected thereon, for a term of one (1) year from the time the building is completed and ready for occupancy, with an option in the lessee to extend the term of the lease for a term of one (1) year from the expiration of the original term of the lease and for one (1) year from the expiration of each extended term of the lease, until the original term of the lease has been extended for a total number of years to be agreed upon by the parties at a rental which, if paid for the original term and for each of the full number of years for which the term of the lease may be extended, will amortize the total cost of the erection of the building and appurtenances. The rent shall be paid at such times as the parties to the lease agree upon. The lease shall provide that the lessee may, at the expiration of the original or any extended term, purchase the leased premises at a stated price, which shall be the balance of the total cost of the erection of the building and appurtenances not amortized by the payments of rent previously made by the lessee. The lease shall provide that in the event of the exercise of the option to purchase the leased premises or in the event the lease has been extended for the full number of years which it is agreed the same may be extended, and all rents and payments provided for in the lease have been made, the lessor shall convey the premises to the lessee in fee simple with covenant of general warranty of title. The lease may provide that the lessee shall, as additional rent for the leased premises, pay all taxes assessed against the leased premises, and the cost of insuring the building erected thereon against loss or damage by fire and windstorm in such sum as may be agreed by the parties thereto.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 574, effective July 13, 1990.)

Compiler's Notes. This section (4535cc-3) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 574, effective July 13, 1990.

Cited: City of Louisville v. Manning, 309 Ky. 789, 219 S.W.2d 13 (Ct. App. 1949).

Collateral References. 78 C.J.S., Schools and School Districts, § 391.

162.340. Governing bodies of state educational institutions may erect buildings.

The governing body of any state educational institution may, under the provisions of KRS 162.350 to 162.380, erect buildings and appurtenances to be used in connection with the institution for educational purposes. (Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 575, effective July 13, 1990.)

Compiler's Notes. This section (4535m-1) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 575, effective July 13, 1990.

Cross-References. City of second class may follow KRS 162.340 to 162.380 to issue bonds for municipal college, KRS 165.165.

Kentucky Law Journal. Meuth, The Development of Financing Public Improvements by Kentucky Municipalities, 25 Ky. L.J. 230 (1937).

Martin, Administrative Action for Efficient Debt Management: The Kentucky Case, 49 Ky. L.J. 505 (1961).

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Limitation on indebtedness.
3. Utility plant authorized.

1. Constitutionality.

State educational institutions are not within the purview of Const., § 157 regarding limitation on indebtedness. Clay v. Board of Regents, 255 Ky. 846, 75 S.W.2d 550 (1934). See J.D. Van Hooser & Co. v. University of Ky., 262 Ky. 581, 90 S.W.2d 1029 (1936).

2. Limitation on Indebtedness.

This section did not violate Const., §§ 49, 50, or 51. J.D. Van Hooser & Co. v. University of Ky., 262 Ky. 581, 90 S.W.2d 1029 (1936).

3. Utility Plant Authorized.

This act authorizes the erection of a water, heating, power and lighting plant. Clay v. Board of Regents, 255 Ky. 846, 75 S.W.2d 550 (1934).

Decisions Under Prior Law

1. Limitations on Indebtedness.

State educational institutions were not within the purview of Const., § 157. McDonald v. University of Ky., 225 Ky. 205, 7 S.W.2d 1046 (1928).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 381-384.

162.350. Method of erection of buildings by state educational institutions.

The governing body of a state educational institution erecting a building or buildings pursuant to KRS 162.340 is subject to the provisions of KRS 162.170 to 162.240, KRS 162.260, 162.270, and 162.290, except that part of KRS 162.190 that provides that the bonds shall be payable solely from the revenue derived from the particular building or buildings erected. When so applied these sections shall be so read that:

(1) "City" means "state educational institution";
(2) "Ordinance" means "resolution";
(3) "Governing body of the city" means "governing body of the institution";
(4) "School buildings" means the type of buildings contemplated by KRS 162.340;
(5) "Thirty (30) years" in KRS 162.180 means "forty (40) years";
(6) "KRS 162.230" in KRS 162.190 and 162.220, means "KRS 162.230, 162.360, and 162.370";
(7) "KRS 162.150 to KRS 162.280" means "KRS 162.350 to 162.380."

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 576, effective July 13, 1990; 1996, ch. 274, § 36, effective July 15, 1996.)

Compiler's Notes. This section (4535m-2 to 4535m-8, 4535m-10 to 4535m-12, 4535m-14: amend. Acts 1958, ch. 147, § 1; 1968, ch. 110, § 20) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 576, effective July 13, 1990.

Kentucky Law Journal. Martin, Administrative Action for Efficient Debt Management: The Kentucky Case, 49 Ky. L.J. 505 (1961).

Opinions of Attorney General. Even though housing bond revenues are required to go into the State Treasury, subject to payment out to the trustee for sinking fund purposes, KRS 56.873 has no application to university housing revenue bonds, since the act (Ch. 96 of 1980) requires legislative approval only where state general fund expenditures are involved. OAG 80-592.

Collateral References. 78A C.J.S., Schools and School Districts, §§ 478-499, 555, 641-643.

162.360. Revenues from building — Determination and use.

The governing body of a state educational institution erecting a building or buildings and appurtenances under the provisions of KRS 162.340 shall, by resolution, provide that the bonds shall be payable, solely from the revenues of such building or buildings, provided, said governing body may in its discretion, by said resolution, also provide that the bonds shall be payable from the revenues of any other building or buildings theretofore or as may be thereafter erected and used, in connection with the institution for educational purposes provided, further, any such provision for the payment of the bonds from the revenues of such other building or buildings theretofore erected shall be subject to and in all respects in full conformity and compliance with the rights of the holders of any bonds or obligations payable from the revenues of such other building or buildings theretofore issued by the governing body then outstanding. The resolution shall fix the initial minimum rents, tolls, fees, and other charges to be imposed in connection with the services furnished by the building or buildings to be erected and may also provide that the governing body of the institution shall monthly as the service accrues pay from the current funds of the institution or from student fees, or both, into the special fund provided by KRS 162.230, as that section is made applicable by KRS 162.350, a minimum amount representing the reasonable cost and value of any service rendered to the educational institution by such building or buildings in furnishing any educational facilities in the operation of the educational

institution. The resolution shall fix the extent of the pledge of revenues from such other building or buildings toward the payment of the bonds and interest thereon and may specify the terms and conditions upon which additional bonds may be thereafter issued and sold ranking on a parity with and payable from the same source as the bonds authorized by such resolution, and such additional parity bonds may thereafter be so issued and sold to pay all or any part of the cost of building or buildings and appurtenances. The resolution shall definitely fix the minimum amount of revenues necessary to be set apart on or before stated intervals and applied to the payment of the principal and interest on the bonds and the balance of the income and revenues shall be set aside as a proper operation and maintenance fund, including a sufficient sum to pay the cost of insuring the building or buildings against loss or damage by fire and windstorm or other calamity as may have been stipulated in the resolution or resolutions authorizing the bonds. The charges for the services from the building or buildings, together with the available revenues of any other building or buildings pledged to the payment of said bonds and interest thereon, shall be sufficient at all times to provide for the payment of such interest and to create a sinking fund to accomplish retirement of such bonds at or before maturity, and to pay the current operation and maintenance expenses of the building or buildings to the extent such expenses are not otherwise provided. The charges shall be revised from time to time so as to produce these amounts.
(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 577, effective July 13, 1990.)

Compiler's Notes. This section (4535m-8: amend. Acts 1958, ch. 147, § 2) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 577, effective July 13, 1990.

Kentucky Law Journal. Martin, Administrative Action for Efficient Debt Management: The Kentucky Case, 49 Ky. L.J. 505 (1961).

162.370. Maintenance fund surplus.

If a surplus is accumulated in the maintenance fund equal to the cost of maintaining the building or buildings during the remaining portion of the calendar or fiscal year, as may be provided by the resolution adopted under KRS 162.360 and the cost of maintaining and operating the building or buildings the succeeding like calendar or fiscal year, the excess over such amount may be transferred at any time by the governing body to the sinking fund or may be used for any improvements, extensions, or additions to the building or buildings.
(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 578, effective July 13, 1990.)

Compiler's Notes. This section (4535m-9: amend. Acts 1958, ch. 147, § 3) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 578, effective July 13, 1990.

Kentucky Law Journal. Goldman, The University and the Liberty of Its Students — A Fiduciary Theory, 54 Ky. L.J. 643 (1966).

Collateral References. 78A C.J.S., Schools and School Districts, §§ 641-643.

162.380. Bonds are obligations of governing body — Resolution constitutes contract.

The bonds issued under authority of KRS 162.350 shall be obligations only of the governing body of the institution, payable as to both principal and interest from the revenues as pledged for that purpose. In no event shall they be considered a debt for which the credit of the state is pledged. Any resolution adopted under the provisions of KRS 162.350 or 162.360 shall constitute a contract between the governing body of the institution and the holder of any bond or coupon and shall be binding in all respects upon the governing body of the institution and its successors.
(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 579, effective July 13, 1990.)

Compiler's Notes. This section (4535m-13: amend. Acts 1958, ch. 147, § 4) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 579, effective July 13, 1990.

Kentucky Law Journal. Martin, Administrative Action for Efficient Debt Management: The Kentucky Case, 49 Ky. L.J. 505 (1961).

Collateral References. 78A C.J.S., Schools and School Districts, § 452.

162.385. School district finance corporation — Definitions — Construction bonds.

(1) Any board of education may obtain buildings for school purposes by proceeding under the provisions of KRS 162.120 to 162.290 utilizing a nonprofit finance corporation established pursuant to the provisions of KRS 273.161 to 273.390, inclusive, and KRS 58.180 as an issuing agency for the bonds instead of a city or county. When applied to such boards of education, KRS 162.120 to 162.290 shall be so read that the term:
   (a) "City" means a finance corporation acting as an agency and instrumentality of the board pursuant to KRS 58.180;
   (b) "City clerk" means the secretary of the finance corporation;
   (c) "Governing body of the city" means the board of directors of the finance corporation or other governing body thereof;
   (d) "Mayor" means president or chief executive officer of the finance corporation; and
   (e) "Ordinance" means an ordinance, resolution, or trust indenture or a similar document.
(2) In order to promote uniformity in the financing of school facilities, each finance corporation shall include the identity of the school district for which it acts in its title and shall be designated as "..... School District Finance Corporation."
(3) Bonds issued by a finance corporation on behalf of a board of education shall constitute "bonds" within the meaning of KRS 157.615(3) and the School Facilities Construction Commission shall be authorized to assist qualified boards in meeting rental payments due under a lease from the finance corporation to the board which shall constitute a "lease" within the meaning of KRS 157.615(8).

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 580, effective July 13, 1990; 1992, ch. 195, § 13, effective April 3, 1992.)

Compiler's Notes. This section (Enact. Acts 1988, ch. 301, § 1, effective April 9, 1988) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 580, effective July 13, 1990.

Cross-References. Bond issue approval, 702 KAR 3:020.

Document filing dates, 702 KAR 3:110.

162.390. School building fund in cities of first class — Tax for. [Repealed.]

Compiler's Notes. This section (2978e-1) was repealed by Acts 1946, ch. 36, § 3.

162.400. Taxes go to school board — May be accumulated — Building fund. [Repealed.]

Compiler's Notes. This section (2978e-2) was repealed by Acts 1946, ch. 36, § 3.

162.410. Deposit or investment of building fund. [Repealed.]

Compiler's Notes. This section (2978e-3) was repealed by Acts 1946, ch. 36, § 3.

162.420. Expenditures from building fund. [Repealed.]

Compiler's Notes. This section (2978e-2, 2978e-4) was repealed by Acts 1946, ch. 36, § 3.

162.430. Report of condition of building fund. [Repealed.]

Compiler's Notes. This section (2978e-5) was repealed by Acts 1946, ch. 36, § 3.

162.431. School building fund in cities of second class and in counties containing such a city — Tax for — Other assets of. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1942, ch. 27, § 1; 1944, ch. 31) was repealed by Acts 1946, ch. 36, § 3.

162.432. Taxes go to school board — Accumulation and use of fund. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1942, ch. 27, § 2) was repealed by Acts 1946, ch. 36, § 3.

162.433. Deposit or investment of fund. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1942, ch. 27, § 3) was repealed by Acts 1946, ch. 36, § 3.

162.434. Expenditures from fund. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1942, ch. 27, § 4) was repealed by Acts 1946, ch. 36, § 3.

162.435. Audit of fund. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1942, ch. 27, § 5; 1944, ch. 31, § 1) was repealed by Acts 1946, ch. 36, § 3.

Insurance Funds

162.440. Insurance fund for boards of education in cities of the second class or counties containing cities of the second class.

The board of education of any city of the second class or of a county containing a city of the second class may, by resolution, establish a fund to be known as the "insurance fund" after written approval of the plan to administer the fund has been secured from the chief state school officer. The resolution shall fix the maximum limit of the fund. The fund shall be maintained separate from the other funds and moneys of the board, and shall be used exclusively for replacing or repairing any injury or destruction to any of the buildings owned by the board or to their contents when caused by fire, tornado, windstorm, cyclone, casualty, explosion, riot, or flood, but not when caused by wear and tear or the natural processes of decadence or deterioration.

(3219a-1: amend. Acts 1944, ch. 31; 1990, ch. 476, Pt. IV, § 257, effective July 13, 1990.)

Cross-References. Insurance of state property, KRS 56.070 to 56.185.

Collateral References. 78 C.J.S., Schools and School Districts, § 401.

Insurance on school property, right or duty to carry. 100 A.L.R. 600.

162.450. Payments into fund — Replacement of expenditures — Use of interest.

The board of education of a city of the second class, or of a county containing a city of the second class, may raise the maximum limit of the insurance fund from time to time as it deems best. Until the amount in the fund equals the maximum limit, the board of education shall each year, from the revenues under its control, set apart to the fund a sum equal to from one-twentieth (1/20) to one-tenth (1/10) of the maximum limit of the sum. When any portion of the fund is used, payments to restore the fund shall at once be begun and be continued until the restoration is complete. When the fund is, for any reason, below the maximum limit, the interest derived from the investment thereof shall be accumulated and added to the fund; otherwise the interest may be transferred to the general funds of the board.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 581, effective July 13, 1990.)

Compiler's Notes. This section (3219a-2: amend. Acts 1944, ch. 31) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 581, effective July 13, 1990.

Cross-References. Appeal procedures, 782 KAR 1:040.

Federal Vocational Rehabilitation Program, 782 KAR 1:010.

Protection, use and release of personal information, 782 KAR 1:050.

Collateral References. 78A C.J.S., Schools and School Districts, § 479.

162.460. Investment and care of insurance fund.
The insurance fund shall be kept on deposit with the treasurer of the board of education, unless by order of the board it is invested in United States, state, county, or city bonds that are not payable from assessments, and are registered, if practicable. If the bonds are coupon bonds, they shall be kept deposited in a safe deposit vault and be opened only by the business manager or secretary of the board in the presence of a member of the board authorized to represent it. Every vote upon the use or investment of any portion of the fund shall be by call of the yeas and nays and the record shall show how each member voted.
(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 582, effective July 13, 1990.)

Compiler's Notes. This section (3219a-3, 3219a-5: amend. Acts 1944, ch. 31) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 582, effective July 13, 1990.
Cross-References. Investment of sinking funds in United States bonds authorized, KRS 386.050.
Appeal procedures, 782 KAR 1:040.
Federal Vocational Rehabilitation Program, 782 KAR 1:010.
Protection, use and release of personal information, 782 KAR 1:050.

162.470. Insurance inspector to examine buildings annually.
The board of education shall cause every building to be carefully examined annually by a competent insurance inspector. The inspector shall make a written report of the result of his examination with recommendations.
(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 583, effective July 13, 1990.)

Compiler's Notes. This section (3219a-4) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 583, effective July 13, 1990.
Cross-References. Appeal procedures, 782 KAR 1:040.
Definition of terms for 782 KAR Chapter 1, 782 KAR 1:020.
Federal Vocational Rehabilitation Program, 782 KAR 1:010.
Protection, use and release of personal information, 782 KAR 1:050.
Scope and nature of services., 782 KAR 1:030.

162.480. Proof of loss — Appropriations of fund.
When an injury occurs to any building or its contents from fire, tornado, windstorm, cyclone, casualty, explosion, riot, or flood, the business director or secretary of the board of education shall, within thirty (30) days thereafter, prepare and file with the board a sworn written proof of loss, showing in detail the items of injury, and in detail an estimate of the extent of the financial loss and whether and to what extent the loss is covered by insurance, with the names of the companies, the number of the policies, and names of the agents. Before the board of education may appropriate any portion of the insurance fund, a committee appointed by the board shall report to the board in writing, making recommendations and answering in detail the following questions:
(1) What is the entire loss on the building? When and what caused it?
(2) What deduction should be made for wear and tear and the natural processes of decadence or deterioration?
(3) What portion of the loss proposed to be made good from this fund resulted from causes covered by this fund?
(4) Will it be practicable to make the restoration from the general fund and the proceeds of any insurance policies without assistance from this fund?
(5) If assistance is needed from this fund, how much? How will the portion so used be returned to the fund?
(6) Does the committee recommend an appropriation from this fund to aid in the restoration proposed? If so, how much?
(3219a-5: amend. Acts 1944, ch. 31; 1990, ch. 476, Pt. IV, § 258, effective July 13, 1990.)

Collateral References. 78A C.J.S., Schools and School Districts, § 507.

162.490. Insurance fund may be used in case of delay in payment under insurance policy.
If any insurance company delays in paying to the board of education the amount of any loss under a policy, the board may, on the recommendation of its building and finance committee, appropriate from the insurance fund a sum not exceeding the amount of the probable loss under the policy to aid in the prompt restoration of the loss. The amount drawn from the insurance fund shall not exceed the amount collectible from the policy. A resolution shall be adopted setting over to the insurance fund the proceeds of the policy or sufficient thereof to replace the amount so used, and the proceeds when collected shall be so used and not otherwise.
(3219a-6: amend. Acts 1990, ch. 476, Pt. IV, § 259, effective July 13, 1990.)

Collateral References. 78A C.J.S., Schools and School Districts, § 507.

162.500. Prohibited appropriations.
No member of the board of education shall vote for, and no officer of the board shall certify to or draw a check for, an appropriation in violation of KRS 162.440 to 162.490.
(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 584, effective July 13, 1990.)

Compiler's Notes. This section (3219a-7) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 584, effective July 13, 1990.
Collateral References. 78A C.J.S., Schools and School Districts, § 507.

State Property and Buildings Commission

162.510. Kentucky public school authority — Public corporation. [Repealed.]

Compiler's Notes. This section (Acts 1960, ch. 81, § 1) was repealed by Acts 1964, ch. 7, § 8.
Cross-References. Definitions for 735 KAR Chapter 2, 735 KAR 2:010.
Grievance procedures, 735 KAR 2:060.
Interpreter protocols, 735 KAR 2:040.

Interpreter qualifications, 735 KAR 2:030.

KCDHH Interpreter Referral Services Program parameters, 735 KAR 2:020.

Processing of requests for services, 735 KAR 2:050.

Processing system including vendor participation, security, and maintenance and repair for specialized telecommunications equipment, 735 KAR 1:020.

162.520. Definitions for KRS 162.520 to 162.620.

As used in KRS 162.520 to 162.620, the following terms and words have the following respective meanings, unless another meaning is clearly indicated by the context:

(1) As used in KRS 162.540, 162.550, 162.580, 162.590, 162.600, and 162.620 "authority" means "State Property and Buildings Commission;"

(2) "Department" means the State Department of Education;

(3) "Board of education" means the governing body of a county school district, or of an independent school district, for which the authority issues its revenue bonds pursuant to KRS 162.520 to 162.620;

(4) "Project" means any undertaking to provide for a board of education any school buildings, facilities, improvements, and appurtenances authorized in KRS 162.120 to 162.300;

(5) "Lease" or "lease instrument" means a written instrument for the leasing of one (1) or more school projects executed by the authority as lessor and a board of education as lessee, conforming to the specifications set forth in KRS 162.140;

(6) "Bonds" or "bonds of the authority" means bonds issued by the authority under KRS 162.520 to 162.620, payable as to principal and interest solely from rentals received from a board of education pursuant to a lease.

(Enact. Acts 1960, ch. 81, § 2; 1964, ch. 7, § 9; 1990, ch. 476, Pt. IV, § 260, effective July 13, 1990; 1996, ch. 87, § 6, effective July 15, 1996.)

162.530. Membership — Succession — Quorum — Compensation — Offices — Register of membership — Official records — Regulations — Meetings. [Repealed.]

Compiler's Notes. This section (Acts 1960, ch. 81, § 3) was repealed by Acts 1964, ch. 7, § 12.

162.540. Interpretation of terms in KRS 162.120 to 162.300 when applied to KRS 162.520 to 162.620.

Upon receiving a request in writing from a board of education, the authority may, in its discretion, assist such board of education in financing any project by acting in the capacity and manner authorized to be performed by cities under KRS 162.120 to 162.290, and by counties under KRS 162.300. When applied to the authority, KRS 162.120 to 162.300 shall be so read that the following terms and passages have the following respective meanings or interpretations:

(1) "City" or "county" means "authority";

(2) "City clerk" or "county clerk" means "secretary or assistant secretary of the authority";

(3) "Governing body of the city" or "fiscal court" means "authority";

(4) "Mayor" or "county judge/executive" means "chairman or vice chairman of the authority";

(5) "Ordinance" in the case of a city, or "resolution" in the case of a county, means a resolution of the authority;

(6) "Building and appurtenances" means "project" as defined in subsection (4) of KRS 162.520;

(7) The last sentence of KRS 162.190 shall read, "It shall be plainly stated on the face of each bond that it was or is issued under the provisions of KRS 162.520 to 162.620 (omitting reference to KRS 162.150 to 162.280 as such), and that it does not constitute an indebtedness of the authority or of the Commonwealth";

(8) KRS 162.200 is modified to permit use of money received from bonds for the additional purpose of paying reasonable expenses incurred in the authorization, advertising, preparation, sale, and delivery of bonds, and may include a fee contracted to be paid to a fiscal agent for financial advice and services if the contract or agreement therefor shall have been approved by the board of education and by the authority;

(9) As used in KRS 162.140, "lease" shall have the meaning defined in subsection (5) of KRS 162.520, and the same shall be recorded or filed for recording in the office of the county clerk of the county in which the project is situated, as evidenced by a written receipt or acknowledgment of filing issued by such clerk, or by a copy of the lease attested or certified by such clerk as being of record in his office. It shall be the duty of the secretary of the authority to obtain such evidence before delivery of the bonds to a purchaser thereof; but failure to obtain the same shall not affect the validity of the bonds in the hands of any purchaser or holder;

(10) KRS 162.240 shall not apply; and the following provisions shall govern in lieu thereof:

"One (1) or more depositories and paying agents may be selected and designated by the board of education, subject to the approval of the authority, which approval shall not unreasonably be withheld; but each depository and paying agent shall be a financial institution, within or without the Commonwealth, which is a member of the Federal Deposit Insurance Corporation. All deposits of sinking funds and of bond proceeds shall continuously be secured by a pledge to the authority of direct obligations of the United States, exclusive of accrued interest, at all times at least equal to the balance on deposit in the fund or account, such securities to be deposited with the authority or held by a trustee or agent designated by the authority; provided, however, in lieu of requiring such security the authority may in its discretion invest, or cause to be invested and reinvested, any moneys in direct obligations of the United States until such time as cash funds may be needed, and the authority may prescribe for the custody and safekeeping of such securities. When cash funds

are needed, the authority shall direct the conversion into cash of such securities, or a sufficient portion thereof, and may require that the same be secured until disbursement, as herein provided. All income from such securities shall accrue to the board of education, but may be retained by the authority and credited upon any rental obligation of the board of education under the lease, or applied to supplement bond proceeds if the same should for any reason turn out to be insufficient to defray the costs and expenses of the project."

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 585, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1960, ch. 81, § 4, effective June 16, 1960; 1976 (Ex. Sess.), ch. 20, § 6, effective January 2, 1978; 1978, ch. 384, § 293, effective June 17, 1978; 1986, ch. 23, § 13, effective July 15, 1986) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 585, effective July 13, 1990.

NOTES TO DECISIONS

1. Escrow.

Designation of an out-of-state bank as escrow agent whose duties were to protect bondholders rather than city does not invalidate revenue bond financing plan. Gregory v. City of Lewisport, 369 S.W.2d 133 (Ky. 1963).

162.550. Ownership of certain moneys determined.

Moneys received by the authority as rentals under any lease, and from the sale of bonds, are declared not to be funds of the Commonwealth but shall be corporate funds of the authority to be held, administered, invested, and disbursed as trust funds under the terms, provisions, pledges, covenants, and agreements set forth in its leases and bond resolutions and bonds.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 586, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1960, ch. 81, § 5, effective June 16, 1960) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 586, effective July 13, 1990.

Collateral References. 78 C.J.S., Schools and School Districts, § 358.

162.560. Officers of authority to be bonded. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1960, ch. 81, § 6) was repealed by Acts 1964, ch. 7, § 12.

162.570. Authority required to record all financial transactions; report to Governor. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1960, ch. 81, § 7) was repealed by Acts 1964, ch. 7, § 12.

162.580. Duty of authority as to each bond issue.

In connection with each bond issue of the authority, it shall be the duty of the authority:

(1) To require the board of education to insure the project to its full insurable value, or to the amount of the bonds outstanding from time to time, whichever is the less, against the hazards covered by the standard fire insurance policy with standard endorsement of "extended coverage"; and to require that a copy of each policy be delivered to the authority for inspection and for its records;

(2) To require periodic accounting from all depositories of funds, the same to be submitted on forms prepared and supplied by the authority;

(3) To furnish to the auditing staff of the department a summary identification and description of each issue, and to request that the financial records of the board of education relating thereto be audited as a part of the annual audit of the board of education, and that a separate statement or report thereof be filed with the authority;

(4) To send to each board of education, at least thirty (30) days before the due date of any rental payment, a notice of the amount of rental to become due, and the date thereof, and to require acknowledgment thereof;

(5) In the event of failure to receive from the board of education satisfactory evidence that sufficient funds have been transmitted to the authority, or will be so transmitted, for paying bond principal and/or interest when due, as provided in the lease, to notify and request that the department withhold from the board of education a sufficient portion of any undisbursed funds then held or set aside or allocated to it, and to request that the department transfer the required amount thereof to the authority for the account of the board of education.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 587, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1960, ch. 81, § 8, effective June 16, 1960) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 587, effective July 13, 1990.

Cross-References. Approval of contracts payable from revenue bonds, KRS 56.470.

Collateral References. 78A C.J.S., Schools and School Districts, § 528.

162.590. Duty of department on request of authority.

It shall be the duty of the department, upon written request of the authority:

(1) To cause its auditing staff to audit the financial records of a board of education relating to any identified and described bond issue of the authority, as an incident to the department's next ensuing annual audit of such board of education, and each subsequent annual audit thereof; and to provide to the authority a statement or report thereof;

(2) Upon receiving a notification and request from the authority as described in KRS 162.580, to ascertain whether the lease of the board of education has been renewed and is in force in accordance with its terms; and if the same is ascertained to be in force, to withhold from the board of education a sufficient portion of any undisbursed funds then held or set aside or allocated by the department for the board of education, and to comply with the terms of the notification and request of the authority, for the account of said board of education.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 588, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1960, ch. 81, § 9, effective June 16, 1960) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 588, effective July 13, 1990.

Cross-References. Department of Education, KRS 156.010.

162.600. Bonds to issue in name of authority — Identification — Investment designation.

(1) Bonds of the authority shall be issued in the name of the authority, shall be designated "school building revenue bonds," or, if appropriate, "school building revenue refunding bonds," and shall additionally be identified by the name of the board of education executing the lease. If the authority shall issue more than one (1) series of bonds for the same lessee from time to time, each series, including the first or subsequent to the first, shall additionally be identified distinctly by alphabetical or chronological designation, by date of the bonds, or otherwise as the authority may determine.

(2) For the purposes of determining any limit prescribed by any law for investment of any public funds, or funds of banks, trust companies, insurance companies, building and loan associations, credit unions, pension and retirement funds, and fiduciaries, in obligations of a single obligor, bonds issued by the authority pursuant to KRS 162.520 to 162.620 shall not be deemed to be bonds or obligations of the same obligor except to the aggregate of all series of bonds involving leases of a single board of education.

(3) Bonds issued by the authority under the provisions of KRS 162.520 to 162.620 are hereby made securities in which all public officers and public bodies of the Commonwealth and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, trustees, and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of a similar nature may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the Commonwealth for any purpose for which the deposit of bonds or other obligations of the Commonwealth is now or may hereafter be authorized by law.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 589, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1960, ch. 81, § 10, effective June 16, 1960) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 589, effective July 13, 1990.

Cross-References. State Property and Buildings Commission, KRS 56.440 to 56.580.

Collateral References. 78A C.J.S., School and School Districts, §§ 525, 526.

162.610. Transactions of authority exempt from other control. [Repealed.]

Compiler's Notes. This section (Acts 1960, ch. 81, § 11) was repealed by Acts 1964, ch. 7, § 12.

162.620. Sale of bonds — Conditions.

Bonds of the authority shall be sold only upon the basis of sealed bids or proposals, publicly solicited, received, opened and acted upon. The "publication area," as that term is used in KRS Chapter 424, shall not be deemed to be the area within which the office of the authority is situated, but shall be deemed to be the "publication area" of the board of education executing the lease. Each sale shall be publicly advertised by means of a notice conforming to the provisions of KRS 424.140(3), and the same shall be published at least one (1) time, at least seven (7) days in advance of the date set forth for opening bids, in a daily newspaper having bona fide general circulation throughout the Commonwealth. If such publication is made, it shall be sufficient for publication in the "publication area" to be made only one (1) time, at least seven (7) days in advance of the date set forth for the opening of bids, notwithstanding provisions for publication more often as provided in KRS Chapter 424. If a copy of the sale notice be delivered or transmitted in good faith to the qualified newspaper of the "publication area" in time for publication in an issue thereof published seven (7) days or more in advance of the date set forth for the opening of bids, and with direction for publication therein, any failure of such newspaper to make publication as directed shall not invalidate the sale of the bonds by the authority on the designated date, nor require postponement or cancellation thereof.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 590, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1960, ch. 81, § 12, effective June 16, 1960) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 590, effective July 13, 1990.

Collateral References. 78A C.J.S., Schools and School Districts, §§ 546-550.

PENALTIES

162.990. Penalties.

Any person who violates any of the provisions of KRS 162.500 is liable to the board of education, in an action brought by the board of education, or by any citizen of the district, or by the chief state school officer, for the restoration of the wrongful appropriation. In addition, he is guilty of malfeasance in office and upon conviction shall forfeit his office, and may for each offense be fined not less than fifty dollars ($50) nor more than one thousand dollars ($1,000), or imprisoned from one (1) to five (5) years, or both so fined and imprisoned. One-half (½) of the fine shall be paid to the board of education by the collecting officer.

(3219a-7: amend. 1990, ch. 476, Pt. IV, § 261, effective July 13, 1990.)

Collateral References. 78 C.J.S., Schools and School Districts, §§ 77, 78.

CHAPTER 163

VOCATIONAL EDUCATION AND REHABILITATION

SECTION.

General Provisions

163.010. [Repealed.]
163.020. [Repealed, reenacted and amended.]
163.030. [Repealed, reenacted and amended.]
163.032. Salary schedule for teachers in schools for deaf and blind.
163.035. [Repealed.]
163.036. [Repealed.]
163.038. [Repealed.]
163.040. [Repealed.]
163.050. [Repealed.]
163.060. [Repealed.]
163.070. [Repealed, reenacted and amended.]
163.080. [Repealed.]

Vocational Schools

163.085. [Repealed, reenacted and amended.]
163.086. [Repealed.]
163.087. [Repealed, reenacted and amended.]
163.088. [Repealed, reenacted and amended.]
163.089. [Repealed, reenacted and amended.]
163.090. [Repealed.]
163.095. Application of bequests or donations.
163.098. Establishment of base salaries for principals.
163.100. [Repealed.]

State Vocational Rehabilitation Agency

163.110. [Repealed, reenacted and amended.]
163.120. [Repealed, reenacted and amended.]
163.130. [Repealed, reenacted and amended.]
163.140. [Repealed, reenacted and amended.]
163.150. [Repealed.]
163.160. [Repealed, reenacted and amended.]
163.170. [Repealed, reenacted and amended.]
163.180. [Repealed, reenacted and amended.]
163.220. [Repealed.]
163.230. [Repealed.]
163.240. [Repealed.]
163.310. [Repealed.]
163.320. [Repealed.]
163.330. [Repealed.]
163.340. [Repealed.]
163.350. [Repealed.]
163.360. [Repealed.]
163.370. [Repealed.]
163.380. [Repealed.]
163.390. [Repealed.]

Department for the Blind

163.450. Purpose.
163.460. Definitions for chapter.
163.470. Department for the Blind — Abolition of Division of Industries for the Blind as of July 1, 2000.
163.475. Legislative findings and provisions relating to transition of operation of Kentucky Industries for the Blind.
163.480. Department's authority to contract with nonprofit corporation for employment services.

Commission on Deaf and Hard of Hearing

163.500. Definitions of "deaf" and "hard of hearing."
163.505. [Repealed.]
163.506. Commission on the Deaf and Hard of Hearing — Membership — Terms — Compensation.
163.510. Duties of commission.
163.515. Executive director — Duties.
163.520. Providing data to commission.
163.525. Distribution program for telecommunications devices for the deaf — Authority for administrative regulations.
163.527. Annual report on TDD distribution program.
163.990. [Repealed.]

General Provisions

163.010. Definitions. [Repealed.]

Compiler's Notes. This section (4526-5) was repealed by Acts 1956, ch. 165, § 1.

163.020. Federal acts relating to vocational education accepted. [Repealed, reenacted and amended.]

Compiler's Notes. This section (4526-1: amend. Acts 1956, ch. 165, § 2) was repealed, reenacted and amended as KRS 151B.145 by Acts 1990, ch. 470, § 28, effective July 1, 1990, which prevailed over the repeal and reenactment of this section by Acts 1990, ch. 476, Pt. V, § 591, effective July 13, 1990.

163.030. State board for vocational-technical, adult education and vocational rehabilitation services authorized to carry out vocational education program. [Repealed, reenacted and amended.]

Compiler's Notes. This section (4526-2: amend. Acts 1956, ch. 165, § 3; 1978, ch. 155, § 83, effective June 17, 1978) was repealed, reenacted and amended as KRS 151B.150 by Acts 1990, ch. 470, § 29, effective July 1, 1990, which prevailed over an amendment by Acts 1990, ch. 476, Pt. IV, § 262, effective July 13, 1990.

163.032. Salary schedule for teachers in schools for deaf and blind.

(1) The Kentucky Department of Education, with assistance from the Kentucky Personnel Cabinet, shall adopt a salary schedule for teachers in the Kentucky School for the Deaf and the Kentucky School for the Blind. The salary schedule shall be the same as salary schedules in effect in local school districts in counties containing a city of the first class and shall conform to the requirements for a single salary schedule as defined in KRS 157.320.

(2) Certified teachers in the Kentucky School for the Deaf and the Kentucky School for the Blind shall have the same statutory employment status and benefits as certified teachers in the public schools.

(3) The Kentucky Department of Education, with assistance from the Kentucky Personnel Cabinet, shall adopt a salary schedule for administrators at the Kentucky School for the Deaf and the Kentucky School for the Blind which will provide for

equitable salaries between teachers and administrators. The salary schedule, which shall be computed prior to July 1 of each year, shall be based on two hundred sixty (260) days per year.

(Enact. Acts 1980, ch. 277, § 1, effective July 15, 1980; 1986, ch. 219, § 1, effective July 15, 1986; 1988, ch. 361, § 16, effective July 15, 1988; 1990, ch. 233, § 1, effective July 13, 1990; 1990, ch. 470, § 55, effective July 1, 1990; 1990, ch. 476, Pt. IV, § 263, effective July 13, 1990; 1998, ch. 154, § 80, effective July 15, 1998.)

Legislative Research Commission Note. (7/13/90). This section was amended by three 1990 Acts. Where those Acts are not in conflict, they have been compiled together. Where a conflict exists, the Act which was last enacted by the General Assembly prevails, pursuant to KRS 446.250.

Opinions of Attorney General. There is a reasonable distinction which justifies the separate treatment given to the salaries of beginning teachers in the state-supported vocational schools, the State School for the Deaf, and the State School for the Blind; therefore, this section is not "special" legislation in violation of either § 59 or § 60 of the Constitution. OAG 85-86.

163.035. Business enterprises program for the blind. [Repealed.]

Compiler's Notes. This section (Acts 1948, ch. 56, § 1) was repealed by Acts 1956, ch. 165, § 1; 1956, ch. 172, § 9.

163.036. Kentucky industries for blind established. [Repealed.]

Compiler's Notes. This section (Acts 1956 (1st Ex. Sess.), ch. 7, Art. II, §§ 4, 5; 1966, ch. 255, § 153) was repealed by Acts 1976, ch. 377, § 6.

163.038. Computer Services for the Blind Corporation. [Repealed.]

Legislative Research Commission Note. (7/15/94). Under KRS 446.260, the repeal of this section in 1994 Ky. Acts ch. 363 prevails over its amendment in 1994 Ky. Acts chs. 209 and 469.

Compiler's Notes. This section (Enact. Acts 1972, ch. 76, § 1; 1978, ch. 384, § 569, effective June 17, 1978; repealed and reenact. Acts 1990, ch. 476, Pt. V, § 592, effective July 13, 1990) was repealed by Acts 1994, ch. 363, § 11, effective July 15, 1994.

163.040. Acceptance and expenditure of appropriations and other funds. [Repealed.]

Compiler's Notes. This section (4526-3; amend. Acts 1956, ch. 165, § 4) was repealed by Acts 1978, ch. 155, § 165, effective June 17, 1978.

163.050. Personnel — Traveling expenses — Rules and regulations. [Repealed.]

Compiler's Notes. This section (4526-4; amend. Acts 1956, ch. 165, § 5) was repealed by Acts 1978, ch. 155, § 165, effective June 17, 1978.

163.060. Residence requirement for eligibility for rehabilitation. [Repealed.]

Compiler's Notes. This section (4526-6) was repealed by Acts 1956, ch. 165, § 1.

163.070. State treasurer custodian of funds. [Repealed, reenacted and amended.]

Compiler's Notes. This section (4526-7: amend. Acts 1978, ch. 155, § 83, effective June 17, 1978) was repealed, reenacted and amended as KRS 151B.155 by Acts 1990, ch. 470, § 30, effective July 1, 1990, which prevailed over an amendment by Acts 1990, ch. 476, Pt. IV, § 264, effective July 13, 1990.

163.080. Donations may be received. [Repealed.]

Compiler's Notes. This section (4526-8) was repealed by Acts 1956, ch. 165, § 1.

Vocational Schools

163.085. Buildings for state vocational schools, acquisition or construction. [Repealed, reenacted and amended.]

Compiler's Notes. This section (Enact. Acts 1964, ch. 145, § 1; 1976, ch. 327, § 4; 1978, ch. 155, § 83, effective June 17, 1978) was repealed, reenacted and amended as KRS 151B.160 (now repealed) by Acts 1990, ch. 470, § 31, effective July 1, 1990, which prevailed over an amendment by Acts 1990, ch. 472, Pt. IV, § 265, effective July 13, 1990.

163.086. Governor's Council on Vocational Education. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1976, ch. 327, § 6; 1978, ch. 154, § 42, effective June 17, 1978; 1978, ch. 155, § 83, effective June 17, 1978; 1980, ch. 295, § 42, effective July 15, 1980; 1986, ch. 24, § 1, effective July 15, 1986; 1990, ch. 373, § 9, effective July 13, 1990; 1990, ch. 470, § 56, effective July 1, 1990; 1990, ch. 476, Pt. IV, § 266, effective July 13, 1990; 1994, ch. 405, § 30, effective July 15, 1994; 1998, ch. 426, § 118, effective July 15, 1998) was repealed by Acts 2000, ch. 156, § 5, effective July 14, 2000.

163.087. Tuition and fees in vocational schools. [Repealed, reenacted and amended.]

Compiler's Notes. This section (Enact. Acts 1976, ch. 327, § 5; 1978, ch. 155, § 83, effective June 17, 1978) was repealed, reenacted and amended as KRS 151B.165 by Acts 1990, ch. 470, § 32, effective July 1, 1990, which prevailed over an amendment by Acts 1990, ch. 476, Pt. IV, § 267, effective July 13, 1990.

163.088. Liability insurance for motor vehicles owned or operated by department in vocational schools. [Repealed, reenacted and amended.]

Compiler's Notes. This section (Enact. Acts 1986, ch. 416, § 1, effective April 10, 1986) was repealed, reenacted and

amended as KRS 151B.170 by Acts 1990, ch. 470, § 33, effective July 1, 1990, which prevailed over an amendment by Acts 1990, ch. 476, Pt. IV, § 268.

163.089. Medical and accident insurance for students. [Repealed, reenacted and amended.]

Compiler's Notes. This section (Enact. Acts 1988, ch. 289, § 1, effective July 15, 1988) was repealed, reenacted and amended as KRS 151B.175 by Acts 1990, ch. 470, § 34, effective July 1, 1990, which prevailed over an amendment by Acts 1990, ch. 476, Pt. IV, § 269.

163.090. Mayo State Vocational School. [Repealed.]

Compiler's Notes. This section (4526-10, 4526-11: amend. Acts 1966, ch. 184, § 3) was repealed by Acts 1976, ch. 327, § 8.

163.095. Application of bequests or donations.
All bequests or donations made for a specified use with regard to the state vocational education program, vocational education facilities, vocational education personnel, or present or prospective vocational education pupils shall be applied to that use and no other so long as it is consistent with appropriate Kentucky Revised Statutes and the state plan for vocational education.
(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 593, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1976, ch. 327, § 7) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 593, effective July 13, 1990.

163.098. Establishment of base salaries for principals.
The principal of an area vocational education center or state vocational technical school shall be paid a base monthly salary, which is at least equal to the highest paid teacher supervised by the principal, when the education and experience of the principal is equal to or greater than that of the supervised employee.
(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 594, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1988, ch. 267, § 1, effective July 15, 1988) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 594, effective July 13, 1990.

163.100. Northern Kentucky State Vocational School. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1944, ch. 75, § 1) was repealed by Acts 1976, ch. 327, § 8.

STATE VOCATIONAL REHABILITATION AGENCY

163.110. Declaration of intent for KRS 163.110 to 163.180. [Repealed, reenacted and amended.]

Compiler's Notes. This section (Enact. Acts 1956, ch. 172, § 1; 1984, ch. 316, § 1, effective July 13, 1984) was repealed, reenacted and amended as KRS 151B.180 by Acts 1990, ch. 470, § 35, effective July 1, 1990, which prevailed over the repeal and reenactment of this section by Acts 1990, ch. 476, Pt. V, § 595, effective July 13, 1990.

163.120. State vocational rehabilitation agency. [Repealed, reenacted and amended.]

Compiler's Notes. This section (Enact. Acts 1956, ch. 172, § 2; 1978, ch. 155, § 83, effective June 17, 1978; 1980, ch. 188, § 121, effective July 15, 1980; 1984, ch. 316, § 2, effective July 13, 1984; 1988, ch. 361, § 15, effective July 15, 1988) was repealed, reenacted and amended as KRS 151B.185 by Acts 1990, ch. 470, § 36, effective July 1, 1990, which prevailed over an amendment by Acts 1990, ch. 476, § 270, effective July 13, 1990.

163.130. Vocational rehabilitation services, persons entitled to receive. [Repealed, reenacted and amended.]

Compiler's Notes. This section (Enact. Acts 1956, ch. 172, § 3; 1984, ch. 316, § 3, effective July 13, 1984) was repealed, reenacted and amended as KRS 151B.190 by Acts 1990, ch. 470, § 37, effective July 1, 1990, which prevailed over the repeal and reenactment of this section by Acts 1990, ch. 476, Pt. V, § 596, effective July 13, 1990.

163.140. Authority of state board for vocational-technical, adult education and vocational rehabilitation services. [Repealed, reenacted and amended.]

Compiler's Notes. This section (Enact. Acts 1956, ch. 172, § 4; 1976, ch. 377, § 5; 1978, ch. 155, § 83, effective June 17, 1978; 1984, ch. 316, § 4, effective July 13, 1984) was repealed, reenacted and amended as KRS 151B.195 by Acts 1990, ch. 470, § 38, effective July 1, 1990 which prevailed over an amendment by Acts 1990, ch. 476, Pt. IV, § 271, effective July 13, 1990.

163.150. Business enterprise program for the blind. [Repealed.]

Compiler's Notes. This section (Acts 1956, ch. 172, § 5; 1958, ch. 12, § 3; 1962, ch. 60) was repealed by Acts 1976, ch. 377, § 6.

163.160. Federal acts relating to vocational rehabilitation accepted. [Repealed, reenacted and amended.]

Compiler's Notes. This section (Enact. Acts 1956, ch. 172, § 6, effective May 18, 1956; 1980, ch. 266, § 1, effective July 15, 1980; 1984, ch. 316, § 5, effective July 13, 1984) was repealed, reenacted and amended as KRS 151B.200 by Acts 1990, ch. 470, § 39, effective July 1, 1990 which prevailed over the repeal and reenactment of this section by Acts 1990, ch. 476, Pt. V, § 597, effective July 13, 1990.

163.170. State treasurer designated as custodian of funds; disbursements. [Repealed, reenacted and amended.]

Compiler's Notes. This section (Enact. Acts 1956, ch. 172, § 7, effective May 18, 1956; 1984, ch. 316, § 6, effective July

13, 1984) was repealed, reenacted and amended as KRS 151B.205 by Acts 1990, ch. 470, § 40, effective July 1, 1990 which prevailed over an amendment by Acts 1990, ch. 476, Pt. IV, § 272, effective July 13, 1990.

163.180. Gifts may be received. [Repealed, reenacted and amended.]

Compiler's Notes. This section (Enact. Acts 1956, ch. 172, § 8, effective May 18, 1956; 1978, ch. 155, § 83, effective June 17, 1978; 1980, ch. 188, § 122, effective July 15, 1980) was repealed, reenacted and amended as KRS 151B.210 by Acts 1990, ch. 470, § 41, effective July 1, 1990 which prevailed over an amendment by Acts 1990, ch. 476, Pt. IV, § 273, effective July 13, 1990.

163.220. Division of services for the blind. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1958, ch. 12, § 1) was repealed by Acts 1976, ch. 377, § 6.

163.230. Advisory committee for division services for the blind. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1958, ch. 12, § 2) was repealed by Acts 1976, ch. 377, § 6.

163.240. Budget and appropriations for vocational rehabilitation services for the blind. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1958, ch. 12, § 4) was repealed by Acts 1976, ch. 377, § 6.

163.310. Title and intent of KRS 163.310 to 163.390. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1972, ch. 340, §§ 1, 2) was repealed by Acts 1976, ch. 363, § 13.

163.320. Definitions. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1972, ch. 340, § 3) was repealed by Acts 1976, ch. 363, § 13.

163.330. Agent's permit. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1972, ch. 340, § 4; 1974, ch. 315, § 18) was repealed by Acts 1976, ch. 363, § 13.

163.340. Proprietary school certificate of approval. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1972, ch. 340, § 5; 1974, ch. 315, § 19) was repealed by Acts 1976, ch. 363, § 13.

163.350. Fees; deposit. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1972, ch. 340, § 6) was repealed by Acts 1976, ch. 363, § 13.

163.360. Minimum standards; certificate of approval. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1972, ch. 340, § 8) was repealed by Acts 1976, ch. 363, § 13.

163.370. Revocation of agent's permit and certificate of approval. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1972, ch. 340, § 9) was repealed by Acts 1976, ch. 363, § 13.

163.380. Rules and regulations. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1972, ch. 340, § 10) was repealed by Acts 1976, ch. 363, § 13.

163.390. Certificate of approval — Agent's permit — Time to comply. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1972, ch. 340, § 11) was repealed by Acts 1976, ch. 363, § 13.

Department for the Blind

163.450. Purpose.

The purpose of KRS 163.450 to 163.470 is to provide for a separate and specialized agency for the blind to provide for and improve the rehabilitation of the blind and visually impaired citizens of the Commonwealth of Kentucky in order that they may increase their social and economic well-being and the productive capacity of the Commonwealth and the nation.
(Enact. Acts 1976, ch. 377, § 1.)

163.460. Definitions for chapter.

As used in this chapter unless the context otherwise requires:

(1) "Department" means the Department for the Blind.
(2) "Legally blind" means a visual acuity of 20/200 or less in the better eye with correction or a visual field of 20 degrees or less.
(3) "Visually impaired" means a condition of the eye with correction which constitutes or progressively results for the individual in a substantial disability to employment.
(4) "Executive director" means the executive director of the Department for the Blind.

(Enact. Acts 1976, ch. 377, § 2; 1982, ch. 353, § 1, effective July 15, 1982; 1994, ch. 49, § 1, effective July 15, 1994; 1994, ch. 405, § 31, effective July 15, 1994.)

Legislative Research Commission Note. (7/15/94). This section was amended by 1994 Ky. Acts chs. 49 and 405. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 405, which was last enacted by the General Assembly, prevails under KRS 446.250.

163.470. Department for the Blind — Abolition of Division of Industries for the Blind as of July 1, 2000.

(1) There is created within the Cabinet for Workforce Development the Department for the Blind.

(2) The commissioner shall be appointed by the Governor upon the recommendation of the secretary of the Cabinet for Workforce Development to whom he shall be directly responsible.

(3) The department shall be the state agency responsible for all rehabilitation services for the blind and the visually impaired and other services as deemed necessary. The department shall be the agency authorized to expend all state and federal funds designated for rehabilitation services for the blind and visually impaired. The Office of the Secretary of the Cabinet for Workforce Development is authorized as the state agency to receive all state and federal funds and gifts and bequests for the benefit of rehabilitation services for the blind and visually impaired. The State Treasurer is designated as the custodian of all funds and shall make disbursements for rehabilitation purposes upon certification by the commissioner.

(4) (a) The Kentucky Department for the Blind State Rehabilitation Council is hereby created and established to accomplish the purposes and functions enumerated in the Rehabilitation Act of 1973, as amended. Members of the council shall be appointed by the Governor from recommendations submitted by the Department for the Blind consistent with the federal mandate to include a majority of individuals who are blind or visually impaired representing specified organizations, service providers, and advocacy groups. The composition, qualifications, and terms of service of the council shall conform to those prescribed by the federal law. There shall be statewide representation on the council.

(b) 1. Except as provided in subparagraph (2) of this paragraph, any vacancy occurring in the membership of the Department for the Blind State Rehabilitation Council shall be filled in the same manner as the original appointment. The vacancy shall not affect the power of the remaining members of the council.

2. The Governor may delegate the authority to fill a vacancy to the remaining voting members of the council.

(c) Each member of the Department for the Blind State Rehabilitation Council may receive a per diem of one hundred dollars ($100), not to exceed six hundred dollars ($600) annually, for each regular or special meeting attended if the member is not employed or must forfeit wages from other employment. Each member may have travel expenses approved at the established state rate and expenses reimbursed at the established state agency rate for services such as personal assistance, child care, and drivers for attendance at council meetings, and in the performance of duties authorized by the Kentucky Department for the Blind State Rehabilitation Council. The per diem and expenses shall be paid out of the federal funds appropriated under the Rehabilitation Act of 1973, as amended.

(5) The department shall establish and implement policies and procedures for the carrying out of the program of services for the blind.

(6) At the close of each biennium, the department shall prepare a financial report and present it to the secretary of the Cabinet for Workforce Development and to the Governor. The biennial report shall be published. The biennial report shall also contain a precise review of the work of the department and contain necessary suggestions for improvement.

(7) The department shall coordinate its functions with other appropriate public and private agencies.

(8) The department shall perform all other duties as required of it by law.

(9) The commissioner shall hire personnel as necessary to carry out the work of the department and the provisions of KRS 163.450 to 163.470. Preference shall be given to hiring qualified blind persons.

(10) There shall be created under the authority of the department, to be directed by the commissioner, a Division of Client Services which shall provide intake and rehabilitation counseling services; distribute or sell technical educational and other aids to the blind; provide educational materials such as recorded texts, braille or large-type texts, or such other materials as may be deemed necessary for the education of the blind; research into the development of new technical aids for the blind, mobility training, work evaluation, personal adjustment, independent living, and other services as needed for blind adults, and services for the blind who have other disabilities; and promote employment of the blind in public and private sectors.

(11) There shall be established under the authority of the department to be directed by the commissioner, a Division of Business Enterprises. This division shall manage and supervise the Vending Facilities Program and license qualified blind persons as vendors. In connection therewith, the department shall be authorized to own or lease vending equipment for the operation of vending facilities in federal, state, private, and other buildings. The set-aside charges levied shall comply with the existing federal regulations as specified in 34 CFR 395.9. One (1) or more facility placement agents shall be employed to locate and establish additional vending facilities. The Department for the Blind shall make such surveys as may be deemed necessary to determine the vending facility opportunities for blind vendors in state buildings or on other property owned, leased, or otherwise occupied by the state government and shall install vending facilities in suitable locations on such property for the use of the blind. All of the net income from vending machines which are on the same property as a vending facility shall be paid to the blind vendor of the vending facility. Whenever there exists a conflict of interest between state agencies seeking to vend merchandise on the same state property, the agencies shall negotiate a fair agreement which shall protect the interest of both

from unreasonable competition. The agreement shall be submitted to the custodial authority having jurisdiction over the property for approval. Provided, however, that in all situations the blind vendor shall be permitted to vend all items of merchandise customarily sold at similar vending facilities.

(12) There shall be established under authority of the department, to be directed by the commissioner, a Division of Industries for the Blind which shall provide industrial evaluation, training, and employment. Emphasis shall be on placement in public employment and long-term sheltered employment at industries for the blind. The Division of Industries for the Blind shall be abolished, effective July 1, 2000. The department, at all times, shall be authorized to provide industrial evaluation, training, and employment.

(13) The department shall provide staff services which shall include fiscal management, staff development and training, program development and evaluation, public information office, and other staff services as may be deemed necessary.

(14) The provisions of any other statute notwithstanding, the commissioner is authorized to use receipt of funds from the Social Security reimbursement program for a direct service delivery staff incentive program. Incentives may be awarded if case service costs are reimbursed for job placement of Social Security or Supplemental Security Income recipients at the Substantial Gainful Activity (SGA) level for nine (9) months pursuant to 42 U.S.C. sec. 422 and under those conditions and criteria as are established by the federal reimbursement program.

(Enact. Acts 1976, ch. 377, § 3; 1982, ch. 353, § 2, effective July 15, 1982; 1982, ch. 381, § 9, effective July 15, 1982; 1988, ch. 265, § 1, effective July 15, 1988; 1990, ch. 470, § 57, effective July 1, 1990; 1994, ch. 49, § 2, effective July 15, 1994; 1994, ch. 126, § 3, effective July 15, 1994; 1994, ch. 363, § 10, effective July 15, 1994; 1994, ch. 469, § 37, effective July 15, 1994; 1998, ch. 33, § 2, effective July 15, 1998; 2000, ch. 125, § 1, effective July 14, 2000.)

Compiler's Notes. Title I, Subtitle B, Section 126 of the Rehabilitation Act Amendments of 1992, referred to in subsection (4) (a) of this section is compiled as 29 U.S.C. § 725. Title I, part A of the Rehabilitation Act Amendments of 1992, P.L. 102-529 referred to in subsection (4) (b) of this section is compiled as 29 U.S.C. §§ 701, 706, 707, 709, 711 to 715, 717, 718 - 718b, 721 to 723, 732, 750, 761a, 761b, 762, 770, 772 to 777b, 777d to 777f, 780, 781, 783, 791 to 795, 795d, 795e, and 795h.

Opinions of Attorney General. Where the Bureau (now Department) for the Blind, pursuant to subsection (14) (now (12)) of this section, operates a concession stand within the Louisville post office, the concession operation is subject to audit by the auditor of public accounts pursuant to KRS 43.050(2)(a); since the state auditor has the responsibility for auditing the Bureau for the Blind, there is nothing in the statutes that would permit him to accept an audit of the concession stand done by a Bureau for the Blind employee. OAG 80-155.

NOTES TO DECISIONS

1. Application.

By virtue of the provision of the state government vending facility program for blind vendors, subsection (11) of this section, and guided by federal law and regulations, authority for supervision and control of vending services operations must be deemed to reside in the state licensing agency and this supervisory authority includes a correlative right of product control; thus, state university could not extend to cola company an exclusive contract to sell its drink products on campus. Kentucky State Univ. v. Kentucky Dep't for Blind, 923 S.W.2d 296 (Ky. Ct. App. 1996).

While provisions of the state government vending facility program for blind vendors did not prohibit state university from competing in any way with blind vendor in the area of food service, university was required to negotiate a fair agreement to protect blind vendor from unreasonable competition; this protection did not require extending to blind vendor a right of first refusal with every expansion of the university's food service line. Kentucky State Univ. v. Kentucky Dep't for Blind, 923 S.W.2d 296 (Ky. Ct. App. 1996).

163.475. Legislative findings and provisions relating to transition of operation of Kentucky Industries for the Blind.

(1) The General Assembly finds that the provision of industrial evaluation, training, and employment opportunities for individuals who are blind or visually impaired is a valuable and necessary component of vocational rehabilitation services. The Department for the Blind has sole responsibility for and the obligation to operate and manage a Division of the Kentucky Industries for the Blind. This facility has struggled to meet these mandates but, faced with declining available state revenues, expects a continual diminishment to a submarginal operation with respect to providing viable long-term employment opportunities that are self-sustaining and sufficiently diversified for individuals who are blind or visually impaired.

(2) The General Assembly finds that increased flexibility in contract negotiation, purchasing, and hiring will enhance the competitiveness of the Kentucky Industries for the Blind, resulting in additional production contracts thereby guaranteeing continued and expanded jobs and other opportunities for individuals who are blind or visually impaired. This flexibility and competitiveness can be achieved through the operation of the Kentucky Industries for the Blind by a nonprofit corporation, the members of which have expertise in management skills and background pertaining to sound business practices and rehabilitation philosophy.

(3) The General Assembly finds that a transition period from state division to a nonprofit operation is necessary to ensure the success and continuation of the important functions of the Kentucky Industries for the Blind. Therefore, the General Assembly shall continue to support the Division of the Kentucky Industries for the Blind through appropriations to the Department for the Blind for six (6) years in order to eliminate eventually the necessity for annual state appropriations. The Department for the Blind shall monitor and safeguard the expenditure of those public moneys for the use and benefit of the Kentucky Industries for the Blind

and citizens who are blind and visually impaired in the Commonwealth.

(4) The General Assembly finds that the continued employment of current employees of the Division of the Kentucky Industries for the Blind is a necessary and important outcome. The Department for the Blind shall ensure through contractual provisions that the nonprofit corporation it contracts with pursuant to KRS 163.480(2) offers employment to every employee of the Kentucky Industries for the Blind at the time the nonprofit corporation assumes total responsibility for the operation of the workshop. The Department for the Blind shall maximize the retirement benefits for each current employee of the Division of Kentucky Industries for the Blind at the time the department contracts for total operation by the nonprofit corporation through the parted employer provisions of KRS 61.510 to 61.705.

(5) The General Assembly finds that at the time the Kentucky Industries for the Blind is operated totally by the nonprofit corporation, the Department for the Blind shall have the authority to convey ownership of the workshop to any nonprofit corporation with which it contracts pursuant to KRS 163.480(2) without financial consideration, including real and personal property, inventory of materials, and stores for resale. The instrument of conveyance to such nonprofit corporation shall provide that the real property and production equipment conveyed, or sufficient remuneration therefor, shall revert to the state at any time the nonprofit corporation or its successor shall cease operating the Kentucky Industries for the Blind for the benefit of individuals who are blind or visually impaired.

(Enact. Acts 1994, ch. 126, § 1, effective July 15, 1994.)

163.480. Department's authority to contract with nonprofit corporation for employment services.

(1) The Department for the Blind may contract, to the extent funds are available under this chapter and under conditions and standards established by the department, with any nonprofit corporation able to provide expertise in the operation of workshops for and rehabilitation of individuals who are blind or visually impaired and whose objectives are to carry out the purposes of KRS 163.470(13).

(2) The Department for the Blind shall contract with a nonprofit corporation, effective July 1, 2000, to provide industrial evaluation, training, and employment opportunities for individuals who are blind or visually impaired as previously provided by the Division of Kentucky Industries for the Blind.

(Enact. Acts 1994, ch. 126, § 2, effective July 15, 1994.)

Commission on Deaf and Hard of Hearing

163.500. Definitions of "deaf" and "hard of hearing."

The "deaf" and "hard of hearing" are persons who have hearing disorders. They are people who cannot hear and understand speech clearly through the ear alone, with or without hearing aids.

(Enact. Acts 1982, ch. 160, § 1, effective July 15, 1982; 1984, ch. 111, § 101, effective July 13, 1984; 1992, ch. 144, § 1, effective July 14, 1992.)

163.505. Commission on the deaf and hearing impaired — Membership — Terms — Compensation. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1982, ch. 160, § 2, effective July 15, 1982; 1988, ch. 263, § 1, effective July 15, 1988) was repealed by Acts 1990, ch. 68, § 3, effective July 13, 1990.

163.506. Commission on the Deaf and Hard of Hearing — Membership — Terms — Compensation.

(1) The Commission on the Deaf and Hard of Hearing shall consist of:

(a) Seven (7) members appointed by the Governor as follows:

1. One (1) audiologist chosen from a list of three (3) names submitted by the Kentucky Speech and Hearing Association;
2. Three (3) hard of hearing or deaf persons chosen from a list of six (6) names submitted by the Kentucky Association of the Deaf;
3. One (1) deaf or hard of hearing person chosen from a list of three (3) names submitted by the Kentucky Chapter of the Alexander Graham Bell Association for the Deaf, the initial appointment to be for a one (1) year term;
4. One (1) hard of hearing or deaf person chosen from a list of three (3) names submitted by the Kentucky members of Self Help for Hard of Hearing People, the initial appointment to be for a two (2) year term; and
5. One (1) deaf, late-deafened, or hard of hearing person chosen from a list of three (3) names submitted by the American Association of Retired Persons, the initial appointment to be for a two (2) year term;

(b) One (1) representative of the Cabinet for Health Services appointed by the secretary;

(c) One (1) representative of the Cabinet for Families and Children appointed by the secretary;

(d) The secretary of the Education, Arts, and Humanities Cabinet or his designee;

(e) The president of the Kentucky Association for the Deaf or his designee;

(f) The president of the Kentucky Registry of Interpreters for the Deaf or his designee; and

(g) Three (3) persons appointed by the Commission on the Deaf and Hard of Hearing as constituted in subsections (1)(a) through (1)(f) of this section, appointed as follows:

1. One (1) parent of a hard of hearing or deaf child;
2. One (1) representative of a public or private organization providing consistent

services to the deaf and hard of hearing; and

3. One (1) member at large.

(2) All members shall serve three (3) year terms except state officials or their designees who shall serve during their terms of office. Of the members appointed pursuant to subsection (1)(a)2. through (1)(a)5. and subsection (1)(g) of this section, no more than three (3) of those members shall have terms beginning in the same year. Any person who is a member of the commission on July 13, 1990, shall serve until he resigns or until his term expires.

(3) Each member of the commission shall be reimbursed for his necessary travel and other expenses actually incurred in the discharge of his duties.

(Enact. Acts 1990, ch. 68, § 1, effective July 13, 1990; 1992, ch. 144, § 2, effective July 14, 1992; 1994, ch. 209, § 15, effective July 15, 1994; 1998, ch. 32, § 1, effective July 15, 1998; 1998, ch. 426, § 119, effective July 15, 1998.)

Legislative Research Commission Note. (7/15/98). This section was amended by 1998 Ky. Acts chs. 32 and 426. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 426, which was last enacted by the General Assembly, prevails under KRS 446.250.

163.510. Duties of commission.

(1) The commission shall advise the Governor and the General Assembly concerning policy and programs to enhance the quality and coordination of services for the deaf and hard of hearing.

(2) The commission shall cooperate with and assist local, state and federal governments and public and private agencies in the development of programs for the deaf and hard of hearing.

(3) The commission shall review legislative programs relating to services to deaf and hard of hearing persons and shall conduct studies of conditions affecting the health and welfare of the deaf and hard of hearing.

(4) The commission shall oversee the provision of interpreter services to the deaf and hard of hearing, and may provide services if necessary.

(Enact. Acts 1982, ch. 160, § 3, effective July 15, 1982; 1992, ch. 144, § 3, effective July 14, 1992.)

163.515. Executive director — Duties.

(1) The commission shall employ an executive director who shall serve at the pleasure of the commission. The executive director shall be familiar with the problems of the deaf and hard of hearing.

(2) Subject to the approval of the commission, the executive director shall:

(a) Employ clerical and other staff assistance;

(b) Prepare an annual report on the status of services to the deaf and hard of hearing;

(c) Promote the training of interpreters for the deaf and hard of hearing;

(d) Identify public and private agencies that provide services to the deaf and hard of hearing and cooperate in the coordination and development of these services;

(e) Survey the needs and compile a census of the deaf and hard of hearing.

(Enact. Acts 1982, ch. 160, § 4, effective July 15, 1982; 1992, ch. 144, § 4, effective July 14, 1992.)

163.520. Providing data to commission.

All departments, divisions, boards, bureaus, commissions, or agencies of state government shall provide the commission data necessary to carry out its duties under KRS 163.510 and 163.515.

(Enact. Acts 1982, ch. 160, § 5, effective July 15, 1982; 1990, ch. 68, § 2, effective July 13, 1990.)

163.525. Distribution program for telecommunications devices for the deaf — Authority for administrative regulations.

(1) As used in this section and KRS 163.527:

(a) "Telecommunications device for the deaf" or "TDD" means a keyboard mechanism attached to a standard telephone set which allows for messages to be typed rather than spoken; and

(b) "TDD distribution program" means the program to furnish TDDs to deaf, hard-of-hearing, and speech-impaired persons in order that they may use the telecommunications relay service established pursuant to KRS 278.548. The program shall include maintenance and repair of the equipment.

(2) (a) On or before July 1, 1995, the Commission on the Deaf and Hard of Hearing shall establish a program to distribute TDDs to any deaf, hard-of-hearing, or speech-impaired person qualified to receive the equipment pursuant to subsection (3) of this section.

(b) Prior to the establishment of the TDD distribution program, the Commission on the Deaf and Hard of Hearing shall initiate an investigation, conduct public hearings, and solicit the advice and counsel of deaf, hard-of-hearing, and speech-impaired persons and the organizations serving them.

(c) The Commission on the Deaf and Hard of Hearing may contract with any person, public, or private organization to provide part or all components of the TDD distribution program, if applicable statutory procurement provisions are followed. The Commission on the Deaf and Hard of Hearing may use assistance from public agencies of the state or federal government or from private organizations to accomplish the purposes of this section. The Kentucky Commission on the Deaf and Hard of Hearing shall enter into memoranda of agreement with the Public Service Commission for coordination and oversight of funding and operations to meet the objectives of this section and KRS 278.5499. The Commission on the Deaf and Hard of Hearing may also enter into memoranda of agreement with other state

agencies to accomplish the purposes of this section.

(3) Factors to determine a person's eligibility to receive a TDD shall include, but not be limited to:
   (a) Kentucky residency;
   (b) Attainment of at least five (5) years of age; and
   (c) Certification as deaf, hard of hearing, or severely speech-impaired by a licensed physician, audiologist, speech pathologist, or by any other method recognized by the Commission on the Deaf and Hard of Hearing. Certification implies that the individual cannot use the telephone for communication without adaptive equipment.

(4) No more than one (1) TDD shall be provided to a person qualified to receive the equipment pursuant to subsection (3) of this section. However, a malfunctioning TDD originally distributed by the program may be returned for repair or replacement. The Commission on the Deaf and Hard of Hearing may prioritize distribution of the TDDs on the basis of need.

(5) The Commission on the Deaf and Hard of Hearing shall establish procedures for application and distribution of TDDs by the promulgation of administrative regulations in accordance with provisions of KRS Chapter 13A.

(Enact. Acts 1994, ch. 237, § 5, effective July 15, 1994.)

Cross-References. Eligibility requirements, application and certification procedures to receive specialized telecommunications equipment for the deaf, hard of hearing and speech impaired, 735 KAR 1:010.

Processing system including vendor participation, security, and maintenance and repair for specialized telecommunications equipment, 735 KAR 1:020.

163.527. Annual report on TDD distribution program.

The Commission on the Deaf and Hard of Hearing shall provide to the General Assembly an annual report on the operation of the TDD distribution program. The report shall be due on July 1 of each year, beginning July 1, 1995, and, at a minimum, provide:

(1) The number of persons served and the number of TDDs distributed;

(2) The revenues and expenditures of the program;

(3) Discussion of any major policy or operational issues;

(4) Any changes the commission plans to make in the program that does not require legislative action; and

(5) Any proposals for legislative changes in the program.

(Enact. Acts 1994, ch. 237, § 6, effective July 15, 1994.)

163.990. Penalty. [Repealed.]

Compiler's Notes. This section (Acts 1972, ch. 340, § 7) was repealed by Acts 1976, ch. 363, § 13.

CHAPTER 164

STATE UNIVERSITIES AND COLLEGES—REGIONAL EDUCATION—ARCHAEOLOGY

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164.002. Definitions for chapter.

As used in KRS Chapter 164, unless the context requires otherwise:

(1) "Advanced placement" means a college-level course for the College Board Advanced Placement examination that incorporates all topics and instructional strategies specified by the College Board on its standard syllabus for a given subject area.

(2) "Board" means the Kentucky Board of Education.

(3) "College Board Advanced Placement examination" means the advanced placement test administered by the College Entrance Examination Board.

(4) "College Board" means the College Entrance Examination Board, a national nonprofit association that provides college admission guidance and advanced placement examinations.

(5) "Department" means the Kentucky Department of Education.

(6) "Dual credit" means a college-level course of study developed in accordance with KRS 164.098 in which a high school student receives credit from both the high school and postsecondary institution in which the student is enrolled upon completion of a single class or designated program of study.

(7) "Dual enrollment" means a college-level course of study developed in accordance with KRS 164.098 in which a student is enrolled in a high school and postsecondary institution simultaneously.

(8) "International Baccalaureate" means the International Baccalaureate Organization's Diploma Programme, a comprehensive two (2) year program designed for highly motivated students.

(9) "Kentucky Virtual High School" means secondary-level instructional programs or courses offered by the Kentucky Department of Education through the Internet and other on-line, computer-based methods.

(10) "Kentucky Virtual University" means a college-level instructional program offered by the Council on Postsecondary Education through the Internet or other on-line, computer-based methods.

(Enact. Acts 2002, ch. 97, § 4, effective July 15, 2002.)

COUNCIL ON POSTSECONDARY EDUCATION

164.020. Powers and duties of council.

The Council on Postsecondary Education in Kentucky shall:

(1) Develop and implement the strategic agenda with the advice and counsel of the Strategic Committee on Postsecondary Education. The council shall provide for and direct the planning process and subsequent strategic implementation plans based on the strategic agenda as provided in KRS 164.0203;

(2) Revise the strategic agenda and strategic implementation plan with the advice and counsel of the committee as set forth in KRS 164.004;

(3) Develop a system of public accountability related to the strategic agenda by evaluating the performance and effectiveness of the state's postsecondary system. The council shall prepare a report in conjunction with the accountability reporting described in KRS 164.095, which shall be submitted to the committee, the Governor, and the General Assembly by December 1 annually. This report shall include a description of contributions by postsecondary institutions to the quality of elementary and secondary education in the Commonwealth;

(4) Review, revise, and approve the missions of the state's universities and the Kentucky Community and Technical College System. The Council on Postsecondary Education shall have the final authority to determine the compliance of postsecondary institutions with their academic, service, and research missions;

(5) Establish and ensure that all postsecondary institutions in Kentucky cooperatively provide for an integrated system of postsecondary education. The council shall guard against inappropriate and unnecessary conflict and duplication by promoting transferability of credits and easy access of information among institutions;

(6) Engage in analyses and research to determine the overall needs of postsecondary education and adult education in the Commonwealth;

(7) Develop plans that may be required by federal legislation. The council shall for all purposes of federal legislation relating to planning be considered the "single state agency" as that term may be used in federal legislation. When federal legislation requires additional representation on any "single state agency," the Council on Postsecondary Education shall establish advisory groups necessary to satisfy federal legislative or regulatory guidelines;

(8) Determine tuition and approve the minimum qualifications for admission to the state postsecondary educational system. In determining the tuition for non-Kentucky residents, the council shall consider the fees required of Kentucky students by institutions in adjoining states, the resi-

dent fees charged by other states, the total actual per student cost of training in the institutions for which the fees are being determined, and the ratios of Kentucky students to non-Kentucky students comprising the enrollments of the respective institutions, and other factors the council may in its sole discretion deem pertinent;

(9) Devise, establish, and periodically review and revise policies to be used in making recommendations to the Governor for consideration in developing recommendations to the General Assembly for appropriations to the universities, the Kentucky Community and Technical College System, and to support strategies for persons to maintain necessary levels of literacy throughout their lifetimes including, but not limited to, appropriations to the Department for Adult Education and Literacy. The council has sole discretion, with advice of the Strategic Committee on Postsecondary Education and the executive officers of the postsecondary education system, to devise policies that provide for allocation of funds among the universities and the Kentucky Community and Technical College System;

(10) Lead and provide staff support for the biennial budget process as provided under KRS Chapter 48, in cooperation with the committee;

(11) (a) Except as provided in paragraph (b) of this subsection, review and approve all capital construction projects covered by KRS 45.750(1)(f), including real property acquisitions, and regardless of the source of funding for projects or acquisitions. Approval of capital projects and real property acquisitions shall be on a basis consistent with the strategic agenda and the mission of the respective universities and the Kentucky Community and Technical College System.

(b) The organized groups that are establishing community college satellites as branches of existing community colleges in the counties of Laurel, Leslie, and Muhlenberg, and that have substantially obtained cash, pledges, real property, or other commitments to build the satellite at no cost to the Commonwealth, other than operating costs that shall be paid as part of the operating budget of the main community college of which the satellite is a branch, are authorized to begin construction of the satellite on or after January 1, 1998;

(12) Require reports from the executive officer of each institution it deems necessary for the effectual performance of its duties;

(13) Ensure that the state postsecondary system does not unnecessarily duplicate services and programs provided by private postsecondary institutions and shall promote maximum cooperation between the state postsecondary system and private postsecondary institutions. Receive and consider an annual report prepared by the Association of Independent Kentucky Colleges and Universities stating the condition of independent institutions, listing opportunities for more collaboration between the state and independent institutions and other information as appropriate;

(14) Develop a university track program within the Kentucky Community and Technical College System consisting of sixty (60) hours of instruction that can be transferred and applied toward the requirements for a bachelor's degree at the public universities. The track shall consist of general education courses and pre-major courses as prescribed by the council. Courses in the university track program shall transfer and apply toward the requirements for graduation with a bachelor's degree at all public universities. Successful completion of the university track program shall meet the academic requirement for transfer to a public university as a junior. By fall semester of 1997, requirements for track programs shall be established for all majors and baccalaureate degree programs;

(15) Define and approve the offering of all postsecondary education technical, associate, baccalaureate, graduate, and professional degree, certificate, or diploma programs in the public postsecondary education institutions. The council shall expedite wherever possible the approval of requests from the Kentucky Community and Technical College System board of regents relating to new certificate, diploma, technical, or associate degree programs of a vocational-technical and occupational nature. Without the consent of the General Assembly, the council shall not abolish or limit the total enrollment of the general program offered at any community college to meet the goal of reasonable access throughout the Commonwealth to a two (2) year course of general studies designed for transfer to a baccalaureate program. This does not restrict or limit the authority of the council, as set forth in this section, to eliminate or make changes in individual programs within that general program;

(16) Eliminate, in its discretion, existing programs or make any changes in existing academic programs at the state's postsecondary educational institutions, taking into consideration these criteria:

(a) Consistency with the institution's mission and the strategic agenda;

(b) Alignment with the priorities in the strategic implementation plan for achieving the strategic agenda;

(c) Elimination of unnecessary duplication of programs within and among institutions; and

(d) Efforts to create cooperative programs with other institutions through traditional means, or by use of distance learning technology and electronic resources, to achieve effective and efficient program delivery;

(17) Ensure the governing board and faculty of all postsecondary education institutions are committed to providing instruction free of discrimination against students who hold political views and opinions contrary to those of the governing board and faculty;

(18) Review proposals and make recommendations to the Governor regarding the establishment of new public community colleges, technical institutions, and new four (4) year colleges;

(19) Postpone the approval of any new program at a state postsecondary educational institution, unless

the institution has met its equal educational opportunity goals, as established by the council. In accordance with administrative regulations promulgated by the council, those institutions not meeting the goals shall be able to obtain a temporary waiver, if the institution has made substantial progress toward meeting its equal educational opportunity goals;

(20) Ensure the coordination, transferability, and connectivity of technology among postsecondary institutions in the Commonwealth including the development and implementation of a technology plan as a component of the strategic agenda;

(21) Approve the teacher education programs in the public institutions that comply with standards established by the Education Professional Standards Board pursuant to KRS 161.028;

(22) Constitute the representative agency of the Commonwealth in all matters of postsecondary education of a general and statewide nature which are not otherwise delegated to one (1) or more institutions of postsecondary learning. The responsibility may be exercised through appropriate contractual relationships with individuals or agencies located within or without the Commonwealth. The authority includes but is not limited to contractual arrangements for programs of research, specialized training, and cultural enrichment;

(23) Maintain procedures for the approval of a designated receiver to provide for the maintenance of student records of the public institutions of higher education and the colleges as defined in KRS 164.945, and institutions operating pursuant to KRS 165A.310 which offer collegiate level courses for academic credit, which cease to operate. Procedures shall include assurances that, upon proper request, subject to federal and state laws and regulations, copies of student records shall be made available within a reasonable length of time for a minimum fee;

(24) Monitor and transmit a report on compliance with KRS 164.351 to the director of the Legislative Research Commission for distribution to the Health and Welfare Committee;

(25) Develop in cooperation with each state postsecondary educational institution a comprehensive orientation program for new members of the council and the governing boards. The orientation program shall include but not be limited to the information concerning the roles of the council, the strategic agenda and the strategic implementation plan, and the respective institution's mission, budget, plans, policies, strengths, and weaknesses;

(26) Develop a financial reporting procedure to be used by all state postsecondary education institutions to ensure uniformity of financial information available to state agencies and the public;

(27) Select and appoint a president of the council under KRS 164.013;

(28) Employ consultants and other persons and employees as may be required for the council's operations, functions, and responsibilities;

(29) Promulgate administrative regulations, in accordance with KRS Chapter 13A, governing its powers, duties, and responsibilities as described in this section;

(30) Prepare and present by January 31 of each year an annual status report on postsecondary education in the Commonwealth to the Governor, the Strategic Committee on Postsecondary Education, and the Legislative Research Commission;

(31) Consider the role, function, and capacity of independent institutions of postsecondary education in developing policies to meet the immediate and future needs of the state. When it is found that independent institutions can meet state needs effectively, state resources may be used to contract with or otherwise assist independent institutions in meeting these needs;

(32) Create advisory groups representing the presidents, faculty, nonteaching staff, and students of the public postsecondary education system and the independent colleges and universities;

(33) Develop a statewide policy to promote employee and faculty development in all postsecondary institutions and in state and locally operated secondary area technology centers through the waiver of tuition for college credit coursework in the public postsecondary education system. Any regular full-time employee of a postsecondary public institution or a state or locally operated secondary area technology center may, with prior administrative approval of the course offering institution, take a maximum of six (6) credit hours per term at any public postsecondary institution. The institution shall waive the tuition up to a maximum of six (6) credit hours per term;

(34) Establish a statewide mission for adult education and develop a twenty (20) year strategy, in partnership with the Department for Adult Education and Literacy, under the provisions of KRS 164.0203 for raising the knowledge and skills of the state's adult population. The council shall:

(a) Promote coordination of programs and responsibilities linked to the issue of adult education with the Department for Adult Education and Literacy and with other agencies and institutions;

(b) Facilitate the development of strategies to increase the knowledge and skills of adults in all counties by promoting the efficient and effective coordination of all available education and training resources;

(c) Lead a statewide public information and marketing campaign to convey the critical nature of Kentucky's adult literacy challenge and to reach adults and employers with practical information about available education and training opportunities;

(d) Establish standards for adult literacy and monitor progress in achieving the state's adult literacy goals, including existing standards that may have been developed to meet requirements of federal law in conjunction with the Collaborative Center for Literacy Development: Early Childhood through Adulthood; and

(e) Administer the adult education and literacy initiative fund created under KRS 164.041; and

(35) Exercise any other powers, duties, and responsibilities necessary to carry out the purposes of this chapter. Nothing in this chapter shall be construed to grant the Council on Postsecondary Education authority to disestablish or eliminate any college of law which became a part of the state system of higher education through merger with a state college.

(4527-1, 4527-3: amend. Acts 1956, ch. 163, § 1; 1966, ch. 6, § 2; 1968, ch. 152, § 118; 1972, ch. 39, § 2; 1974, ch. 74, Art. II, § 9(2); 1978, ch. 155, §§ 41, 106, effective June 17, 1978; 1978, ch. 295, § 1, effective June 17, 1978; 1980, ch. 71, § 1, effective July 15, 1980; 1982, ch. 379, § 4, effective April 9, 1982; 1990, ch. 443, § 39, effective July 13, 1990; 1992, ch. 10, § 2, effective February 20, 1992; 1992, ch. 315, § 1, effective July 14, 1992; 1994, ch. 31, § 6, effective July 15, 1994; 1996, ch. 184, § 1, effective July 15, 1996; 1997 (1st Ex. Sess.), ch. 1, § 74, effective May 30, 1997; 2000, ch. 192, § 1, effective July 14, 2000; 2000, ch. 526, §§ 3, 27, effective July 14, 2000; 2002, ch. 37, § 3, effective July 15, 2002.)

Opinions of Attorney General. KRS 2.015, lowering the age of majority to 18 must be applied to the question of establishment of residence for tuition purposes. OAG 68-170.

The annual leave benefits of the executive director of the Council on Public Higher Education (now Council on Higher Education) are subject to Rule 15, "Service Regulations," revised January 1, 1964, of the Commonwealth's personnel rules. OAG 70-532.

The council does have the authority to "approve" a new professional school (engineering, dentistry, law, etc.) in the context of its planning function and also the discretion of nonapproval. OAG 71-251.

The General Assembly has reserved to itself the prerogative of delineating programs, roles, purposes and the types of colleges or schools which the state universities and colleges are authorized to provide. OAG 71-251.

This section, although requiring the Council on Public Higher Education (now Council on Higher Education) to "approve" all new professional schools and authorizing the council to give such approval in the planning context, falls short of delegating to the council the power to actually create and/or establish such new schools. OAG 71-251.

The provisions of this section as to determination of curricula for teacher education are superseded and impliedly repealed by the provisions of KRS 161.030 as amended by Acts 1972, ch. 248, § 1. OAG 72-272.

The Council on Public Higher Education (now Council on Higher Education) professional education staff members may participate in any qualified nonprofit professional educators retirement program, plan, or system as subsection (10) of this section (eliminated by amendment) provides for "compensation" of staff members which would include such fringe benefits as the retirement plan the Council elects to provide for its staff members. OAG 73-292.

Subsection (3) (now (8)) of this section clearly authorizes the Council on Public Higher Education (now Council on Higher Education) to consummate and implement both the proposal for an academic common market and the proposal for a reciprocal tuition agreement with the state of Tennessee or any other state when such an agreement is, in the discretion of the Council, advantageous to the higher education programs for the citizens of Kentucky. OAG 74-12.

A professional program in subsection (8) is a program in a field where the graduate is required to obtain a license or certificate to practice his profession or a program where accreditation by a regional or national association is available. OAG 74-283.

Under subsection (8) (now (14)), the council has the power to review, approve or disapprove all proposed new programs in professional fields, whether the programs are pre- or post-baccalaureate. OAG 74-283.

KRS 314.111 vests the Kentucky Board of Nursing Education and Nurse Registration with the responsibility of approving all nursing education programs and nursing schools within the Commonwealth and this responsibility is not superseded by this section or by KRS 164.945 or 216.040 (repealed). OAG 75-251.

If no single institution of higher education has the responsibility for the development of a clinical educational experiences program or a statewide higher education television program, then under subsection (11), the council has the overall responsibility for the supervision and operation of such programs. OAG 75-533.

It is within the powers of the Board of Regents to establish a mandatory entertainment fee to be charged students for the financing of plays, concerts, movies and other activities. OAG 78-170.

Subsection (8) of this section clearly allows the council to permit the universities to offer new degrees and new programs at the graduate and professional level if the university is elsewhere authorized by statute to provide such a degree or program. OAG 91-126.

Cited: Hutsell v. Sayre, 5 F.3d 996 (6th Cir. 1993).

Collateral References. 14A C.J.S., Colleges and Universities, § 17.

164.0206. Public postsecondary education institution's program in speech-language pathology and teacher education.

A public postsecondary education institution with a degree program in speech-language pathology and a teacher education program, under the direction of the Council on Postsecondary Education, and in consultation with the Education Professional Standards Board and the Kentucky Board of Speech-Language Pathology and Audiology, shall:

(1) Align the programs of studies for speech-language pathology and teacher education to permit a student to successfully prepare for licensure as a speech-language pathology assistant and certification as a bachelor's level teacher of exceptional children/communication disorders;

(2) Increase the number of qualified students accepted into programs leading to licensure as a speech-language pathologist or speech-language pathology assistant and certification as a teacher of exceptional children/communication disorders, subject to:

(a) Requirements for program certification by national certifying bodies, including, but not limited to, student to faculty ratios;

(b) The strategic plans of the Council on Postsecondary Education and the postsecondary education institution; and

(c) The budgetary considerations of the postsecondary education institution.

(3) Provide expanded opportunities for speech-language pathology assistants working in public schools to pursue licensure as a speech-language pathologist and certification as a teacher of excep-

tional children/communication disorders, which may include:

(a) Expanded opportunities for admission to on-campus programs;

(b) The development and expansion of distance learning opportunities in collaboration with the Kentucky Commonwealth Virtual University; and

(c) Admissions requirements that take into account successful professional experience as a speech-language pathology assistant in lieu of other admissions requirements.

(Enact. Acts 2000, ch. 375, § 2, effective July 14, 2000.)

164.0207. Collaborative Center for Literacy Development: Early Childhood through Adulthood — Duties — Report.

(1) The Collaborative Center for Literacy Development: Early Childhood through Adulthood is created to make available training for educators in reliable, replicable research-based reading models, and to promote literacy development. The center shall be responsible for:

(a) Developing and implementing a clearinghouse for information about models addressing reading and literacy from the elementary grades through adult education;

(b) Collaborating with public and private institutions of postsecondary education and adult education providers to provide for teachers and administrators quality preservice and professional development in early reading instruction, including phonics instruction;

(c) Assisting districts located in areas with low levels of reading skills to assess and address identified literacy needs;

(d) Providing professional development and coaching for classroom teachers, including adult education teachers, implementing selected reliable, replicable research-based reading models;

(e) Developing and implementing a comprehensive research agenda evaluating the early reading models implemented in Kentucky under KRS 158.792;

(f) Establishing a demonstration and training site for early literacy located at each of the public universities; and

(g) Evaluating the reading and literacy components of the model adult education programs funded under the adult education and literacy initiative fund created under KRS 164.041.

(2) The center shall submit an annual report on its activities to the Governor and the Legislative Research Commission no later than September 1 of each year.

(3) With the advice of the Department of Adult Education and Literacy in the Cabinet for Workforce Development and the Department of Education, the Council on Postsecondary Education shall develop a process to solicit, review, and approve a proposal for locating the Collaborative Center for Literacy Development at a public institution of postsecondary education. The Council on Postsecondary Education shall approve the location and monitor the progress of the center.

(Enact. Acts 1998, ch. 580, § 3, effective July 15, 1998; 2000, ch. 526, § 29, effective July 14, 2000.)

164.033. Local P-16 councils.

(1) Effective August 1, 2002, the Council on Postsecondary Education shall administer a competitive grant program to enable the establishment of local P-16 councils. A P-16 council may be called a council of partners. The Council on Postsecondary Education and the Kentucky Board of Education shall jointly establish the criteria for participation in the grant program and the amount of funds available to each local P-16 council based on funds appropriated for this purpose. A postsecondary education institution shall assume the leadership role for managing a local P-16 council grant.

(2) A local P-16 council shall promote the preparation and development of teachers, the alignment of competency standards, and the elimination of barriers that impede student transition from preschool through baccalaureate programs.

(3) Each local P-16 council shall provide an annual written report of its activities and recommendations to its members and the institutions they represent, the Kentucky Board of Education, the Council on Postsecondary Education, and the Education Professional Standards Board.

(Enact. Acts 2001, ch. 76, § 2, effective June 21, 2001.)

164.035. Needs assessment for adult education and workforce development.

The Council on Postsecondary Education, in consultation with the Department for Adult Education and Literacy and the Collaborative Center for Literacy Development: Early Childhood through Adulthood, shall assess the need for technical assistance, training, and other support to assist in the development of adult education and workforce development that support the state strategic agenda and that include a comprehensive coordinated approach to education and training services. The council shall promote the involvement of universities; colleges; technical institutions; elementary and secondary educational agencies; labor, business, and industry representatives; community-based organizations; citizens' groups; and other policymakers in the development of the regional strategies.

(Enact. Acts 1997 (1st Ex. Sess.), ch. 1, § 23, effective May 30, 1997; 2000, ch. 526, §§ 5, 28, effective July 14, 2000.)

Legislative Research Commission Note. (7/14/2000). This section was amended by 2000 Ky. Acts ch. 526, sec. 5 and 28, which do not appear to be in conflict and have been codified together.

164.097. Certification of postsecondary institutions to recieve funds for teacher education or model program.

No postsecondary education institution shall receive funds from the Council on Postsecondary Education from any trust fund for the purposes of teacher educa-

tion or model programs of teaching and learning unless the Education Professional Standards Board has certified to the council that the institution has met the following conditions:

(1) The college or university has developed viable partnerships with local school districts and schools;
(2) There is evidence of ongoing dialogue and collaboration among liberal arts and sciences faculty and administrators with faculty and administrators in the department, school, or college of education;
(3) The college or university has demonstrated a commitment to participate in teacher academies;
(4) The college or university has an active recruitment plan for attracting and retaining minority faculty as well as students, and particularly in the department, school, or college of education;
(5) The college or university has initiated the development of incentives or rewards for faculty across the institution to participate in service activities to local schools;
(6) The department, school, or college of education has developed at least one (1) accelerated alternative plan for teacher education or nontraditional program of teacher preparation, or commits to developing an accelerated alternative or nontraditional program;
(7) The department, school, or college of education provides consistent and quality classroom and field experiences, including early practicums and student teaching experience for all students;
(8) The department, school, or college of education has, as an element of its curriculum, substantial course work and classroom and field experiences directly addressing teacher training in classroom management;
(9) There are no major accreditation deficiencies; and
(10) The institution has demonstrated at least one (1) or more innovations in teacher education.

(Enact. Acts 2000, ch. 527, § 8, effective July 14, 2000.)

164.098. Duties of Council on Postsecondary Education relating to advanced placement, dual enrollment, and dual credit programs.

By December 31, 2002:

(1) The Council on Postsecondary Education shall promulgate administrative regulations that require public postsecondary educational institutions, beginning with the 2003-2004 school year, to grant credit toward graduation to a student who scores at least "3" on a College Board Advanced Placement examination.
(2) The Council on Postsecondary Education shall publish information, in print and electronic format, about the scores required on College Board Advanced Placement examinations at which credit toward graduation and completion of degree requirements will be granted at all Kentucky public and private postsecondary educational institutions.
(3) The Council on Postsecondary Education, in conjunction with the Kentucky Board of Education and the Education Professional Standards Board, shall develop guidelines for content knowledge and teacher training in dual enrollment and dual credit programs offered in Kentucky.

(Enact. Acts 2002, ch. 97, § 5, effective July 15, 2002.)

INSTITUTIONS OF HIGHER LEARNING

164.2845. Tuition-free courses for supervising teachers and resource teachers.

(1) In recognition of valuable service to the preparation of teachers and the need for all teachers to have continual professional growth, a supervising teacher or a resource teacher for teacher interns may, with prior approval of the course-offering institution, take a maximum of six (6) credit hours per term at any public postsecondary institution and pay no tuition. The postsecondary institution shall waive the tuition up to a maximum of six (6) credit hours.
(2) The teachers covered in this section may exercise the tuition-free course option only if there is available space within a given course offering. A postsecondary institution shall not be required to establish a course to meet teacher requests.
(3) The tuition-free courses may be used to partially satisfy requirements for an advanced degree.
(4) Each public postsecondary education institution shall establish the procedures for implementing the provisions of this section, effective August 1, 2000.

(Enact. Acts 2000, ch. 527, § 9, effective July 14, 2000.)

164.2847. Waiver of tuition and mandatory student fees for Kentucky foster or adopted children.

(1) Tuition and mandatory student fees for any undergraduate program of any Kentucky public postsecondary institution, including all four (4) year universities and colleges and institutions of the Kentucky Community and Technical College System, shall be waived for a Kentucky foster or adopted child who is a full-time or part-time student if the student meets all entrance requirements and maintains academic eligibility while enrolled at the postsecondary institution, and if:
   (a) The student's family receives state-funded adoption assistance under KRS 199.555;
   (b) The student is currently committed to the Cabinet for Families and Children under KRS 610.010(4) and placed in a family foster home or is placed in accordance with KRS 605.090(3);
   (c) The student is in an independent living program and the placement is funded by the Cabinet for Families and Children;
   (d) The student who is an adopted child was in the permanent legal custody of and placed for adoption by the Cabinet for Families and Children. A student who meets the eligibility criteria of this paragraph and lives outside of Kentucky at the time of application to a Kentucky postsecondary institution may apply for the waiver up to the amount of tuition for a Kentucky resident; or

(e) The Cabinet for Families and Children was the student's legal custodian on his or her eighteenth birthday.

(2) Tuition and mandatory student fees for any undergraduate program of any Kentucky public postsecondary institution, including all four (4) year universities and colleges and institutions of the Kentucky Community and Technical College System, shall be waived for a Department of Juvenile Justice foster child who is a full-time or part-time student if the student meets all entrance requirements and maintains academic eligibility while enrolled at the postsecondary institution and obtains a recommendation for participation from an official from the Department of Juvenile Justice, and if:

(a) The student has not been sentenced to the Department of Juvenile Justice under KRS Chapter 640;

(b) The student has been committed to the Department of Juvenile Justice for a period of at least two (2) years;

(c) The student is in an independent living program and placement is funded by the Department of Juvenile Justice;

(d) The parental rights of the student's biological parents have been terminated; or

(e) The student was committed to the Cabinet for Families and Children prior to a commitment to the Department of Juvenile Justice.

(3) Upon request of the postsecondary institution, the Cabinet for Families and Children shall confirm the eligibility status under subsection (1) of this section and the Department of Juvenile Justice shall confirm the eligibility status and recommendations under subsection (2) of this section of the student seeking to participate in the waiver program. Release of this information shall not constitute a breach of confidentiality required by KRS 199.570, 610.320, or 620.050.

(4) The student shall complete the Free Application for Federal Student Aid to determine the level of need and eligibility for state and federal financial aid programs. If the sum of the tuition waiver plus other student financial assistance, except loans and the work study program under 42 U.S.C. secs. 2751-2756b, from all sources exceeds the student's total cost of attendance, as defined in 20 U.S.C. sec. 1087ll, the tuition waiver shall be reduced by the amount exceeding the total cost of attendance.

(5) The student shall be eligible for the tuition waiver:

(a) For entrance to the institution for a period of no more than four (4) years after the date of graduation from high school; and

(b) For a period of five (5) years after first admittance to any Kentucky institution if satisfactory progress is achieved or maintained.

(6) The Cabinet for Families and Children shall report the number of students participating in the tuition waiver program under subsection (1) of this section and the Department of Juvenile Justice shall report the number of students participating in the tuition waiver program under subsection (2) of this section on October 1 each year to the Council on Postsecondary Education and the Legislative Research Commission.

(7) The Council on Postsecondary Education shall report nonidentifying data on graduation rates of students participating in the tuition waiver program by November 30 each year to the Legislative Research Commission.

(8) Nothing in this section shall be construed to:

(a) Guarantee acceptance of or entrance into any postsecondary institution for a foster or adopted child;

(b) Limit the participation of a foster or adopted student in any other program of financial assistance for postsecondary education;

(c) Require any postsecondary institution to waive costs or fees relating to room and board; or

(d) Restrict any postsecondary institution, the Department of Juvenile Justice, or the Cabinet for Families and Children from accessing other sources of financial assistance, except loans, that may be available to a foster or adopted student.

(Enact. Acts 2001, ch. 48, § 1, effective June 21, 2001; 2002, ch. 279, § 2, effective July 15, 2002.)

164.2849. Legislative finding.

The General Assembly of the Commonwealth of Kentucky finds and declares that it is in the best interests of the Commonwealth to encourage and support adults to adopt and provide foster care for children in the custody of the state. The General Assembly recognizes that a child whose care, custody, and control has been assumed by the Commonwealth as evidenced by termination of the rights of the biological parents and adoption from state custody or a custodial commitment to the Cabinet for Families and Children or the Department of Juvenile Justice is a special ward of the state and faces particular challenges in pursuing higher education. Because it is the intent of the General Assembly to support adoption, foster parenting, and educational advancement, the purpose of KRS 164.2847 is to provide postsecondary education advancement opportunity for foster and adopted children who are or were wards of the state.

(Enact. Acts 2002, ch. 279, § 1, effective July 15, 2002.)

Professional Development for Child-Care Workers

164.518. Scholarships and awards for persons who are employed or provide training in child-care and early-childhood settings.

(1) It is the intent of the General Assembly to create a seamless system to upgrade the professional development of persons who are employed or provide training in a child-care or early childhood setting through scholarships, merit awards, and monetary incentives, to assist these persons in obtaining a child development associate credential, post-secondary certificate, diploma, degree, or specialty credential in an area of study determined by the

authority as recommended by the professional development council.

(2) Eligibility for scholarship funds shall be for individuals who do not have access to professional development funds from other education programs that receive state or federal funds, and who are:
   (a) Employed at least twenty (20) hours per week providing services in a child-care or early childhood setting; or
   (b) Involved in providing professional development training for teachers in an early childhood setting.

(3) The Kentucky Higher Education Assistance Authority, after consultation with the Early Childhood Development Authority and the Cabinet for Families and Children, shall promulgate administrative regulations, including a system of monetary incentives for scholarship program participants for completing classes, in accordance with KRS Chapter 13A as necessary to implement this section.

(Enact. Acts 2000, ch. 308, § 13, effective July 14, 2000.)

Athlete Agents and Agent Contracts

164.680. Definitions for KRS 164.680 to 164.689.

As used in KRS 164.680 to 164.689, unless the context requires otherwise:

(1) "Agent contract" means any contract or agreement pursuant to which an athlete authorizes or empowers an athlete agent to negotiate or solicit on behalf of the athlete with one (1) or more professional sports teams for the employment of the athlete by one (1) or more professional sports teams, or to negotiate or solicit on behalf of the athlete for the employment of the athlete as a professional athlete;

(2) "Athlete" means a student athlete or any person who is employed or seeks to be employed under a professional sports services contract with a professional sports team or as a professional athlete;

(3) "Athlete agent" means:
   (a) Any person who, as part of a business enterprise or as an independent contractor, directly or indirectly recruits or solicits any athlete to enter into any agent contract or professional sports services contract, or for a fee procures, offers, promises, or attempts to obtain employment for any athlete with a professional sports team or as a professional athlete;
   (b) Any member of the state bar of Kentucky or the bar of any other jurisdiction when advising athlete clients and when attempting to negotiate a professional sports services contract for that client; or
   (c) Other than for registration purposes, any agent, subagent, employee, or runner of an athlete agent who receives compensation directly or indirectly to recruit any athlete to enter into any contract or negotiates any contract, or for a fee procures, offers, promises, or attempts to obtain employment for any athlete with a professional sports team or as a professional athlete.

   "Athlete agent" does not include an employee or other representative of a professional sports team;

(4) "Division" means the Division of Occupations and Professions;

(5) "Player association" or "buyer organization" means any association or organization that represents professional athletes in collective bargaining with management of professional sports teams;

(6) "Professional sports services contract" means a contract or agreement, written or oral, pursuant to which an athlete is employed or agrees to render services as a player on a professional sports team or as a professional athlete; and

(7) "Student athlete" means any one of the following:
   (a) A student who resides in Kentucky and has informed, in writing, a college or university of the student's intent to participate in that school's intercollegiate athletics program and is eligible to do so;
   (b) A student who does not reside in Kentucky, but has informed, in writing, a college or university in Kentucky of the student's intent to participate in that school's intercollegiate athletics, or who does participate in that school's intercollegiate athletics program and is eligible to do so; or
   (c) A student who is enrolled and participates in a sport at a secondary school, college, or university in Kentucky.

(Enact. Acts 1998, ch. 259, § 1, effective July 15, 1998.)

164.681. Division of Occupations and Professions to provide administrative services — Revolving fund — Directory of registered athlete agents — Administrative regulations.

(1) The Division of Occupations and Professions shall provide administrative services and logistical support as may be necessary to carry out the provisions of KRS 164.680 to 164.689. The cost of these services shall be paid from moneys deposited in the revolving fund established in subsection (2) of this section.

(2) All registration fees, other moneys received by the division under the provisions of KRS 164.680 to 164.689, and accrued interest shall be deposited in the State Treasury to the credit of a revolving fund. The revolving fund shall be used only for valid expenditures incurred by the division in the registration and regulation of athlete agents. No part of this revolving fund shall revert to the general fund of the Commonwealth.

(3) The division shall publish annually a directory of all athlete agents registered in the Commonwealth of Kentucky.

(4) The division may promulgate administrative regulations as may be necessary to carry out the provisions of KRS 164.680 to 164.689.

(Enact. Acts 1998, ch. 259, § 2, effective July 15, 1998.)

164.682. Requirement of athlete agent to register — Application — Fee — Grounds for denial — Availability of financial and business records — Annual contract reports.

(1) No person shall engage in business as an athlete agent or represent himself or herself as an athlete agent unless he or she is registered with the Division of Occupations and Professions under this section.

(2) To register as an athlete agent, a person shall:
   (a) Complete and submit to the division an application on forms provided by the division;
   (b) Pay a registration fee and an annual renewal fee to be established by the division but not to exceed three hundred dollars ($300);
   (c) Submit evidence to the division that one (1) of the following is in full force and effect:
      1. A surety bond payable to the State Treasurer in the sum of one hundred thousand dollars ($100,000); or
      2. Malpractice insurance in effect with a minimum of one hundred thousand dollars ($100,000) coverage per incident; or
      3. Cash, a certificate of deposit, bearer bonds, other negotiable instruments, or an assigned savings account in the amount of one hundred thousand dollars ($100,000) deposited with or assigned to the commission; and
      4. Affirm in the application that he or she will comply with the provisions of KRS 164.680 to 164.689 and all administrative regulations duly promulgated thereunder.

(3) A person shall be denied registration as an athlete agent if he or she:
   (a) Fails to comply with subsection (2) of this section;
   (b) Has been convicted within the last ten (10) years of any felony or any misdemeanor that would render the applicant unfit to be an athlete agent; or
   (c) Has had a license, certificate, or registration denied or revoked by any other state for reasons that would constitute grounds for denial or revocation of registration in Kentucky.

(4) A registered athlete agent shall establish complete financial and business records and maintain them for a period of at least four (4) years. All financial and business records shall be made available to division staff upon request and at reasonable hours.

(5) A registered athlete agent shall submit to the division annual contact reports on his or her activities within the Commonwealth.

(Enact. Acts 1998, ch. 259, § 3, effective July 15, 1998.)

164.683. Prohibited acts.

No athlete agent shall engage in the following acts:

(1) Making false or misleading statements of a material nature in his or her application for registration.

(2) Misappropriating funds, or engaging in other specific acts such as embezzlement, theft, or fraud, which would render him or her unfit to serve in a fiduciary capacity.

(3) Engaging in other conduct that significantly impacts adversely on his or her credibility, integrity, or competence to serve in a fiduciary capacity, including failure to disclose to a student athlete:
   (a) Any financial interest in any entity that is directly involved in the same sport as a student athlete with whom he or she has entered into a contractual relationship; or
   (b) Any financial interest that the athlete agent has in any entity in which he or she has advised a student athlete to invest.

(4) Engaging in conduct which violates or causes a student athlete to violate any rule or regulation promulgated by an intercollegiate sports governing body.

(5) Failure to include the agent's name in any advertising relating to the business of an athlete agent. Advertising shall not include clothing or novelty items.

(6) Publishing or causing to be published false or misleading information or advertisements, or giving any false information or making false promises to a student athlete concerning employment or financial services.

(7) Offering anything of value to a student athlete or to any person to induce a student athlete to enter into an agreement by which the agent will represent the student athlete. Negotiation regarding the agent's fee shall not, however, be considered an inducement.

(8) Accepting as a client a student athlete referred by, or in exchange for, any consideration made to an employee of, or a coach for, a college or university.

(9) Committing mismanagement or misconduct as an agent which causes financial harm to a student athlete or college or university.

(10) Sending a student athlete written materials without simultaneously sending an identical copy of the written materials to the athletics director, or the director's designee, of the college or university in which the student athlete is enrolled or to which the student athlete has provided written intent to participate in intercollegiate athletics.

(11) Contacting a student athlete without having given prior notice to the college or university in which the student athlete is enrolled or to which the student athlete has provided a written intent to participate in intercollegiate athletics.

(12) Engaging in conduct which results in an athlete losing eligibility to participate in intercollegiate athletics as a member of a sports team of an institution of higher education.

(Enact. Acts 1998, ch. 259, § 4, effective July 15, 1998.)

164.684. Requirements for athlete agent contract — Duty to report contract to athletic director or president — Postdating prohibited — Right to rescind.

(1) Except as otherwise provided in this section, all contracts to be utilized by athlete agents shall contain in prominent type the following: "This

athlete agent is registered with the Kentucky Division of Occupations and Professions. Registration does not imply approval by the division of the terms and conditions of this contract or the competence of the athlete agent."

(2) An athlete agent who negotiates or enters into an oral or written agent contract with a student athlete or provides any monetary or in-kind benefits to a student athlete who is subject to the rules and regulations of an intercollegiate sports governing body shall notify the athletic director or the president of the college or university in which the student athlete is enrolled that the athlete agent negotiated or has entered into a contract or has provided monetary or in-kind benefits to a student athlete. Written notification of the contract, regardless of the legal enforceability of the contract under this chapter or any other provision of law, or of accepting any benefits from an athlete agent shall be given before the student athlete practices for, or participates in, an athletic event on behalf of a college or university or within seventy-two (72) hours after entering into the contract or providing the benefits, whichever occurs first.

(3) An agent contract between a student athlete and an athlete agent shall have a notice printed near the space for the student athlete's signature which shall contain the following statement in ten (10) point bold face type:

"Warning: If you as a student athlete sign this contract, you may lose your eligibility to compete in intercollegiate athletics. Under Kentucky law, you are required to notify the athletic director or president of your college or university in writing before practicing for, or participating in, an athletic event on behalf of a college or university or within seventy-two (72) hours after entering into this contract, whichever occurs first. Failure to provide this notice is a criminal offense. Do not sign this contract until you have read it and filled in any blank spaces. You may cancel this contract by notifying the athlete agent in writing of your desire to cancel not later than the fifteenth day after the date you sign this contract. However, even if you cancel this contract, the intercollegiate athletic association or conference to which your college or university belongs may not restore your eligibility to participate in intercollegiate athletics."

(4) An agent contract which does not meet the requirements of subsections (1) and (3) of this section is void and unenforceable.

(5) Postdating of agent contracts is prohibited, and a postdated contract is void and unenforceable. Subsections (1) and (3) of this section are applicable to postdated contracts even though these contracts may be void and unenforceable. Execution of a postdated contract is a violation of this section, and an athlete agent committing the violation is subject to the penalty provisions of KRS 164.687 and 164.689. A student athlete committing the violation is subject to the penalty provisions of KRS 164.689(4).

(6) Within fifteen (15) days after the date on which the contractual relationship between the athlete agent and the student athlete arises or after notification of the contractual relationship is received by the athletic director or president of the college or university in which the student is enrolled, whichever occurs later, the student athlete has the right to rescind the contract or any contractual relationship with the athlete agent by giving notice in writing of his or her intent to rescind. The rescission is effective upon repayment by the student athlete to the athlete agent of any monetary amounts paid to the student athlete by the athlete agent, exclusive of travel, lodging, meals, and entertainment, or reimbursement for these items, furnished by the athlete agent to the student athlete. The student athlete may not effect a waiver of his or her right to rescind, and an attempt to do so is prohibited and unenforceable.

(Enact. Acts 1998, ch. 259, § 5, effective July 15, 1998.)

164.685. Notification to athletic director or president — Penalty.

(1) A student athlete who is subject to the rules and regulations of an intercollegiate sports governing body, who has not competed in his or her last intercollegiate contest, including postseason games, for the applicable sport, and who negotiates for or enters into an oral or written agent contract with an athlete agent or a contract under which a student athlete is employed as a professional athlete, or accepts any monetary or in-kind benefit from an athlete agent, shall notify the athletic director or the president of the college or university in which he or she is enrolled that he or she has commenced negotiations or entered into a contract or has accepted these benefits. Written notification of negotiation or entering into a contract, regardless of the legal enforceability of the contract under this chapter or any other provision of law, or accepting any benefits from an athlete agent shall be given before practicing for or participating in an athletic event on behalf of a college or university within seventy-two (72) hours after commencing negotiations or entering into the contract, whichever occurs first.

(2) In addition to any other penalty of law provided, a student athlete who fails to provide this notification shall perform a minimum of seventy (70) hours of community service.

(Enact. Acts 1998, ch. 259, § 6, effective July 15, 1998.)

164.686. Damages for failure to notify — Limitation of actions.

(1) A student athlete and athlete agent who negotiate or enter into an agent contract or accept any monetary or in-kind benefits and fail to provide the notification required by this section are liable for actual damages to the college or university in which the student athlete is enrolled that result from the student athlete's subsequent ineligibility.

(2) For purposes of subsection (1) of this section, a college or university suffers actual damages if, because of activities of the person, the college or university is penalized or is disqualified or suspended from participation in intercollegiate athlet-

ics by a national association for the promotion and regulation of intercollegiate athletics, by an intercollegiate athletic conference, or by self-imposition and, because of that penalty, disqualification, or suspension, one of the following occurs to the institution:
(a) Loses revenue from media coverage of a sports contest;
(b) Loses the right to grant an athletic scholarship;
(c) Loses the right to recruit an athlete;
(d) Is prohibited from participating in postseason athletic competition;
(e) Forfeits an athletic contest; or
(f) Suffers an adverse financial impact.

(3) An institution that prevails in a suit brought under this section may recover the following:
(a) Actual damages;
(b) Punitive damages;
(c) Court costs; and
(d) Reasonable attorney's fees.

(4) In actions seeking relief under this section, the claim shall not have been considered as having accrued until the discovery by the aggrieved college or university of the alleged violation by the student athlete or the athlete agent, after which the college or university shall have two (2) years to bring an action.

(Enact. Acts 1998, ch. 259, § 7, effective July 15, 1998.)

164.687. Referral of complaint — Investigation — Recommendation of disciplinary action — Appeal — Length of suspension or revocation — Reinstatement.

(1) Any complaint against an athlete agent shall be referred to the appropriate college or university or athletic regulatory body for review and investigation. If upon investigation an athlete agent has been found to have committed a violation of KRS 164.680 to 164.689 or any administrative regulation promulgated thereunder, the college or university or athletic regulatory agency involved may recommend to the division that the athlete agent's registration be suspended or revoked. Upon receipt of that recommendation, the division shall take action with the type of action to be commensurate with the nature and severity of the violation. Administrative action authorized in this section shall be in addition to any criminal penalties provided in KRS 164.689 or under other provisions of law.

(2) Any suspension or revocation imposed by the division under this section may be appealed by the aggrieved party within thirty (30) days of receipt of notice, and upon appeal an administrative hearing shall be conducted in accordance with the provisions of KRS Chapter 13B. In an administrative hearing conducted under this subsection, the responsibility for presenting the case in support of the suspension or revocation shall be the responsibility of the college or university or athletic regulatory agency upon whose recommendation the action was taken. Upon appeal, a disciplinary action may be stayed pending final disposition of the appeal, except for denial of registration or an emergency suspension imposed under KRS 13B.125, but only if the division determines, with the advice of the affected college or university or athletic regulatory agency, that a stay does not pose a threat to the honesty and integrity of intercollegiate sports in Kentucky, or cause damage to any college or university in Kentucky.

(3) The suspension of a registration shall be for a specified period of time not to exceed two (2) years. Revocation shall not be time specific, and an athlete agent may apply for reinstatement but not within a period of three (3) years from the date of revocation. Reinstatement shall be based on the fitness of the applicant to perform in accordance with the provisions of KRS 164.680 to 164.689 and administrative regulations promulgated thereunder, and an affirmative recommendation from the college or university or athletic regulatory agency that precipitated the revocation.

(Enact. Acts 1998, ch. 259, § 8, effective July 15, 1998.)

164.689. Penalties for violation of KRS 164.680 to 164.687.

(1) Any person who engages in the business of an athlete agent or represents himself or herself as an athlete agent without being registered in accordance with KRS 164.680 to 164.687 shall be guilty of a Class A misdemeanor.

(2) Any registered athlete agent who knowingly and willfully commits a prohibited act contained in KRS 164.683 shall be guilty of a Class D felony.

(3) Any registered athlete agent who knowingly and willfully violates any provision of KRS 164.684 shall be guilty of a Class D felony.

(4) A student athlete who knowingly and willfully violates any provision of KRS 164.685 or KRS 164.684(5) shall be guilty of a Class A misdemeanor.

(5) Any registered athlete agent or athlete who fails to make restitution to a college or university that prevails in a suit brought under KRS 164.686 shall be guilty of a Class D felony.

(Enact. Acts 1998, ch. 259, § 9, effective July 15, 1998.)

Higher Education Assistance

164.757. District teacher certification loan fund.

(1) For purposes of this section unless the context requires otherwise:
(a) "Critical shortage area" means an area in which there are insufficient numbers of fully certified staff in a particular subject, school, or geographic location;
(b) "Emergency certified teacher" means an individual who has not completed certification requirements but has been awarded a temporary certificate for a certification area in which no fully qualified teacher was available;
(c) "Qualified teacher" means a teacher who holds the appropriate certification for a position unless the superintendent of the employing local

school district has documented evidence that the teacher is unsuitable for appointment;

(d) "Qualified teaching service" means teaching for at least seventy (70) days each semester or the equivalent in the certification area for which an individual received a forgivable loan in the Kentucky school district that recommended the individual for a loan or in another Kentucky private or public school district in the certification area for which an individual received a forgivable loan if no position was available in the recommending school district at the time when the individual completed his or her certification;

(e) "Semester" means a period which usually makes up one-half (½) of a school year or one-half (½) of a postsecondary institution's academic year; and

(f) "Summer term" means an academic period consisting of one (1) or more sessions of instruction between a spring and a fall semester at a postsecondary education institution.

(2) To increase the number of qualified teachers in local school districts and to reduce the number of emergency certified teachers, there is hereby created the district teacher certification loan fund in the State Treasury. The loans shall be used to provide forgivable loans to emergency certified personnel, fully certified teachers who are willing to seek additional certification in hard-to-fill or critical shortage areas, and paraprofessionals in local school districts to become fully certified teachers and to continue service within the local district.

(3) The fund shall be administered by the Kentucky Higher Education Assistance Authority. The authority shall promulgate administrative regulations to specify the terms and conditions of the award, cancellation, and repayment of loans, including but not limited to the maximum amount that may be loaned per term and the maximum aggregate amount per applicant, the selection process, eligibility for renewal, the specific administrative procedures for utilizing the funds, and the rate of repayment.

(4) To qualify for a forgivable loan, an applicant shall meet the following requirements:

(a) Be employed by a specific local district as a certified teacher, an emergency full-time or part-time teacher, an emergency substitute teacher, or a paraprofessional at the time he or she makes application for the loan;

(b) Be recommended by the superintendent as an individual that he or she would recommend to be employed in a teaching position for which the applicant is pursuing certification if the applicant fulfills all credentialing requirements;

(c) Be endorsed by the school-based decision making council of the school in which he or she serves to receive a loan for the purposes of obtaining teacher certification in a specific certification area; except that the endorsement shall not be construed as a commitment of securing a position in the particular school in the future;

(d) Be admitted and enrolled as an undergraduate or graduate student in a Kentucky private or public postsecondary institution that offers a teacher certification program in the area for which he or she is seeking certification; and

(e) Be enrolled in a minimum of six (6) credit hours and not more than nine (9) credit hours during each semester of an academic term while employed concurrently in the school district and in not less than six (6) credit hours during the summer term. If a school district recommends an applicant for a loan under provisions of this section and grants a leave of absence to the employee to pursue certification, the employee shall be enrolled as a full-time undergraduate or graduate student as defined by the institution in which he or she is enrolled.

(5) A participant in a local district alternative certification program as defined in KRS 161.048(2) may be eligible for a loan under provisions of this section to offset costs associated with the program. The authority shall establish by administrative regulation the specific requirements, notwithstanding requirements in subsection (4) of this section.

(6) A loan shall not be awarded or a promissory note cancellation shall not be granted to any person who is in default on any obligation to the authority under any program administered pursuant to KRS 164.740 to 164.785 until financial obligations to the authority are satisfied, except that ineligibility for this reason may be waived by the authority for cause.

(7) Recipients shall render one (1) semester of qualified teaching service for each semester or summer term for which a loan was received. Upon completion of each semester of qualified teacher service, the authority shall cancel the appropriate portion of the promissory notes.

(8) If the recipient of a loan fails to complete the certification at a participating institution or fails to render qualified teaching service in any semester following certification, unless the failure is temporarily waived for cause by the authority, the recipient shall immediately become liable to the authority for repayment of the sum of all outstanding promissory notes and accrued interest. Persons liable for repayment of loans under this subsection shall be liable for interest accruing from the dates on which the loans were disbursed.

(9) Failure to meet repayment obligations imposed by this section shall be cause for the revocation of a person's certification, subject to the procedures set forth in KRS 161.120.

(10) All moneys repaid to the authority under this section shall be added to the fund in this section. Any fund balance at the close of a fiscal year shall not lapse but shall be carried forward to the next fiscal year and continuously appropriated for the purposes specified in this section.

(11) The authority may execute appropriate contracts and promissory notes for administering this section.

(12) If available funds are insufficient for all requested loans for eligible applicants during any fiscal year, the authority shall give priority consideration to eligible applicants who previously received loans. If funds are insufficient to make all requested renewal loans to eligible applicants, the authority shall reduce all loans to the extent necessary to provide loans to all qualified renewal applicants. If, after awarding all eligible renewal applicants, funds are not depleted, priority shall be given to loans for those applicants who are seeking certification in critical shortage areas.

(Enact. Acts 2002, ch. 135, § 3, effective April 2, 2002.)

164.769. Teacher scholarships for eligible persons agreeing to render qualified teaching service in Kentucky — Cancellation or repayment of notes.

(1) It is the intent of the General Assembly to establish a teacher scholarship program to assist highly qualified individuals to become certified Kentucky teachers and render teaching service in Kentucky schools.

(2) For purposes of this section, the terms listed below shall have the following meanings:

(a) "Critical shortage area" means an understaffing of teachers in particular subject matters at the secondary level, in grade levels, or in geographic locations at the elementary and secondary level, as determined by the commissioner of education in consultation with the authority. The commissioner and the authority may use any source considered reliable including, but not limited to, local education agencies to identify the critical shortage areas.

(b) "Eligible program of study" means an undergraduate or graduate program of study which is preparatory to initial teacher certification, but does not lead to a certificate, diploma, or degree in theology, divinity, or religious education.

(c) "Expected family contribution" means the amount that a student and his family are expected to contribute toward the cost of the student's education determined by applying methodology set forth in 20 U.S.C. sec. 1087 kk to 1087 vv.

(d) "Participating institution" means an institution of higher education located in Kentucky which offers an eligible program of study and has in force an agreement with the authority providing for administration of this program.

(e) "Qualified teaching service" means teaching the major portion of each school day for at least seventy (70) days each semester in a public school of the Commonwealth or a private school certified pursuant to KRS 156.160(3), except that an individual having a disability defined by Title II of the Americans with Disabilities Act (42 U.S.C. sec. 12131 et seq.), whose disability, certified by a licensed physician, prevents that individual from teaching a major portion of each school day, shall be deemed to perform qualified teaching service by teaching the maximum time permitted by the attending physician.

(f) "Semester" means a period of about eighteen (18) weeks, which usually makes up one-half (½) of a school year or one-half (½) of a participating institution's academic year.

(g) "Summer term" means an academic period consisting of one (1) or more sessions of instruction between a spring and a fall semester.

(3) The authority may, to the extent of appropriations and other funds available to it pursuant to subsection (9) of this section, award teacher scholarships to persons eligible under subsection (4) of this section, who initially demonstrate financial need in accordance with standards and criteria established by the authority or received teacher scholarships pursuant to this section prior to July 1, 1996. Each teacher scholarship shall be evidenced by a promissory note that requires repayment or cancellation pursuant to subsection (6) of this section.

(4) Kentucky residents who are United States citizens and enrolled or accepted for enrollment in an eligible program of study on a full-time basis at a participating institution shall be eligible to apply for and be awarded teacher scholarships. Teacher scholarships shall first be awarded to highly qualified eligible students who meet standards and requirements established by the Education Professional Standards Board pursuant to KRS 161.028 for admission to a teacher education program at a participating institution or who received teacher scholarships pursuant to this section prior to July 1, 1996. If funds are not depleted after awarding teacher scholarships to students who meet the preceding criteria, then awards shall be made to any otherwise eligible students seeking admission to a teacher education program.

(5) The authority shall establish, by administrative regulation, the maximum amount of scholarship to be awarded for each semester and summer term under this section, and shall prorate the amount awarded to any student enrolled less than full-time in accordance with paragraph (6)(a) of this section. The aggregate amount of scholarships awarded to an individual shall not exceed twelve thousand five hundred dollars ($12,500) for undergraduate students and seven thousand five hundred dollars ($7,500) for postbaccalaureate students, except that the aggregate amount of scholarships awarded to an individual who received teacher scholarships pursuant to this section prior to July 1, 1996, including any amount received pursuant to KRS 156.611, 156.613, 164.768, or 164.770, shall not exceed twenty thousand dollars ($20,000), and the amount of each scholarship to be awarded shall not exceed the applicant's total cost of education minus other financial assistance received or expected to be received by the applicant during the academic period.

(6) (a) The authority shall disburse teacher scholarships to eligible students who agree to render qualified teaching service as certified teachers,

and are unconditionally admitted and enrolled in an eligible program of study on a full-time basis, except that disbursements may be made to otherwise eligible students enrolled less than full-time in the semester or summer term in which the eligible program of study will be completed or otherwise eligible students having a disability defined by Title II of the Americans with Disabilities Act (42 U.S.C. sec. 12131 et seq.), who have been certified by a licensed physician to be unable to attend the eligible program of study full-time because of the disability. Teacher scholarships shall be disbursed to eligible students who received teacher scholarships pursuant to this section for recertification in a critical shortage area prior to July 1, 1996, who are enrolled in and continuing toward completion of their program of study, and who agree to render qualified teaching service as certified teachers.

(b) A teacher scholarship shall not be awarded or a promissory note cancellation shall not be granted to any person who is in default on any obligation to the authority under any program administered by the authority pursuant to KRS 164.740 to 164.785 until financial obligations to the authority are satisfied, except that ineligibility for this reason may be waived by the authority for cause.

(c) Recipients shall render one (1) semester of qualified teaching service for each semester or summer term of scholarship received, except that recipients who teach in a critical shortage area designated by the authority shall render one (1) semester of qualified teaching service as repayment for two (2) semesters or summer terms of scholarships received. Upon completion of each semester of qualified teacher service, the authority shall cancel the appropriate number of promissory notes.

(d) If the recipient of a teacher scholarship fails to complete an eligible program of study at a participating institution or fails to render qualified teaching service in any semester following certification or recertification, unless the failure is temporarily waived for cause by the authority, the recipient shall immediately become liable to the authority for repayment of the sum of all outstanding promissory notes and accrued interest. Persons liable for repayment of scholarships under this paragraph shall be liable for interest accruing from the dates on which the teacher scholarships were disbursed.

(e) Recipients who have outstanding loans or scholarships under KRS 156.611, 156.613, 164.768, or 164.770 respectively, and who render qualified teaching service, shall have their notes canceled in accordance with subsection (6)(c) of this section.

(f) The authority shall establish, by administrative regulation, the terms and conditions for the award, cancellation, and repayment of teacher scholarships including, but not limited to, the selection criteria, eligibility for renewal awards, amount of scholarship payments, deferments, the rate of repayment, and the interest rate thereon.

(g) Notwithstanding any other statute to the contrary, the maximum interest rate applicable to repayment of a promissory note under this section shall be twelve percent (12%) per annum, except that if a judgment is rendered to recover payment, the judgment shall bear interest at the rate of five percent (5%) greater than the rate actually charged on the promissory note.

(7) A repayment obligation imposed by this section shall not be voidable by reason of the age of the recipient at the time of receiving the teacher scholarship.

(8) Failure to meet repayment obligations imposed by this section shall be cause for the revocation of a person's teaching certificate, subject to the procedures set forth in KRS 161.120.

(9) All moneys repaid to the authority under this section shall be added to the appropriations made for purposes of this section, and the funds and unobligated appropriations shall not lapse.

(10) The authority may execute appropriate contracts and promissory notes for administering this section.

(11) If available funds are insufficient for all requested scholarships for eligible applicants during any fiscal year, the authority shall give priority consideration to eligible applicants who previously received teacher scholarships. If funds are insufficient to make all requested renewal scholarships to eligible applicants, the authority shall reduce all scholarship awards to the extent necessary to provide scholarships to all qualified renewal applicants. If, after awarding all eligible renewal applicants, funds are not depleted, initial applications shall be ranked according to regulatory selection criteria, which may include expected family contribution and application date, and awards shall be made to highly qualified applicants until funds are depleted.

(Enact. Acts 1994, ch. 163, § 1, effective July 15, 1994; 1996, ch. 125, § 1, effective July 15, 1996; 1998, ch. 111, § 1, effective July 15, 1998.)

Compiler's Notes. KRS 156.611, 156.613, 164.768 and 164.770 referred to in this section were repealed.

Cross-References. Definitions pertaining to 11 KAR Chapter 5, 11 KAR 5:001.

Reports by postsecondary institutions, 11 KAR 4:070.

Teacher scholarships, 11 KAR 8:030.

Assistance to Private College Students

164.785. Qualifications for state assistance — Calculation — Adjustment for scholarship.

(1) The State of Kentucky shall grant an amount as provided in KRS 164.780 and this section to any applicant who meets the following qualifications:

(a) Is a Kentucky resident as defined by the Kentucky Council on Postsecondary Education;
(b) Has been accepted by or is enrolled as a full time student in a Kentucky independent college or university which is accredited by the Southern Association of Colleges and Schools and whose institutional programs are not comprised solely of a sectarian instruction. An otherwise eligible student having a disability defined by Title II of the Americans with Disabilities Act (42 U.S.C. sec. 12131 et seq.), certified by a licensed physician to be unable to attend the eligible program of study full-time because of the disability may also qualify under this paragraph;
(c) Is not enrolled in a program of study leading to a degree in theology, divinity, or religious education; and
(d) Has not previously attended college or university for more than seven (7) semesters or the equivalent.

(2) The amount of the tuition grant to be paid to a student each semester, or appropriate academic term, shall be determined by the Kentucky Higher Education Assistance Authority.
(3) The maximum amount shall not exceed fifty percent (50%) of the average state appropriation per full-time equivalent student enrolled in all public institutions of higher education. Such tuition grants are to be calculated annually by the Kentucky Higher Education Assistance Authority.
(4) The need of each applicant shall be determined by acceptable need analysis such as the parents' confidential statement of the college scholarship service, and such other analyses as the authority may determine, subject to the approval by the United States Secretary of Education.
(5) An adjustment shall be made in the tuition grant of any student awarded a scholarship from any other source provided the combination of grants and awards exceeds the calculated need of the student.

(Enact. Acts 1972, ch. 114, § 2; 1976, ch. 215, § 4, effective March 29, 1976; 1978, ch. 155, § 104, effective June 17, 1978; 1982, ch. 403, § 7, effective July 15, 1982; 1997 (1st Ex. Sess.), ch. 1, § 122, effective May 30, 1997; 1998, ch. 317, § 1, effective July 15, 1998.)

Cross-References. Application by recipients of AFDC, 11 KAR 5:120.
Definitions, 11 KAR 15:010.
Definitions pertaining to 11 KAR Chapter 5, 11 KAR 5:001.
Disbursement procedures, 11 KAR 5:160.
Dual enrollment under consortium agreement, 11 KAR 15:030.
Kentucky Educational Excellence Scholarship overpayment and refund and repayment procedure, 11 KAR 15:060.
KTG award determination procedure, 11 KAR 5:140.
KTG student eligibility requirements, 11 KAR 5:033.
Notification of award, 11 KAR 5:150.
Records and reports, 11 KAR 5:180.
Records and reports, 11 KAR 15:070.
Refund and repayment policy, 11 KAR 5:170.
Reports by postsecondary institutions, 11 KAR 4:070.
Student application, 11 KAR 5:130.

164.7871. Legislative declaration.

(1) The General Assembly of the Commonwealth of Kentucky hereby declares that the best interest of the Commonwealth mandates that financial assistance be provided to ensure access of Kentucky citizens to public and private postsecondary education at the postsecondary educational institutions of the Commonwealth.
(2) It is the intent and purpose of the General Assembly that the enactment of KRS 164.7871 to 164.7885 shall be construed as a long-term financial commitment to postsecondary education and that the funding provided by KRS 154A.130(3) and (4) shall not be diverted from the purposes described in KRS 164.7871 to 164.7885 and KRS 164.7889.

(Enact. Acts 1998, ch. 575, § 1, effective July 15, 1998.)

Cross-References. Definitions, 11 KAR 15:010.
Dual enrollment under consortium agreement, 11 KAR 15:030.
Kentucky Educational Excellence Scholarship (KEES), 13 KAR 2:090.
Kentucky Educational Excellence Scholarship overpayment and refund and repayment procedure, 11 KAR 15:060.
Records and reports, 11 KAR 15:070.

164.7874. Definitions for KRS 164.7871 to 164.7885.

As used in KRS 164.7871 to 164.7885:
(1) "Academic term" means a semester or other time period specified in an administrative regulation promulgated by the council;
(2) "Academic year" means a period consisting of at least the minimum school term, as defined in KRS 158.070;
(3) "ACT score" means the composite score achieved on the American College Test at a national test site on a national test date or an equivalent score, as determined by the council, on the Scholastic Assessment Test;
(4) "Authority" means the Kentucky Higher Education Assistance Authority;
(5) "Award period" means two (2) consecutive academic terms;
(6) "Base scholarship amount" means that amount earned by an eligible high school student pursuant to KRS 164.7879 in each academic year as determined by the grade point average earned and reported by the high school at the end of the academic year;
(7) "Council" means the Council on Postsecondary Education created under KRS 164.011;
(8) "Eligible high school student" means any person who:
(a) Is a citizen, national, or permanent resident of the United States and Kentucky resident;
(b) Was enrolled after July 1, 1998:
1. In a Kentucky high school, at least one hundred forty (140) days of the minimum school term unless exempted by the authority's executive director upon documentation of extreme hardship, while meeting the Kentucky educational excellence scholarship curriculum require-

ments, and was enrolled in a Kentucky high school at the end of the academic year;

2. In a Kentucky high school for the fall academic term of the senior year and who:
   a. Was enrolled during the entire academic term;
   b. Completed the high school's graduation requirements during the fall academic term; and
   c. Was not enrolled in a secondary school during any other academic term of that academic year;
3. Has a grade point average of 2.5 or above at the end of any academic year beginning after July 1, 1998, or at the end of the fall academic term for a student eligible under subparagraph 2. of this paragraph; and

(c) Is not a convicted felon;

(9) "Eligible postsecondary student" means a citizen, national, or permanent resident of the United States and Kentucky resident, as determined by the participating institution in accordance with criteria established by the council for the purposes of admission and tuition assessment, who:
   (a) Earned a Kentucky educational excellence scholarship base, supplemental, or base and supplemental final award;
   (b) Has the required postsecondary G.P.A. required under KRS 164.7881;
   (c) Has remaining semesters of eligibility under KRS 164.7881;
   (d) Is enrolled in a participating institution as a part-time or full-time student; and
   (e) Is not a convicted felon;

(10) "Full-time student" means a student enrolled in a postsecondary program of study that meets the full-time student requirements of the participating institution in which the student is enrolled;

(11) "Grade point average" means the grade point average earned by an eligible student and reported by the high school or participating institution in which the student was enrolled based on a scale of 4.0 or its equivalent if the high school or participating institution that the student attends does not use the 4.0 grade scale;

(12) "High school" means any Kentucky public high school, and any private, parochial, or church school located in Kentucky that has been certified by the Kentucky Board of Education as voluntarily complying with curriculum, certification, and textbook standards established by the Kentucky Board of Education under KRS 156.160;

(13) "KEES" means Kentucky educational excellence scholarship;

(14) "KEES curriculum" means five (5) courses of study in an academic year as determined by administrative regulation promulgated by the council;

(15) "Kentucky educational excellence scholarship" means a scholarship provided under KRS 164.7871 to 164.7885;

(16) "Kentucky educational excellence scholarship trust fund" means the Wallace G. Wilkinson Kentucky educational excellence scholarship trust fund;

(17) "Maximum award amount" means the sum of the base scholarship amount earned by an eligible high school student in each academic year of high school study plus any supplemental award earned by an eligible high school student or earned pursuant to KRS 164.7879(3)(c). The amount so determined shall be the maximum amount available to the eligible postsecondary student for any award period;

(18) "Participating institution" means an "institution" as defined in KRS 164.001 that actively participates in the federal Pell Grant program, executes a contract with the authority on terms the authority deems necessary or appropriate for the administration of its programs, and:
   (a) 1. Is publicly operated; or
      2. Is licensed by the Commonwealth of Kentucky and has operated for at least ten (10) years, offers an associate or baccalaureate degree program of study not comprised solely of sectarian instruction, and admits as regular students only high school graduates or recipients of a general equivalency diploma or students transferring from another accredited degree granting institution; or
      3. Is designated by the Council on Postsecondary Education as an approved out-of-state institution that offers a degree program in a field of study that is not offered at any institution in the Commonwealth; and
   (b) Continues to commit financial resources to student financial assistance programs and provides annual documentation to the authority of compliance;

(19) "Part-time student" means a student enrolled in a postsecondary program of study who does not meet the full-time student requirements of the participating institution in which the student is enrolled and who is enrolled for at least six (6) credit hours or the equivalent for an institution that does not use credit hours; and

(20) "Supplemental award" means commitment of scholarship funds under KRS 164.7879(3).

(Enact. Acts 1998, ch. 575, § 2, effective July 15, 1998; 2000, ch. 13, § 1, effective July 14, 2000; 2000, ch. 198, § 1, effective July 14, 2000; 2000, ch. 382, § 11, effective July 14, 2000; 2002, ch. 51, § 1, effective July 15, 2002.)

Legislative Research Commission Note. (7/14/2000). This section was amended by 2000 Ky. Acts chs. 13, 198, and 382. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 198, which was last enacted by the General Assembly, prevails under KRS 446.250.

Cross-References. Kentucky Educational Excellence Scholarship (KEES), 13 KAR 2:090.

164.7877. Kentucky educational excellence scholarship trust fund — Funding sources, including lottery revenues.

(1) There is established in the State Treasury a permanent and perpetual fund to be known as the "Wallace G. Wilkinson Kentucky Educational Excellence Scholarship Trust Fund" to which shall be credited net lottery revenues transferred in accordance with KRS 154A.130; gifts; bequests; endowments; grants from the United States government, its agencies, and instrumentalities; and funds received from any other sources, public or private.

(2) The moneys in the fund are hereby continuously appropriated only for the purposes set forth in KRS 164.7871 to 164.7885 and KRS 164.7889.

(3) The council shall administer the Kentucky educational excellence scholarship trust fund. Upon the approval of the council, the authority may expend funds from the Kentucky educational excellence scholarship trust fund that are necessary and reasonable to meet the expenses of administering the Kentucky educational excellence scholarship trust fund.

(Enact. Acts 1998, ch. 575, § 3, effective July 15, 1998; 2000, ch. 13, § 2, effective July 14, 2000; 2000, ch. 198, § 2, effective July 14, 2000.)

Legislative Research Commission Note. (7/14/2000). This section was amended by 2000 Ky. Acts chs. 13 and 198, which do not appear to be in conflict and have been codified together.

Cross-References. Kentucky Educational Excellence Scholarship (KEES), 13 KAR 2:090.

164.7879. Calculation of educational excellence scholarship awards — Inclusion of certain out-of-state educational experience in grade point average calculation — Supplemental award eligibility and calculation of amounts.

(1) Kentucky educational excellence scholarship awards shall be based upon an established base scholarship amount and an eligible high school student's grade point average. The base scholarship amount for students attaining a grade point average of at least 2.5 for the 1998-1999 academic year shall be as follows:

GPA	Amount	GPA	Amount
2.50	$125.00	3.30	$325.00
2.60	$150.00	3.40	$350.00
2.70	$175.00	3.50	$375.00
2.75	$187.00	3.60	$400.00
2.80	$200.00	3.70	$425.00
2.90	$225.00	3.75	$437.00
3.00	$250.00	3.80	$450.00
3.10	$275.00	3.90	$475.00
3.20	$300.00	4.00	$500.00
3.25	$312.00		

The council shall review the base amount of the Kentucky educational excellence scholarship beginning with the 1999-2000 academic year and each academic year thereafter and may promulgate an administrative regulation to make adjustments after considering the availability of funds.

(2) (a) The authority shall commit to provide to each eligible high school student the base amount of the Kentucky educational excellence scholarship for each academic year of high school study in the Kentucky educational excellence scholarship curriculum that the high school student has attained at least a 2.5 grade point average. The award shall be based upon the eligible high school student's grade point average at the close of each academic year. An award attributable to a past academic year shall not be increased after the award has been earned by an eligible high school student, regardless of any subsequent increases made to the base amount of the Kentucky educational excellence scholarship through the promulgation of an administrative regulation by the council.

(b) Notwithstanding the definitions of "eligible high school student" and "high school" in KRS 164.7874, any high school student who maintains Kentucky residency and completes the academic courses that are required for a Kentucky educational excellence scholarship while participating in an approved educational high school foreign exchange program or participating in the United States Congressional Page School may apply his or her grade point average for that academic year toward the base as described in paragraph (a) of this subsection. The grade point average shall be reported by the student's Kentucky home high school, based on an official transcript from the school that the student attended during the out-of-state educational experience. The council shall promulgate administrative regulations that describe the approval process for the educational exchange programs that qualify under this paragraph. The provisions in this paragraph shall likewise apply to any Kentucky high school student who participated in an approved educational exchange program or in a Congressional Page School since the 1998-99 school year and maintained his or her Kentucky residency throughout.

(c) 1. Notwithstanding the definitions of "eligible high school student" and "high school" in KRS 164.7874 and the requirement that a student graduate from a Kentucky high school, a high school student who completes the KEES curriculum while attending an accredited out-of-state high school or Department of Defense school may apply the grade point average for any applicable academic year toward the base as described in paragraph (a) of this subsection and shall also qualify for a supplemental award under subsection (3) of this section when:

a. His or her custodial parent or guardian is in active service of the Armed Forces of the United States; and

b. The custodial parent or guardian maintained Kentucky as the home of record at the time the student attended an accredited out-of-state high school or a Department of Defense school.

2. The student or parent shall arrange for the out-of-state school to report the student's grade point average each academic year and the student's highest ACT score to the Kentucky Department of Education as required under KRS 164.7885. The Council on Postsecondary Education shall promulgate administrative regulations implementing the requirements in this paragraph, including:

a. The documentation that the parent shall submit to the council establishing the student's eligibility for the scholarship; and

b. The assurances that an out-of state institution shall submit to the Kentucky Department of Education for submission of the student grade point average.

3. The provisions in this paragraph shall apply to the 2001-2002 school year and thereafter.

(3) (a) The authority shall commit to provide to each eligible high school student graduating from high school before June 30, 1999, and achieving a score of at least 15 on the American College Test, a supplemental award for the award period beginning in the fall of 1999, based on the eligible high school student's highest ACT score attained by the date of graduation from high school. The amount of the supplemental award shall be determined as follows:

ACT Score	Annual Bonus	ACT Score	Annual Bonus
15	$21	22	$171
16	$ 43	23	$193
17	$ 64	24	$214
18	$ 86	25	$236
19	$107	26	$257
20	$129	27	$279
21	$150	28 or above	$300

Subsequent supplemental awards for eligible high school students graduating before June 30, 1999, shall be determined in accordance with the provisions of paragraph (b) of this subsection.

(b) The authority shall commit to provide to each eligible high school student upon achievement after June 30, 1999, of an ACT score of at least 15 on the American College Test a supplemental award based on the eligible high school student's highest ACT score attained by the date of graduation from high school. The amount of the supplemental award shall be determined as follows:

ACT Score	Amount	ACT Score	Amount
15	$ 36	22	$286
16	$ 71	23	$321
17	$107	24	$357
18	$143	25	$393
19	$179	26	$428
20	$214	27	$464
21	$250	28 and above	$500

The council shall review the base amount of the supplemental award beginning with the 2001-2002 academic year and each academic year thereafter and may promulgate an administrative regulation to make adjustments after considering the availability of funds.

(c) The council shall promulgate administrative regulations establishing the eligibility criteria and procedures for making a supplemental award to Kentucky residents who are citizens, nationals, or permanent residents of the United States and who graduate from a nonpublic secondary school not certified by the Kentucky Board of Education and Kentucky residents who are citizens, nationals, or permanent residents of the United States and who obtain a General Educational Development (GED) diploma within five (5) years of their high school graduating class, and students under subsection (2)(c) of this section who do not attend an accredited high school.

(Enact. Acts 1998, ch. 575, § 4, effective July 15, 1998; 2000, ch. 13, § 3, effective July 14, 2000; 2000, ch. 198, § 3, effective July 14, 2000; 2001, ch. 25, § 1, effective June 21, 2001; 2002, ch. 278, § 1, effective July 15, 2002.)

Cross-References. Kentucky Educational Excellence Scholarship (KEES), 13 KAR 2:090.

164.7881. Eligibility for educational excellence scholarship and supplemental awards — Time limits for receiving aid — Adjustment of amounts and loss of award — Extension of time limits — Senator Jeff Green Scholars.

(1) Eligible high school students who have graduated from high school and eligible postsecondary students who have earned a Kentucky educational excellence scholarship, a Kentucky educational excellence scholarship and a supplemental award, or a supplemental award only pursuant to KRS 164.7879(3)(c), shall be eligible to receive the Kentucky educational excellence scholarship, the Kentucky educational excellence scholarship and the supplemental award, or a supplemental award only for a maximum of eight (8) academic terms in an undergraduate or other postsecondary program of study at a participating institution, except as provided in subsection (6) of this section.

(2) To receive the Kentucky educational excellence scholarship, a Kentucky educational excellence scholarship and supplemental award, or a supplemental award only, an eligible high school or postsecondary student shall:
   (a) Enroll in and attend a participating institution as a full-time student or a part-time student; and
   (b) Maintain eligibility as provided in subsection (3) of this section.

(3) Eligibility for a Kentucky educational excellence scholarship or a Kentucky educational excellence scholarship and supplemental award shall terminate upon the earlier of:
   (a) The expiration of five (5) years following the student's graduation from high school, except as provided in subsection (5) or (6) of this section; or
   (b) The successful completion of an undergraduate or other postsecondary course of study. However, any student who successfully completes the requirements for a degree or certification involving a postsecondary course of study that normally requires less than eight (8) academic terms to complete may continue to receive the benefits of a Kentucky educational excellence scholarship, a Kentucky educational excellence scholarship and supplemental award, or a supplemental award only, for a cumulative total of eight (8) academic terms if the student enrolls as at least a part-time student in a four (4) year program.

(4) (a) The maximum award amount shall be determined by the council and shall be adjusted as provided in this subsection. The award amount ultimately determined to be available to an eligible postsecondary student for an award period shall be disbursed by the authority to the eligible postsecondary student in two (2) installments, with one (1) installment being disbursed in each of the two (2) academic terms during the award period.
   (b) The authority shall, by promulgation of administrative regulations, provide for the proportionate reduction of the maximum award amount for an eligible postsecondary student for any academic term in which the student is enrolled on a part-time basis. Each academic term for which any scholarship or supplemental award funds are accepted by an eligible postsecondary student shall count as a full academic term, even if the award amount was reduced to reflect the part-time status of the eligible postsecondary student.
   (c) 1. An eligible postsecondary student who is enrolled full-time in an undergraduate program of study, in the pharmacy program at the University of Kentucky, or in a program of study designated as an equivalent undergraduate program of study by the Council on Postsecondary Education in an administrative regulation, shall receive the maximum award amount for the first award period that the student is enrolled in and attending the program of study. To retain the maximum award for the second award period, an eligible postsecondary student shall have at least a 2.5 grade point average at the end of the first award period. To retain the maximum award amount for subsequent award periods, an eligible postsecondary student shall have a cumulative grade point average of 3.0 or greater at the end of the prior award period.
   2. Any eligible postsecondary student who maintains a cumulative grade point average of less than 3.0 but at least 2.5 at the completion of any award period shall receive a reduction in the maximum award amount equal to fifty percent (50%) of the maximum award amount for the next award period.
   3. Any eligible postsecondary student who maintains a cumulative grade point average of less than 2.5 at the completion of any award period shall lose his or her award for the next award period.
   4. Each participating institution shall certify to the authority at the close of each award period the cumulative grade point average of each Kentucky educational excellence scholarship recipient enrolled as a full-time or part-time student at the participating institution.
   5. Any student who loses eligibility through failure to maintain the required cumulative grade point average may regain eligibility in a subsequent award period upon reestablishing at least a 2.5 cumulative grade point average or its equivalent during a subsequent award period, as certified by the participating institution.

(5) The expiration of a student's five (5) year eligibility shall be extended by the authority upon a determination that the student was unable to enroll for or complete an academic term due to any of the following circumstances:
   (a) A serious and extended illness or injury of the student, certified by an attending physician;
   (b) The death or serious and extended illness or injury of an immediate family member of the student, certified by an attending physician, which would render the student unable to attend classes;
   (c) Natural disasters that would render a student unable to attend classes; or
   (d) Active duty status for the student in the United States Armed Forces or as an officer in the Commissioned Corps of the United States Public Health Service, or active service by the student in the Peace Corps Act or the Americorps, for up to three (3) years.

(6) An eligible postsecondary student who is enrolled at a participating institution in a five (5) year undergraduate degree program designated in an administrative regulation promulgated by the council shall be eligible to receive the Kentucky

educational excellence scholarship, the Kentucky educational excellence scholarship and the supplemental award, or the supplemental award only for a maximum of ten (10) academic terms. The expiration of an eligible postsecondary student's five (5) year eligibility shall be extended to six (6) years for eligible postsecondary students meeting the requirements of this subsection.

(7) Each eligible high school student who attains a 28 or above on the ACT and a 4.0 grade point average for all four (4) years of high school shall be designated as a "Senator Jeff Green Scholar" in honor of the late Senator Jeff Green of Mayfield, Kentucky, First District, and shall be recognized by the high school in a manner consistent with recognition given by the high school to other high levels of academic achievement.

(Enact. Acts 1998, ch. 575, § 5, effective July 15, 1998; 2000, ch. 13, § 4, effective July 14, 2000; 2000, ch. 198, § 4, effective July 14, 2000; 2002, ch. 278, § 2, effective July 15, 2002; 2002, ch. 326, § 2, effective July 15, 2002.)

Legislative Research Commission Note. (7/15/2002). This section was amended by 2002 Ky. Acts chs. 278 and 326, which do not appear to be in conflict and have been codified together.

(7/15/2002). The amendments made to this statute in subsection (4)(c)1. relating to an equivalent undergraduate program of study "apply to the 2001-2002 academic year and thereafter. An eligible student under the provisions of this Act for the 2001-2002 academic year shall have until October 1, 2002, to apply for a retroactive award." 2002 Ky. Acts ch. 326, sec. 3.

(7/15/2002). The amendment made to subsection (4)(c)1. of this statute relating to the pharmacy program at the University of Kentucky in 2002 Ky. Acts ch. 278, sec. 2, "shall first apply to the 2000-2001 academic year." 2002 Ky. Acts ch. 278, sec. 3.

Cross-References. Kentucky Educational Excellence Scholarship (KEES), 13 KAR 2:090.

Kentucky Educational Excellence Scholarship award determination procedure, 11 KAR 15:040.

164.7883. Use of scholarship and supplemental award at out-of-state institution.

An eligible student who has earned a Kentucky educational excellence scholarship, or the Kentucky educational excellence scholarship and the supplemental award, and who is enrolled in an out-of-state institution shall be eligible to receive the Kentucky educational excellence scholarship, or the Kentucky educational excellence scholarship and the supplemental award, if he or she is enrolled in a degree program in a field of study that is not available at any participating institution in the Commonwealth. The Council on Postsecondary Education shall promulgate administrative regulations to establish procedures to designate an out-of-state institution as an approved participating institution as defined in KRS 164.7874 and to notify the Kentucky Higher Education Assistance Authority of its approval to transfer to the out-of-state institution the amount of the scholarship and supplemental award, earned by the eligible student.

(Enact. Acts 2000, ch. 382, § 12, effective July 14, 2000.)

164.7885. Annual submission by high schools of list of eligible students — Data in list — Verification of eligibility — Reduction of award — Authority for administrative regulations.

(1) Not later than August 1, 1999, and each June 30 thereafter, each Kentucky high school shall submit to the Kentucky Department of Education, which shall transmit to the authority, a compiled list of all high school students during the academic year. A high school shall report the grade point average of an eligible high school student pursuant to KRS 164.7874 by January 15 following the end of the fall academic term in which the student completed the high school graduation requirements. The list shall identify the high school and shall contain each high school student's name, Social Security number, address, grade point average for the academic year, expected or actual graduation date, and highest ACT score. The list need not contain the ACT score if the authority receives the ACT score directly from the testing services. The authority shall notify each eligible high school student of his or her Kentucky educational excellence scholarship award earned each academic year. The authority shall determine the final Kentucky educational excellence scholarship and supplemental award based upon the actual final grade point average and highest ACT score and shall notify each eligible high school student of the final determination. The authority shall make available a list of eligible high school and postsecondary students to participating institutions.

(2) The authority shall provide data access only to participating institutions that have either received an admission application from an eligible high school or postsecondary student or have been listed by the eligible high school or postsecondary student on the Free Application For Federal Student Aid.

(3) For each eligible postsecondary student enrolling in a participating institution after July 1, 1999, the participating institution shall verify to the authority:

(a) The student's initial eligibility for a Kentucky educational excellence scholarship, Kentucky educational excellence scholarship and supplemental award, or supplemental award only pursuant to KRS 164.7879(3)(c) through the comprehensive list compiled by the authority or an alternative source satisfactory to the authority;

(b) The student's highest ACT score attained by the date of graduation from high school, provided that the participating institution need not report the ACT score if the authority receives the ACT score directly from the testing services;

(c) The eligible postsecondary student's full-time or part-time enrollment status at the beginning of each academic term; and

(d) The eligible postsecondary student's cumulative grade point average after the completion of each award period.

(4) Each participating institution shall submit to the authority a report, in a form satisfactory to the authority, of all eligible postsecondary students enrolled for that academic term. Kentucky educational excellence scholarships and supplemental awards shall be disbursed by the authority to each eligible postsecondary student attending a participating institution during the academic term within thirty (30) days after receiving a satisfactory report.

(5) The Kentucky educational excellence scholarship and the supplemental award shall not be reduced, except as provided in KRS 164.7881(4).

(6) Kentucky educational excellence scholarships and supplemental awards shall not be awarded or disbursed to any eligible postsecondary students who are in default on any obligation to the authority under any programs administered by the authority until financial obligations to the authority are satisfied, except that ineligibility may be waived by the authority for cause.

(7) Notwithstanding the provisions of KRS 164.753, the authority may promulgate administrative regulations for the administration of Kentucky educational excellence scholarships and supplemental awards under the provisions of KRS 164.7871 to 164.7885 and KRS 164.7889.

(Enact. Acts 1998, ch. 575, § 6, effective July 15, 1998; 2000, ch. 13, § 5, effective July 14, 2000; 2000, ch. 198, § 5, effective July 14, 2000; 2002, ch. 51, § 2, effective July 15, 2002.)

Legislative Research Commission Note. (7/14/2000). This section was amended by 2000 Ky. Acts chs. 13 and 198. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 198, which was last enacted by the General Assembly, prevails under KRS 446.250.

Cross-References. Definitions, 11 KAR 15:010.

Disbursement, 11 KAR 15:050.

Dual enrollment under consortium agreement, 11 KAR 15:030.

Kentucky Educational Excellence Scholarship (KEES), 13 KAR 2:090.

Kentucky Educational Excellence Scholarship award determination procedure, 11 KAR 15:040.

Kentucky Educational Excellence Scholarship overpayment and refund and repayment procedure, 11 KAR 15:060.

Records and reports, 11 KAR 15:070.

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CHAPTER 164A

HIGHER EDUCATION FINANCE

SECTION.

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KENTUCKY EDUCATIONAL SAVINGS PLAN TRUST

164A.300. Legislative findings and intent.

(1) The General Assembly of the Commonwealth of Kentucky hereby declares as a legislative finding of fact that the general welfare and well-being of the Commonwealth are directly related to the educational levels and skills of the citizens of the Commonwealth. Therefore, a vital and valid public purpose of the Commonwealth is served by the creation and implementation of programs which encourage and make possible the attainment of higher education by the greatest number of citizens of the Commonwealth.

(2) The General Assembly finds, declares, and recognizes that the Commonwealth has limited resources to provide additional programs for higher education funding and that the continued operation and maintenance of the institutions of higher education in Kentucky and the general welfare of the citizens and the Commonwealth will be enhanced by creation of a program pursuant to which

citizens and others may invest money in a public trust for future application to the payment of higher education costs in the Commonwealth and elsewhere and that the creation of a means of encouragement of citizens in the investment of funds for such future higher education application represents the carrying out of a valid and vital public purpose of the Commonwealth. In order to make available to the citizens of the Commonwealth an opportunity to fund future higher education needs for beneficiaries, it is necessary that a public trust be established in which the citizens of the Commonwealth and others may invest moneys for future educational use.

(3) It is the intent of the General Assembly of the Commonwealth of Kentucky to create the Kentucky Educational Savings Plan Trust. The implementation and effectuation of the Kentucky Educational Savings Plan Trust as provided by KRS 164A.300 to 164A.380 constitutes the carrying out of a valid and vital public purpose for which public funds of the Commonwealth may be expended.

(4) It is in the best interest of the people of the Commonwealth to establish and provide for the operation of the Kentucky Educational Savings Plan Trust in a manner conforming to federal law that allows participants and beneficiaries federal income taxation benefits on contributions and earnings on contributions expended by the trust for the higher education costs of a beneficiary.

(Enact. Acts 1988, ch. 88, § 1, effective July 15, 1988; 1992, ch. 190, § 2, effective July 14, 1992; 1998, ch. 132, § 1, effective March 26, 1998; 2000, ch. 382, § 1, effective July 14, 2000.)

Cross-References. Definitions for 11 KAR Chapter 12, 11 KAR 12:010.

164A.305. Definitions for KRS 164A.300 to 164A.380.

As used in KRS 164A.300 to 164A.380, except where the context clearly requires another interpretation:

(1) "Act" means the Kentucky Educational Savings Plan Trust Act codified at KRS 164A.300 to 164A.380;

(2) "Administrative fund" means the funds used to administer the Kentucky Educational Savings Plan Trust;

(3) "Beneficiary" means:

(a) Any person designated at the commencement of participation by a participation agreement to benefit from payments for higher education costs at an institution of higher education;

(b) The new beneficiary, in the case of a change of beneficiaries pursuant to KRS 164A.330(4); or

(c) The scholarship recipient, in the case of a participation agreement entered into as part of a scholarship program operated by a state or local government organization or an organization described in Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. sec. 501(c)(3), that is exempt from federal income taxation pursuant to Section 501(a) of that code;

(4) "Benefits" means the payment of higher education costs on behalf of a beneficiary by the savings plan trust during the beneficiary's attendance at an institution of higher education;

(5) "Board" means the board of directors of the Kentucky Higher Education Assistance Authority;

(6) "Higher education costs" means the costs specified in section 529(e)(3) of the Internal Revenue Code of 1986 as amended for attendance at an institution of higher education as determined and certified by the institution of higher education in the same manner as prescribed in Title IV of the Higher Education Act of 1965, 20 U.S.C. sec. 1087ll, as amended;

(7) "Institution of higher education" means an institution as defined in Section 529(e)(5) of the Internal Revenue Code of 1986, as amended;

(8) "Kentucky Educational Savings Plan Trust" or "savings plan trust" means the trust created pursuant to KRS 164A.310;

(9) "Participant" means an organization described in Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. sec. 501(c)(3), that is exempt from federal income taxation pursuant to Section 501(a) of that code, an individual, firm, corporation, a state or local government organization, or a legal representative of any of the foregoing who has entered into a participation agreement pursuant to KRS 164A.300 to 164A.380 for the advance payment of higher education costs on behalf of a beneficiary;

(10) "Participation agreement" means an agreement between a participant and the savings plan trust, pursuant to and conforming with the requirements of KRS 164A.300 to 164A.380;

(11) "Program administrator" means the administrator of the savings plan trust appointed by the board to administer and manage the trust;

(12) "Program fund" means the program fund established by KRS 164A.335 which shall be held as a separate fund within the savings plan trust;

(13) "Tuition" means the quarterly or semester charges imposed to attend an institution of higher education and required as a condition of enrollment;

(14) "Vested participation agreement" means a participation agreement which has been in full force and effect during eight (8) continuous years of residency of the beneficiary in the Commonwealth while participating in the savings plan trust.

(Enact. Acts 1988, ch. 88, § 2, effective July 15, 1988; 1992, ch. 190, § 3, effective July 14, 1992; 1996, ch. 11, § 1, effective July 15, 1996; 1998, ch. 132, § 3, effective March 26, 1998; 2000, ch. 382, § 2, effective July 14, 2000.)

Cross-References. Residency classification for Kentucky Educational Savings Plan Trust vested participation agreements, 11 KAR 12:040.

164A.310. Kentucky Educational Savings Plan Trust — Powers of board.

There is hereby created an instrumentality of the Commonwealth to be known as the Kentucky Educa-

tional Savings Plan Trust. The board, in the capacity of trustee, shall have the power and authority to:

(1) Sue and be sued;

(2) Make and enter into contracts necessary for the administration of the savings plan trust pursuant to KRS 164A.300 to 164A.380;

(3) Adopt a corporate seal and to change and amend it from time to time;

(4) Invest moneys within the program fund in any investments determined by the board to be appropriate, notwithstanding any other statutory limitations contained in the Kentucky Revised Statutes, which are specifically determined to be inapplicable to the savings plan trust;

(5) Enter into agreements with any institution of higher education, the Commonwealth of Kentucky, or any federal or other state agency or other entity as required for the effectuation of its rights and duties pursuant to KRS 164A.300 to 164A.380;

(6) Accept any grants, gifts, legislative appropriations, and other moneys from the Commonwealth, any unit of federal, state, or local government or any other person, firm, partnership, or corporation for deposit to the administrative fund or the program fund, which, in the case of any contributions from other than general funds of the Commonwealth, may be limited in application to definite classes of beneficiaries;

(7) Enter into participation agreements with participants;

(8) Make payments to institutions of higher education pursuant to participation agreements on behalf of beneficiaries;

(9) Make refunds to participants upon the termination of participation agreements pursuant to the provisions, limitations, and restrictions set forth in KRS 164A.300 to 164A.380;

(10) Appoint a program administrator and to determine the duties of the program administrator and other staff as necessary and fix their compensation within the provisions of KRS Chapter 18A;

(11) Delegate to the program administrator general supervision and direction over the administrative function of the trust and its employees in carrying out the policies, programs, administrative regulations, and directives of the board;

(12) Make provision for the payment of costs of administration and operation of the savings plan trust;

(13) Carry out the duties and obligations of the savings plan trust pursuant to KRS 164A.300 to 164A.380 and to have any and all other powers as may be reasonably necessary for the effectuation of the purposes of the savings plan trust and KRS 164A.300 to 164A.380; and

(14) Promulgate administrative regulations to implement the provisions of KRS 164A.300 to 164A.380 consistent with the federal Internal Revenue Code and administrative regulations issued pursuant to that code.

(Enact. Acts 1988, ch. 88, § 3, effective July 15, 1988; 1990, ch. 321, § 9, effective July 13, 1990; 1992, ch. 190, § 4, effective July 14, 1992; 1998, ch. 132, § 2, effective March 26, 1998; 2000, ch. 382, § 3, effective July 14, 2000.)

Compiler's Notes. Section 13 of Acts 2000, ch. 382, effective July 14, 2000, read: "Moneys held by the Kentucky Educational Savings Plan Trust on June 30, 2000, as an endowment for purposes of distributing investment earnings to beneficiaries enrolled in an institution of higher education in Kentucky may, at the discretion of the board of directors of the Kentucky Higher Education Assistance Authority in its capacity of trustee, be distributed as follows:

"(1) The investment earnings on the endowment fund accrued as of June 30, 2000, shall be allocated and proportionally added to each participant's account in the program fund; and

"(2) The remainder of the moneys held in the endowment fund on June 30, 2000, including, but not limited to, any contributions to the endowment, may be distributed in any amount and combination of the following dispositions:

"(a) Proportionally added to each participant's account in the program fund; or

"(b) Transferred to the administrative fund."

Cross-References. Benefits payable from the Kentucky Educational Savings Plan Trust Program fund, 11 KAR 12:070.

General rules for investments and fund transfers, 11 KAR 12:020.

164A.315. Office facilities, clerical and administrative support for endowment trust.

The board shall provide to the endowment trust, by agreement, administrative and clerical support and office facilities and space. Reasonable charges or fees may be levied against the endowment trust pursuant to the agreement for the services provided by the board, the provision of office space and clerical and administrative support being deemed and declared to be provided for a valid public purpose of the Commonwealth. (Enact. Acts 1988, ch. 88, § 4, effective July 15, 1988; 1992, ch. 190, § 5, effective July 14, 1992.)

164A.325. Additional powers of board as to savings plan trust.

In addition to effectuating and carrying out all of the powers granted by KRS 164A.300 to 164A.380, the board, as trustee, shall have all powers necessary to carry out and effectuate the purposes, objectives, and provisions of KRS 164A.300 to 164A.380 pertaining to the savings plan trust, including, but not limited to, the power to:

(1) Engage investment advisors to assist in the investment of savings plan trust assets;

(2) Carry out studies and projections in order to advise participants regarding present and estimated future higher education costs and levels of financial participation in the trust required in order to enable participants to achieve their educational funding objectives;

(3) Contract, in accordance with the provisions of KRS 45A.345 to 45A.460 under KRS 45A.343, for goods and services and engage personnel as necessary, including consultants, actuaries, managers, counsel, and auditors for the purpose of rendering professional, managerial, and technical assistance and advice, all of which contract obligations and services shall be payable from any moneys of the trust;

(4) Participate in any other way in any federal, state, or local governmental program for the benefit of the savings plan trust;
(5) Promulgate, impose, and collect administrative fees and charges in connection with transactions of the savings plan trust, and provide for reasonable service charges, including penalties for cancellations and late payments in respect of participation agreements;
(6) Procure insurance against any loss in connection with the property, assets or activities of the savings plan trust;
(7) Administer the funds of the savings plan trust;
(8) Procure insurance indemnifying any member of the board from personal loss or accountability arising from liability resulting from a member's action or inaction as a member of the board; and
(9) Promulgate reasonable rules and regulations for the administration of the savings plan trust.

(Enact. Acts 1988, ch. 88, § 6, effective July 15, 1988; 1990, ch. 321, § 10, effective July 13, 1990; 1992, ch. 190, § 6, effective July 14, 1992; 2000, ch. 382, § 4, effective July 14, 2000.)

Cross-References. Benefits payable from the Kentucky Educational Savings Plan Trust Program fund, 11 KAR 12:070.

Cancellation and payment of refund, 11 KAR 12:060.

Definitions for 11 KAR Chapter 12, 11 KAR 12:010.

Eligibility of beneficiary and participant, 11 KAR 12:030.

General rules for investments and fund transfers, 11 KAR 12:020.

Residency classification for Kentucky Educational Savings Plan Trust vested participation agreements, 11 KAR 12:040.

Substitution of a beneficiary, 11 KAR 12:050.

Transfer of ownership of Kentucky Educational Savings Plan Trust Program fund, 11 KAR 12:090.

164A.330. Participation agreements for savings plan trust — Confidentiality of information.

The savings plan trust shall have the authority to enter into participation agreements with participants on behalf of beneficiaries pursuant to the following terms and agreements:

(1) Each participation agreement shall require a participant to agree to invest a specific amount of money in the trust for a specific period of time for the benefit of a specific beneficiary. Participation agreements may be amended to provide for adjusted levels of contributions based upon changed circumstances or changes in educational plans and may contain penalties for failure to make contributions when scheduled;
(2) Notwithstanding the provisions of subsection (1) of this section, participants may elect to enter into a lump-sum contribution participation agreement in connection with which a single, lump-sum contribution is made by the participant for the benefit of a beneficiary;
(3) Execution of a participation agreement by the trust shall not guarantee in any way that higher education costs will be equal to projections and estimates provided by the trust or that the beneficiary named in any participation agreement will:
    (a) Be admitted to an institution of higher education;
    (b) If admitted, be determined a resident for tuition purposes by the institution of higher education, unless the participation agreement is vested;
    (c) Be allowed to continue attendance at the institution of higher education following admission; or
    (d) Graduate from the institution of higher education;
(4) Beneficiaries may be changed as permitted by the rules and regulations of the board upon written request of the participant provided, however, that the substitute beneficiary shall be eligible;
(5) Participation agreements shall be freely amended throughout their terms in order to enable participants to increase or decrease the level of participation, change the designation of beneficiaries, and carry out similar matters;
(6) Each participation agreement shall provide that for vested participation agreements, the beneficiary shall be considered a resident of the Commonwealth for tuition purposes if the beneficiary enrolls in an institution of higher education in Kentucky;
(7) Each participation agreement shall provide that it may be canceled under the terms and conditions, including payment of the fees and costs, set forth in the rules and regulations promulgated by the board;
(8) The participation agreement shall ensure that contributions made pursuant to subsections (1) and (2) of this section shall not be made in real or personal property other than cash and shall not exceed the anticipated higher education costs of the beneficiary;
(9) The participation agreement shall provide that the participant and the beneficiary shall not directly or indirectly or otherwise control the investment of contributions or earnings on contributions;
(10) Information obtained from a participant or a beneficiary and other personally identifiable records made by the trust in the administration of this chapter shall not be published or be open for public inspection pursuant to KRS 61.870 to 61.884, except as provided below:
    (a) Upon written request, a participant or beneficiary or his legal representative shall be entitled to be advised of the aggregate balance of contributions and earnings for all participation agreements that designate that same beneficiary;
    (b) Information may be made available to public employees in the performance of their duties, but the agency receiving the information shall assure the confidentiality, as provided for in this section, of all information so released;
    (c) Statistical information derived from information and records obtained or made by the trust may be published, if it in no way reveals the identity of any participant or beneficiary; and
    (d) Nothing in this section shall preclude the program administrator or any employee of the

board from testifying or introducing as evidence information or records obtained or made by the trust in any proceeding under this chapter, in an action to which the trust is a party, or upon order of a court.

(Enact. Acts 1988, ch. 88, § 7, effective July 15, 1988; 1992, ch. 190, § 7, effective July 14, 1992; 1996, ch. 11, § 2, effective July 15, 1996; 1998, ch. 132, § 4, effective March 26, 1998; 2000, ch. 382, § 5, effective July 14, 2000.)

Cross-References. Benefits payable from the Kentucky Educational Savings Plan Trust Program fund, 11 KAR 12:070.

Eligibility of beneficiary and participant, 11 KAR 12:030.

Residency classification for Kentucky Educational Savings Plan Trust vested participation agreements, 11 KAR 12:040.

Substitution of a beneficiary, 11 KAR 12:050.

164A.335. Program and administrative funds for savings plan trust — Investment and payments from funds.

The board, as trustee, shall segregate moneys received by the savings plan trust into two (2) funds, which shall be identified as the program fund and the administrative fund. Transfers may be made from the program fund to the administrative fund for the purpose of paying operating costs associated with administering the trust and as required by KRS 164A.300 to 164A.380. All moneys credited to the administrative fund shall be deposited in accordance with KRS 41.070. All moneys paid by participants in connection with participation agreements shall be deposited as received into the program fund and shall be promptly invested and accounted for separately. Contributions shall be accounted for separately for each beneficiary. Deposits and interest thereon accumulated on behalf of participants in the program fund of the savings plan trust may be used for payments to any institution of higher education.

(Enact. Acts 1988, ch. 88, § 8, effective July 15, 1988; 1992, ch. 190, § 8, effective July 14, 1992; 1998, ch. 132, § 5, effective March 26, 1998; 2000, ch. 382, § 6, effective July 14, 2000.)

Cross-References. Benefits payable from the Kentucky Educational Savings Plan Trust Program fund, 11 KAR 12:070.

General rules for investments and fund transfers, 11 KAR 12:020.

164A.337. Endowment trust for student financial assistance benefits — Authority to incorporate corporation to administer — Annual report.

(1) The board is authorized to incorporate an organization pursuant to KRS Chapter 273 for the eleemosynary, charitable, and educational purposes of administering an endowment trust. The organization so created shall be an instrumentality of the Commonwealth, but shall possess no part of the sovereign powers of the Commonwealth. The corporation shall be created to qualify as a tax exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code.

(2) The endowment trust created pursuant to subsection (1) of this section shall solicit and accept gifts, grants, donations, bequests, or other endowments, including general fund appropriations from the Commonwealth and grants from any federal or other governmental agency, for the purposes of the endowment trust.

(3) The endowment trust shall provide student financial assistance benefits, including, but not limited to, grants, scholarships, or loans to pay higher education costs of members of the public, designated as beneficiaries of participation agreements under the Kentucky Educational Savings Plan Trust, who enroll in an institution of higher education in Kentucky.

(4) The board is authorized to transfer to the endowment trust, after its qualification under Section 501(c)(3) of the Internal Revenue Code, any funds or assets then held in the endowment fund initially established pursuant to KRS 164A.335.

(5) Any gifts, grants, or donations made by any governmental unit or any person, firm, partnership or corporation to the endowment trust shall be a grant, gift, or donation for the accomplishment of a valid public, eleemosynary, charitable, and educational purpose.

(6) The endowment trust shall submit an annual audited report, in accordance with KRS 164A.365(1) and (2), to the program administrator not later than the fifteenth of each September.

(Enact. Acts 1992, ch. 190, § 1, effective July 14, 1992.)

Compiler's Notes. Section 501(c)(3) of the Internal Revenue Code, referred to in subsection (4) of this section, is compiled as 26 U.S.C. § 501(c)(3).

164A.350. Ownership of contributions and interest — Cancellation of participation agreement — Transfer of ownership rights — Penalty on earnings refunded due to cancellation or nondistribution — Exemption from creditor's execution.

For all purposes of Kentucky law, the following shall be applicable:

(1) The trust shall exercise ownership of all contributions made under any participation agreement and all interest derived from the investment of the contributions made by the participant up to the date of utilization for payment of higher education costs for the beneficiary. All contributions made under any participant agreement and interest derived from the investment of the contributions made by the participant shall be deemed to be held in trust for the benefit of the beneficiary;

(2) Any participant may cancel a participation agreement at any time, and terminate the trust's ownership rights thereby created in whole or in part, by delivering an instrument in writing signed and delivered to the program administrator or his designee. In the event the participation agreement is terminated in part, the trust shall retain ownership of all contributions made under the partic-

ipation agreement not previously expended for the higher education costs of the beneficiary and not returned to the participant. The participant shall retain a reversionary right to receive upon termination the actual market value of the participant's account at the time of the cancellation, including interest, except that the participant shall be required to pay a penalty upon the interest that has been credited to the participant's account in accordance with subsection (8) of this section;

(3) Any participant may cancel a participation agreement and shall be permitted to transfer funds to the Commonwealth postsecondary education prepaid tuition trust fund established in KRS 164A.701, and in compliance with administrative regulations promulgated by the board for the savings plan trust.

(4) If the beneficiary graduates from an institution of higher education, and a balance remains in the participant's account, then the program administrator shall pay the balance to the participant, except that the participant shall be required to pay a penalty upon the interest that has been credited to the participant's account in accordance with subsection (8) of this section;

(5) The institution of higher education shall obtain ownership of the distributions made from the participant's account for the higher education costs paid to the institution at the time each payment is made to the institution;

(6) Any amounts received by the trust pursuant to the Kentucky Educational Savings Plan Trust which are not listed in this section shall be owned by the trust;

(7) A participant may transfer the participant's rights to another eligible participant, including, but not limited to, a gift of the participant's rights to a minor beneficiary pursuant to KRS Chapter 385, except that, notwithstanding KRS 385.202(1), the transfer shall be affected and the property distributed in accordance with administrative regulations promulgated by the board or the terms of the participation agreement;

(8) Notwithstanding any other law to the contrary, if any earnings on contributions are refunded due to cancellation of the participation agreement by the participant or nondistribution of the funds for payment of the beneficiary's higher education costs, the board shall charge a penalty to the participant against the earnings on contributions. No penalty shall be charged when a refund is made due to:

(a) The death, permanent disability, or mental incapacity of the beneficiary; or

(b) The beneficiary's receipt of a scholarship, an educational assistance allowance under Chapters 30, 31, 32, 34, or 35 of Title 38, United States Code, or a payment exempt from income taxation by any law of the United States, other than a gift, bequest, devise, or inheritance within the meaning of Section 102(a) of the Internal Revenue Code, 26 U.S.C. sec. 102(a), for educational expenses, or attributable to attendance at an institution of higher education, to the extent that the amount refunded does not exceed the amount of the scholarship, allowance, or payment; and

(9) Notwithstanding any other provision of law to the contrary, contributions and earnings on contributions held by the trust shall be exempt from levy of execution, attachment, garnishment, distress for rent, or fee bill by a creditor of the participant or the beneficiary. No interest of the participant or beneficiary in the trust shall be pledged or otherwise encumbered as security for a debt.

(Enact. Acts 1988, ch. 88, § 11, effective July 15, 1988; 1992, ch. 190, § 10, effective July 14, 1992; 1998, ch. 132, § 6, effective March 26, 1998; 2000, ch. 163, § 10, effective July 14, 2000; 2000, ch. 382, § 7, effective July 14, 2000.)

Legislative Research Commission Note. (7/14/2000). This section was amended by 2000 Ky. Acts ch. 163 and 382, which do not appear to be in conflict and have been codified together.

Cross-References. Cancellation and payment of refund, 11 KAR 12:060.

Transfer of ownership of Kentucky Educational Savings Plan Trust Program fund, 11 KAR 12:090.

164A.355. Effect of payments on determination of need and eligibility for student aid.

No student loan program, student grant program or other program administered by any agency of the Commonwealth, except as may be otherwise provided by federal law or the provisions of any specific grant applicable thereto, shall take into account and consider amounts available for the payment of higher education costs pursuant to the Kentucky Educational Savings Plan Trust in determining need and eligibility for student aid.

(Enact. Acts 1988, ch. 88, § 12, effective July 15, 1988.)

164A.360. Borrowing from the trust.

The board, as trustee, may establish, by the promulgation of administrative regulations in accordance with KRS Chapter 13A, a program of lending from any funds available to the trust, for participants and beneficiaries to borrow from the trust for the sole purpose of paying higher education costs to an institution of higher education. The interest rate payable by borrowers for any such borrowing shall be a rate established by the board from time to time. Any contribution to such loan program from the program fund or any loan made from the program fund shall be insured.

(Enact. Acts 1988, ch. 88, § 13, effective July 15, 1988; 2000, ch. 382, § 8, effective July 14, 2000.)

164A.365. Annual audited financial report to Governor, General Assembly, and State Auditor.

(1) The board shall submit an annual audited financial report, prepared in accordance with generally accepted accounting principles, on the operations of the savings plan trust by the first day of November to the Governor, the General Assembly, and the Auditor of Public Accounts. The annual audit shall

be made by an independent certified public accountant and shall include, but not be limited to, direct and indirect costs attributable to the use of outside consultants, independent contractors, and any other persons who are not state employees.

(2) The annual audit shall be supplemented by the following information prepared by the board:
   (a) Any studies or evaluations prepared in the preceding year;
   (b) A summary of the benefits provided by the trusts including the number of participants and beneficiaries in the trust; and
   (c) Any other information which is relevant in order to make a full, fair, and effective disclosure of the operations of the savings plan trust and the endowment trust.

(Enact. Acts 1988, ch. 88, § 14, effective July 15, 1988; 1992, ch. 190, § 11, effective July 14, 1992.)

164A.370. Tax exemption.

The property of the trust and its income from operations shall be exempt from all taxation by the Commonwealth of Kentucky or any of its political subdivisions. Investment income earned on contributions paid by any participant and used for higher education costs defined in KRS 164A.305(7) or refunded under KRS 164A.350(7)(a) or 164A.350(7)(b) shall not be subject to Kentucky income tax by either a participant or any beneficiary of a participation agreement, the purposes for which the investment income was accrued being deemed and declared to be entirely public in nature. Earnings that are not used for higher education costs as defined in KRS 164A.305(7) and are refunded shall be subject to Kentucky income tax, except for earnings refunded pursuant to KRS 164A.350(7)(a) and 164A.350(7)(b).

(Enact. Acts 1988, ch. 88, § 15, effective July 15, 1988; 2000, ch. 382, § 9, effective July 14, 2000.)

164A.375. Property rights to assets in trust.

The assets of the trust, including the program fund, shall at all times be preserved, invested and expended solely and only for the purposes of the trust and shall be held in trust for the participants and beneficiaries and no property rights therein shall exist in favor of the Commonwealth. The assets shall not be transferred or used by the Commonwealth for any purposes other than the purposes of the trust.

(Enact. Acts 1988, ch. 88, § 16, effective July 15, 1988; 2000, ch. 382, § 10, effective July 14, 2000.)

Cross-References. General rules for investments and fund transfers, 11 KAR 12:020.

164A.380. Liberal construction.

KRS 164A.300 to 164A.380 shall be construed liberally in order to effectuate its legislative intent. The purposes of KRS 164A.300 to 164A.380 and all provisions of KRS 164A.300 to 164A.380 with respect to powers granted shall be broadly interpreted to effectuate such intent and purposes and not as to any limitation of powers.

(Enact. Acts 1988, ch. 88, § 17, effective July 15, 1988.)

Commonwealth Postsecondary Education Prepaid Tuition Trust Fund

164A.700. Definitions for KRS 164A.700 to 164A.709.

As used in KRS 164A.700 to 164A.709, unless the context requires otherwise:

(1) "Academic year" means the time period specified by each eligible educational institution;
(2) "Board" means the board of directors of the Commonwealth postsecondary education prepaid tuition trust fund;
(3) "Eligible educational institution" means an institution defined in the Internal Revenue Code of 1986, as amended, 26 U.S.C. sec. 529;
(4) "Fund" means the prepaid tuition payment fund created in KRS 164A.701 and known as the "Commonwealth Postsecondary Education Prepaid Tuition Trust Fund" which shall be marketed under the name "Kentucky's Affordable Prepaid Tuition";
(5) "Office" means the Tuition Account Program Office in the Office of the State Treasurer that is responsible for administering the prepaid tuition accounts;
(6) "Prepaid tuition" means the amount of tuition estimated by the board for the tuition plan under the prepaid tuition contract;
(7) "Prepaid tuition academic year conversion" means the difference between the amount of prepaid tuition required in the original prepaid tuition contract and the amount of prepaid tuition required in an amended prepaid tuition contract as the result of the change in the academic year;
(8) "Prepaid tuition academic year conversion shortfall" means the amount by which the prepaid tuition required in an amended prepaid tuition contract as the result of the change in the academic year exceeds the amount of prepaid tuition required in the original prepaid tuition contract;
(9) "Prepaid tuition account" means the account for a qualified beneficiary as specified in the prepaid tuition contract;
(10) "Prepaid tuition contract" means the contract entered into by the board and the purchaser for the purchase of prepaid tuition for a qualified beneficiary to attend any eligible educational institution as provided in KRS 164A.700 to 164A.709;
(11) "Prepaid tuition conversion" means the difference between the value of a prepaid tuition account and the tuition at an eligible educational institution;
(12) "Prepaid tuition conversion shortfall" means the amount by which the actual tuition cost at an eligible educational institution exceeds the amount of the value of a prepaid tuition account;
(13) "Purchaser" means a person, corporation, association, partnership, or other legal entity who enters into a prepaid tuition contract;
(14) "Qualified beneficiary" means:
   (a) Any Kentucky resident designated as beneficiary at the time a purchaser enters into a prepaid tuition contract; or
   (b) Any nonresident designated at the time a purchaser enters into a prepaid tuition con-

tract who intends to attend an eligible institution in Kentucky; or

(c) The new beneficiary, in the case of a change of beneficiaries under provisions of KRS 164A.707; or

(d) The individual receiving a scholarship in the case of a prepaid tuition contract purchased by a state or local government or agency or instrumentality thereof or an organization described in 26 U.S.C. sec. 501(c)(3), and exempt from federal income taxation pursuant to 26 U.S.C. sec. 501(a) as part of a scholarship program offered by the government entity or the organization;

(15) "Tuition" means the actual charges and all mandatory fees required as a condition of full-time enrollment in an undergraduate program for an academic year for a qualified beneficiary to attend an eligible educational institution;

(16) "Qualified postsecondary education expenses" means the expenses as defined in 26 U.S.C. sec. 529;

(17) "Tuition plan" means a tuition plan approved by the board and provided under a prepaid tuition contract; and

(18) "Value of a prepaid tuition account" means the amount which the fund is obligated to pay for tuition for an academic period based on full payment of the purchaser's tuition plan; except, under a tuition plan for private colleges and universities, tuition shall be calculated based on the same percentage that University of Kentucky tuition is increased from the year the prepaid tuition contract is purchased to the year of payment.

(Enact. Acts 2000, ch. 163, § 1, effective July 14, 2000; 2002, ch. 25, § 1, effective July 15, 2002.)

Opinions of Attorney General. The Kentucky Postsecondary Education Prepaid Trust Fund is a public instrumentality of the Commonwealth of Kentucky for purposes of the Securities Act of 1933, Securities Exchange Act of 1934, and Trust Indenture Act of 1939. OAG 01-3.

164A.701. Commonwealth postsecondary education prepaid tuition trust fund — Prepaid postsecondary tuition administrative account.

(1) There is hereby created an instrumentality of the Commonwealth to be known as the "Commonwealth postsecondary education prepaid tuition trust fund", to be governed by a board of directors and administered by the Tuition Account Program Office in the Office of the State Treasurer. The fund shall consist of payments received from prepaid tuition contracts under KRS 164A.700 to 164A.709. Income earned from the investment of the fund shall remain in the fund and be credited to it. The fund shall not constitute an investment company as defined in KRS 291.010.

(2) The purposes of the fund are:

(a) To provide affordable access to participating institutions for the qualified beneficiaries; and

(b) To provide students and their parents economic protection against rising tuition costs.

(3) The office and the facilities of the State Treasurer shall be used and employed in the administration of the fund including, but not limited to, the keeping of records, the employment of staff to assist in the administration of the fund, the management of accounts and other investments, the transfer of funds, and the safekeeping of securities evidencing investments. The office of the Treasurer and the board of the Kentucky Higher Education Assistance Authority, shall work together to jointly market, as appropriate, the Commonwealth Prepaid Tuition Plan and the Savings Plan established in KRS 164A.300.

(4) Assets of the fund shall constitute public funds of the Commonwealth and may be invested in any instrument, obligation, security, or property that constitutes legal investments for the investment of public funds in the Commonwealth that are deemed most appropriate by the board and may be pooled for investment purposes with any other investment of the Commonwealth that is eligible for asset pooling.

(5) The fund, through the State Treasurer, may receive and deposit into the fund gifts made by any individual or agency as deemed acceptable by the board.

(6) There is created a separate account within the State Treasurer's office to be known as the prepaid postsecondary tuition administrative account for the purposes of implementing and maintaining the fund. Funds may be transferred from the property abandoned under KRS Chapter 393 to the administrative account and shall be repaid to the abandoned property fund no later than three (3) years after the transfer. The board may establish administrative fees for handling prepaid tuition contracts and deposit the money in this account.

(7) Four (4) years after July 14, 2000, the administration of the fund shall be transferred from the Office of the State Treasurer to the Kentucky Higher Education Assistance Authority unless the General Assembly shall decide that the administration of the fund shall remain in the Office of the State Treasurer.

(Enact. Acts 2000, ch. 163, § 2, effective July 14, 2000; 2002, ch. 25, § 2, effective July 15, 2002.)

Compiler's Notes. KRS 291.010, referred to in subsection (1), was repealed by Acts 2000, ch. 157, § 19, effective July 14, 2000.

164A.703. Board of directors.

(1) The fund shall be governed by an eleven (11) member board of directors. The board shall have five (5) ex officio voting members including the State Treasurer, the president of the Council on Postsecondary Education or designee, the secretary of the Finance Cabinet or designee, the secretary of the Revenue Cabinet or designee, the chair of the Association of Independent Kentucky Colleges and Universities or designee, three (3) members appointed by the State Treasurer, and three (3) members appointed by the Governor. The executive director of the Higher Education Assistance

Authority or designee shall serve as a nonvoting member. The gubernatorial and State Treasurer appointees shall have experience in finance, accounting, or investment management.

(2) Of the members to be appointed initially by the State Treasurer, one (1) shall be appointed for a three (3) year term, and two (2) shall be appointed for a four (4) year term; of the members to be appointed by the Governor, two (2) shall be appointed for a two (2) year term and one (1) for a three (3) year term. Thereafter, all appointments shall be for terms of four (4) years, except that appointments to fill vacancies shall be for the unexpired terms. No person shall be appointed to serve for more than two (2) successive four (4) year terms. No person holding a full-time office or position of employment with the state, any county or city, or any educational institution shall be eligible for gubernatorial appointment to the board.

(3) Members of the board shall receive no compensation but shall be reimbursed expenses incurred in the performance of their duties at the same per diem and travel rate as is paid the employees of the state.

(4) The State Treasurer shall be the chair and presiding officer of the board. The State Treasurer may appoint other officers as the board may deem advisable or necessary. A majority of the members of the board shall constitute a quorum for the transaction of the business of the fund.

(5) The initial board appointments shall be made by October 1, 2000.

(Enact. Acts 2000, ch. 163, § 3, effective July 14, 2000; 2002, ch. 25, § 3, effective July 15, 2002.)

164A.704. Duties of board.

The board shall:

(1) Promulgate administrative regulations, set fees, and adopt procedures as are necessary to implement the provisions of KRS 164A.700 to 164A.709;

(2) Enter into contractual agreements, including contracts for legal, actuarial, financial, and consulting services;

(3) Invest moneys in the fund in any instruments, obligations, securities, or property as permitted by law and deemed appropriate by the board;

(4) Procure insurance to protect against any loss in connection with the fund's property, assets, or activities and to indemnify board members from personal loss or accountability from liability arising from any action or inaction as a board member;

(5) Make arrangements with eligible educational institutions in the Commonwealth to fulfill obligations under prepaid tuition contracts, including, but not limited to, payment from the fund of the tuition cost on behalf of a qualified beneficiary to attend an eligible educational institution in which the beneficiary is admitted and enrolled;

(6) Develop requirements, procedures, and guidelines regarding prepaid tuition contracts, including but not limited to, the termination, withdrawal, or transfer of payments under a prepaid tuition contract; tuition shortfalls; number of participants; time limitations for prepaid tuition contracts and the use of tuition benefits; tuition conversions; payment schedules; payroll deductions; penalties for failure of purchasers to adhere to contracts; and transfer of prepaid tuition credits towards private education in the Commonwealth or for out-of-state institutions;

(7) Obtain appropriate actuarial assistance to establish, maintain, and certify a fund sufficient to defray the obligation of the fund, annually evaluate or cause to be evaluated, the actuarial soundness of the fund, and determine prior to each academic year the amount of prepaid tuition for each tuition plan and for each eligible educational institution for specific academic years, the corresponding value.

(8) Make an annual report each year to the Legislative Research Commission showing the fund's condition;

(9) Market and promote participation in the fund; and

(10) Develop, sponsor, and maintain a scholarship program, if deemed feasible by the board, to provide the benefits of the fund to financially disadvantaged families and students of Kentucky under criteria established by the board to encourage students to obtain postsecondary education in Kentucky and otherwise consistent with the purposes of the fund.

(Enact. Acts 2000, ch. 163, § 4, effective July 14, 2000; 2002, ch. 25, § 4, effective July 15, 2002.)

164A.705. Obligations of fund and of purchaser or qualified beneficiary — Use of tuition account.

(1) The prepaid tuition contract entered into by the purchaser and the board shall constitute an irrevocable pledge and guarantee by the fund to pay for the tuition of a qualified beneficiary upon acceptance and enrollment at an eligible educational institution in accordance with the tuition plan purchased.

(2) Under a tuition plan for private colleges and universities, tuition shall be paid based on the same percentage that University of Kentucky tuition is increased from the year the prepaid tuition contract is purchased to the year of payment.

(3) The purchaser or qualified beneficiary shall pay to the eligible educational institution the amount of any prepaid tuition academic year conversion shortfall and the amount of any prepaid tuition conversion shortfall.

(4) A qualified beneficiary attending an eligible educational institution may apply the value of a prepaid tuition account to a specific academic year at the maximum course load or maximum number of credit hours generally permitted to full-time undergraduates at that institution.

(5) The value of a prepaid tuition account remaining after tuition is paid may be used for other qualified educational expenses under administrative regulations promulgated by the board in compliance with 26 U.S.C. sec. 529. The board may permit the use of the value of a prepaid tuition account for part-

time undergraduate enrollment or graduate programs at eligible educational institutions.

(6) In the event a qualified beneficiary attends an eligible educational institution for which payment of tuition is not guaranteed by the fund in whole or in part, and if the cost of tuition exceeds the value of a prepaid tuition account, the fund shall have no responsibility to pay the difference. If the value of a prepaid tuition account exceeds the cost of tuition, the excess may be used for other qualified postsecondary education expenses as directed by the purchaser.

(7) The value of a prepaid tuition account shall not be used in calculating personal asset contribution for determining eligibility and need for student loan programs, student grant programs, or other student aid programs administered by any agency of the Commonwealth, except as otherwise may be provided by federal law.

(Enact. Acts 2000, ch. 163, § 5, effective July 14, 2000; 2002, ch. 25, § 5, effective July 15, 2002.)

164A.707. Prepaid tuition contracts — Amendments — Accounts not subject to creditors or taxes — No guarantee of attendance at institution — Payment of contracts — Beneficiaries — Investments and earnings — Contracts not securities or annuities — Contracts subject to implied amendment by subsequent change to statute, regulation, or policy.

(1) Purchasers buying prepaid tuition for a qualified beneficiary shall enter into prepaid tuition contracts with the board. These contracts shall be in a form as shall be determined by the office. The contract shall provide for the purchase of a tuition plan for prepaid tuition for the qualified beneficiary from one (1) to five (5) specific academic years.

(2) Upon written notification to the office a purchaser may amend the prepaid tuition contract to change:

(a) The qualified beneficiary, in accordance with 26 U.S.C. sec. 529;

(b) The academic year or years for which prepaid tuition is purchased;

(c) A tuition plan designation to another tuition plan designation;

(d) The number of years for which prepaid tuition is purchased; or

(e) Other provisions of the prepaid tuition contract as permitted by the board.

(3) A prepaid tuition account shall not be subject to attachment, levy, or execution by any creditor of a purchaser or qualified beneficiary. Prepaid tuition accounts shall be exempt from all state and local taxes including, but not limited to, intangible personal property tax levied under KRS 132.020, individual income tax levied under KRS 141.020, and the inheritance tax levied under KRS Chapter 140. Payments from a prepaid tuition account used to pay qualified postsecondary education expenses, or disbursed due to the death or disability of the beneficiary, or receipt of a scholarship by the beneficiary shall be exempt from tax liabilities.

(4) Nothing in KRS 164A.700 to 164A.709 or in a prepaid tuition contract shall be construed as a promise or guarantee that a qualified beneficiary shall be admitted to an eligible educational institution, be allowed to continue to attend an eligible educational institution after having been admitted, or be graduated from an eligible educational institution.

(5) Prepaid tuition contract payments shall not be made in real or personal property other than cash and shall not exceed the prepaid tuition. Prepaid tuition contract payments may be made in lump-sum installments.

(6) The purchaser shall designate the qualified beneficiary at the time the purchaser enters into a prepaid tuition contract, except for a prepaid tuition contract purchased in accordance with KRS 164A.700(14)(d). In the case of gifts made to the fund, the board shall designate a qualified beneficiary at the time of the gift.

(7) The prepaid tuition contract shall provide that the purchaser and the qualified beneficiary shall not directly or indirectly or otherwise control the investment of the prepaid tuition account or earnings on the account. Payments made for prepaid tuition shall be accounted for separately for each qualified beneficiary. No interest or earnings on a prepaid tuition contract of the purchaser or qualified beneficiary shall be pledged or otherwise encumbered as security of a debt.

(8) A prepaid tuition contract does not constitute a security as defined in KRS 292.310 or an annuity as defined in KRS 304.5-030.

(9) Each prepaid tuition contract is subject to, and shall incorporate by reference, all operating procedures and policies adopted by the board, the statutes governing prepaid tuition contracts in KRS 164A.700 to 164A.709 and 393.015, and administrative regulations promulgated thereunder. Any amendments to statutes, administrative regulations, and operating procedures and policies shall automatically amend prepaid tuition contracts, with retroactive or prospective effect, as applicable.

(Enact. Acts 2000, ch. 163, § 6, effective July 14, 2000; 2002, ch. 25, § 6, effective July 15, 2002.)

164A.709. Termination of prepaid tuition contract or account — Transfer of funds.

(1) A purchaser may terminate a prepaid tuition contract at any time upon written request to the office.

(2) Upon termination of a prepaid tuition contract at the request of a purchaser, the office shall pay from the fund to the purchaser:

(a) The value of the prepaid tuition account if the contract is terminated for:

1. The death of the qualified beneficiary; or

2. The disability of the qualified beneficiary that, in the opinion of the office, would make attendance by the beneficiary at an

eligible educational institution impossible or unreasonably burdensome; or

3. A request made on or after July 1 of the initial projected year of enrollment of the qualified beneficiary; and

(b) The amounts paid on the purchaser's prepaid tuition contract if the contract is terminated and a request for refund is made before July 1 of the qualified beneficiary's initial projected year of enrollment. The board may determine a rate of interest to accrue for payment on the amount otherwise payable under this paragraph.

(3) At the option of the purchaser the value of the prepaid tuition account may be carried forward to another academic year or distributed by the fund upon the purchaser's request.

(4) All refunds paid shall be net of administrative fees as determined by the board. The office may impose a fee upon termination of the account for administrative costs and deduct the fee from the amount otherwise payable under this section.

(5) If a qualified beneficiary is awarded a scholarship that covers tuition costs included in a prepaid tuition contract, the purchaser may request a refund consisting of the amount of the value of the prepaid tuition account, not to exceed the amount of the scholarship.

(6) If the purchaser wishes to transfer funds from the prepaid tuition account to the Kentucky Higher Educational Savings Plan Trust, the purchaser may do so under administrative regulations promulgated by the board of directors of the Commonwealth postsecondary education prepaid tuition trust fund and the board of the Kentucky Higher Education Assistance Authority.

(7) If the purchaser wishes to transfer funds from the prepaid tuition account to another qualified tuition program as defined in 26 U.S.C. sec. 529, the purchaser may do so under administrative regulations promulgated by the board.

(8) The board may terminate a prepaid tuition contract at any time due to the fraud or misrepresentation of a purchaser or qualified beneficiary with respect to the prepaid tuition contract.

(Enact. Acts 2000, ch. 163, § 7, effective July 14, 2000; 2002, ch. 25, § 7, effective July 15, 2002.)

CHAPTER 165A

PROPRIETARY EDUCATION

SECTION.

COMMERCIAL DRIVER'S LICENSE TRAINING

165A.515. Application of chapter.

COMMERCIAL DRIVER'S LICENSE TRAINING

165A.515. Application of chapter.

(1) This chapter shall not apply to:

(a) Any school or educational institution which offers to full-time, regularly enrolled students as a part of its curriculum a course in driving instruction for the purposes of obtaining a Kentucky Class D driver's license issued under KRS Chapter 186;

(b) Automobile dealers and their salesmen who give instruction without charge to purchasers of motor vehicles; or

(c) Employers who give instruction without charge to their employees.

(2) This chapter shall not apply to any college within the Kentucky Community and Technical College System which offers to part-time students a course in driver's instruction where there is not a school licensed pursuant to this chapter in the county.

(Repealed, reenact. and amend. Acts 2002, ch. 280, § 14, effective April 9, 2002.)

Compiler's Notes. This section was formerly compiled as KRS 332.110.

CHAPTER 167

EDUCATION OF THE PHYSICALLY HANDICAPPED

SECTION.

167.010. [Repealed.]
167.015. Management for Kentucky School for the Blind and School for the Deaf — Extramural services and programs.
167.017. Appointment of superintendent of Kentucky School for the Deaf.
167.020. [Repealed.]
167.025. [Repealed.]
167.030. [Repealed.]
167.035. Kentucky School for the Blind Advisory Board.
167.037. Kentucky School for the Deaf Advisory Board.
167.040. [Repealed.]
167.050. [Repealed.]
167.060. [Repealed.]
167.070. [Repealed.]
167.080. [Repealed.]
167.090. [Repealed.]
167.100. [Repealed.]
167.110. [Repealed.]
167.120. [Repealed.]
167.130. [Repealed.]
167.140. [Repealed.]
167.150. Admission policies, curriculum, and rules for Kentucky School for the Blind and Kentucky School for the Deaf.
167.160. [Repealed.]
167.170. Expulsion of students.
167.180. [Repealed.]
167.190. [Repealed.]
167.210. Definition of "deaf-blind children" for KRS 167.210 to 167.240.
167.220. Authority of Department of Education.
167.230. [Repealed.]
167.240. Authority to adopt rules and regulations.
167.250. Liability insurance for drivers of motor vehicles transporting specified students.
167.990. [Repealed.]

167.010. School for deaf — Name, nature and location of. [Repealed.]

Compiler's Notes. This section (273a-1, 297, 298f-1) was repealed by Acts 1960, ch. 68, Art. IV, § 6.

167.015. Management for Kentucky School for the Blind and School for the Deaf — Extramural services and programs.

(1) The Kentucky School for the Blind at Louisville, Kentucky, and the Kentucky School for the Deaf at Danville, Kentucky, shall be managed and controlled by the Kentucky Board of Education. The board shall have possession and the responsibility and authority for preservation, repair, and control of the buildings and grounds belonging to the state and dedicated to the schools. The board may, except as provided in KRS 45A.045, sell any property held for the use and benefit of the schools, and purchase other property deemed by the board to be suitably and conveniently located, and erect buildings necessary for carrying out the purposes of the schools. The board may promulgate administrative regulations to carry into effect its powers with respect to the schools, and may require from the superintendent of the schools any reports and information it desires as to the condition of the schools.

(2) In addition to being recognized as a school providing quality, full-time educational services to students who are deaf and hard of hearing or who are blind or visually impaired, the Kentucky School for the Deaf and the Kentucky School for the Blind shall also serve as the Statewide Educational Resource Center on Deafness and as the Statewide Educational Resource Center on Blindness, respectively. They shall provide technical assistance and resource services to local school districts, parents, and other agencies or organizations serving children and youth who are deaf and hard of hearing or who are blind or visually impaired. Depending on the availability of funding, services may include, but not be limited to, assessments; consultations on curriculum; language and communication; orientation and mobility; classroom devices, including telecommunication devices for the deaf and hard of hearing and Braille for the blind and visually impaired; assistive technology; professional development; and program development and implementation. The Kentucky School for the Deaf and the Kentucky School for the Blind may enter into collaborative agreements with local school districts and other public and private agencies to provide for regional or satellite programs for children and youth who are deaf and hard of hearing or who are blind or visually impaired.

(Enact. Acts 1960, ch. 68, Art. IV, § 1; 1966, ch. 255, § 154; 1978, ch. 155, § 82, effective June 17, 1978; 1980, ch. 286, § 9, effective July 15, 1980; 1990, ch. 476, Pt. V, § 598, effective July 13, 1990; 1990, ch. 496, § 52, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 219, § 1, effective July 15, 1998.)

Legislative Research Commission Note. (7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

Cross-References. Administrative regulations, KRS Ch. 13A.

Aid to the needy blind, KRS Ch. 207.

Department for the Blind, KRS 163.450 to 163.470.

Property and Building Commission, powers and duties, KRS 56.450.

Child find, evaluation, and reevaluation, 707 KAR 1:300.

Children with disabilities enrolled in private schools, 707 KAR 1:370.

Comprehensive system of personnel development, 707 KAR 1:330.

Confidentiality of information, 707 KAR 1:360.

Definitions, 707 KAR 1:280.

Determination of eligibility, 707 KAR 1:310.

Free appropriate public education, 707 KAR 1:290.

Individual education program, 707 KAR 1:320.

Monitoring and recovery of funds, 707 KAR 1:380.

Placement decisions, 707 KAR 1:350.

Procedural safeguards and state complaint procedures, 707 KAR 1:340.

Collateral References. 15A Am. Jur. 2d, Colleges and Universities, § 5.

14A C.J.S., Colleges and Universities, §§ 15-17.

167.017. Appointment of superintendent of Kentucky School for the Deaf.

(1) The superintendent of the Kentucky School for the Deaf shall be appointed by the chief state school officer. The appointment shall be made upon recommendation of a search committee which shall be appointed by the Kentucky Board of Education whenever appointment of a superintendent becomes necessary.

(2) The search committee for the superintendent of the Kentucky School for the Deaf shall consist of the representative of the State Department of Education selected by the chief state school officer, one (1) representative of the Kentucky Association of the Deaf, Inc., one (1) representative of the Kentucky School for the Deaf Alumni Association, Inc., one (1) representative of the Kentucky School for the Deaf faculty, one (1) parent of a student at the Kentucky School for the Deaf, and one (1) representative of the Kentucky School for the Deaf advisory board. The search committee's recommendation must be approved by a majority of the Kentucky Board of Education members.

(3) The superintendent of the Kentucky School for the Deaf may be removed from office by the Kentucky Board of Education only by a majority vote of the Kentucky Board of Education.

(Enact. Acts 1982, ch. 267, § 3, effective July 15, 1982; 1990, ch. 476, Pt. IV, § 274, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

167.020. Board of commissioners of school for deaf — Membership — Terms — Organization and powers. [Repealed.]

Compiler's Notes. This section (273, 274, 280, 281: amend. Acts 1948, ch. 222, § 2) was repealed by Acts 1960, ch. 68, Art. IV, § 6.

167.025. School staff — Qualifications of superintendent. [Repealed.]

Compiler's Notes. This section (Acts 1960, ch. 68, Art. IV, § 2; 1978, ch. 155, § 82) was repealed by Acts 1980, ch. 286, § 14, effective July 15, 1980.

167.030. Records and reports of board. [Repealed.]

Compiler's Notes. This section (278) was repealed by Acts 1960, ch. 68, Art. IV, § 6.

167.035. Kentucky School for the Blind Advisory Board.

(1) There may be established a Kentucky School for the Blind Advisory Board composed of five (5) members appointed by the Kentucky Board of Education upon recommendation by the chief state school officer for terms of four (4) years and until their successors are appointed. The board shall elect from its membership a chairman. Members of the board shall serve without compensation but shall be reimbursed for necessary expenses incurred in performance of their duties.

(2) The board shall act in an advisory capacity to assist the superintendent in conducting the activities of the school.

(Enact. Acts 1960, ch. 68, Art. IV, § 3; 1978, ch. 155, § 82, effective June 17, 1978; June 1980, ch. 286, § 10, effective July 15, 1980; 1982, ch. 267, § 1, effective July 15, 1982; 1990, ch. 476, Pt. IV, § 275, effective July 13, 1990; 1996, ch. 362, § 6, effective July 10, 1996.)

Cross-References. Kentucky School for Deaf Advisory Board as division of Department of Education, KRS 156.010.

Collateral References. 14A C.J.S., Colleges and Universities, §§ 15-17.

167.037. Kentucky School for the Deaf Advisory Board.

(1) There shall be established a Kentucky School for the Deaf Advisory Board, composed of nine (9) members appointed by the Kentucky Board of Education upon recommendation of the chief state school officer. At the first regular meeting in each fiscal year, the board shall elect a chairman and vice chairman. A member may serve no more than two (2) consecutive years as chairman. Members shall be appointed for regular terms of four (4) years. Members of the board shall serve without compensation but shall be reimbursed for necessary expenses incurred in performance of their duties.

(2) Advisory board members for the Kentucky School for the Deaf shall be selected from nominations submitted by the Kentucky Association of the Deaf Inc., the Parent-Teacher-Cottage Parent Association, the Kentucky School for the Deaf Alumni Association Inc., the Kentucky Association of School Administrators, and the chief state school officer. Membership on the board shall be statewide and shall consist of two (2) parents of deaf children, one (1) professional in education of the deaf, one (1) former student of the Kentucky School for the Deaf, one (1) member of the Kentucky Association for the Deaf, two (2) members who shall represent school districts, and two (2) members at large. A majority of the board's membership shall be persons who are deaf or hard of hearing.

(3) The board shall act in an advisory capacity to assist the school superintendent in conducting the activities of the school. The board shall also make recommendations to the chief state school officer concerning all areas relating to the effective operation of the school, including but not limited to:
   (a) Goals and objectives,
   (b) Budget requests,
   (c) Student services,
   (d) Public relations,
   (e) Construction and maintenance, and
   (f) Program evaluation.

(Enact. Acts 1982, ch. 267, § 2, effective July 15, 1982; 1990, ch. 476, Pt. IV, § 276, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1997; 2000, ch. 204, § 3, effective July 14, 2000.)

Compiler's Notes. The reference to State Board of Elementary and Secondary Education in this section has been changed to Kentucky Board of Education on authority of Acts 1996, ch. 362, § 6, effective July 15, 1996.

167.040. Purchase and sale of property. [Repealed.]

Compiler's Notes. This section (277a-1) was repealed by Acts 1960, ch. 68, Art. IV, § 6.

167.050. Donations. [Repealed.]

Compiler's Notes. This section (276, 277) was repealed by Acts 1960, ch. 68, Art. IV, § 6.

167.060. Control of property. [Repealed.]

Compiler's Notes. This section (277) was repealed by Acts 1960, ch. 68, Art. IV, § 6.

167.070. Superintendent, teachers and officers — Appointment and removal of. [Repealed.]

Compiler's Notes. This section (280) was repealed by Acts 1960, ch. 68, Art. IV, § 6.

167.080. Colored deaf — Provisions concerning schools for. [Repealed.]

Compiler's Notes. This section (282, 283, 283a) was repealed by Acts 1960, ch. 68, Art. IV, § 6.

167.090. Attendance of deaf children at school compulsory. [Repealed.]

Compiler's Notes. This section (298f-1, 298f-2) was repealed by Acts 1980, ch. 286, § 14, effective July 15, 1980.

167.100. Children exempt from compulsory attendance. [Repealed.]

Compiler's Notes. This section (298f-2) was repealed by Acts 1980, ch. 286, § 14, effective July 15, 1980.

167.110. False statement as to child's age prohibited. [Repealed.]

Compiler's Notes. This section (298f-4) was repealed by Acts 1980, ch. 286, § 14, effective July 15, 1980.

167.120. Failure to send child excused when schools are full. [Repealed.]

Compiler's Notes. This section (298f-5) was repealed by Acts 1980, ch. 286, § 14, effective July 15, 1980.

167.130. Public schools for deaf to receive children — Exception. [Repealed.]

Compiler's Notes. This section (298f-8: amend. Acts 1960, ch. 68, Art. IV, § 4) was repealed by Acts 1980, ch. 286, § 14, effective July 15, 1980.

167.140. School for the blind — Management — Property. [Repealed.]

Compiler's Notes. This section (301, 301b, 4618-80: amend. Acts 1966, ch. 255, § 155; 1978, ch. 155, § 82) was repealed by Acts 1980, ch. 286, § 14, effective July 15, 1980.

167.150. Admission policies, curriculum, and rules for Kentucky School for the Blind and Kentucky School for the Deaf.

The Kentucky Board of Education upon recommendation of the chief state school officer may prescribe admission policies, curriculum, and rules for the government and discipline of pupils who attend the Kentucky School for the Blind or the Kentucky School for the Deaf and fix and regulate tuition fees and terms of admission of pupils into the facilities from other states, but no charge shall be made for the admission of pupils from this state.

(300, 301a, 4618-80: amend. Acts 1978, ch. 155, § 82, effective June 17, 1978; 1980, ch. 286, § 11, effective July 15, 1980; 1990, ch. 476, Pt. IV, § 277, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996.)

Opinions of Attorney General. Teachers at the Kentucky School for the Blind are protected by the tenure law set forth in KRS 161.720 to 161.810. OAG 60-1043.

Cited: Eva N. v. Brock, 741 F. Supp. 626 (E.D. Ky. 1990).

Collateral References. 15A Am. Jur. 2d, Colleges and Universities, §§ 5, 11.

14A C.J.S., Colleges and Universities, §§ 17, 29, 30.

167.160. Advisory committee for school for blind. [Repealed.]

Compiler's Notes. This section (4618-80; 1978, ch. 155, § 82) was repealed by Acts 1980, ch. 286, § 14, effective July 15, 1980.

167.170. Expulsion of students.

The Kentucky Board of Education shall alone have the power to expel a pupil from the Kentucky School for the Blind or the Kentucky School for the Deaf. The board may delegate that power to a three (3) member panel of the board.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 599, effective July 13, 1990; 1996, ch. 13, § 1, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996.)

Compiler's Notes. This section (305, 4618-80: amend. Acts 1978, ch. 155, § 82, effective June 17, 1978; 1980, ch. 286, § 12, effective July 15, 1980) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 599, effective July 13, 1990.

Kentucky Law Journal. Taylor, With Temperate Rod: Maintaining Academic Order in Secondary Schools, 58 Ky. L.J. 616 (1970).

Collateral References. 15A Am. Jur. 2d, Colleges and Universities, §§ 23, 26-30.

14A C.J.S., Colleges and Universities, §§ 35, 37, 38.

167.180. Black blind children. [Repealed.]

Compiler's Notes. This section (311) was repealed by Acts 1966, ch. 184, § 8.

167.190. Adult blind. [Repealed.]

Compiler's Notes. This section (312) was repealed by Acts 1956 (1st Ex. Sess.), ch. 7, Art. II, § 8.

167.210. Definition of "deaf-blind children" for KRS 167.210 to 167.240.

As used in KRS 167.210 to 167.240, unless the context otherwise requires, "deaf-blind children" are those children who are deaf or hard of hearing and have visual impairments, the combination of which causes such severe communication, developmental, and educational problems that they cannot profit satisfactorily from educational programs provided solely for the child with a visual disability or for the child with a hearing disability.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 600, effective July 13, 1990; 1992, ch. 144, § 11, effective July 14, 1992; 1994, ch. 405, § 32, effective July 15, 1994.)

Compiler's Notes. This section (Enact. Acts 1962, ch. 87, § 1; 1980, ch. 286, § 13, effective July 15, 1980) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 600, effective July 13, 1990.

167.220. Authority of Department of Education.

The State Department of Education is hereby authorized to expend available funds for the purpose of sending children who are deaf-blind to any facility, school, or institution, within or without the Commonwealth, which provides a qualified program of education for such children. Such funds may be spent for evaluation and diagnosis, room, board, tuition, transportation, and other items which are necessarily relevant to the education of such children.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 601, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1962, ch. 87, § 2) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 601, effective July 13, 1990.

Cross-References. Vocational education and rehabilitation, KRS Ch. 163.

Opinions of Attorney General. In determining whether the State Department of Education can utilize a particular school to provide education for blind-deaf pupils, the criteria is not who owns and operates the school but in what manner and to what purpose is the school being conducted and if religion is part of the school program, the State Department of Education cannot utilize such a school to provide education for blind-deaf pupils. OAG 74-660.

Although this section does not authorize a school district to contract with an approved out-of-state school for special educational services for exceptional pupils who are not blind and deaf, it may do so under KRS 157.280. OAG 74-742.

Collateral References. 15A Am. Jur. 2d, Colleges and Universities, § 35.

14A C.J.S., Colleges and Universities, §§ 14, 17.

167.230. Authority of bureau of education for exceptional children. [Repealed.]

Compiler's Notes. This section (Acts 1962, ch. 87, § 3; 1978, ch. 155, § 82; 1978, ch. 384, § 50) was repealed by Acts 1980, ch. 286, § 14, effective July 15, 1980.

167.240. Authority to adopt rules and regulations.

The State Department of Education is hereby authorized to adopt and promulgate such rules and regulations as it deems necessary and proper for carrying out the purposes of KRS 167.210 to 167.240.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 602, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1962, ch. 87, § 4) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 602, effective July 13, 1990.

Collateral References. 14A C.J.S., Colleges and Universities, § 17.

167.250. Liability insurance for drivers of motor vehicles transporting specified students.

The chief state school officer may provide liability insurance or an indemnity bond against the negligence of drivers of motor vehicles owned or operated by the Department of Education for the transportation of members of the student bodies of the Kentucky School for the Blind, the Kentucky School for the Deaf, and the Eastern Kentucky Comprehensive Rehabilitation Center at Thelma. If the transportation of members of the student bodies is let out under contract, the contract shall require the contractor to carry an indemnity bond or liability insurance against negligence in such amounts as the chief state school officer designates. In either case, the indemnity bond or insurance policy shall be issued by a surety or insurance company authorized to transact business in this state, and shall bind the company to pay any final judgment not to exceed the limits of the policy rendered against the insured for loss or damage to property of any student or other person, or death or injury of any student or other person.

(Enact. Acts 1984, ch. 348, § 1, effective July 13, 1984; 1990, ch. 476, Pt. IV, § 278, effective July 13, 1990.)

167.990. Penalties. [Repealed.]

Compiler's Notes. This section (298f-3, 298f-4, 298f-6: amend. Acts 1960, ch. 68, Art. IV, § 5; 1976 (Ex. Sess.), ch. 14, § 164) was repealed by Acts 1980, ch. 286, § 14, effective July 15, 1980.

CHAPTER 168

EDUCATIONAL TELEVISION

SECTION.

168.010. Declaration of purpose.
168.015. Legislative recognition of importance of education technology.
168.020. Definitions for KRS 168.010 to 168.100.
168.030. Kentucky Authority for Educational Television.
168.040. Membership of authority.
168.050. Terms of members — Vacancies — Reelection or reappointment.
168.060. Meetings — Notice — Quorum — Organization.
168.070. Executive committee.
168.080. Employees.
168.090. Compensation and expenses of members.
168.100. Powers of authority.

168.010. Declaration of purpose.

It is declared to be the legislative purpose of KRS 168.010 to 168.100, and the public policy of the Commonwealth, that there be established, developed, and utilized in the public interest a network of educational television production and related facilities and transmission and relay stations such as will ultimately make available to students in public schools and state-supported institutions of higher education in the Commonwealth, and to any others who may choose to utilize the same, television programs and related services in aid of education, and for incidental use in other proper functions; and that the same be managed, controlled, and operated in the public interest by an independent corporate agency and instrumentality of the Commonwealth having membership such as to be representative of the general public as well as public educational bodies at all levels.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 603, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1962, ch. 16, § 1; 1970, ch. 204, § 1) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 603, effective July 13, 1990.

Cross-References. State Property and Buildings Commission, acquisition of educational television facilities, duties, KRS 56.440, 56.550.

Kentucky Bench & Bar. Mitchell, Beyond McCall: Toward a Neutral Reportage Privilege in Kentucky, Volume 55, No. 1, Winter 1991 Ky. Bench & Bar 32.

Collateral References. 74 Am. Jur. 2d, Telecommunications, § 192.

168.015. Legislative recognition of importance of education technology.

The General Assembly of the Commonwealth of Kentucky recognizes that technology plays an important role in enlarging and enriching the school experiences

of students and is vital to an efficient system of public schools.
(Enact. Acts 1990, ch. 476, Pt. I, § 20, effective July 13, 1990.)

168.020. Definitions for KRS 168.010 to 168.100.
As used in KRS 168.010 to 168.100, the following words and terms have the following meanings, unless in any instance, the context shall clearly indicate another meaning, in which event the context shall be controlling:
(1) "Authority" means the Kentucky Authority for Educational Television;
(2) "Board" means the Kentucky Board of Education;
(3) "Department" means the Kentucky Department of Education;
(4) "Public schools" means the state-supported schools of the elementary and secondary levels, as defined in KRS 157.320;
(5) "Commission" means the State Property and Buildings Commission of Kentucky;
(6) "Council" means the Council on Postsecondary Education in Kentucky;
(7) "University of Kentucky" means the University of Kentucky as one (1) entity, including its present and future extensions;
(8) "State colleges and universities" means and includes Eastern Kentucky University, Kentucky State University, Morehead State University, Murray State University, Northern Kentucky University, Western Kentucky University, and the University of Louisville, and institutions in the Kentucky Community and Technical College System;
(9) "Educational television" means and includes the production of television programs, the filming or taping thereof, the purchase or lease of filmed or taped programs produced by others, and the transmission or relaying of them for utilization:
(a) Which may be used in aid of education in the public schools and public institutions of higher education; and
(b) For limited and incidental use in furtherance of other proper public functions;
(10) "Television facilities" means and includes sites, buildings, structures, machinery, equipment, and installations, each with necessary or appropriate appurtenances, used or useful in the furtherance of educational television;
(11) "Related functions" or "related services" means and includes the use of facilities operated or leased by the authority, or which may be added or connected to such facilities as permitted by applicable statutes, and to prepare, transmit, or enable the exchange of nontelevision programs, services, or functions for and among the public schools, public institutions of higher education, and other state agencies:
(a) In aid of education; and
(b) For use in other proper public functions; provided, however, that such related functions or related services may include, but are not limited to, the following examples: computer-assisted instruction, data for teaching or administrative purposes, and educational noncommercial radio;
(12) "Related facilities" means and includes sites, buildings, structures, machinery, equipment, and installations, each with necessary or appropriate appurtenances, used or useful in the furtherance of related functions or services.
(Enact. Acts 1962, ch. 16, § 3; 1970, ch. 204, § 3; 1972, ch. 181, § 1; 1978, ch. 155, §§ 82, 104, effective June 17, 1978; 1978, ch. 276, § 1, effective June 17, 1978; 1990, ch. 60, § 3, effective July 13, 1990; 1990, ch. 476, Pt. V, § 604, effective July 13, 1990; 1996, ch. 362, § 6, effective July 15, 1996; 1997 (1st Ex. Sess.), ch. 1, § 142, effective May 30, 1997.)

Legislative Research Commission Note. (7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

168.030. Kentucky Authority for Educational Television.
An independent agency and instrumentality of the Commonwealth is hereby created and established to be known as "The Kentucky Authority for Educational Television," the same being a public body corporate and politic, with perpetual succession, the power in its own name to contract and be contracted with, sue and be sued, to adopt and use a corporate seal, to adopt bylaws for the orderly conduct of its affairs and to alter the same from time to time, to prescribe and enforce regulations governing the use of educational television and television facilities and related functions and facilities, and generally to have and use all powers of private corporations as set forth in KRS Chapter 271B, except as the same may be inconsistent with the provisions of KRS 168.010 to 168.100.
(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 605, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1962, ch. 16, § 2; 1970, ch. 204, § 2; 1972, ch. 274, § 147) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 605, effective July 13, 1990.

168.040. Membership of authority.
(1) The authority shall consist of nine (9) members, as follows:
The chief state school officer, ex officio, who shall initially serve as temporary chairman and shall call and preside over the organizational meeting or meetings until the members of the authority shall elect a chairman from among their number; a member of the staff or personnel of the department elected by the board upon recommendation of the chief state school officer as being qualified to serve as liaison and coordinator between the authority and the department on matters of curriculum, and his term shall be the same as that of the chief state school officer by whom he is recommended, but terminable by the board in the event he is transferred to other duties in the department, and automatically terminated in the event of his severance from the department for any reason; a

representative of the University of Kentucky and a representative of the state universities to be elected by the Council on Postsecondary Education; and five (5) additional members appointed by the Governor who need possess no special or prescribed qualifications except that they shall be citizens of Kentucky.

(2) Effective at 11:59 p.m. on June 30, 1994, all terms of gubernatorial appointees to the authority shall expire. Effective July 1, 1994, five (5) appointees nominated pursuant to KRS 164.005 and appointed by the Governor shall become members of the authority.

(Enact. Acts 1962, ch. 16, § 4 (1st par.); 1970, ch. 204, § 4; 1978, ch. 59, § 1, effective June 17, 1978; 1984, ch. 315, § 2, effective July 13, 1984; 1990, ch. 476, Pt. IV, § 279, effective July 13, 1990; 1994, ch. 91, § 2, effective March 22, 1994; 1997 (1st Ex. Sess.), ch. 1, § 143, effective May 30, 1997.)

168.050. Terms of members — Vacancies — Reelection or reappointment.

(1) Effective July 1, 1994, the terms of the members other than the chief state school officer and the member appointed from the staff or personnel of the department shall be originally, two (2) members for a term of four (4) years; two (2) members for a term of three (3) years; two (2) members for a term of two (2) years; and one (1) member for a term of one (1) year, to be determined by the Governor. Thereafter the terms shall be for four (4) years.

(2) In addition to vacancies from death or resignation, vacancies shall occur upon removal of permanent residence from the Commonwealth; in the case of the elected member representing the department and the board, by change of assignment or by severance from relationship with the department or the board for any reason; and, in the cases of the members representing the University of Kentucky and the state colleges, by termination of the member's membership on the council for any reason. Vacancies during the term of any member shall be filled for the unexpired portion of the term only; and vacancies of elected or appointed members by reason of the expiration of the term shall be for terms of four (4) years each, in the same manner as the initial election or appointment, as the case may be.

(3) Elected or appointed members shall be eligible for reelection or reappointment for any number of terms, as long as the prescribed qualifications prevail.

(Enact. Acts 1962, ch. 16, § 4 (2nd, 3rd pars.); 1970, ch. 204, § 5; 1990, ch. 476, Pt. IV, § 280, effective July 13, 1990; 1994, ch. 91, § 3, effective March 22, 1994.)

168.060. Meetings — Notice — Quorum — Organization.

(1) The authority shall meet not less frequently than quarterly, and otherwise as often as necessary for the orderly conduct of its affairs. If it sees fit to do so, it may establish in its bylaws, or by resolution, four (4) or more fixed dates for regular meetings at one (1) or more specified places, in which event any proper business may come before the authority on such occasions, and it shall not be necessary that the members be given notice thereof unless the chairman shall deem it necessary or desirable that the day, place, or hour be changed, whereupon notice to such effect shall be mailed to each member by the chairman or secretary, by ordinary first-class mail, postage prepaid, not less than one (1) week in advance. Regular meetings may be adjourned to convene again at another time and place, if the facts are shown in a motion or resolution adopted by a majority of those present and entered upon the minutes; and if such be done, the adjourned session shall constitute a continuation of the regular session without notice to absent members; but the motion or resolution of adjournment may specify that every reasonable effort be made to give such notice to absent members as time and circumstances may permit, whereupon the secretary (or in his absence the chairman or any designated member) shall make such effort and report the same and the success or failure thereof as to each member, at the occasion of the adjourned session of the regular meeting. Special meetings may be called by the chairman, vice chairman, secretary, or any two (2) members upon notice of the time, place and business to be transacted, similarly given; and special meetings may be adjourned in like manner as in the case of regular meetings, except that the matters considered shall be limited to such as are set forth in the notice of the special meeting.

(2) Any member may waive notice orally or in writing at any time before, at, or after any meeting; and the presence of a member at any meeting shall constitute a waiver of notice unless such member tenders at such meeting a written protest on the ground of want of sufficient notice.

(3) Five (5) or more members shall constitute a quorum for the transaction of business at any meeting, and a majority vote thereof shall be sufficient to transact any business properly before the meeting. Any lesser number may adjourn to reconvene at another time for failure to muster a quorum.

(4) Immediately upon receiving notice of the election or appointment of all other members, the chief state school officer shall call a meeting for organizational purposes, to be held at Frankfort, Kentucky, at a time and place set forth in a written notice mailed to each member, as set forth above. At this meeting, the chief state school officer shall preside as temporary chairman, and the authority shall elect from among the members a chairman, a vice chairman, a secretary, and a treasurer, and define the duties thereof; or it may combine the office of treasurer with any other office of the authority or with any position created pursuant to KRS 168.080.

(Enact. Acts 1962, ch. 16, § 5; 1964, ch. 120; 1990, ch. 476, Pt. IV, § 281, effective July 13, 1990.)

168.070. Executive committee.

At such organizational meeting, or at any subsequent meeting, the authority may elect an executive commit-

tee, not less than three (3) in number, of which the chairman or vice chairman of the authority shall be a member and the presiding officer. The powers of the executive committee to transact business between meetings of the authority shall be defined, and may be limited, but it shall not be provided that actions of the executive committee within its defined powers and limitations are subject to review, or not final and binding as actions of the authority. The executive committee shall preserve minutes of its proceedings, and file a written copy thereof with the secretary at or before the next ensuing regular meeting of the authority.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 606, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1962, ch. 16, § 5 (5th par.)) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 606, effective July 13, 1990.

168.080. Employees.

Subject only to availability of funds from any source, the authority may employ and prescribe the qualifications and duties of such persons as it may deem necessary to the proper performance of its purposes and functions, including an executive director to serve as the principal executive of the authority, and a chief engineer to supervise its engineering staff. Compensation shall be such as may be fixed in accordance with the standards established by the State secretary of the Personnel Cabinet, except that the compensation for those officers and employees exempt from classified services as provided in KRS 18A.115 shall be determined by the authority not to exceed the maximum established by KRS 64.640(2).

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 607, effective July 13, 1990; 1998, ch. 154, § 83, effective July 15, 1998.)

Compiler's Notes. This section (Enact. Acts 1962, ch. 16, § 6; 1980, ch. 98, § 2, effective July 15, 1980; 1982, ch. 52, § 4, effective July 15, 1982) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 607, effective July 13, 1990.

Opinions of Attorney General. Since under KRS 64.640 the Governor sets the compensation payable out of the State Treasury to each officer of an independent agency, the Authority for Educational Television can only recommend to the Governor the annual compensation of the agency's chief executive. OAG 77-707.

The statutes do not grant sole authority to Kentucky Authority for Educational Television to determine who may be exempt from KRS Chapter 18 (repealed, see KRS Chapter 18A); at most, they exclude from the commissioner of personnel's determination of salary those positions exempted by the merit system under KRS 18.140 (now see KRS 18A.115); Kentucky Educational Television was not given authority to exempt other positions not so listed, nor was it given the sole right to determine the salary of nonexempted positions. OAG 80-537.

168.090. Compensation and expenses of members.

(1) Members of the authority who are otherwise compensated by the Commonwealth on a full-time basis shall receive no additional compensation as members of the authority, or for attendance at meetings. Members who are not otherwise compensated by the Commonwealth on a full-time basis shall receive a per diem of fifty dollars ($50) for attendance at each meeting, including reasonable travel time necessarily required.

(2) All members may be reimbursed for actual travel and other proper expenses according to reasonable rules and regulations of the authority. The scope of travel shall not be limited to the confines of the Commonwealth; but may extend to any place outside the Commonwealth if specifically authorized by the authority by motion, resolution, or directive reciting the occasion, necessity, and persons authorized to travel.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 608, effective July 13, 1990.)

Compiler's Notes. This section (Enact. Acts 1962, ch. 16, § 7; 1978, ch. 154, § 11, effective June 17, 1978) was repealed and reenacted by Acts 1990, ch. 476, Part V, § 608, effective July 13, 1990.

Cross-References. Bonds of state officers and employees, KRS 62.170.

168.100. Powers of authority.

The authority shall have no power of taxation, nor is it vested with the police power of the Commonwealth, except insofar as the exercise of the power of eminent domain may be deemed a part thereof. Otherwise, in general terms, it shall have and is hereby given all such constitutional powers as are necessary to its accomplishment of the purpose and implementation of the public policy set forth in KRS 168.010. Without limiting the generality of the foregoing, but only for assurance to parties transacting business with the authority, and who may demand and be entitled to assurance, the following specific powers are hereby vested in the authority:

(1) To receive and use in the furtherance of its lawful objectives state funds as may be appropriated or allotted to it, any funds received for services rendered under contract or from the sale of property owned by it, and contributions, matching funds, gifts, bequests, and devises from any source, whether state or federal, and whether public or private; unless the same be tendered subject to one (1) or more conditions which are inconsistent with KRS 168.010 to 168.100, or otherwise unlawful;

(2) To make contracts and agreements whereunder the authority may undertake to provide educational television facilities and related functions and facilities to or for any public body of the state or federal government in furtherance of educational television or in aid of any other public function. However, it shall be an express provision of every such contract that the authority will not undertake to transmit or relay, and will not permit any other party to transmit or relay, in the use of the authority's television facilities, any subversive matter, any political propaganda, or any image or message in the interests of any political party or candidate for public office; or be used by, or in aid of, any church, sectarian, or denominational school; but this proviso is not intended and shall

not be construed to be a limitation upon dissemination by the authority of legitimate objective instructional material which is properly related to the study of history or of current events, or which is no more than factually informative, of current issues of government, or of various political ideologies;

(3) To produce, prepare, transmit, and relay, either from life or by recording on tape or films, educational television programs and related services coordinated with the curricula prescribed or approved for the public schools of the Commonwealth by the department or the board pursuant to KRS 158.6451;

(4) To purchase or lease from others, or to contract with others for the use of, or the right to transmit or relay, similar educational television programs and related services, whenever in the opinion of the authority the same are suitable and cannot be produced as effectively or economically through the use of its own facilities;

(5) To purchase, lease, or otherwise acquire, and to operate, television and related facilities deemed by the authority to be necessary in the furtherance of its lawful objectives; and in this connection to acquire property by the exercise of the power of eminent domain, in the manner authorized for the Department of Highways by the Eminent Domain Act of Kentucky, whenever the same cannot be purchased, leased, or otherwise acquired at a reasonable price after reasonable negotiations with the owner or owners. In all such matters, the authority shall be subject to the provisions of KRS Chapters 45A and 56;

(6) To prescribe standards for receiving instruments which are purchased in the future for use in the public schools, in order that reception of educational television programs and related services may be acceptable and in conformity with the manner of transmission thereof; and to disseminate such standards, together with technical information with regard to installations and use of receiving instruments, to all of the public school districts, or to such as may request the same;

(7) In its discretion and within the limitation of availability of funds from any sources, to:

(a) Establish a program of matching funds as an inducement to public school districts to purchase and install proper facilities for receiving and utilizing educational television programs and related services, especially in situations where by reason of topographical difficulties of reception, special antennas, or other equipment may be required, and

(b) If so requested by the boards of education of a sufficient number of public school districts, to purchase through the Finance and Administration Cabinet, subject to the provisions of KRS Chapter 45A, receiving instruments on their behalf on a wholesale basis for the purposes of economy, any such purchases to be on a public competitive basis after due advertisement according to law, but restricted to such receiving instruments as meet the standards prescribed by the authority.

(Enact. Acts 1962, ch. 16, § 8; 1970, ch. 204, § 6; 1974, ch. 74, Art. II, § 9(1); 1974, ch. 74, Art. IV, § 20(1); 1976, ch. 140, § 73; 1990, ch. 476, Pt. I, § 24, effective July 13, 1990; 1990, ch. 496, § 53, effective July 13, 1990.)

Legislative Research Commission Note. (7/13/90). This section was amended by two 1990 Acts which do not appear to be in conflict and have been compiled together.

Cross-References. Disposition of private funds and contributions to state agencies, KRS 41.290.

Eminent Domain Act of Kentucky, KRS 416.540 to 416.680.

State Board of Education may acquire facilities for educational television, KRS 156.070.

Educational television equipment purchases, 702 KAR 3:170.

Opinions of Attorney General. A private college could not legally be permitted to erect an FM antenna on a tower built as an educational television facility. OAG 71-354.

KRS 168.010 to 168.100 expressly prohibit educational television facilities from being used in any way by or in aid of any church, sectarian or denominational school. OAG 71-354.

KRS 168.100(2) and 156.070 restrict the furnishing of educational television facilities and related functions and facilities to and for public bodies of state and federal government. OAG 71-354.

An employee of the Kentucky Authority for Educational Television under the state merit system who receives no profit from her work other than her regular salary may legally become a candidate for and serve, if elected, as a member of the local school board and at the same time retain her employment with the Kentucky Authority for Educational Television. OAG 76-394.

If this section was interpreted to prohibit Kentucky Educational Television from providing time for legally qualified candidates for public office it would conflict with the Federal Communications Act of 1934. OAG 79-465.

No provisions of state law prohibit Kentucky Educational Television (KET) from providing time for political candidates in programs produced, purchased or leased by KET for general broadcast purposes. OAG 79-465.

Subsection (2) of this section purports to proscribe the broadcast of, among other things, "political propaganda" or "any image or message in the interests of any political party or candidate for public office," only where such material is broadcast pursuant to a contract or agreement to provide educational television services or facilities "to or for any public body of the state or federal governments," and if the authority chooses to produce programming presenting political candidates not pursuant to any such contract or agreement, the statutory prohibition would be inapplicable. OAG 79-465.

The "political broadcast" limitation of subsection (2) of this section was imposed to protect the authority from any pressure to broadcast presentations of political candidates at the request of legislative or other governmental bodies, and was not designed to restrict its discretion in the production and selection of programming not broadcast under such an arrangement. OAG 79-465.

The legislative intent is that the Kentucky Authority for Educational Television is the state agency charged with operating the educational television network, and should be the licensee for the television transmitters; accordingly, licenses issued to the State Board of Education could be transferred to the Authority either by joint or separate resolutions of the boards or by executive order. OAG 80-511.

The decision to rent space on a tower belonging to the authority should be decided on the principles of good business. OAG 83-85.

There is no constitutional or statutory impediment against the authority renting tower space for fair market value to a religious organization since such a business transaction is neutral as to the purposes of the private organization which is the lessee and does not involve the issue of separation of church and state. OAG 83-85.

Under this section, the use of state funds appropriated for educational purpose may be applied by Kentucky Educational Television only for the benefit of public or common schools in order to avoid violation of Const., §§ 171, 184, 186, and 189. Accordingly, KET is required to charge nonstate schools, whether private and nonsectarian or parochial, for services delivered in the process of returning student responses to the KET master computer. OAG 91-71.

TITLE XIV

LIBRARIES AND ARCHIVES

CHAPTER 171

STATE LIBRARIES—LIBRARIANS—STATE ARCHIVES AND RECORDS

SECTION.

DEPARTMENT FOR LIBRARIES AND ARCHIVES

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STATE ARCHIVES AND RECORDS

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PENALTIES

171.990. Penalties.

DEPARTMENT FOR LIBRARIES AND ARCHIVES

171.130. Department for Libraries and Archives — Commissioner.

The Department for Libraries and Archives is established. The department shall be headed by a commissioner whose title shall be state librarian who shall be appointed by and serve at the pleasure of the Governor, and who shall have had technical training in the field of library science.

(Enact. Acts 1954, ch. 41, § 1; 1962, ch. 106, Art. VIII, § 2; 1980, ch. 188, § 127, effective July 15, 1980; 1982, ch. 381, § 6, effective July 15, 1982.)

Collateral References. 63C Am. Jur. 2d, Public Officers and Employees, § 13.

81A C.J.S., States, § 80.

171.140. General powers and duties.

(1) The department shall give assistance and advice to all state institutional and public libraries, and to all counties in the state which propose to establish public libraries, as to the best means of their establishment and operation and may send any of its members to aid in organizing such libraries or assist in the improvement of those already established.

(2) It may receive gifts which may be used or held for the purpose given, and may purchase and operate traveling libraries under such conditions and rules as it thinks necessary to protect the interests of the state and best increase the efficiency of its service to the public.

(3) The department may issue printed material, such as lists and circulars of information, and in the publication thereof may cooperate with other state library commissions and libraries, in order to secure the more economical administration of the work for which it was formed. It may provide for library educational opportunities in various parts of the state.

(4) The department shall perform such other service in behalf of public libraries as it considers for the best interests of the state.

(5) The department shall maintain a strong central collection of library materials in a variety of formats and assure access to those materials and to other information resources throughout the state and nation for the purposes of providing information and reference services to state government agencies and of supplementing the resources of local libraries.

(2438c-4; 1990, ch. 62, § 2, effective July 13, 1990.)

Cross-References. Private contributions to be deposited in State Treasury, KRS 41.290.

171.145. Authority to provide library services for qualified readers with disabilities.

For the benefit of qualified readers with disabilities of Kentucky, the Department for Libraries and Archives may make available books and other reading matter in Braille, talking books or any other medium of reading used by qualified readers with disabilities. To this end, the department is authorized to provide library services for qualified citizens with disabilities of the Commonwealth through contract, agreement or otherwise with the Library of Congress or any regional library thereof.

(Enact. Acts 1960, ch. 58; 1974, ch. 8, § 1; 1974, ch. 74, Art. VIII, B, § 1; 1994, ch. 405, § 33, effective July 15, 1994.)

State Archives and Records

171.410. Definitions for KRS 171.420 to 171.740.

As used in KRS 171.420 to 171.740:

(1) "Public record or record" means all books, papers, maps, photographs, cards, tapes, disks, diskettes, recordings, and other documentary materials, regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency. "Public record" shall not include any records owned by a private person or corporation that are not related to functions, activities, programs or operations funded by state or local authority;

(2) "Department" means the Department for Libraries and Archives;

(3) "Commission" means the State Archives and Records Commission; and

(4) "Public agency" means every state or local office, state department, division, bureau, board, commission and authority; every legislative board, commission, committee and officer; every county and city governing body, council, school district board, special district board, municipal corporation, and any board, department, commission, committee, subcommittee, ad hoc committee, council or agency thereof; and any other body which is created by state or local authority and which derives at least twenty-five percent (25%) of its funds from state or local authority.

(Enact. Acts 1958, ch. 49, § 1; 1962, ch. 106, Art. V, § 2; 1966, ch. 255, § 159; 1970, ch. 92, § 32; 1974, ch. 74, Art. VIII, B, § 2; 1982, ch. 245, § 1, effective July 15, 1982; 1986, ch. 150, § 3, effective July 15, 1986.)

Cross-References. Court records, control by Supreme Court, KRS 26A.200, 26A.210.

Open records law, KRS 61.870 to 61.884.

Opinions of Attorney General. Neither the interested person nor his representative has the right to reproduce the records of a district board of education by any photostatic means whatsoever. OAG 68-291.

Neither an interested person nor his representative has the absolute right to take the original records of a district board of education into a private room without the secretary or the secretary's representative being present. OAG 68-291.

Where the necessary interest is present, the interested person or his representative is entitled to obtain a certified copy of the contract between the board of education and the secretary upon payment of such reasonable fee therefor as may be prescribed by regulation of the district board. OAG 68-291.

Information concerning textbook titles and course enrollment requested by a private bookstore would be a part of the university's records and would be subject to the statutory privilege of inspection by any interested person. OAG 69-24.

It is apparent from the 1982 amendment to subdivision (1) of this section, which added cards, tapes, disks and recordings to the definition of "records," that it was the intent of the legislature to facilitate the maintenance of public records by modernizing the means of preserving those records; therefore, it appears that Kentucky law does permit Kentucky State University to maintain its records via microfilm microfiche. OAG 83-161.

171.420. State Archives and Records Commission.

The State Archives and Records Commission, is hereby created and shall be a seventeen (17) member body constituted as follows: The state librarian or his designee, who shall be the chairman of the commission, secretary of the Education, Arts, and Humanities Cabinet or his designee, the Auditor of Public Accounts or his designee, the Chief Justice of the Supreme Court or his designee, the director of the Legislative Research Commission or his designee, the Attorney General or his designee, the director of the Office for Policy and Management or his designee, the chief information officer or her or his designee, one (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the University of Kentucky, one (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Historical Society, one (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Library Association, one (1) member appointed by the Governor from a list of seven (7) persons with one (1) name submitted by each of the presidents of the state universities and colleges, four (4) citizens at large, and one (1) member appointed by the Governor from a list of three (3) persons, with one (1) name submitted by each of the presidents of the Kentucky League of Cities, the Kentucky Association of Counties, and the Kentucky Association of School Administrators. Vacancies shall be filled by the Governor in the same manner as initial appointments are made. All members shall serve for a term of four (4) years, provided that one (1) of the initial appointments shall be for a term of four (4) years, one (1) for three (3) years, one (1) for two (2) years, and one (1) for one (1) year. The commission shall advise the Department for Libraries and Archives on matters relating to archives and records management. The commission shall have the authority to review and approve schedules for retention and destruction of records submitted by state and local agencies. In all cases, the commission shall determine questions which relate to destruction of public records, and their decision shall be binding on the parties concerned and final, except that the commission may reconsider or modify

its actions upon the agreement of a simple majority of the membership present and voting.
(Enact. Acts 1958, ch. 49, § 2; 1962, ch. 106, Art. V, § 3; 1970, ch. 92, § 33; 1974, Art. II, § 9(2); 1974, ch. 257, § 5; 1976, ch. 242, § 1; 1978, ch. 384, § 120, effective June 17, 1978; 1982, ch. 245, § 2, effective July 15, 1982; 1992, ch. 185, § 1, effective July 14, 1992; 1994, ch. 209, § 18, effective July 15, 1994; 2000, ch. 506, § 20, effective July 14, 2000; 2000, ch. 536, § 20, effective July 14, 2000.)

Legislative Research Commission Note. (7/14/2000). This section was amended by 2000 Ky. Acts chs. 506 and 536, which are identical and have been codified together.

171.430. Expenses of commission members.
Members of the commission shall serve without compensation other than actual expense of attending meetings of the commission or while in the performance of their official duties in connection with the business of the commission.
(Enact. 1958, ch. 49, § 3, effective June 19, 1958.)

171.440. Commission meetings.
The commission shall meet in the City of Frankfort, but the commission may, by majority vote, hold special or regular meetings in other locations when the work of the commission would be facilitated thereby. The commission shall hold not less than four (4) meetings during each calendar year and may hold such special meetings as may be necessary to transact the business of the commission. All meetings shall be called by the chairman, or when requested in writing by any two (2) members of the commission.
(Enact. Acts 1958, ch. 49, § 4; 1982, ch. 245, § 3, effective July 15, 1982.)

171.450. Department procedures and regulations.
(1) The department shall establish:
(a) Procedures for the compilation and submission to the department of lists and schedules of public records proposed for disposal;
(b) Procedures for the disposal or destruction of public records authorized for disposal or destruction;
(c) Standards and procedures for recording, managing, and preserving public records and for the reproduction of public records by photographic or microphotographic process;
(d) Procedures for collection and distribution by the central depository of all reports and publications, except the Kentucky Revised Statutes editions, issued by any department, board, commission, officer or other agency of the Commonwealth for general public distribution after July 1, 1958.
(2) The department shall enforce the provisions of KRS 171.410 to 171.740 by appropriate rules and regulations.
(3) The department shall make copies of such rules and regulations available to all officials affected by KRS 171.410 to 171.740 subject to the provisions of KRS Chapter 13A.
(4) Such rules and regulations when approved by the department shall be binding on all state and local agencies, subject to the provisions of KRS Chapter 13A. The department shall perform any acts deemed necessary, legal and proper to carry out the duties and responsibilities imposed upon it pursuant to the authority granted herein.
(Enact. Acts 1958, ch. 49, § 5; 1970, ch. 92, § 34; 1982, ch. 245, § 4, effective July 15, 1982; 1984, ch. 353, § 1, effective July 13, 1984.)

Legislative Research Commission Note. (10/5/90). Pursuant to KRS 7.136(1), KRS Chapter 13A has been substituted for the prior reference to KRS Chapter 13 in this statute. The sections in KRS Chapter 13 were repealed by 1984 Ky. Acts ch. 417, § 36 and KRS Chapter 13A was created in that same chapter of the 1984 Ky. Acts.

Cross-References. Collection and distribution of reports and publications, 725 KAR 1:040.
Disposal or destruction of public records; procedure, 725 KAR 1:030.
Records management program, 725 KAR 1:050.
Records officers; duties, 725 KAR 1:010.
Reproduction of public records, 725 KAR 1:020.

171.460. Records management survey.
In order for proper planning to be accomplished, the department shall cause a records management survey to be conducted in accordance with the regulations issued by the department.
(Enact. Acts 1958, ch. 49, § 6; 1970, ch. 92, § 35.)

171.470. Records management promotion — Reports.
The department is authorized to make continuing surveys of government records and records management and disposal practices and to obtain reports thereon from state and local agencies; to promote, in cooperation with the various state and local agencies, improved records management practices and controls in such agencies, including the central storage or disposition of records not needed by such agencies for their current use; and to report to the Governor semiannually. The department shall submit a biennial report to the General Assembly.
(Enact. Acts 1958, ch. 49, § 7; 1970, ch. 92, § 36.)

171.480. Buildings and facilities.
The secretary of the Finance and Administration Cabinet, at the request of the commission, shall have authority to design, build, purchase, lease, maintain, operate, protect, and improve buildings or facilities, including a state archives and records center building, used for the storage of noncurrent records of state and local agencies. The cabinet shall have custody and control of all such buildings and facilities and their contents.
(Enact. Acts 1958, ch. 49, § 8; 1970, ch. 92, § 37.)

171.500. Central depository.
The department is hereby constituted the central depository for public records. It shall be the duty of all departments, boards, commissions, officers or other agencies of the Commonwealth to supply to the central

depository copies of each of their reports and publications issued for general public distribution after July 1, 1958, in the number and in the manner prescribed by rule or regulation promulgated by the department pursuant to KRS 171.450. College, university, and public libraries may be constituted depository libraries by written order of the department. The central depository shall supply copies to such depository libraries in the number and in the manner prescribed by rule or regulation promulgated by the department pursuant to KRS 171.450.
(Enact. Acts 1958, ch. 49, § 10; 1970, ch. 92, § 38.)

Cross-References. Collection and distribution of reports and publications, 725 KAR 1:040.

171.510. Advisory groups for commission.
The commission may from time to time appoint advisory groups to more effectively obtain the best professional thinking of the bar, historians, political scientists, accountants, genealogists, patriotic groups, and associations of public officials on the steps to be taken with regard to any particular group or type of records.
(Enact. Acts 1958, ch. 49, § 11, effective June 19, 1958.)

171.520. Supervision of state and local agencies — Plan for comprehensive records management system for state government — Rules and regulations.

(1) The department shall, with due regard to the program activities of the state and local agencies concerned, prescribe the policies and principles to be followed by state and local agencies in the conduct of their records management programs, and make provisions for the economical and efficient management of records by state and local agencies by analyzing, developing, promoting, and coordinating standards, procedures, and techniques designed to improve the management of records, to insure the maintenance and security of records deemed appropriate for preservation, and to facilitate the segregation and disposal of records of temporary value and by promoting the efficient and economical utilization of space, equipment, and supplies needed for the purpose of creating, maintaining, storing, and servicing records. The department may accept, administer and grant any money appropriated or granted to it, in addition to appropriations from the general fund, for providing and improving records management programs of state and local agencies.

(2) To effect the purposes of subsection (1) of this section, the department shall prepare a plan for a comprehensive records management system for Kentucky state government. This plan shall include a proposal for funding through cost allocation or other methods in lieu of a general fund appropriation. The plan shall provide for a records management certification program, to identify state agencies in compliance with records management practices implemented by the department, and shall be completed by July 1, 1987. The plan shall be submitted to the Office of Policy and Management and the Legislative Research Commission for evaluation.

(3) The department shall promulgate necessary rules and regulations for the furtherance of this section.

(Enact. Acts 1958, ch. 49, § 12; 1970, ch. 92, § 39; 1984, ch. 172, § 1, effective July 13, 1984; 1986, ch. 66, § 1, effective July 15, 1986.)

Cross-References. Records management program, 725 KAR 1:050.

171.530. Retention and recovery of records.
The commission shall establish standards for the selective retention of records of continuing value, and the department shall assist state and local agencies in applying such standards to records in their custody. The department shall notify the head of any such agency of any actual, impending, or threatening unlawful removal, defacing, alteration, or destruction of records in the custody of such agency that has come to its attention, and initiate action through the agency head or Attorney General for the recovery of such records as shall have been unlawfully removed and for such other redress as may be provided by law.
(Enact. Acts 1958, ch. 49, § 13; 1970, ch. 92, § 40; 1982, ch. 245, § 5, effective July 15, 1982.)

171.540. Inspection of agency records.
The department is authorized to inspect or survey the records of any state or local agency, as well as to make surveys of records management and records disposal practices in such agencies, and shall be given full cooperation of officials and employees of agencies in such inspection and surveys; provided, that records, the use of which is restricted by or pursuant to law or for reasons of security or the public interest, shall be inspected or surveyed only in accordance with law, and the rules and regulations of the department.
(Enact. Acts 1958, ch. 49, § 14; 1970, ch. 92, § 41.)

171.550. Processing and servicing records.
The department is authorized to establish an interim records center or centers for the storage, processing, and servicing of records of state and local agencies pending their deposit in the State Archives and Records Center or their disposition in any other manner authorized by law, and to establish, maintain and operate centralized microfilming, photostating, indexing, decontamination and lamination and any other records repair and rehabilitation services for state and local agencies.
(Enact. Acts 1958, ch. 49, § 15; 1970, ch. 92, § 42.)

171.560. Transfer of records.
Subject to applicable provisions of law, the department shall promulgate rules and regulations governing the transfer of records from the custody of one (1) state or local agency to that of another.
(Enact. Acts 1958, ch. 49, § 16; 1970, ch. 92, § 43.)

171.570. Extension of agency retention period.
The department may empower any state or local agency, upon the submission of evidence of the need

therefor, to retain records for a longer period than that specified in any approved disposal schedule, or by law but the agency shall report all such actions to the commission at its next meeting for approval or disapproval.
(Enact. Acts 1958, ch. 49, § 17; 1966, ch. 255, § 160; 1970, ch. 92, § 44.)

171.580. Historical records.
The department, whenever it appears to be in the public interest, is authorized:
(1) To accept for deposit in the State Archives and Records Center the records of any state or local agency or of the General Assembly that are determined by the department to have sufficient historical or other value to warrant their continued preservation;
(2) To direct and effect the transfer to the department of any records that have been in existence for more than fifty (50) years and that are determined by the department to have sufficient historical or other value to warrant their continued preservation, unless the head of the state or local agency which has custody of them certifies in writing to the department that they must be retained in his custody for use in the conduct of the regular current business of the said agency;
(3) To direct and effect, with the approval of the head of the originating agency, or its successor, if any, the transfer of records deposited, or approved for deposit, in the State Archives and Records Center to public or educational institutions for special research or exhibit purposes; provided that title to such records shall remain vested in the Commonwealth of Kentucky unless otherwise authorized by law, and provided further such records may be recalled after reasonable notice in writing;
(4) To direct and effect the transfer of materials from private sources authorized to be received by the State Archives and Records Center by the provisions of KRS 171.620.
(Enact. Acts 1958, ch. 49, § 18; 1970, ch. 92, § 45.)

171.590. Public nature of records in department's custody.
The department shall be responsible for the custody, use, and withdrawal of records transferred to it. All papers, books, and other records of any matters so transferred are public records and shall be open to inspection by any interested person subject to reasonable rules as to time and place of inspection established by the department; provided that whenever any records, the use of which is subject to statutory limitations and restrictions, are so transferred, the department shall enforce such limitations. Restrictions shall not remain in effect after the records have been in existence for fifty (50) years.
(Enact. Acts 1958, ch. 49, § 19; 1970, ch. 92, § 46.)

Cross-References. Open Records Law, KRS 61.870 to 61.884.

171.600. Servicing records.
The department shall make provisions for the preservation, management, repair and rehabilitation, duplication and reproduction, description, and exhibition of records or related documentary material transferred to it as may be needful or appropriate, including the preparation and duplication of inventories, indexes, catalogs, and other finding aids or guides facilitating their use.
(Enact. Acts 1958, ch. 49, § 20; 1970, ch. 92, § 47.)

Cross-References. Reproduction of public records, 725 KAR 1:020.

171.610. Facilities for public inspection.
The department shall make such provision and maintain such facilities as it deems necessary or desirable for servicing records in its custody that are not exempt from examination by statutory provisions or other restrictions.
(Enact. Acts 1958, ch. 49, § 21; 1970, ch. 92, § 48.)

171.620. Private documents of public interest.
The department is authorized, whenever it is deemed to be in the public interest, to accept for deposit:
(1) The papers and other historical materials of any Governor of the Commonwealth of Kentucky, or of any other official or former official of the state or its subdivisions, and other papers relating to and contemporary with any Governor or former Governor of Kentucky, subject to restrictions agreeable to the department and the donor;
(2) Documents, including motion picture films, still pictures, sound recordings, maps, and papers, from private sources that are appropriate for preservation by the state government as evidence of its organization, functions, policies, and transactions or those of its subdivisions.
(Enact. Acts 1958, ch. 49, § 22; 1970, ch. 92, § 49.)

171.630. Reproduction fee.
The department may charge a fee not in excess of ten percent (10%) above the costs or expenses for making or authenticating copies or reproductions of materials transferred to its custody. All such fees shall be paid into a revolving fund for the continuation of such services on as self-sustaining a basis as possible. There shall be no charge for making or authenticating copies or reproductions of such materials for official use by the government of the Commonwealth of Kentucky; provided that reimbursement may be accepted to cover the cost of furnishing such copies or reproductions that could not otherwise be furnished.
(Enact. Acts 1958, ch. 49, § 23; 1970, ch. 92, § 50.)

171.640. Documentation of agency matters — Standards, rules and regulations.
The head of each state or local agency shall cause to be made and preserved records containing adequate and proper documentation of the organizational functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish information necessary to protect the legal and financial rights of the government and of persons directly affected by the agency's activities. Such documentation shall be created, managed, and preserved in accordance with stan-

dards, rules and regulations prescribed by the department under the provisions of KRS 171.410 to 171.740. (Enact. Acts 1958, ch. 49, § 24; 1986, ch. 66, § 2, effective July 15, 1986.)

Opinions of Attorney General. Since the Open Records Act does not regulate management practices of keeping public records and since the Attorney General's decisions are limited to whether a requested document is in the possession of a public agency and whether such document is subject to public inspection, the request that university, in not identifying one person as the official custodian in charge of enforcing proper records keeping practices, be charged with violating the Open Records Act as well as the request for provision of a copy of the contract of the person thought to be the official custodian of the university's records were denied. OAG 94-ORD-8.

171.660. Authorized reproductions — Disposal of originals.

When the Governor, Lieutenant Governor, or any state agency or subdivision or the principal officer thereof shall reproduce and preserve for record any records or papers by photographic, microphotographic, nonerasable optical image, or other process which accurately reproduces the original records, which forms a durable medium, and which is performed in accordance with rules and regulations promulgated by the department, the original may be disposed of or destroyed.
(Enact. Acts 1958, ch. 49, § 26; 1970, ch. 92, § 51; 1986, ch. 223, § 1, effective July 15, 1986; 1990, ch. 37, § 1, effective July 13, 1990; 1990, ch. 88, § 82.)

Legislative Research Commission Note. (7/13/90). This section was amended by two 1990 Acts which do not appear to be in conflict and have been compiled together.

Compiler's Notes. This section was amended by § 82 of Acts 1990, ch. 88 to contingently become effective as provided by § 93 of Acts 1990, ch. 88. However, § 93 of Acts 1990, ch. 88 was repealed by § 30 of Acts 1992, ch. 324, effective July 1, 1992. Therefore the amendment of this section by § 82 of Acts 1990, ch. 88 became effective July 1, 1992.

Cross-References. Reproduction of public records, 725 KAR 1:020.

171.670. Destruction of records.

When there is a question whether a particular record or group of records should be destroyed, the commission shall have exclusive authority to decide whether or not the record or group of records are to be destroyed.
(Enact. Acts 1958, ch. 49, § 27; 1962, ch. 106, Art. V, § 4; 1970, ch. 92, § 52; 1982, ch. 245, § 6, effective July 15, 1982.)

Cross-References. Reproduction of public records, 725 KAR 1:020.

171.680. Records management by agencies.

(1) The head of each state and local agency shall establish and maintain an active, continuing program for the economical and efficient management of the records of the agency.
(2) Such program shall provide for:
  (a) Effective controls over the creation, maintenance, and use of records in the conduct of current business;
  (b) Cooperation with the department in applying standards, procedures, and techniques designed to improve the management of records;
  (c) Promotion of the maintenance and security of records deemed appropriate for preservation, and facilitation of the segregation and disposal of records of temporary value;
  (d) Compliance with the provisions of KRS 171.410 to 171.740 and the rules and regulations of the department.

(Enact. Acts 1958, ch. 49, § 28; 1970, ch. 92, § 53.)

Opinions of Attorney General. The University of Kentucky subverted the intent of the Open Records Act, which is essentially related to the intent of the State Archives and Records Act, by failing to develop an adequate program for ensuring records management through agency oversight of employee records handling practices; and by failing to develop a coherent scheme for the organized maintenance of records at identified maintenance locations. OAG 94-ORD-121.

171.690. Storage of agency records.

Whenever the head of a state or local agency determines that substantial economies or increased operating efficiency can be effected thereby, he shall provide for the storage, processing and servicing of records that are appropriate therefor in the records center maintained and operated by the department or, when approved by the department in such location maintained and operated by the head of such agency.
(Enact. Acts 1958, ch. 49, § 29; 1970, ch. 92, § 54.)

171.700. Certification of records.

Any official who is authorized to certify to facts on the basis of records in his custody is authorized to certify to facts on the basis of records that have been transferred by him or his predecessors to the department, further provided, that any fee due any official of the state or its subdivisions shall not be eliminated by KRS 171.410 to 171.740.
(Enact. Acts 1958, ch. 49, § 30; 1970, ch. 92, § 55.)

171.710. Safeguarding agency records.

The head of each state and local agency shall establish such safeguards against removal or loss of records as he shall deem necessary and as may be required by rules and regulations issued under authority of KRS 171.410 to 171.740. Such safeguards shall include making it known to all officials and employees of the agency that no records are to be alienated or destroyed except in accordance with law, and calling their attention to the penalties provided by law for the unlawful removal or destruction of records.
(Enact. Acts 1958, ch. 49, § 31, effective June 19, 1958.)

Opinions of Attorney General. The University of Kentucky subverted the intent of the Open Records Act, which is essentially related to the intent of the State Archives and Records Act, by failing to develop an adequate program for ensuring records management through agency oversight of employee records handling practices. OAG 94-ORD-121.

171.720. Agency recovery of records.

The head of each state and local agency shall notify the department of any actual, impending or threatened

unlawful removal, defacing, alteration or destruction of records in the custody of the agency that shall come to his attention, and with the assistance of the department shall initiate action through the Attorney General for recovery of such records as shall have been unlawfully removed and for such other redress as may be provided by law.
(Enact. Acts 1958, ch. 49, § 32; 1970, ch. 92, § 56.)

171.730. Effect on public accounting and confidential nature of agency records.
Nothing in KRS 171.410 to 171.740 shall be construed as limiting the authority of the State Auditor, or other officers charged with prescribing accounting systems, forms, or procedures or of lessening the responsibility of collecting and disbursing officers for rendering of their accounts for settlement. Nothing in KRS 171.410 to 171.740 shall be construed as changing, modifying or affecting the present law or laws concerning confidential records of any state agency and the use thereof. All such laws remain in full force and effect.
(Enact. Acts 1958, ch. 49, § 33.)

171.740. General assembly records.
The Legislative Research Commission shall, unless otherwise directed by the Senate or House of Representatives obtain at the close of each session of the General Assembly all of the noncurrent records of the General Assembly and of each committee thereof and transfer them to the State Archives and Records Center for preservation.
(Enact. Acts 1958, ch. 49, § 34.)

PENALTIES

171.990. Penalties.
(1) Any person or library board violating any of the provisions of KRS 171.240 to 171.300 shall be fined not less than ten ($10) nor more than one hundred dollars ($100) for each offense.
(2) The board for certification of librarians may revoke the certificate of any person violating any of the provisions of KRS 171.240 to 171.300, or any of the regulations as established by the board for certification.
(3) Any person knowingly violating the rules and regulations of the department pursuant to the provisions of KRS 171.450, 171.560, 171.670, 171.710, or 171.720 is guilty of a Class A misdemeanor and is also liable for damages or losses incurred by the Commonwealth. Any state employee who knowingly violates these provisions shall also be subject to dismissal from state employment upon a determination of fact, at a hearing, that a serious violation did occur. The employee's right to appeal to the state personnel board is not abridged or denied. In the event of an appeal, the decision of the state personnel board is final.
(4) State employees dismissed under the provision of subsection (3) of this section shall have the right to reapply for state employment in accordance with state personnel rules governing dismissal. Such individuals shall have the full rights and privileges accorded under applicable equal opportunity laws.
(4618-130i, 4618-130k: amend. Acts 1972, ch. 223, § 5; 1982, ch. 245, § 7, effective July 15, 1982.)

TITLE XV

ROADS, WATERWAYS, AND AVIATION

CHAPTER 178

COUNTY ROADS—GRADE CROSSING ELIMINATION

SECTION.
178.200. Tax levy to retire bonds and pay interest.
178.210. Special tax for construction of roads — Submission to vote — Short-term bonds.
178.290. Construction of sidewalks along public roads — School bus turn-around areas.

PENALTIES

178.990. Penalties.

178.200. Tax levy to retire bonds and pay interest.
(1) If bonds are sold to enable the fiscal court to construct roads and bridges, the fiscal court shall levy a tax of not over twenty cents ($ 0.20) on the one hundred dollars ($100) of the assessed valuation of the county. The tax shall be collected as other county taxes and allocated, first, to the payment of the interest on the bonds, and the balance placed to the credit of a sinking fund for the redemption of the bonds.
(2) Any accumulation in the sinking fund may be loaned by the fiscal court on first mortgage real estate security, on the basis of fifty percent (50%) of its value, at the legal rate of interest, which shall accrue to the sinking fund, but before the loan is made all titles shall be looked up and papers approved by the county attorney.
(3) For the 1966 tax year and for all subsequent years the rate levied by the levying authority under the provisions of this section for levies which were approved prior to December 16, 1965, shall be the compensating tax rate as defined in KRS 132.010, except as provided in subsection (4) of this section.
(4) Notwithstanding the limitations contained in subsection (3) of this section no tax rate shall be set lower than that necessary to provide such funds as are required to meet principal and interest payments on outstanding bonded indebtedness.
(4308: amend. Acts 1965 (1st Ex. Sess.), ch. 2, § 9.)

178.210. Special tax for construction of roads — Submission to vote — Short-term bonds.
(1) The fiscal court of any county may submit to the voters at a special election to be held for that

purpose, the question of voting a tax of any sum not exceeding twenty cents ($ 0.20) on the hundred dollars ($100) on all property subject by law to local taxation, for the construction of the public roads and bridges of the county, as the fiscal court directs. The order of the fiscal court calling the election shall specify the amount of the tax to be levied each year and the number of years for which the tax may be imposed, not exceeding ten (10) years, and shall also provide that no money in excess of the amount that can be raised by the levy in any one (1) year shall be expended in that year.

(2) The fiscal court may borrow money and issue bonds therefor in advance of the collection of the tax for any year, but the amount borrowed shall not exceed eighty percent (80%) of the estimated tax for the year. The amount of the tax shall be estimated according to the assessment and collection of the preceding year. Any money so borrowed shall be paid out of the money raised from the tax in the year in which the money is borrowed.

(3) For the 1966 tax year and for all subsequent years the rate levied by the levying authority under the provisions of this section for levies which were approved prior to December 16, 1965, shall be the compensating tax rate as defined in KRS 132.010, except as provided in subsection (4) of this section.

(4) Notwithstanding the limitations contained in subsection (3) of this section no tax rate shall be set lower than that necessary to provide such funds as are required to meet principal and interest payments on outstanding bonded indebtedness.

(4307b-1, 4307b-2: amend. Acts 1965 (1st Ex. Sess.), ch. 2, § 10.)

Cross-References. Additional tax for road purposes, Const., § 157a.

Opinions of Attorney General. If the county taxes and special district taxes, excluding school taxes and excluding a special road tax, charged to the sheriff for the year are less than $150,000, the sheriff will be allowed, by the county treasurer for collecting such taxes, 10% on the first $10,000 and 4% on the remainder but if the amount is $150,000 or more, the sheriff will be allowed 10% upon the first $5,000 and 4% on the residue and the sheriff's fee for collecting the special road tax is 1% of the amount collected. OAG 74-64.

178.290. Construction of sidewalks along public roads — School bus turn-around areas.

(1) Any person may build a sidewalk, composed of gravel, concrete or other suitable material, along the side of any public road in this state. The sidewalk shall not exceed sixty (60) inches in width and the construction and repair and the use of the sidewalk shall be without expense of any kind to any other person who may want to use it. All persons who desire shall be permitted to use the sidewalk, and it shall be so constructed as not to interfere with the traveling public on any public road. The fiscal court of any county may build and repair sidewalks along public roads where the need exists for the safety of school children. Before the beginning of construction of the sidewalk, written approval must be obtained from the governmental agency having jurisdiction over the public road.

(2) The fiscal court may, where needed, build and maintain suitable areas for the safe turning around of school buses.

(4318: amend. Acts 1964, ch. 51, § 1; 1970, ch. 250, § 1.)

Opinions of Attorney General. The fiscal court can, in its sound discretion, and where such construction is needed, build and maintain suitable areas for the safe turning around of school buses, but the county would have to acquire at least an easement right from affected landowners for such areas sufficient to justify the cost to the county. OAG 72-134.

Where a school bus must travel two-tenths or three-tenths of a mile from a county road over a private drive to reach an area maintained as a turn around pursuant to subsection (2) of this section, the county must acquire the private drive interval by agreement or condemnation, since this section strongly suggests that a turn around is part of the county road system and does not contemplate a private ownership or interval between the county's road holdings. OAG 81-428.

The fiscal court could, with written permission of the city having jurisdiction over a road or street as a city street, construct sidewalks alongside the road or street where needed for school children. Where the public road is not under the jurisdiction of a city or other governmental agency, the fiscal court would have to procure the appropriate easement rights. OAG 82-136.

The only exceptions to the basic rule that formal acceptance of a road into the county road system is a prerequisite to a fiscal court's authority to spend county money on a road or to improve or maintain it, relate to sidewalks and bus turnarounds for school children, as treated under this section. OAG 82-136.

Under this section, a fiscal court may, where needed, build and maintain suitable areas for the safe turning around of school buses. However, the fiscal court would have to acquire at least an easement right from affected landowners for such areas sufficient to justify the cost to the county; neither the school board nor the private owner is responsible for such construction. OAG 82-136.

There does not appear to be any statute permitting the fiscal court to place county gravel on school parking lots, even though the gravel would be on public property and the school system would pay the cost of the materials. OAG 83-398.

A school board cannot lawfully agree to provide materials paid for with school funds, or provide school funds themselves, whether under an intergovernmental agreement or otherwise, for the construction or maintenance of school bus turnarounds within the meaning of subsection (2) of this section. OAG 93-63.

Fiscal court was not authorized to expend funds for the construction or maintenance of a private driveway needed to accommodate the parking of a school bus on property owned by a school bus driver. OAG 94-21.

PENALTIES

178.990. Penalties.

(1) Any county road engineer who fails to comply with the provisions of KRS 178.050 shall be fined not less than ten ($10) nor more than one hundred dollars ($100) for each offense.

(2) Any county road engineer who makes a change in the location of a road without complying with the provisions of this chapter shall be fined not less than twenty-five dollars ($25).
(3) Any person who injures a sidewalk constructed under the provisions of KRS 178.290 and fails to repair or replace the sidewalk shall be fined not less than four ($4) nor more than fifty dollars ($50).
(4) Any owner or occupier of a dam who fails to comply with the provisions of KRS 178.300 shall be fined two dollars ($2) for every twenty-four (24) hours of noncompliance. Where a milldam is carried away or destroyed, the owner or occupier shall not be subject to the fine until one (1) month after the mill has been put in operation.
(5) If a fiscal court or county judge/executive willfully fails to perform any duty required of it by the provisions of this chapter, except KRS 178.170 and 178.210 to 178.240, every member of such court concurring in the failure shall be fined not less than ten ($10) nor more than one hundred dollars ($100) by the Circuit Court of the county.
(6) All fines imposed by this chapter shall be paid into the county road fund, except that in case of a privately owned road or bridge, the fines shall accrue to the owner.
(7) No fines imposed by this chapter shall bar action for damages for breach of contract.

(4299, 4304, 4318, 4320, 4322, 4346, 4349: amend. Acts 1978, ch. 384, § 315, effective June 17, 1978.)

Cross-References. Penalty for failure of county engineer to prosecute, KRS 179.990.

TITLE XVI

MOTOR VEHICLES

CHAPTER 186

LICENSING OF MOTOR VEHICLES, OPERATORS AND TRAILERS

SECTION.

MOTOR VEHICLE LICENSES

186.060. Motor vehicles leased or owned by governmental units or emergency and ambulance vehicles operated by nonprofit corporations organized by units of government.
186.184. Special PTA license plate — PTA program fund.

OPERATOR'S LICENSE

186.440. Persons ineligible for operator's license — Reinstatement fee and exemption.

PENALTIES

186.990. Penalties.

MOTOR VEHICLE LICENSES

186.060. Motor vehicles leased or owned by governmental units or emergency and ambulance vehicles operated by nonprofit corporations organized by units of government.

(1) Applications for registration of motor vehicles leased or owned by a county, city, urban-county, or board of education, or emergency and ambulance vehicles operated by nonprofit corporations organized by units of government in the state or by the state or federal government shall be accompanied by a statement from the head of the department of the governmental unit that leases or owns the motor vehicle, certifying that the motor vehicle is leased or owned and operated by the governmental unit. The application and statement shall be forwarded by the county clerk to the cabinet, which shall give special authority to the clerk to register it. Upon receiving that authority, the clerk shall issue a registration receipt and the official number plate described in KRS 186.240(1)(c), and report the registration to the head of the department authorizing the registration. For his services in issuing such certificate of registration and number plate and reporting the same, the county clerk shall be entitled to a fee of three dollars ($3) in each instance, to be paid by the department upon whose authorization such license was issued.
(2) After such registration of any vehicle leased or owned by a county, city, urban-county, or board of education, or emergency and ambulance vehicles operated by nonprofit corporations organized by units of government in the state, or by the state or federal government and after issuance of such number plate for such vehicle so leased or owned, no subsequent registration or renewal of same, and no subsequent renewal of a number plate of the vehicle shall be necessary so long as the vehicle is leased or owned by the governmental unit except in the case of loss or destruction of the license plate. In the event of loss or destruction, the number plate shall be replaced in the same manner as if no plate had ever been issued.
(3) When a motor vehicle leased or owned by a county, city, urban-county, or board of education, or emergency and ambulance vehicles operated by nonprofit corporations organized by units of government in the state, or by the state or federal government is transferred or sold to another governmental unit, a new license plate shall be issued for the vehicle in the same manner as provided for in subsection (1) of this section and shall have the same effect as given to such license plates in subsection (2) of this section.
(4) No person shall use on a motor vehicle, not leased or owned by a county, city, urban-county, board of education, or emergency and ambulance vehicles operated by nonprofit corporations organized by units of government in the state, or the state or federal government, any license plate that has been issued for use on a motor vehicle leased or owned by the governmental unit.

(2739g-7: amend. Acts 1946, ch. 122; 1948, ch. 126, §§ 1, 2, 3; 1964, ch. 148, § 1; 1974, ch. 72, § 1; 1986, ch.

419, § 3, effective July 15, 1986; 1990, ch. 296, § 2, effective July 13, 1990; 1990, ch. 498, § 2, effective July 13, 1990; 1994, ch. 428, § 9, effective July 15, 1994; 1996, ch. 36, § 1, effective July 15, 1996.)

Cross-References. "Cabinet" defined, KRS 186.010(1).

Opinions of Attorney General. A school board was without authority to authorize the use of its buses by a civic organization in the absence of a showing of some specific connection between the proposed trip and regular school functions. OAG 60-690.

So long as motor vehicles are owned exclusively by a board of education they need not be re-registered after the initial registration and the license tags will be permanent. OAG 65-421.

A residential manpower center is not entitled to receive official license plates for automobiles acquired under a General Motors lending agreement and used in its driver's education program as it is not a governmental unit and the automobiles are not owned and used exclusively by it. OAG 74-363.

The driver education vehicles owned by an independent school district and operated exclusively for the conduct of a school program by a residential manpower center as an agency of the school district qualify for official license plates under this section. OAG 74-395.

186.184. Special PTA license plate — PTA program fund.

(1) As used in this section:
   (a) "PTA" means an organized parent-teacher association or a parent-teacher organization that has been formally recognized by a school council in a public school where the PTA is located, or recognized by the principal of the public school if the school does not have a school council; and
   (b) "Public education foundation" means a corporation that is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code and that is incorporated to support public education and PTAs in the county where the foundation is located.

(2) The owner or lessee of a motor vehicle registered under the provisions of KRS 186.050(1) or (3)(a) may apply for a special PTA license plate in the office of the county clerk in the county where the person lives. At the time the owner or lessee applies for a special PTA license plate, the person shall include with the application the initial state fee of fifty dollars ($50). The county clerk shall inform the owner or lessee that the person's application and state fee shall be sent to Frankfort to the Transportation Cabinet where it may be held for a period not to exceed one (1) year while the cabinet is waiting to receive sufficient applications subject to the provisions of subsection (3) of this section. The person shall designate on the application form the specific school and PTA where the proceeds from the person's purchase shall be credited for distribution under subsection (10) of this section.

(3) The Transportation Cabinet shall be required to begin designing and printing special PTA license plates after the cabinet has received nine hundred (900) applications accompanied by a fifty dollar ($50) state fee within a one (1) year period. The purpose of the fifty dollar ($50) state fee is to offset computer programming costs incurred by the cabinet. Unless the cabinet is requested in writing to the contrary, if the cabinet has not received nine hundred (900) applications within one (1) year from the date the cabinet receives the first application for a special PTA license plate, the cabinet shall refund the fifty dollar ($50) state fee to the appropriate applicants.

(4) Subject to the provisions of subsection (3) of this section, the total initial application fee for the first nine hundred (900) special PTA license plates printed by the Transportation Cabinet shall be sixty-eight dollars ($68). The sixty-eight dollar ($68) fee shall be divided as follows:
   (a) The Transportation Cabinet shall receive a fee of fifty dollars ($50) that includes the state fee to reflectorize the license plate under KRS 186.240;
   (b) The county clerk shall receive a fee of three dollars ($3); and
   (c) The remaining fifteen dollar ($15) fee collected from the applicant shall be remitted to the Transportation Cabinet to be used as provided in subsection (10) of this section.

(5) The initial application fee for each special PTA license plate printed by the Transportation Cabinet in excess of nine hundred (900) shall be thirty dollars ($30). The thirty dollar ($30) fee shall be divided as follows:
   (a) The Transportation Cabinet shall receive a fee of twelve dollars ($12) that includes the state fee to reflectorize the license plate under KRS 186.240;
   (b) The county clerk shall receive a fee of three dollars ($3); and
   (c) The remaining fifteen dollar ($15) fee collected from the applicant shall be remitted to the Transportation Cabinet to be used as provided in subsection (10) of this section.

(6) A special PTA license plate shall annually be issued a renewal registration decal during the owner's or lessee's birth month. The annual renewal fee shall be twenty dollars ($20) and shall be divided as follows:
   (a) The Transportation Cabinet shall receive a fee of twelve dollars ($12) that includes the state fee to reflectorize the license plate under KRS 186.240;
   (b) The county clerk shall receive a fee of three dollars ($3); and
   (c) The remaining five dollar ($5) fee collected from an applicant renewing an annual registration shall be remitted to the Transportation Cabinet to be used as provided in subsection (10) of this section.

(7) Except as provided in this subsection, the special PTA license plate shall be replaced on the same schedule that regular license plates are replaced by the Transportation Cabinet under KRS 186.240. A special PTA license plate shall be replaced free of charge if the metal plate is destroyed in an accident, the plate deteriorates to a point that the

lettering, numbering, or images on the face of the plate are not legible, or the plate is stolen, if the owner or lessee has not transferred the vehicle issued the plate during the current licensing period.

(8) A person seeking a special PTA license plate for a vehicle provided as part of the person's occupation shall conform to the requirements of KRS 186.050.

(9) Upon the sale, transfer, or termination of a lease of a vehicle licensed under this section, the owner or lessee shall remove the special PTA license plate and return it and the certificate of registration to the county clerk. The county clerk shall reissue the owner or lessee a regular license plate and certificate of registration upon payment of a twelve dollar ($12) state fee that includes the state fee to reflectorize the license plate under KRS 186.240 and a three dollar ($3) county clerk fee. If the owner or lessee requests, the county clerk shall reissue the special PTA license plate free of charge for use on any other vehicle of the same classification and category owned by the person during the current licensing period. If the owner or lessee has the special PTA license plate reissued to another vehicle, the regular license plate that is being replaced shall be returned to the county clerk who shall forward the plate to Frankfort.

(10) All funds received by the Transportation Cabinet under subsections (4)(c), (5)(c), and (6)(c) of this section shall be deposited into a PTA program fund that is established in the state road fund. Money in the PTA program fund shall be used as provided in this subsection. If at the end of a fiscal year money remains in the PTA program fund, it shall be retained in the fund and used as provided in this subsection and shall not revert to the road fund. All interest and income earned on money in the PTA program fund shall be retained by the Transportation Cabinet to help offset the costs associated with administering this subsection.

(a) At the end of each fiscal year the cabinet shall, after deducting interest and income earned during the year, disburse all funds remaining in the PTA program fund to the public education foundation in a county containing a city of the first class. The public education foundation shall be responsible for distributing funds under this subsection among all schools and PTAs throughout the Commonwealth.

(b) The amount of money each PTA shall receive under this subsection shall be proportionate to the amount of money contributed to the PTA program fund from sales of the special PTA license plates in the county where the PTA is located.

(c) A person wishing to purchase a special PTA license plate who lives in a county that does not have a public education foundation shall be permitted on the application form to designate the specific school and PTA where the proceeds from the person's purchase shall be credited for purposes of distribution under this subsection. The plate issued under this paragraph shall designate the county where the person's motor vehicle is registered, not the county where the school and PTA designated on the application form is located.

(11) Subject to limitations imposed by the cabinet, special PTA license plates shall be the color and design selected by the public education foundation located in a county containing a city of the first class. The public education foundation may select up to three (3) designs of three (3) colors each. The name "Kentucky" shall appear on the PTA license plate. The cabinet may use any combination of letters or numerals as needed in the design.

(Enact. Acts 2002, ch. 32, § 1, effective July 15, 2002.)

Operator's License

186.440. Persons ineligible for operator's license — Reinstatement fee and exemption.

An operator's license shall not be granted to:

(1) Any person who is not a resident of Kentucky;

(2) Any person under the age of sixteen (16);

(3) Any person under the age of eighteen (18) who holds a valid Kentucky instruction permit issued pursuant to KRS 186.450, but who has not graduated from high school or who is not enrolled and successfully participating in school or who is not being schooled at home, except those persons who satisfy the District Court of appropriate venue pursuant to KRS 159.051(3) that revocation of their license would create an undue hardship. Persons under the age of eighteen (18) shall present proof of complying with the requirements of KRS 159.051;

(4) Any person whose operator's license has been suspended, during the period of suspension;

(5) Any person whose operator's license has been revoked, nor to any nonresident whose privilege of exemption under KRS 186.430 has been refused or discontinued, until the expiration of the period for which the license was revoked, or for which the privilege was refused or discontinued;

(6) Any applicant adjudged incompetent by judicial decree;

(7) Any person who in the opinion of the State Police, after examination, is unable to exercise reasonable and ordinary control over a motor vehicle upon the highways;

(8) Any person who is unable to understand highway warnings or direction signs in the English language;

(9) Any person required by KRS 186.480 to take an examination who has not successfully passed the examination;

(10) Any person required by KRS Chapter 187 to deposit proof of financial responsibility, who has not deposited that proof;

(11) Any person who has not filed a correct and complete application attested to in the presence of a person authorized to administer oaths;

(12) Any person who cannot meet the requirements set forth in KRS 186.411(1) or (3); or

(13) Any person whose operator's license has been suspended or revoked under the provisions of KRS

Chapter 186, 187, or 189A until the person has forwarded to the cabinet a reinstatement fee of fifteen dollars ($15). The fee shall be paid by certified check or money order payable to the State Treasurer who shall deposit five dollars ($5) of the fee in a trust and agency fund to be used in defraying the costs and expenses of administering a driver improvement program for problem drivers. Ten dollars ($10) of the fee shall be deposited by the State Treasurer in a trust and agency account to the credit of the Administrative Office of the Courts and shall be used to assist circuit clerks in hiring additional employees, providing salary adjustments for employees, providing training for employees, and purchasing additional equipment used in administering the issuance of driver's licenses. The provisions of this subsection shall not apply to any person whose license was suspended for failure to meet the conditions set out in KRS 186.411 when, within one (1) year of suspension, the driving privileges of the individuals are reinstated or to any student who has had his license revoked pursuant to KRS 159.051.

(2739m-37: amend. Acts 1966, ch. 78, § 1; 1966, ch. 255, § 170; 1974, ch. 306, § 2; 1978, ch. 92, § 8, effective June 17, 1978; 1980, ch. 88, § 1, effective July 15, 1980; 1986, ch. 123, § 1, effective July 15, 1986; 1990, ch. 63, § 1, effective July 13, 1990; 1990, ch. 234, § 2, effective July 13, 1990; 1994, ch. 267, § 1, effective July 15, 1994; 1994, ch. 416, § 7, effective July 15, 1994; 1994, ch. 455, § 3, effective July 15, 1994; 1996, ch. 341, § 10, effective July 15, 1996; 1996, ch. 198, § 4, effective October 1, 1996; 1998, ch. 442, § 5, effective July 15, 1998; 2002, ch. 264, § 6, effective July 15, 2002.)

Legislative Research Commission Note. (7/15/94). This section was amended by 1994 Ky. Acts chs. 267, 416, and 455. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 416, which was last enacted by the General Assembly, prevails under KRS 446.250.

Cross-References. Approval of operation of alternative education programs for purposes of driver's license revocation, 704 KAR 7:100.

PENALTIES

186.990. Penalties.

(1) Any person who violates any of the provisions of KRS 186.020, 186.030, 186.040, 186.045(2), 186.050, 186.056, 186.060, 186.110, 186.130, 186.140, 186.160, 186.170, 186.180(1) to (4)(a), 186.210, 186.230, or KRS 186.655 to 186.680 shall be guilty of a violation.

(2) Any person who violates any of the provisions of KRS 138.465, 186.190, or 186.200 shall be guilty of a Class A misdemeanor.

(3) A person who violates the provisions of KRS 186.450(4) or (5) shall be guilty of a violation. A person who violates any of the other provisions of KRS 186.400 to 186.640 shall be guilty of a Class B misdemeanor.

(4) Any clerk or judge failing to comply with KRS 186.550(1) shall be guilty of a violation.

(5) If it appears to the satisfaction of the trial court that any offender under KRS 186.400 to 186.640 has a driver's license but in good faith failed to have it on his or her person or misplaced or lost it, the court may, in its discretion, dismiss the charges against the defendant without fine, imprisonment, or cost.

(6) Any person who steals a motor vehicle registration plate or renewal decal shall be guilty of a Class D felony. Displaying a canceled registration plate on a motor vehicle shall be prima facie evidence of guilt under this section.

(7) Any person who violates the provisions of KRS 186.1911 shall be guilty of a Class A misdemeanor.

(8) Any person who makes a false affidavit to secure a license plate under KRS 186.172 shall be guilty of a Class A misdemeanor.

(9) Any person who violates any provision of KRS 186.070 or 186.150 shall be guilty of a Class A misdemeanor.

(10) Any person who operates a vehicle bearing a dealer's plate upon the highways of this Commonwealth with intent to evade the motor vehicle usage tax or registration fee shall be guilty of a Class A misdemeanor for the first offense and a Class D felony for each subsequent offense.

(11) Any person, other than a licensed dealer or manufacturer, who procures a dealer's plate with intent to evade the motor vehicle usage tax or registration fee shall be guilty of a Class D felony.

(12) Any resident who unlawfully registers, titles, or licenses a motor vehicle in any state other than Kentucky with intent to evade the motor vehicle usage tax or the registration fee shall be guilty of a Class A misdemeanor if the amount of tax due is less than one hundred dollars ($100), or of a Class D felony if the amount of tax due is more than one hundred dollars ($100), and in addition shall be liable for all taxes so evaded with applicable interest and penalties.

(2739g-5c, 2739g-6, 2739g-7, 2739g-65, 2739g-103, 2739g-104, 2739m-36, 2739m-48, 2739m-59, 2739m-69: amend. Acts 1946, ch. 208, § 4; 1958, ch. 70, § 28; 1960, ch. 37, § 5; 1966, ch. 83, § 2; 1970, ch. 92, § 58; 1978, ch. 101, § 1, effective June 17, 1978; 1979 (Ex. Sess.), ch. 7, § 2, effective July 1, 1979; 1980, ch. 296, § 5, effective July 15, 1980; 1982, ch. 303, § 2, effective July 15, 1982; 1984, ch. 373, § 7(1) to (9), effective July 13, 1984; 1986, ch. 118, § 104, effective July 1, 1987; 1986, ch. 431, § 14, effective July 15, 1986; 1986, ch. 498, § 6, effective April 1, 1987; 1992, ch. 463, § 20, effective July 14, 1992; 1996, ch. 198, § 17, effective October 1, 1996; 2000, ch. 441, § 3, effective July 14, 2000.)

CHAPTER 189

TRAFFIC REGULATIONS—VEHICLE EQUIPMENT AND STORAGE

SECTION.
189.336. Installation of flasher lights near schools — Speed limits.
189.370. Passing stopped school or church bus prohibited —

SECTION.
Application to properly marked vehicles — Rebuttable presumption as to identity of violator.
189.375. School or church bus signaling device — Use — Stopping regulated.
189.380. Signals.
189.450. Stopping, standing, or repairing vehicle on roadway or shoulders of highway.
189.540. Regulations for school buses — Operator required to have commercial driver's license.
189.550. Vehicles used for transporting children to stop at railroad crossings.

PENALTIES

189.990. Penalties.
189.993. Penalties.

189.336. Installation of flasher lights near schools — Speed limits.

(1) Fiscal courts, with respect to school zones situated in unincorporated areas, may authorize by resolution installation at county expense of school flasher lights and other traffic control devices on highways in school zones as they deem reasonable and necessary.

(2) Cities, with respect to school zones within their incorporated areas, may authorize by ordinance installation at city expense of school flasher lights and other traffic control devices on highways in school zones as they deem reasonable and necessary.

(3) The speed limit on all highways where school flasher lights are in operation shall be determined by the governmental unit having control of the highway where a school flasher light is in operation. Flasher lights shall be placed one-eighth (⅛) of a mile on each side of the principal school building where practical. The governmental unit having control of the highway where the lights are in operation shall erect signs notifying motorists of the speed limit.

(4) "Highways" as used in this section shall mean any public road or street maintained by a city, county or the state.

(5) Any traffic control devices erected by any governmental unit shall conform to standards and specifications authorized by KRS 189.337.

(Enact. Acts 1972, ch. 49, § 1; 1974, ch. 27, § 1; 1978, ch. 227, § 1, effective June 17, 1978.)

Opinions of Attorney General. Fiscal courts, and cities by ordinance, may authorize the installation of traffic devices that conform to the standards and specifications of KRS 189.337 on highways in school zones as they deem reasonable and necessary with or without authorization from the bureau (now department) of highways, except where federal aid highways are involved, since any traffic control devices placed thereon must be approved by the bureau (now department) of highways as required by 23 U.S.C., § 109(d). OAG 74-774.

A board of education in making reasonable rules for the control and management of the schools may establish student safety patrols for street traffic instructional purposes inside the limits of school property but may not make or enforce traffic regulations on roads or driveways within or outside the limits of school property. OAG 75-614.

A city ordinance making school crossing guards, who are sworn peace officers with authority to issue citations and place and remove traffic control devices, employes of the school board rather than the city is invalid under KRS 94.360 (now repealed), giving a city exclusive control over its streets, this section, giving a city exclusive authority to place traffic control devices, and Const., § 184 requiring school board funds be used only for the purpose of education. OAG 79-107.

The city has authority to employ school crossing guards to regulate traffic, while the local school board does not; due to the city's exclusive control over its streets, no other governmental entity has similar control. OAG 92-6.

The city school board does not have the authority to regulate traffic, as the city has exclusive control over traffic and traffic control devices. OAG 92-6.

There is no statutory authority allowing the city to abdicate its responsibility and jurisdiction over existing city streets and in fact, subsection (2) of this section expressly authorizes a city, by ordinance, to install, at city expense, school flasher lights in school zones, as necessary. OAG 92-6.

189.370. Passing stopped school or church bus prohibited — Application to properly marked vehicles — Rebuttable presumption as to identity of violator.

(1) If any school or church bus used in the transportation of children is stopped upon a highway for the purpose of receiving or discharging passengers, with the stop arm and signal lights activated, the operator of a vehicle approaching from any direction shall bring his vehicle to a stop and shall not proceed until the bus has completed receiving or discharging passengers and has been put into motion. The stop requirement provided for in this section shall not apply to vehicles approaching a stopped bus from the opposite direction upon a highway of four (4) or more lanes.

(2) Subsection (1) of this section shall be applicable only when the bus displays the markings and equipment required by Kentucky minimum specifications for school buses.

(3) If any vehicle is witnessed to be in violation of subsection (1) of this section and the identity of the operator is not otherwise apparent, it shall be a rebuttable presumption that the person in whose name the vehicle is registered or leased was the operator of the vehicle at the time of the alleged violation and is subject to the penalties as provided for in KRS 189.990(5).

(2739g-46a, 2739g-69*l*: amend. Acts 1950, ch. 96, § 1; 1960, ch. 123, § 2; 1964, ch. 65, § 3; 1986, ch. 443, § 1, effective July 15, 1986; 1988, ch. 262, § 1, effective July 15, 1988.)

Kentucky Law Journal. Murray, Instructions In Regard to the Speed of Motor Trucks, A Study In Statutory Interpretation, 34 Ky. L.J. 85 (1946).

Opinions of Attorney General. Regardless of whether a bus was marked "school bus" or "church bus" when it was being used to carry children to a church function, a motorist passing such a bus while the bus was stopped for receiving or disembarking passengers, whether or not the bus was "upon a highway," would be in violation of subsection (1) of this section. OAG 60-1237.

The provisions of subsection (1) of this section were intended primarily to apply to the passing of a bus which was

loading or unloading passengers on the highway. OAG 60-1237.

Painted stripes between opposite traffic lanes would not fall within the definition of a mountable median. OAG 65-120.

When a school bus driver has seen a vehicle pass a stopped school bus loading or unloading children, has noted the license number of the vehicle, and has ascertained the name of the registered owner, he has sufficient information to justify making a complaint before a judge against the registered owner and the complaint should not be dismissed without a trial, but unless the prosecution has obtained additional evidence, either direct or circumstantial, identifying the driver of the vehicle at the time of the violation, the court would be justified in dismissing the case without requiring the defendant to make any defense. OAG 79-263.

Cited: Lowe v. Commonwealth, 298 Ky. 7, 181 S.W.2d 409 (1944); Mackey v. Spradlin, 397 S.W.2d 33 (Ky. 1965).

NOTES TO DECISIONS

ANALYSIS

1. Purpose.
2. Bus driver.
3. —Duty.
4. —Negligence.
5. Negligence of motorist.
6. Involuntary manslaughter.
7. "In use."

1. Purpose.

The Constitution, statute and case law of this state reflect a policy of special protection of minors from injury. Pike v. George, 434 S.W.2d 626 (Ky. 1968).

2. Bus Driver.

3. —Duty.

School bus driver owes other motorists duty of operating his bus in a careful manner with respect to their safety under KRS 189.290. Greyhound Corp. v. White, 323 S.W.2d 578 (Ky. 1958).

4. —Negligence.

Where a school bus driver stopped in his left lane a few feet behind a commercial bus which was stopped partially in the right lane and the school bus driver could easily have pulled completely off of the road, the question of whether the school bus driver was negligent should have been submitted to the jury and were it not for the requirement that all motorists stop before passing a school bus and the possibility that the school bus driver, therefore, reasonably thought that any motorist behind him would be prepared to stop when he did, there should have been a directed verdict against the school bus driver in favor of a passenger in a car which hit both buses from behind on slick road. Greyhound Corp. v. White, 323 S.W.2d 578 (Ky. 1958).

5. Negligence of Motorist.

Where a motorist was following a school bus on a slick road, the school bus pulled into the left lane revealing a commercial bus stopped partially in the right lane, the school bus then stopped in the left lane a few feet behind the commercial bus to pick up children, and the motorist slid into both buses, the issue of the motorist's negligence should have been submitted to the jury in an action by passengers in his automobile. Greyhound Corp. v. White, 323 S.W.2d 578 (Ky. 1958).

6. Involuntary Manslaughter.

Driver who failed to bring his automobile to a complete stop as he approached school bus which had stopped on highway for the purpose of discharging passengers and who passed bus while it was discharging passengers was guilty of involuntary manslaughter when he struck and killed child who had alighted from the bus. Commonwealth v. Mullins, 296 Ky. 190, 176 S.W.2d 403 (1943).

7. "In use."

Where truck passed school bus on the left and struck the child, child's death arose out of the "use" of the school bus, and insurer of the school bus had a duty to defend; until the child had reached the other side of the street safely the school bus had not stopped operating as a school bus in relation to the child. Hartford Ins. Cos. of Am. v. Kentucky Sch. Bds. Ins. Trust, 17 S.W.3d 525 (Ky. Ct. App. 1999).

Collateral References. 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 269, 509, 523-530.

60 C.J.S., Motor Vehicles, § 35; 61A C.J.S., Motor Vehicles, § 686.

189.375. School or church bus signaling device — Use — Stopping regulated.

No school or church bus shall be licensed or operated for the transportation of school children unless it is equipped with bus alternating flashing signal lamps and a stop arm folding sign. The bus body shall be equipped with a system of four (4) red signal lamps, two (2) on the front and two (2) on the rear of the bus, and four (4) amber signal lamps. Each amber signal lamp shall be located near each red signal lamp, at the same level, but closer to the vertical centerline of the bus. The bus body shall be equipped with a stop arm folding sign on the driver's side with letters at least six (6) inches in height displaying the word "stop" on both sides. Prior to stopping the school bus for the purpose of receiving or discharging school children, the driver shall activate the amber flashing signal lamps. Once the bus comes to a complete stop, the driver shall extend the stop arm and activate the red flashing signal lights prior to opening the door so it shall be plainly visible to traffic approaching from both directions that the bus is in the process of receiving or discharging passengers. No driver shall stop a school or church bus for receiving or discharging passengers in a no passing zone which does not afford reasonable visibility to approaching motor vehicles from both directions. No driver shall stop a school or church bus for the purpose of receiving passengers from or discharging passengers to the opposite side of the road on a highway of four (4) or more lanes; provided, that this provision does not prohibit the discharging of passengers at a marked pedestrian crossing.

(Enact. Acts 1956, ch. 41; 1958, ch. 110, § 1; 1964, ch. 65, § 4; 1986, ch. 443, § 2, effective July 15, 1986; 1988, ch. 262, § 2, effective July 15, 1988.)

Opinions of Attorney General. A school bus may not stop to receive or discharge passengers in a no passing area as defined in KRS 189.340(4). OAG 64-23.

NOTES TO DECISIONS

1. Bus Driver's Standard of Care.

A school bus driver is required to exercise the highest degree of care for a child's safety until the child is on the side of the street where his home is located and is out of danger of injury from passing traffic. Croghan v. Hart County Bd. of Educ., 549 S.W.2d 306 (Ky. Ct. App. 1977).

Where child was allowed to disembark from school bus on side of highway opposite his home and bus driver failed to use flashing signals or operate stop sign, bus driver and county

school board were negligent as a matter of law. Croghan v. Hart County Bd. of Educ., 549 S.W.2d 306 (Ky. Ct. App. 1977).

Collateral References. 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 509.

60A C.J.S., Motor Vehicles, § 330.

189.380. Signals.

(1) A person shall not turn a vehicle or move right or left upon a roadway until the movement can be made with reasonable safety nor without giving an appropriate signal in the manner hereinafter provided.

(2) A signal indicating the intention to turn right or left shall be given continuously for not less than the last one hundred (100) feet traveled by the motor vehicle before the turn.

(3) A bus driver shall not stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal to traffic following the bus.

(4) All signals required for a motor vehicle shall be given by signal lamps or mechanical signal devices.

(5) A signal required for a vehicle that is not a motor vehicle may be given by either hand signals, signal lamps, or mechanical signal devices. The signal shall be given intermittently for the last fifty (50) feet traveled by the vehicle before the turn.

(6) Hand signals shall be executed in the following manner when operating a vehicle that is not a motor vehicle:

(a) The hand and arm shall be extended horizontally from the left side of the vehicle to indicate a left turn;

(b) The left arm shall be extended horizontally with the hand and arm extended upward from the elbow or the right arm and hand shall be extended horizontally to indicate a right turn;

(c) Either arm shall be extended horizontally with the hand and arm extended downward from the elbow to indicate a stop or decrease in speed.

(2739g-50, 2739g-69p: amend. Acts 1950, ch. 54; 1954, ch. 142, § 1; 1960, ch. 123, § 3; 1978, ch. 46, § 6, effective June 17, 1978; 1988, ch. 262, § 3, effective July 15, 1988; 1994, ch. 203, § 2, effective July 15, 1994; 1996, ch. 327, § 2, effective July 15, 1996.)

189.450. Stopping, standing, or repairing vehicle on roadway or shoulders of highway.

(1) No person shall stop a vehicle, leave it standing or cause it to stop or to be left standing upon any portion of the roadway; provided, however, that this section shall not be construed to prevent parking in front of a private residence off the roadway or street in a city or suburban area where such parking is otherwise permitted, as long as the vehicle so parked does not impede the flow of traffic. This subsection shall not apply to:

(a) A vehicle that has been disabled on the right-of-way of such a highway in such a manner and to such extent that it is impossible to avoid the occupation of the shoulder of a state-maintained highway or impracticable to remove it from the shoulder of the highway until repairs have been made or sufficient help obtained for its removal. In no event shall a disabled vehicle remain on the shoulder of a state-maintained highway for twenty-four (24) hours or more;

(b) Motor vehicles when required to stop in obedience to the provisions of any section of the Kentucky Revised Statutes or any traffic ordinance, regulation or sign or the command of any peace officer;

(c) Vehicles operating as common carriers of passengers for hire and school buses taking passengers on such vehicle or discharging passengers therefrom, provided that no such vehicle shall stop for such purposes at a place on the highway which does not afford reasonable visibility to approaching motor vehicles from both directions; or

(d) Any vehicle required to stop by reason of an obstruction to its progress.

(2) When any police officer finds a vehicle standing upon such a highway in violation of this section, he may move or cause to be moved the vehicle, or require the operator or other person in charge of the vehicle to move it. The police officer may cause the vehicle to be removed by ordering any person engaged in the business of storing or towing motor vehicles to remove the vehicle to a site chosen by such person. Ownership of the vehicle shall be determined by the police officer's enforcement agency through the vehicle's license plates, serial number or other means of determining ownership. As soon as practicable, the police officer's enforcement agency shall notify the owner by mail that the vehicle was illegally upon public property; the name and address of the storage facility where the vehicle is located; that removal of the vehicle from the storage facility will involve payment of towing and storage charges; and that the vehicle may be sold pursuant to the provisions of KRS 376.275 if not claimed within sixty (60) days. No notification shall be required if ownership cannot be determined. In the event of a sale pursuant to KRS 376.275, the state shall receive any proceeds after the satisfaction of all liens placed on the vehicle.

(3) No vehicle shall be parked, stopped, or allowed to stand on the shoulders of any toll road, interstate highway, or other fully controlled access highway, including ramps thereto, nor shall any vehicle registered at a gross weight of over forty-four thousand (44,000) pounds be parked, stopped or allowed to stand on the shoulders of any state-maintained highway except that in the case of emergency, or in response to a peace officer's signal, vehicles shall be permitted to stop on the shoulders to the right of the traveled way with all wheels and projecting parts of the vehicles, including the load, completely clear of the traveled way. Parking of any vehicle which is disabled on the shoulders of a toll road, interstate highway, other fully controlled access highway, including ramps thereto, or any state-maintained highway not mentioned in this section for twenty-four (24) hours continuously is prohibited and vehicles violating

this provision may be towed away at the cost of the owner.

(4) When any police officer finds a vehicle unattended upon any bridge or causeway or in a tunnel where the vehicle constitutes an obstruction to traffic, the officer may provide for the removal of the vehicle to the nearest garage or other place of safety as provided in subsection (2) of this section.

(5) No person shall stop or park a vehicle except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control device, in the following places:
   (a) On a sidewalk;
   (b) In front of sidewalk ramps provided for persons with disabilities;
   (c) In front of a public or private driveway;
   (d) Within an intersection;
   (e) At any place where official signs prohibit stopping or parking; or
   (f) Within thirty (30) feet upon the approach to any flashing beacon, stop sign or traffic control signal located at the side of a roadway.

(6) No person shall move a vehicle not lawfully under his control into any such prohibited area.

(7) The restrictions in subsection (5)(e) of this section shall not apply to sheriffs and their deputies or police officers when operating properly identified vehicles during performance of their official duties.

(2739g-48: amend. Acts 1952, ch. 206, § 3; 1954, ch. 235; 1962, ch. 288, § 2; 1964, ch. 25, § 1; 1970, ch. 93, § 11; 1974, ch. 405, § 1; 1980, ch. 163, § 1, effective July 15, 1980; 1982, ch. 318, § 1, effective July 15, 1982; 1986, ch. 322, § 1, effective July 15, 1986; 1988, ch. 80, § 1, effective July 15, 1988; 1994, ch. 405, § 39, effective July 15, 1994.)

Cross-References. Glass dropped from damaged vehicle on highway to be removed by person removing vehicle, KRS 189.754.

State and federal highways, KRS ch. 177.

NOTES TO DECISIONS

ANALYSIS

7. Parking.
15. Disabled vehicles.
16. —Repairing flat.

7. Parking.

One transporting seven-year-old boy for hire from school to home who stopped on opposite side of city street from home, thus requiring boy to cross street, was negligent as to selecting place to discharge boy, since driver could have stopped on left side next to home. Taylor v. Patterson's Adm'r, 272 Ky. 415, 114 S.W.2d 488 (1938).

15. Disabled Vehicles.

16. —Repairing Flat.

Where a commercial bus stopped partially in the right traffic lane of a road in order to repair a flat tire, a school bus traveling in the same direction was then stopped in the left lane a few feet behind it, and a car also traveling in the same direction then hit both buses in an attempt to stop on the slick road, the parking of the school bus so as to materially obstruct the road was so unusual and extraordinary that the commercial bus driver could not have foreseen it and therefore the parking of the school bus was an intervening cause of the accident so as to relieve the commercial bus driver of liability even if his stopping was negligent. Greyhound Corp. v. White, 323 S.W.2d 578 (Ky. 1958).

189.540. Regulations for school buses — Operator required to have commercial driver's license.

(1) The Kentucky Board of Education shall promulgate administrative regulations to govern the design and operation of all Kentucky school buses and to govern the operation of district-owned passenger vehicles transporting students under KRS 156.153(3). The board shall, with the advice and aid of the Kentucky State Police and the Transportation Cabinet, enforce the administrative regulations governing the operation of all school buses whether owned by a school district or privately contracted and all district-owned passenger vehicles transporting students under KRS 156.153(3). The regulations covering the operation shall by reference be made a part of any contract with a school district. Every school district and private contractor referred to under this subsection shall be subject to those regulations.

(2) Any employee of any school district who violates any of the administrative regulations in any contract executed on behalf of a school district shall be subject to removal from office. Any person operating a school bus under contract with a school district who fails to comply with any of the administrative regulations shall be guilty of breach of contract and the contract shall be canceled after proper notice and a hearing by the responsible officers of such school district.

(3) Any person who operates a school bus shall be required to possess a commercial driver's license issued pursuant to KRS 281A.170.

(2739g-69m: corrected, Acts. 1958, ch. 126, § 24; 1988, ch. 262, § 4, effective July 15, 1988; 1990, ch. 455, § 32, effective July 13, 1990; 1990, ch. 476, § 609, effective July 13, 1990; 1996, ch. 216, § 2, effective July 15, 1996; 1996, ch. 362, § 6, effective July 15, 1996.)

Legislative Research Commission Note. (7/13/90). The Act amending this section prevails over the repeal and reenactment in House Bill 940, Acts Ch. 476, pursuant to Section 653(1) of Acts Ch. 476.

(6/17/78). This section was amended by 1978 Ky. Acts chs. 83 and 434, part of which are in conflict and cannot be compiled together. Effect has been given to all provisions except for the conflicting provision in subsection (3), in which the later amendment by 1978 Ky. Acts ch. 434, sec. 7, prevails.

Cross-References. Bus drivers' qualifications; responsibilities, 702 KAR 5:080.

District board's responsibilities, 702 KAR 5:040.

Pupils' responsibilities, 702 KAR 5:090.

Responsibilities of division, 702 KAR 5:010.

Superintendents' responsibilities, 702 KAR 5:030.

Supervision and discipline of pupils, 702 KAR 5:050.

Transportation of preschool children, 702 KAR 5:150.

Vehicles designed to carry nine (9) passengers or less, standards for, 702 KAR 5:130.

NOTES TO DECISIONS

1. Authority to Regulate.

Where language of KRS 156.160 and this section was clear

and unambiguous and authorized the Department of Transportation to regulate the operation of school buses, which necessarily included those persons operating the buses, there was no room for construction of the statutes and they must be accepted as they were written. Cornette v. Commonwealth, 899 S.W.2d 502 (Ky. Ct. App. 1995).

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

It was not the case that KRS Chapter 281A set forth a comprehensive scheme of regulating the same matter which was being regulated by an administrative agency, in violation of KRS 13A.120, as the administrative regulation was more detailed, comprehensive and pertinent regarding school bus drivers than was the statute, which dealt with commercial driver's licenses. Cornette v. Commonwealth, 899 S.W.2d 502 (Ky. Ct. App. 1995).

Collateral References. 60 C.J.S., Motor Vehicles, §§ 35, 48.

189.550. Vehicles used for transporting children to stop at railroad crossings.

Operators of all buses and motor vehicles used for transporting children shall stop their vehicles before crossing any railroad when tracks are at the same level of the roadway. The stop shall be made not less than ten (10) feet nor more than thirty (30) feet from the nearest track over which the highway crosses, except where the crossing is protected by gates or a flagman employed by the railroad. After making the stop, the operator shall open the service door and carefully look in each direction and listen for approaching trains or maintenance vehicles before proceeding.

(1376r-10: amend. Acts. 1960, ch. 123, § 4; 1988, ch. 262, § 5, effective July 15, 1988.)

Collateral References. 60A C.J.S., Motor Vehicles, § 330.

Penalties

189.990. Penalties.

(1) Any person who violates any of the provisions of KRS 189.020 to 189.040, subsections (1), (2), and (5) of KRS 189.050, KRS 189.060 to 189.080, subsections (1) to (3) of KRS 189.090, KRS 189.100, 189.110, 189.130 to 189.160, subsections (2) to (4) of KRS 189.190, KRS 189.200, 189.285, 189.290, 189.300 to 189.360, KRS 189.380, KRS 189.400 to 189.430, 189.450 to 189.480, subsection (1) of KRS 189.520, KRS 189.540, KRS 189.570 to 189.630, except subsection (1) of KRS 189.580, KRS 189.345, subsection (4) of KRS 189.456, and 189.960 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense. Any person who violates subsection (1) of KRS 189.580 shall be fined not less than twenty dollars ($20) nor more than two thousand dollars ($2,000) or imprisoned in the county jail for not more than one (1) year, or both. Any person who violates paragraph (c) of subsection (5) of KRS 189.390 shall be fined not less than eleven dollars ($11) nor more than thirty dollars ($30). Neither court costs nor fees shall be taxed against any person violating paragraph (c) of subsection (5) of KRS 189.390.

(2) (a) Any person who violates the weight provisions of KRS 189.212, 189.221, 189.222, 189.226, 189.230, or 189.270 shall be fined two cents ($0.02) per pound for each pound of excess load when the excess is five thousand (5,000) pounds or less. When the excess exceeds five thousand (5,000) pounds the fine shall be two cents ($0.02) per pound for each pound of excess load, but the fine levied shall not be less than one hundred dollars ($100) and shall not be more than five hundred dollars ($500).

(b) Any person who violates the provisions of KRS 189.271 and is operating on a route designated on the permit shall be fined one hundred dollars ($100); otherwise, the penalties in paragraph (a) of this subsection shall apply.

(c) Any person who violates any provision of subsections (3) and (4) of KRS 189.050, subsection (4) of KRS 189.090, KRS 189.221 to 189.230, 189.270, 189.280, 189.490, or the dimension provisions of KRS 189.212, for which another penalty is not specifically provided shall be fined not less than ten dollars ($10) nor more than five hundred dollars ($500).

(d) Nothing in this subsection or in KRS 189.221 to 189.228 shall be deemed to prejudice or affect the authority of the Department of Vehicle Regulation to suspend or revoke certificates of common carriers, permits of contract carriers, or drivers' or chauffeurs' licenses, for any violation of KRS 189.221 to 189.228 or any other act applicable to motor vehicles, as provided by law.

(3) (a) Any person who violates subsection (1) of KRS 189.190 shall be fined not more than fifteen dollars ($15).

(b) Any person who violates subsection (5) of KRS 189.190 shall be fined not less than thirty-five dollars ($35) nor more than two hundred dollars ($200).

(4) (a) Any person who violates subsection (1) of KRS 189.210 shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100).

(b) Any peace officer who fails, when properly informed, to enforce KRS 189.210 shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100).

(c) All fines collected under this subsection, after payment of commissions to officers entitled thereto, shall go to the county road fund if the offense is committed in the county, or to the city street fund if committed in the city.

(5) Any person who violates KRS 189.370 shall for the first offense be fined not less than one hundred dollars ($100) nor more than two hundred dollars ($200) or imprisoned not less than thirty (30) days nor more than sixty (60) days, or both. For each

subsequent offense occurring within three (3) years, the person shall be fined not less than three hundred dollars ($300) nor more than five hundred dollars ($500) or imprisoned not less than sixty (60) days nor more than six (6) months, or both. The minimum fine for this violation shall not be subject to suspension. A minimum of six (6) points shall be assessed against the driving record of any person convicted.

(6) Any person who violates KRS 189.500 shall be fined not more than fifteen dollars ($15) in excess of the cost of the repair of the road.

(7) Any person who violates KRS 189.510 or KRS 189.515 shall be fined not less than twenty dollars ($20) nor more than fifty dollars ($50).

(8) Any peace officer who violates subsection (2) of KRS 189.520 shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100).

(9) (a) Any person who violates KRS 189.530(1) shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100), or imprisoned not less than thirty (30) days nor more than twelve (12) months, or both.

(b) Any person who violates KRS 189.530(2) shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100).

(10) Any person who violates any of the provisions of KRS 189.550 shall be guilty of a Class B misdemeanor.

(11) Any person who violates subsection (2) of KRS 189.560 shall be fined not less than thirty dollars ($30) nor more than one hundred dollars ($100) for each offense.

(12) The fines imposed by paragraph (a) of subsection (3) and subsections (6) and (7) of this section shall, in the case of a public highway, be paid into the county road fund, and, in the case of a privately owned road or bridge, be paid to the owner. These fines shall not bar an action for damages for breach of contract.

(13) Any person who violates any of the provisions of KRS 189.120 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense.

(14) Any person who violates any provision of KRS 189.575 shall be fined not less than twenty dollars ($20) nor more than twenty-five dollars ($25).

(15) Any person who violates subsection (2) of KRS 189.231 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense.

(16) Any person who violates restrictions or regulations established by the secretary of transportation pursuant to subsection (3) of KRS 189.231 shall, upon first offense, be fined one hundred dollars ($100) and, upon subsequent convictions, be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or imprisoned for thirty (30) days, or both.

(17) (a) Any person who violates any of the provisions of KRS 189.565 shall be guilty of a Class B misdemeanor.

(b) In addition to the penalties prescribed in paragraph (a) of this subsection, in case of violation by any person in whose name the vehicle used in the transportation of inflammable liquids or explosives is licensed, the person shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500). Each violation shall constitute a separate offense.

(18) Any person who abandons a vehicle upon the right-of-way of a state highway for three (3) consecutive days shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100), or imprisoned for not less than ten (10) days nor more than thirty (30) days.

(19) Every person violating KRS 189.393 shall be guilty of a Class B misdemeanor, unless the offense is being committed by a defendant fleeing the commission of a felony offense which the defendant was also charged with violating and was subsequently convicted of that felony, in which case it is a Class A misdemeanor.

(20) Any law enforcement agency which fails or refuses to forward the reports required by KRS 189.635 shall be subject to the penalties prescribed in KRS 17.157.

(21) A person who elects to operate a bicycle in accordance with any regulations adopted pursuant to KRS 189.287 and who willfully violates a provision of a regulation shall be fined not less than ten dollars ($10) nor more than one hundred dollars ($100). A person who operates a bicycle without complying with any regulations adopted pursuant to KRS 189.287 or vehicle safety statutes shall be prosecuted for violation of the latter.

(22) Any person who violates KRS 189.860 shall be fined not more than five hundred dollars ($500) or imprisoned for not more than six (6) months, or both.

(23) Any person who violates KRS 189.754 shall be fined not less than twenty-five dollars ($25) nor more than three hundred dollars ($300).

(24) Any person who violates the provisions of KRS 189.125(3) shall be fined fifty dollars ($50).

(25) Any person who violates the provisions of KRS 189.125(6) shall be fined an amount not to exceed twenty-five dollars ($25).

(26) Fines levied pursuant to this chapter shall be assessed in the manner required by KRS 534.020, in amounts consistent with this chapter. Nonpayment of fines shall be governed by KRS 534.060.

(27) A licensed driver under the age of eighteen (18) charged with a moving violation pursuant to this chapter as the driver of a motor vehicle may be referred, prior to trial, by the court to a diversionary program. The diversionary program under this subsection shall consist of one (1) or both of the following:

(a) Execution of a diversion agreement which prohibits the driver from operating a vehicle for a period not to exceed forty-five (45) days and which allows the court to retain the driver's operator's license during this period; and

(b) Attendance at a driver improvement clinic established pursuant to KRS 186.574. If the person completes the terms of this diversion-

ary program satisfactorily the violation shall be dismissed.

(1376r-2, 1376r-10, 2739g-34a, 2739g-34b, 2739g-46a, 2739-53b, 2739g-65, 2739g-69ee, 2739g-93, 2739i-2, 2896a-15, 4345, 4345a-6, 4346, 4346a-5, 4348, 4353b-4: amend. Acts 1946, ch. 96; 1948, ch. 171, § 2; 1950, ch. 48, § 4; 1950, ch. 96, § 2; 1950, ch. 97, §§ 2, 3; 1950, ch. 115, § 9; 1952, ch. 206, § 1; 1956, ch. 23, § 1, 1956, ch. 35, § 2; 1956, ch. 125, § 3; 1970, ch. 92, § 60; 1972, ch. 128, § 2; 1972, ch. 203, § 38; 1972, ch. 299, § 2(4); 1974, ch. 101, § 7; 1974, ch. 217, § 2; 1974, ch. 258 § 5; 1974, ch. 335, § 2; 1974, ch. 345, § 1(3); 1976 (Ex. Sess.), ch. 36, § 2, effective January 2, 1978; 1978, ch. 46, § 11, effective June 17, 1978, ch. 101, § 4, effective June 17, 1978; 1978, ch. 384, § 54, effective June 17, 1978; 1979 (Ex. Sess.), ch. 7 § 5, effective July 1, 1979; 1980, ch. 49, § 5, effective July 15, 1980; 1980, ch. 305, § 2, effective July 15, 1980; 1984, ch. 165, § 20(1) to (24), effective July 13, 1984; 1988, ch. 72, § 1, effective July 15, 1988; 1988, ch. 232, § 2, effective July 15, 1988; 1988, ch. 262, § 6, effective July 15, 1988; 1988, ch. 293, § 1, effective July 15, 1988; 1988, ch. 347, § 2, effective April 10, 1988; 1990, ch. 400, § 3, effective July 13, 1990; 1992, ch. 143, § 4, effective July 14, 1992; 1992, ch. 229, § 4, effective July 14, 1992; 1994, ch. 39, § 2, effective July 15, 1994; 1998, ch. 21, § 3, effective July 15, 1998; 1998, ch. 124, § 6, effective July 15, 1998; 1998, ch. 179, § 4, effective July 15, 1998; 1998, ch. 484, § 4, effective July 15, 1998; 1998, ch. 606, § 69, effective July 15, 1998; 2000, ch. 319, § 3, effective July 14, 2000; 2000, ch. 449, § 1, effective April 21, 2000; 2000, ch. 467, § 25, effective October 1, 2000; 2000, ch. 481, § 2, effective July 14, 2000; 2000, ch. 512, § 6, effective July 14, 2000; 2002, ch. 183, § 18, effective August 1, 2002.)

Compiler's Notes. Former subsections (19) and (20) (Acts 1956, ch. 125, § 3) were repealed by Acts 1966, ch. 115, § 12 and former subsection (21) (Acts 1966, ch. 142, § 2) was repealed by implication by Acts 1968, ch. 152, § 123.

189.993. Penalties.

(1) Any person who violates KRS 189.045 shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000).

(2) Any person convicted of violating any of the provisions of KRS 189.095 shall be fined sixty dollars ($60) and costs of prosecution.

(3) Any person who violates any provision of KRS 189.205 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100).

(4) Any person who violates any provision of KRS 189.375 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100).

(5) Any person who violates KRS 189.505 shall be fined not less than sixty dollars ($60) nor more than two hundred dollars ($200) or be imprisoned for not more than thirty (30) days, or both.

(6) Any person found violating any provision of KRS 189.820 or 189.830 is guilty of a misdemeanor and shall be fined not less than twenty dollars ($20) nor more than thirty-five dollars ($35).

(7) Any person who violates KRS 189.920 shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or imprisoned in the county jail for not more than thirty (30) days, or both. In the case of a private vehicle, all lighting and other equipment used in violation of KRS 189.910 to 189.950 shall be confiscated and forfeited to the county in which the offense occurred.

(8) Any person who violates KRS 189.930 shall be fined not less than sixty dollars ($60) nor more than five hundred dollars ($500), or be imprisoned in the county jail for not more than thirty (30) days, or both.

(9) Any person who violates KRS 189.940 shall be fined not less than sixty dollars ($60) nor more than one thousand dollars ($1,000) or be imprisoned in the county jail for not more than six (6) months, or both. In the case of a private vehicle, all lighting and other equipment used in violation of KRS 189.910 to 189.950 shall be confiscated and forfeited to the county in which the offense occurred.

(10) If a member of a regular or volunteer fire department, ambulance service, or rescue squad violates any provisions of subsection (6) of KRS 189.940, he shall, in addition to any other penalty provided under KRS 189.990 or this section, be immediately dismissed from his membership or employment with the fire department, ambulance service, or rescue squad and shall be disqualified from being employed by or being a member of any fire department, ambulance service, or rescue squad in the Commonwealth for a period of three (3) years. Upon conviction of a second offense he shall be permanently barred from employment or membership in any fire department, ambulance service, rescue squad, police department, or sheriff's office in the Commonwealth, nor shall he be permitted to operate any public safety vehicle as defined in KRS 189.910.

(11) Any person who violates KRS 189.950 shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) or be imprisoned in the county jail for not more than thirty (30) days, or both. In the case of a privately owned vehicle, all lighting and other equipment used or installed in violation of KRS 189.910 to 189.950 shall be confiscated and forfeited to the county in which the offense occurred.

(12) Any person who violates any provision of this chapter for which no penalty is otherwise provided shall, upon conviction, be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense.

(13) No producer or processor of natural resources shall allow the transporting of natural resources over the highways of the Commonwealth in excess of the weight limits without possessing a resource recovery road hauling permit. Violation for hauling in excess of prescribed limits without possession of a permit or transporting natural resources over prescribed limits of the resource recovery road hauling permit shall be not less than five hundred dollars ($500) nor more than one thousand dollars

($1,000) for each violation and shall be deposited in the resource recovery road fund.

(Enact. Acts 1966, ch. 18, § 2; 1966, ch. 113, § 3; 1968, ch. 152, § 123; 1970, ch. 45, § 4; 1970, ch. 92, § 61; 1970, ch. 93, § 6; 1970, ch. 117, § 1; 1972, ch. 203, § 39; 1978, ch. 101, § 5, effective June 17, 1978; 1978, ch. 102, § 5, effective June 17, 1978; 1979 (Ex. Sess.), ch. 7, § 6, effective July 1, 1979; 1982, ch. 203, § 12(5), effective July 15, 1982; 1986, ch. 220, § 3, effective July 15, 1986.)

TITLE XVII

ECONOMIC SECURITY AND PUBLIC WELFARE

CHAPTER 194B

CABINET FOR FAMILIES AND CHILDREN

SECTION.

STRATEGIC PLANNING FOR CHILDREN IN PLACEMENT

194B.100. Legislative finding and declaration.
194B.102. Statewide Strategic Planning Committee for Children in Placement — Membership — Strategic plan — Facilities and services plan — Review — Information systems — Annual report.

STRATEGIC PLANNING FOR CHILDREN IN PLACEMENT

194B.100. Legislative finding and declaration. The Kentucky General Assembly finds that the various departments, agencies, and entities providing care and treatment to children in placement and their families often do so without appropriate collaboration of policies and services or appropriate and necessary sharing of relevant information. The General Assembly declares that the purpose of KRS 194B.102 is to establish a structure for coordinated strategic planning, policy development, and information reporting and sharing among and across departments, agencies, and entities that provide care and services to children in placement.

(Enact. Acts 1998, ch. 395, § 1, effective July 15, 1998.)

194B.102. Statewide Strategic Planning Committee for Children in Placement — Membership — Strategic plan — Facilities and services plan — Review — Information systems — Annual report.

(1) There is hereby created the "Statewide Strategic Planning Committee for Children in Placement" which is administratively attached to the Department for Community Based Services. The committee shall be composed of the following:

(a) Members who shall serve by virtue of their positions: the secretary of the Cabinet for Families and Children or the secretary's designee, the commissioner of the Department for Public Health, the commissioner of the Department for Mental Health and Mental Retardation Services, the commissioner for the Department for Medicaid Services, the commissioner of the Department for Community Based Services, the commissioner of the Department of Juvenile Justice, the commissioner of the Department of Education, the executive director of the Administrative Office of the Courts, or their designees; and

(b) One (1) foster parent selected by the statewide organization for foster parents, one (1) District Judge selected by the Chief Justice of the Kentucky Supreme Court, one (1) parent of a child in placement at the time of appointment to be selected by the secretary of the Cabinet for Families and Children, one (1) youth in placement at the time of the appointment to be selected by the secretary of the Cabinet for Families and Children, and one (1) private child care provider selected by the statewide organization for private child care providers. These members shall serve a term of two (2) years, and may be reappointed.

(2) The Statewide Strategic Planning Committee for Children in Placement shall, by July 1, 1999, develop a statewide strategic plan for the coordination and delivery of care and services to children in placement and their families. The plan shall be submitted to the Governor, the Chief Justice of the Supreme Court, and the Legislative Research Commission on or before July 1, 1999, and each July 1 thereafter.

(3) The strategic plan shall, at a minimum, include:

(a) A mission statement;
(b) Measurable goals;
(c) Principles;
(d) Strategies and objectives; and
(e) Benchmarks.

(4) The planning horizon shall be three (3) years. The plan shall be updated on an annual basis. Strategic plan updates shall include data and statistical information comparing plan benchmarks to actual services and care provided.

(5) The Statewide Strategic Planning Committee for Children in Placement shall, in consultation with the commissioner and the statewide placement coordinator as provided for in KRS 199.801, establish a statewide facilities and services plan that identifies the location of existing facilities and services for children in placement, identifies unmet needs, and develops strategies to meet the needs. The planning horizon shall be five (5) years. The plan shall be updated on an annual basis. The plan shall be used to guide, direct, and, if necessary, restrict the development of new facilities and services, the expansion of existing facilities and services, and the geographic location of placement alternatives.

(6) The Statewide Strategic Planning Committee for Children in Placement may, through the promulgation of administrative regulations, establish a process that results in the review and approval or denial of the development of new facilities and services, the expansion of existing facilities and services, and the geographic location of any facilities and services for children in placement in accordance with the statewide facilities and services plan. Any process established shall include adequate due process rights for individuals and entities seeking to develop new services, construct new facilities, or expand existing facilities, and shall require the involvement of local communities and other resource providers in those communities.

(7) As a part of the statewide strategic plan, and in consultation with the Governor's Office for Technology, the Statewide Strategic Planning Committee for Children in Placement shall plan for the development or integration of information systems that will allow information to be shared across agencies and entities, so that relevant data will follow a child through the system regardless of the entity or agency that is responsible for the child. The data produced shall be used to establish and monitor the benchmarks required by subsection (3) of this section. The data system shall, at a minimum, produce the following information on a monthly basis:
   (a) Number of placements per child;
   (b) Reasons for placement disruptions;
   (c) Length of time between removal and establishment of permanency;
   (d) Reabuse or reoffense rates;
   (e) Fatality rates;
   (f) Injury and hospitalization rates;
   (g) Health care provision rates;
   (h) Educational achievement rates;
   (i) Multiple placement rates;
   (j) Sibling placement rates;
   (k) Ethnicity matching rates;
   (l) Family maintenance and preservation rate; and
   (m) Adoption disruption rates.

(8) The Statewide Strategic Planning Committee for Children in Placement shall publish an annual report no later than December 1 of each year that includes, but is not limited to, the information outlined in subsection (7) of this section.

(Enact. Acts 1998, ch. 395, § 2, effective July 15, 1998; 2000, ch. 14, § 14, effective July 14, 2000; 2000, ch. 506, § 24, effective July 14, 2000; 2000, ch. 536, § 24, effective July 14, 2000.)

Legislative Research Commission Note. (7/15/98). A reference in this statute to the former Department for Health Services has been changed to the Department for Public Health under 1998 Ky. Acts ch. 426, sec. 629, and KRS 7.136(2).

(7/14/2000). This section was amended by 2000 Ky. Acts chs. 14, 506, and 536, which do not appear to be in conflict and have been codified together.

CHAPTER 195

MANPOWER SERVICES

SECTION.

195.105. Training program authorized — Research assignment — Classification — Compensation — Contract.

EMPLOYMENT OF HANDICAPPED

195.180. [Repealed.]

195.105. Training program authorized — Research assignment — Classification — Compensation — Contract.

(1) The secretaries for health services and for families and children in coordination with the Personnel Cabinet are authorized to establish formal training programs within the Cabinet for Health Services and the Cabinet for Families and Children or within any of the departments, divisions, or sections of the cabinets for the training of necessary personnel for the administration of the programs of the cabinets. When courses of study, applicable to the program processes of the cabinets, are not available through instruction within the cabinets, arrangements may be made for the training of employees in any public or private school or institution having available facilities for that purpose, and this training shall be deemed to be a part of the cabinets' training program. Training of employees in public or private schools or institutions for this purpose shall be deemed a part of research assignments to be completed during the period of study, these assignments to relate directly to the work assignment of the employee. After consulting with the Personnel Cabinet, position classifications in the research series shall be established for employees on work study assignments, and funds of the cabinets may be used to pay salaries commensurate with the appropriate classification while the employee is receiving such training.

(2) Any employee who is paid a salary while receiving such training shall be required to enter into a contract, prior to receiving the training, that he will complete a specified work assignment, and that unless he continues in the employ of the cabinet for at least a period equivalent to the training period, immediately following the completion of such training, the state will hold a claim against that person for the amount of salary paid during the training period, and he will repay to the cabinet the sum paid to him by the cabinet during the period of his training.

(Enact. Acts 1962, ch. 85, § 1; 1974, ch. 74, Art. VI, § 107; 1998, ch. 154, § 85, effective July 15, 1998; 1998, ch. 426, § 126, effective July 15, 1998.)

Legislative Research Commission Note. (7/15/98). This section was amended by 1998 Ky. Acts chs. 154 and 426 which do not appear to be in conflict and have been codified together.

Cross-References. State personnel generally, KRS Chapter 18A.

EMPLOYMENT OF HANDICAPPED

195.180. Duties. [Repealed.]

Legislative Research Commission Note. (7/15/98). Under KRS 446.260, the repeal of this section in 1998 Ky. Acts ch. 426, sec. 628 prevails over its amendment in 1998 Ky. Acts ch. 426, sec. 128.

Compiler's Notes. This section (Enact. Acts 1962, ch. 106, Art. IX, § 4; 1970, ch. 180, § 3; 1974, ch. 74, Art. VI, § 41; 1994, ch. 405, § 47, effective July 15, 1994) was repealed by Acts 1998, ch. 426, § 628, effective July 15, 1998.

CHAPTER 199

PROTECTIVE SERVICES FOR CHILDREN—ADOPTION

SECTION.

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PLACEMENT COORDINATION

199.800. Definitions for KRS 199.800 to 199.805.

For the purposes of KRS 199.800 to 199.805:

(1) "Department" means the Department for Community Based Services;

(2) "Home county" means the county in which the child's natural parents, adoptive parents, or guardian reside. If the parents are divorced, the home county is the county of residence of the parent with legal custody. If the child is committed, the home county is the county of original commitment or case responsibility;

(3) "Home district" means the Department for Community Based Services district in which the child's home county is located;

(4) "Type of placement" means the living arrangement, including family foster care, private child care, or other residential alternative that is deemed appropriate for a child as determined by the district placement coordinator and the social service worker with case responsibility; and

(5) "Unmet need" means the type of facility or placement needed to serve the child's needs which is unavailable at the time placement is being sought for the child.

(Enact. Acts 1998, ch. 395, § 3, effective July 15, 1998; 2000, ch. 14, § 23, effective July 14, 2000.)

199.801. Procedure for placement of children who are in custody of department — Statewide and district placement coordinators — Cases of unmet need — Information and recommendations — State resource plan — Assistance in developing facilities service plan.

(1) The department shall establish a procedure throughout the state that is designed to determine and expedite the placement of children who are in the custody of the department. The procedure shall utilize a statewide placement coordinator and district placement coordinators who may be state employees or employees of a contracted entity, and who shall be assigned and located in each of the department's districts.

(2) Upon determining that a child shall be removed from the current living arrangement, the social service worker with responsibility for the child shall contact the district placement coordinator to facilitate the placement. In consultation with the social service worker, the district placement coordinator shall determine the appropriate type of placement according to the child's circumstances and needs and shall attempt to locate the appropriate placement within the child's home county.

(3) The living arrangement and placement selected for the child shall be the type of facility that is determined to be the best alternative for the child

that is in the closest proximity to the child's home county.

(4) If the type of placement that best suits the child's needs is not available in the child's home county, the district placement coordinator shall document the circumstance as an unmet need and may seek a placement in another county located within the home district of the child.

(5) If the type of placement that best suits the child's needs is not available in the child's home district, the district placement coordinator shall document the circumstance as an unmet need and may seek a placement in surrounding districts by contacting the statewide placement coordinator.

(6) If the type of placement that best suits the child's needs is not available in the districts surrounding the child's home district, the district placement coordinator shall document the circumstance as an unmet need and may seek a placement in any district within the state by contacting the statewide placement coordinator.

(7) If the type of placement that best suits the child's needs is not available within the state, the statewide placement coordinator shall contact the commissioner of the department or the commissioner's designee to explore placement options.

(8) The statewide placement coordinator and every district placement coordinator shall compile information that identifies the unmet needs for their jurisdiction, and shall submit the data and recommendations for meeting the unmet needs to the commissioner of the department.

(9) The commissioner shall develop a state placement resource plan that identifies areas of unmet need and strategies to meet the need. The plan shall be used to guide and, if necessary, restrict the development of new facilities, the expansion of existing facilities, and the geographic location of placement alternatives.

(10) The commissioner and the statewide planning coordinator shall assist the Statewide Strategic Planning Committee for Children in Placement, created in KRS 194B.102, in the development of a statewide facilities services plan.

(Enact. Acts 1998, ch. 395, § 4, effective July 15, 1998; 2000, ch. 14, § 60, effective July 14, 2000.)

199.805. Inventory of placements.

The department shall maintain an inventory of the number and types of placements available for children by county, by district, and for the state. The inventory shall be updated every week and shall show in detail for each facility or foster home how many beds are filled, how many are empty, and the type of child that would be appropriate for referral to the facility or foster home. The inventory shall be readily accessible by the statewide placement coordinator and the district placement coordinators.

(Enact. Acts 1998, ch. 395, § 5, effective July 15, 1998.)

Child Care

199.892. Declaration of legislative intent.

In enacting legislation relating to the regulation of day-care centers, it is the intention of the General Assembly to enable the Cabinet for Families and Children to qualify to receive federal funds under provisions of the Federal Social Security Act and to provide for effective regulation of day-care centers.

(Enact. Acts 1962, ch. 196, § 1; 1974, ch. 74, Art. VI, § 107(1), (13); 1998, ch. 426, § 155, effective July 15, 1998.)

Cross-References. Boarding and lodging homes, KRS 199.380 to 199.410.

199.894. Definitions for KRS 199.892 to 199.896.

As used in KRS 199.892 to 199.896, unless the context otherwise requires:

(1) "Cabinet" means the Cabinet for Families and Children;

(2) "Secretary" means secretary for families and children;

(3) "Child-care center" means any child-care center which provides full or part-time care, day or night, to at least seven (7) children who are not the children, grandchildren, nieces, nephews, or children in legal custody of the operator. "Child-care center" shall not include any child-care facility operated by a religious organization while religious services are being conducted, or a youth development agency. For the purposes of this section, "youth development agency" means a program with tax-exempt status under 26 U.S.C. sec. 501(c)(3), which operates continuously throughout the year as an outside-school-hours center for youth who are six (6) years of age or older, and for which there are no fee or scheduled-care arrangements with the parent or guardian of the youth served;

(4) "Department" means the Department for Community Based Services; and

(5) "Family child-care home" means a private home that provides full or part-time care day or night for six (6) or fewer children who are not the children, siblings, stepchildren, grandchildren, nieces, nephews, or children in legal custody of the provider.

(Enact. Acts 1962, ch. 196, § 2; 1974, ch. 74, Art. VI, § 107(1), (13), (21) and (30); 1992, ch. 57, § 3, effective July 14, 1992; 1996, ch. 81, § 1, effective July 15, 1996; 1998, ch. 426, § 156, effective July 15, 1998; 2000, ch. 308, § 17, effective July 14, 2000.)

199.8941. Monetary incentives for child-care facilities — Professional development.

(1) The Early Childhood Development Authority shall, by administrative regulation promulgated in accordance with KRS Chapter 13A, establish a program of monetary incentives including but not limited to an increased child-care subsidy and a one-time merit achievement award for child-care centers and certified family child-care homes that are tied to a quality rating system for child care as established under KRS 199.8943.

(2) The monetary incentive program shall be reviewed annually by the authority for the purpose of determining future opportunities to provide incentives.

(3) Participation in the program of monetary incentives and in the quality rating system by child-care centers and certified family child-care homes is voluntary.

(4) The Cabinet for Families and Children shall encourage the professional development of persons who are employed or provide training in a child-care or early childhood setting by facilitating their participation in the scholarship program for obtaining a child development associate credential, postsecondary certificate, diploma, degree, or specialty credential as established under KRS 164.518.

(Enact. Acts 2000, ch. 308, § 14, effective July 14, 2000.)

199.8943. Quality based child-care rating system — Administrative regulations.

(1) The Early Childhood Development Authority shall, in consultation with child-care providers, the Cabinet for Families and Children, the Cabinet for Health Services, and others, including but not limited to child-care resource and referral agencies and family resource centers, develop a voluntary quality-based graduated child-care rating system for licensed child-care and certified family child-care homes based on, but not limited to:

(a) Child to caregiver ratios;

(b) Child-care staff training;

(c) Program curriculum; and

(d) Program regulatory compliance.

(2) The Cabinet for Families and Children shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement:

(a) The voluntary quality-based graduated child-care rating system for child-care and certified family child-care homes developed under subsection (1) of this section;

(b) Agency time frames of reviews for rating;

(c) An appellate process under KRS Chapter 13B; and

(d) The ability of providers to request reevaluation for rating.

(Enact. Acts 2000, ch. 308, § 15, effective July 14, 2000.)

199.8945. Healthy Start in Child Care Program — Technical assistance for child-care providers.

(1) The secretaries of the Cabinet for Families and Children and Cabinet for Health Services, or their designees, shall collaborate on the expansion of the Healthy Start in Child Care Program. The goals of the Healthy Start in Child Care Program are:

(a) To train and educate child-care providers in health and safety;

(b) Provide nutrition consultation to parents;

(c) Increase awareness of methods for the prevention of communicable diseases in child-care settings; and

(d) Provide information to parents of children who attend child care.

(2) The Cabinet for Families and Children shall establish technical assistance positions dedicated to child care within the Kentucky child-care resource and referral agencies in order to offer technical assistance to child-care providers to upgrade quality in early child-care and education facilities.

(Enact. Acts 2000, ch. 308, § 16, effective July 14, 2000.)

199.896. License requirement — Application — Fee — Emergency action — Use of information — Hearing — Disposition of receipts — Advertisement — Unannounced inspections — Orientation and training requirements — Prohibition against use of corporal physical discipline.

(1) No person, association, or organization shall conduct, operate, maintain, or advertise any child-care center without obtaining a license as provided in KRS 199.892 to 199.896.

(2) The secretary may promulgate administrative regulations pursuant to KRS Chapter 13A relating to license fees and may establish standards of care and service for a child-care center, criteria for the denial of a license if criminal records indicate convictions that may impact the safety and security of children in care, and procedures for enforcement of penalties.

(3) Each initial application for a license shall be made to the cabinet and shall be accompanied by a fee of not more than fifty dollars ($50) and shall be renewable annually upon expiration and reapplication when accompanied by a fee of twenty-five dollars ($25). Regular licenses and renewals thereof shall expire one (1) year from their effective date.

(4) No child-care center shall be refused a license or have its license revoked for failure to meet standards set by the secretary until after the expiration of a period not to exceed six (6) months from the date of the first official notice that the standards have not been met. If, however, the cabinet has probable cause to believe that an immediate threat to the public health, safety, or welfare exists, the cabinet may take emergency action pursuant to KRS 13B.125. All administrative hearings conducted under authority of KRS 199.892 to 199.896 shall be conducted in accordance with KRS Chapter 13B.

(5) If, upon inspection or investigation, the inspector general finds that a child-care center licensed under this section has violated the administrative regulations, standards, or requirements of the cabinet, the inspector general shall issue a statement of deficiency to the center containing:

(a) A statement of fact;

(b) A statement of how an administrative regulation, standard, or requirement of the cabinet was violated; and

(c) The time frame, negotiated with the child-care center, within which a violation is to be corrected, except that a violation that poses an

immediate threat to the health, safety, or welfare of children in the center shall be corrected in no event later than five (5) working days from the date of the statement of deficiency.

(6) The Cabinet for Families and Children, in consultation with the Cabinet for Health Services, Office of the Inspector General, shall establish by administrative regulations promulgated in accordance with KRS Chapter 13A an informal dispute resolution process containing at least two (2) separate levels of review through which a child-care provider may dispute licensure deficiencies that have an adverse effect on the child-care provider's license.

(7) A child-care center shall have the right to appeal to the Cabinet for Health Services under KRS Chapter 13B any action adverse to its license or the assessment of a civil penalty issued by the inspector general as the result of a violation contained in a statement of deficiency within twenty (20) days of the issuance of the action or assessment of the civil penalty. An appeal shall not act to stay the correction of a violation.

(8) In assessing the civil penalty to be levied against a child-care center for a violation contained in a statement of deficiency issued under this section, the inspector general or the inspector general's designee shall take into consideration the following factors:

(a) The gravity of the threat to the health, safety, or welfare of children posed by the violation;

(b) The number and type of previous violations of the child-care center;

(c) The reasonable diligence exercised by the child-care center and efforts to correct the violation; and

(d) The amount of assessment necessary to assure immediate and continued compliance.

(9) Upon a child-care center's failure to take action to correct a violation of the administrative regulations, standards, or requirements of the cabinet contained in a statement of deficiency, or at any time when the operation of a child-care center poses an immediate threat to the health, safety, or welfare of children in the center, and the child-care center continues to operate after the cabinet has taken emergency action to deny, suspend, or revoke its license, the cabinet or the cabinet's designee shall take at least one (1) of the following actions against the center:

(a) Institute proceedings to obtain an order compelling compliance with the administrative regulations, standards, and requirements of the cabinet;

(b) Institute injunctive proceedings in Circuit Court to terminate the operation of the center;

(c) Institute action to discontinue payment of child-care subsidies; or

(d) Suspend or revoke the license or impose other penalties provided by law.

(10) Upon request of any person, the cabinet shall provide information regarding the denial, revocation, suspension, or violation of any type of child-care center license of the operator. Identifying information regarding children and their families shall remain confidential.

(11) The cabinet shall provide, upon request, public information regarding the inspections of and the plans of correction for the child-care center within the past year. All information distributed by the cabinet under this subsection shall include a statement indicating that the reports as provided under this subsection from the past five (5) years are available from the child-care center upon the parent's, custodian's, guardian's, or other interested person's request.

(12) All fees collected under the provisions of KRS 199.892 to 199.896 for license and certification applications shall be paid into the State Treasury and credited to a special fund for the purpose of administering KRS 199.892 to 199.896 including the payment of expenses of and to the participants in child-care workshops. The funds collected are hereby appropriated for the use of the cabinet. The balance of the special fund shall lapse to the general fund at the end of each biennium.

(13) Any advertisement for child-care services shall include the address of where the service is being provided.

(14) All inspections of licensed and unlicensed child-care centers by the Cabinet for Families and Children and the Cabinet for Health Services shall be unannounced.

(15) All employees and owners of a child-care center who provide care to children shall demonstrate within the first three (3) months of employment completion of at least a total of six (6) hours of orientation in the following areas:

(a) Basic health, safety, and sanitation;

(b) Recognizing and reporting child abuse; and

(c) Developmentally appropriate child-care practice.

(16) All employees and owners of a child-care center who provide care to children shall annually demonstrate to the department completion of at least six (6) hours of training in child development.

(17) The Cabinet for Families and Children shall make available either through the development or approval of a model training curriculum and training materials, including video instructional materials, to cover the areas specified in subsection (15) of this section. The cabinet shall develop or approve the model training curriculum and training materials to cover the areas specified in subsection (15) of this section.

(18) Child-care centers licensed pursuant to this section and family child-care homes certified pursuant to KRS 199.8982 shall not use corporal physical discipline, including the use of spanking, shaking, or paddling, as a means of punishment, discipline, behavior modification, or for any other reason. For the purposes of this section, "corporal physical discipline" means the deliberate infliction of physical pain and does not include spontaneous physical contact which is intended to protect a child from immediate danger.

(19) Directors and employees of child-care centers in a position that involves supervisory or disciplinary

power over a minor, or direct contact with a minor, shall submit to a criminal record check in accordance with KRS 17.165. The application shall be denied if the applicant has been found by the Cabinet for Families and Children or a court to have abused or neglected a child or has been convicted of a violent crime or sex crime as defined in KRS 17.165.

(20) A director or employee of a child-care center may be employed on a probationary status pending receipt of the criminal background check. Application for the criminal record of a probationary employee shall be made no later than the date probationary employment begins.

(Enact. Acts 1962, ch. 196, § 3; 1974, ch. 74, Art. VI, § 107(21); 1978, ch. 203, § 1, effective June 17, 1978; 1980, ch. 188, § 187, effective July 15, 1980; 1982, ch. 247, § 5, effective July 15, 1982; 1992, ch. 57, § 4, effective July 14, 1992; 1994, ch. 131, § 1, effective July 15, 1994; 1996, ch. 318, § 90, effective July 15, 1996; 1998, ch. 426, § 157, effective July 15, 1998; 1998, ch. 524, § 2, effective July 15, 1998; 2000, ch. 308, § 18, effective July 14, 2000.)

Legislative Research Commission Note. (7/15/98). This section was amended by 1998 Ky. Acts chs. 426 and 524 which do not appear to be in conflict and have been codified together.

199.898. Rights for children in child-care programs and their parents, custodians, or guardians — Posting and distribution requirements.

(1) All children receiving child-care services in a day-care center licensed pursuant to KRS 199.896, a family child-care home certified pursuant to KRS 199.8982, or from a provider or program receiving public funds shall have the following rights:

(a) The right to be free from physical or mental abuse;

(b) The right not to be subjected to abusive language or abusive punishment; and

(c) The right to be in the care of adults who shall meet their health, safety, and developmental needs.

(2) Parents, custodians, or guardians of children specified in subsection (1) of this section shall have the following rights:

(a) The right to have access to their children at all times the child is in care and access to the provider caring for their children during normal hours of provider operation and whenever the children are in the care of the provider;

(b) The right to be provided with information about child-care regulatory standards, if applicable; where to direct questions about regulatory standards; and how to file a complaint;

(c) The right to file a complaint against a child-care provider without any retribution against the parent, custodian, guardian, or child;

(d) The right to obtain information from the cabinet regarding any type of licensure denial, suspension, or revocation of an operator, and cabinet reports that have found abuse or neglect by any child-care provider or any employee of a child care provider. Identifying information regarding children and their families shall remain confidential;

(e) The right to obtain information from the cabinet regarding the inspections and plans of correction of the day-care center, the family child-care home, or the provider or program receiving public funds within the past year; and

(f) The right to review and discuss with the provider any state reports and deficiencies revealed by such reports.

(3) The child-care provider who is licensed pursuant to KRS 199.896 or certified pursuant to KRS 199.8982 shall post these rights in a prominent place and shall provide a copy of these rights to the parent, custodian, or guardian of the child at the time of the child's enrollment in the program.

(Enact. Acts 1992, ch. 57, § 1, effective July 14, 1992; 1998, ch. 524, § 3, effective July 15, 1998.)

199.8982. Family child-care home certification program — When required — Requirements for certification — Unannounced inspection — Use of information — Authority to promulgate administrative regulations — Hearing — Emergency action — Training.

(1) (a) The cabinet shall establish a family child-care home certification program which shall be administered by the department. A family child-care provider shall apply for certification of the provider's home if the provider is caring for four (4) to six (6) children unrelated to the provider. A family child-care provider caring for three (3) or fewer children may apply for certification of the provider's home at the discretion of the provider. Applicants for certification shall not have been found by the cabinet or a court to have abused or neglected a child, and shall meet the following minimum requirements:

1. Submit two (2) written character references;
2. Provide a written statement from a physician that the applicant is in good health;
3. Submit to a criminal record check in accordance with KRS 17.165. The application shall be denied if the applicant has been convicted of a violent crime or sex crime as defined in KRS 17.165.
4. Provide smoke detectors, a telephone, an adequate water supply, sufficient lighting and space, and a safe environment in the residence in which care is provided;
5. Provide a copy of the results of a tuberculosis skin test for the applicant administered within thirty (30) days of the date of application for certification; and
6. Demonstrate completion of a total of at least six (6) hours of training in the following areas within three (3) months of application for certification:

a. Basic health, safety, and sanitation;
b. Recognizing and reporting child abuse; and
c. Developmentally appropriate child-care practice.

(b) Initial applications for certification shall be made to the department and shall be accompanied by a ten dollar ($10) certification fee. The department shall issue a certificate of operation upon inspecting the family child-care home and determining the provider's compliance with the provisions of this section. The inspection shall be unannounced. A certificate of operation issued pursuant to this section shall not be transferable and shall be renewed every two (2) years for a fee of ten dollars ($10).

(c) A certified family child-care provider shall display the certificate of operation in a prominent place within the residence in which care is provided. The cabinet shall provide the certified family child-care provider with written information explaining the requirements for a family day-care provider and instructions on the method of reporting violations of the requirements which the provider shall distribute to parents.

(d) Upon request of any person, the cabinet shall provide information regarding the denial, revocation, suspension, or violation of any type of day-care license of the family child-care provider. Identifying information regarding children and their families shall remain confidential.

(e) The cabinet shall provide, upon request, public information regarding the inspections of and the plans of correction for the family child-care home within the past year. All information distributed by the cabinet under this paragraph shall include a statement indicating that the reports as provided under this paragraph from the past five (5) years are available from the family child-care home upon the parent's, custodian's, guardian's, or other interested person's request.

(f) The cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A which establish standards for the issuance, monitoring, release of information under this section and KRS 199.896 and 199.898, renewal, denial, revocation, and suspension of a certificate of operation for a family child-care home and establish criteria for the denial of certification if criminal records indicate convictions that may impact the safety and security of children in care. A denial, suspension, or revocation of a certificate may be appealed, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B. If the cabinet has probable cause to believe that there is an immediate threat to the public health, safety, or welfare, the cabinet may take emergency action to suspend a certificate pursuant to KRS 13B.125. The cabinet shall promulgate administrative regulations to impose minimum staff-to-child ratios. The cabinet may promulgate administrative regulations relating to other requirements necessary to ensure minimum safety in family child-care homes. The cabinet shall develop and provide an "easy-to-read" guide containing the following information to a family child-care provider seeking certification of his home:
1. Certification requirements and procedures;
2. Information about available child-care training; and
3. Child-care food sponsoring organizations.

(2) Family child-care providers shall annually demonstrate to the department completion of at least six (6) hours of training in child development.

(3) The cabinet shall, either through the development of or approval of, make available a model training curriculum and training materials, including video instructional materials, to cover the areas specified in subsection (1)(a)6. of this section. The cabinet shall develop or approve the model training curriculum and training materials to cover the areas specified in subsection (1)(a)6. of this section.

(Enact. Acts 1992, ch. 57, § 2, effective July 14, 1992; 1996, ch. 318, § 91, effective July 15, 1996; 1998, ch. 426, § 158, effective July 15, 1998; 1998, ch. 524, § 4, effective July 15, 1998; 2000, ch. 14, § 24, effective July 14, 2000; 2000, ch. 308, § 19, effective July 14, 2000.)

Legislative Research Commission Note. (7/14/2000). This section was amended by 2000 Ky. Acts chs. 14 and 308, which are in conflict. Under KRS 446.250, Acts ch. 308, which was last enacted by the General Assembly, prevails.

199.8984. Child-Care Policy Council. [Repealed.]

Legislative Research Commission Note. (7/14/2000). Under KRS 446.260, the repeal of this section in 2000 Ky. Acts ch. 308 prevails over its amendment in 2000 Ky. Acts ch. 14.

Compiler's Notes. This section (Enact. Acts 1992, ch. 57, § 5, effective July 14, 1992; 1994, ch. 486, § 29, effective July 15, 1994; 1998, ch. 426, § 159, effective July 15, 1998) was repealed by Acts 2000, ch. 308, § 28, effective July 14, 2000. For present law, see KRS 200.700 et seq.

199.899. Market-rate survey to determine rates for child-care services receiving public funds.

(1) The Cabinet for Families and Children shall conduct a market-rate survey at least biennially to set the minimum rates paid by the cabinet for child-care services receiving public funds in the Commonwealth. The market-rate survey shall:
(a) Survey all child-care programs in the Commonwealth licensed pursuant to KRS 199.896 or certified pursuant to KRS 199.8982;
(b) Determine market rates; and
(c) Make public its findings.

(2) In counties containing no more than two (2) child-care programs of the same type regulated by the cabinet, the cabinet shall pay the rate charged by the program up to the maximum allowable market

rate, set in accordance with federal regulations, paid to a program of the same type in that area development district.

(3) The Cabinet for Families and Children shall evaluate, at least annually, the adequacy of the child-care subsidy to enable low income families in need of child-care services to obtain child care.

(Enact. Acts 1992, ch. 57, § 6, effective July 14, 1992; 1998, ch. 426, § 160, effective July 15, 1998; 2000, ch. 308, § 20, effective July 14, 2000.)

199.8992. Development of statewide network of community-based child-care resource and referral services — Awarding of contracts.

(1) To the extent possible with available funds, the Cabinet for Families and Children shall develop through a system of contracts, a statewide network of community-based child-care resource and referral services. The network shall include one (1) resource and referral agency per area development district as designated by the cabinet. To avoid duplication of services, priority for receiving designation by the cabinet shall be given to existing child-care resource and referral organizations which are public or private, nonprofit, community-based agencies. Each resource and referral agency shall:

(a) Maintain a uniform database in a format developed by the cabinet of all child-care providers licensed pursuant to KRS 199.896 or certified pursuant to KRS 199.8982 in the service area, including information on the availability of care;

(b) Provide consumer education to families seeking child-care services;

(c) Provide timely referrals of available child-care providers to families seeking child-care services;

(d) Recruit child-care providers in areas where there is an identified need as identified pursuant to paragraph (f) of this subsection;

(e) Coordinate, with the cabinet, training for child-care providers and provide technical assistance to employers, current and potential child-care providers, and the community at large;

(f) Collect and analyze data on the supply of, and demand for, child-care in the community;

(g) Stimulate employer involvement in improving the affordability, availability, safety, and quality of child care for their employees and for the community;

(h) Provide written educational materials to parents and child-care providers;

(i) Not operate a child-care center on behalf of an employer or on their own unless no existing provider is willing or able to provide the service at the current market rate. This paragraph shall not apply to child care provided by a resource and referral agency to an employer prior to July 14, 1992; and

(j) Form community early childhood councils in cooperation with family resource centers and other local organizations or agencies.

(2) To the extent possible with available funds, the cabinet shall award contracts in accordance with KRS Chapter 45A to:

(a) Coordinate existing resource and referral services;

(b) Expand resource and referral services to unserved areas; and

(c) Improve services provided by the designated resources and referral agency.

(3) When awarding the contracts provided for in subsection (2) of this section, priority shall be given to agencies which demonstrate the ability to provide local matching funds in an amount equal to twenty-five percent (25%) of the total amount of the contract. Contracts shall be awarded for a minimum period of up to one (1) year. Start-up contracts may be awarded in up to four (4) area development districts per year until each area development district has one (1) designated child-care resource and referral agency. The awarding of a contract pursuant to this section shall not create a continuing obligation for the cabinet to fund a resource and referral agency. The cabinet shall require applicants to submit a plan for providing the services required by subsection (1) of this section.

(Enact. Acts 1992, ch. 57, § 7, effective July 14, 1992; 1998, ch. 426, § 161, effective July 15, 1998; 2000, ch. 308, § 21, effective July 14, 2000.)

199.8994. Uniform administration of child-care funds — Dedicated child-care licensing surveyors.

(1) All child-day-care funds administered by the cabinet, including Title XX of the Social Security Act, shall be administered by the Cabinet for Families and Children to the extent allowable under federal law or regulation and in a manner which is in the best interest of the clients to be served. To the extent permitted by federal law or regulations, requirements relating to application, eligibility, provider agreements, and payment for child-care services shall be the same regardless of the source of public funding.

(2) The cabinet shall, to the extent allowable under federal law or regulation and in a manner which is in the best interest of the clients to be served, develop a system which provides a single intake point in each county through which parents seeking public subsidies for child-care services can make application.

(3) The cabinet shall, subject to the extent funds are available, cooperate with the Cabinet for Health Services to fund and establish dedicated child-care licensing surveyor positions within the Division of Licensed Child Care to conduct all the cabinet's child-care licensing activities. The cabinet shall have the authority to request the transfer of funds to establish these positions. Where possible, dedicated child-care surveyors shall have expertise or experience in child-care or early childhood education.

(4) The targeted ratio of dedicated child-care licensing surveyor positions shall be one (1) surveyor for

each fifty (50) child-care facilities in order to allow for the provision of an expedient, constructive, and thorough licensing visit.

(5) The cabinet shall, in cooperation with the Division of Licensed Child Care, Cabinet for Health Services, provide appropriate specialized training for child-care surveyors.

(6) (a) The cabinet shall evaluate ways to improve the monitoring of unregulated child-care providers that receive a public subsidy for child care, and promulgate administrative regulations in accordance with KRS Chapter 13A that establish minimum health and safety standards, limitations on the maximum number of children in care, training requirements for a child-care provider that receives a child-care subsidy administered by the cabinet, and criteria for the denial of subsidies if criminal records indicate convictions that impact the safety and security of children in care.

(b) If the cabinet has probable cause to believe that there is an immediate threat to the public health, safety, or welfare, it may take emergency action to deny a public subsidy for child-care services under KRS 13B.125.

(Enact. Acts 1992, ch. 57, § 8, effective July 14, 1992; 1998, ch. 426, § 162, effective July 15, 1998; 2000, ch. 308, § 22, effective July 14, 2000; 2001, ch. 81, § 2, effective June 21, 2001.)

Compiler's Notes. Title XX of the Social Security Act referred to in subsection (1) of this section is compiled as 42 U.S.C. § 1397 et seq.

199.8996. Reports on child-care program activity.

(1) The Cabinet for Families and Children shall prepare the following reports to the General Assembly on child-care programs, and shall make them available to the public:

(a) A quarterly report detailing the number of children and amounts of child-care subsidies provided in each area development district;

(b) A quarterly report on administrative expenses incurred in the operation of child-care subsidy programs;

(c) A quarterly report on disbursements of federal child-care block grant funds for training, resource and referral, and similar activities; and

(d) Beginning July 15, 1993, an annual report summarizing the average child-care subsidy activities per month in all Kentucky counties.

(2) The cabinet shall file an annual report on its evaluation of the adequacy of the child-care subsidy to enable low income families in need of child-care services to obtain child care with the Early Childhood Development Authority and the Legislative Research Commission.

(3) The cabinet shall file an annual report on the number of dedicated child-care licensing surveyor positions and the ratio of surveyors to child-care facilities with the Early Childhood Development Authority and the Legislative Research Commission.

(Enact. Acts 1992, ch. 57, § 9, effective July 14, 1992; 1998, ch. 426, § 163, effective July 15, 1998; 2000, ch. 308, § 23, effective July 14, 2000.)

Personnel Training

199.900. Training programs authorized — Research assignment — Classification — Compensation — Contract.

(1) The secretary for families and children in coordination with the Personnel Cabinet is authorized to establish formal training programs within the Cabinet for Families and Children or within any of the divisions or sections of the cabinet for the training of necessary personnel for the administration of the programs of the cabinet. When courses of study, applicable to the program processes of the cabinet, are not available through cabinet instruction, arrangements may be made for the training of employees in any public or private school or institution having available facilities for that purpose, and such training shall be deemed to be a part of the cabinet training program. Training of employees in public or private schools or institutions for this purpose shall be deemed a part of research assignments to be completed during the period of study, and these assignments are to relate directly to the work assignment of the employee. After consulting with the Personnel Cabinet, position classifications in the research series shall be established for employees on such work study assignments, and funds of the cabinet may be used to pay salaries commensurate with the appropriate classification while the employee is receiving training.

(2) Any employee who is paid a salary while receiving such training shall be required to enter into a contract, prior to receiving the training, that he will complete a specified work assignment, and that unless he continues in the employ of the cabinet for at least a period equivalent to the training period, immediately following the completion of training, the state will hold a claim against him for the amount of salary paid during the training period, and he will repay to the cabinet the sum paid to him by the cabinet during the period of his training.

(Enact. Acts 1962, ch. 85, § 2; 1974, ch. 74, Art. VI, § 107(1), (13) and (30); 1998, ch. 154, § 86, effective July 15, 1998; 1998, ch. 426, § 164, effective July 15, 1998.)

Legislative Research Commission Note. (7/15/98). This section was amended by 1998 Ky. Acts chs. 154 and 426 which do not appear to be in conflict and have been codified together.

Cross-References. Personnel of cabinet may be appointed as peace officers to enforce KRS Chapters 600 to 645, KRS 605.050.

State personnel generally, KRS Chapter 18A.

PENALTIES

199.990. Penalties.

(1) Any person violating any of the provisions of KRS 199.380 to 199.400 shall be guilty of an offense, and upon conviction thereof, shall be fined not more than five hundred dollars ($500) or imprisoned for not more than twelve (12) months, or be both fined and imprisoned, in the discretion of the court.

(2) Any person who violates any of the provisions of KRS 199.430, 199.470, 199.473, 199.570 and 199.590 except subsection (2), or 199.640 to 199.670, or any rule or regulation under such sections the violation of which is made unlawful shall be fined not less than five hundred dollars ($500) nor more than two thousand dollars ($2,000) or imprisoned for not more than six (6) months, or both. Each day such violation continues shall constitute a separate offense.

(3) Any person who willfully violates any other of the provisions of KRS 199.420 to 199.670 or any rule or regulation thereunder, the violation of which is made unlawful under the terms of those sections, and for which no other penalty is prescribed in those sections or in subsection (1) of this section, or in any other applicable statute, shall be fined not less than one hundred dollars ($100) nor more than two hundred dollars ($200) or imprisoned for not more than thirty (30) days, or both.

(4) Any violation of the regulations, standards, or requirements of the cabinet under the provisions of KRS 199.896 that poses an immediate threat to the health, safety, or welfare of any child served by the child-care center shall be subject to a civil penalty of no more than one thousand dollars ($1,000) for each occurrence. Treble penalties shall be assessed for two (2) or more violations within twelve (12) months. All money collected as a result of civil penalties assessed under the provisions of KRS 199.896 shall be paid into the State Treasury and credited to a special fund for the purpose of the early childhood scholarship program created in accordance with KRS 164.518. The balance of the fund shall not lapse to the general fund at the end of each biennium.

(5) A person who commits a violation of the regulations, standards, or requirements of the cabinet under the provisions of KRS 199.896 shall be fined not less than one thousand dollars ($1,000) or imprisoned for not more than twelve (12) months, or be fined and imprisoned, at the discretion of the court.

(6) Any person who violates any of the provisions of KRS 199.590(2) shall be guilty of a Class D felony.

(326, 327, 330, 331c-1, 331c-3, 331e-4, 331g-1 to 331g-3: amend. Acts 1944, ch. 77; 1946, ch. 13, § 5; 1950, ch. 125, § 31; 1952, ch. 161, § 61; 1962, ch. 196, § 4; 1962, ch. 211, § 6; 1962, ch. 212, § 12; 1964, ch. 85, § 5; 1970, ch. 270; 1976, ch. 142, § 3; 1978, ch. 66, § 3, effective June 17, 1978; 1980, ch. 188, effective July 15, 1980; 1986, ch. 423, § 196, effective July 1, 1987; 1994, ch. 242, § 13, effective July 15, 1994; 2000, ch. 308, § 24, effective July 14, 2000.)

Compiler's Notes. The amendment of this section by Acts 1980, ch. 280, § 147, which was to have taken effect on July 15, 1984, was itself repealed by Acts 1984, ch. 184, § 1, effective July 13, 1984.

Section 1 of Acts 1984, ch. 184, provided: "It is the intent of the General Assembly that the amendments and repealers of Acts 1980, ch. 280 not become effective and that the statutes affected thereby remain as not amended or not repealed except as affected by legislation other than Acts 1980, Chapter 280 and Acts 1982, Chapter 284 passed during the 1980 or 1982 session, or this Act."

Cross-References. Probation and parole, KRS Chapter 439.

Sentence of imprisonment for felony, KRS 532.060.

CHAPTER 200

ASSISTANCE TO CHILDREN

SECTION.

EARLY INTERVENTION SERVICES

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EARLY CHILDHOOD SERVICES

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EARLY INTERVENTION SERVICES

200.650. Legislative findings.

The General Assembly hereby finds and declares that there is an urgent and substantial need:

(1) To enhance the development of all infants and toddlers with disabilities in the Commonwealth of

Kentucky in order to minimize developmental delay, and to maximize individual potential for adult independence;
(2) To enhance the capacity of families to meet the needs of their infants and toddlers with disabilities;
(3) To reduce the educational costs by minimizing the need for special education and related services after infants and toddlers with disabilities reach school age;
(4) To reduce future social services costs and to minimize the likelihood of institutionalization of individuals with disabilities;
(5) To prevent secondary impairments and disabilities by improving the health of infants and toddlers, thereby reducing health costs for the families and the state; and
(6) To comply with federal law as it pertains to services for infants and toddlers with disabilities and their families.
(Enact. Acts 1994, ch. 313, § 1, effective July 15, 1994.)

Cross-References. Coverage and payment for Kentucky Early Intervention Program Services, 908 KAR 2:200.
Kentucky Early Intervention Program assessment and service planning, 908 KAR 2:130.
Kentucky Early Intervention Program covered services, 908 KAR 2:160.
Kentucky Early Intervention Program definitions, 908 KAR 2:100.
Kentucky Early Intervention Program evaluation and eligibility, 908 KAR 2:120.
Kentucky Early Intervention Program mediation, 908 KAR 2:180.
Kentucky Early Intervention Program personnel qualifications, 908 KAR 2:150.
Kentucky Early Intervention Program point of entry, 908 KAR 2:110.
Kentucky Early Intervention Program primary service coordination and assistive technology, 908 KAR 2:140.
Notice of action and administrative appeal, 908 KAR 2:170.

200.652. Legislative declaration of policy.
It is the intent of the General Assembly that the policy of the Commonwealth of Kentucky shall be:
(1) To reaffirm the importance of the family in all areas of the child's development and to reinforce the role of the family in the decision making processes regarding their children;
(2) To provide assistance and support to the family of an infant or toddler with a disability that addresses the individual needs of that family;
(3) To develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for all infants and toddlers with disabilities and their families;
(4) To enhance the capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities;
(5) To facilitate the coordination of payment for early intervention services from federal, state, local, and private insurance coverage, and the use of sliding fee scales; and
(6) To coordinate and provide individualized early intervention services to infants and toddlers with disabilities and their families.
(Enact. Acts 1994, ch. 313, § 2, effective July 15, 1994.)

200.654. Definitions for KRS 200.650 to 200.676.
As used in KRS 200.650 to 200.676, unless the context requires otherwise:
(1) "Awards and contracts" means the state and federal funds designated by the cabinet for projects relating to planning, resource development, or provision of direct early intervention services, as defined in this section, to infants and toddlers with disabilities and their families;
(2) "Cabinet" means the Cabinet for Health Services;
(3) "Child find" means a system to identify, locate, and evaluate all infants and toddlers with disabilities who are eligible for early intervention services, determine which children are receiving services, and coordinate the effort with other state agencies and departments;
(4) "Council" means the Kentucky Early Intervention System Interagency Coordinating Council;
(5) "District" means one (1) of the fifteen (15) area development districts;
(6) "District early intervention committee" means an interagency coordinating committee established within each of the fifteen (15) area development districts to facilitate interagency coordination at the district level;
(7) "Early intervention services" means services for infants and toddlers with disabilities and their families delivered according to an individualized family service plan developed by the child multidisciplinary team to meet the developmental needs of eligible children, as defined in this section, and provided by entities receiving public funds using qualified personnel. The individualized family services plan is developed and the services are provided in collaboration with the families and, to the maximum extent appropriate, in natural environments, including home and community settings in which infants and toddlers without disabilities would participate. These services are necessary to enable the child to reach maximum potential. Services to be made available shall include but not be limited to the following:
(a) Screening services;
(b) Evaluation services;
(c) Assessment services;
(d) Service coordination;
(e) Transportation and related costs for accessing early intervention services;
(f) Family services including counseling, psychological, and social work services;
(g) Health services including medical services for diagnostic and evaluation purposes only;
(h) Nutrition services;
(i) Occupational therapy services;
(j) Physical therapy services;
(k) Communication development services;
(l) Sensory development services;
(m) Developmental intervention services;
(n) Assistive technology services; and

(o) Respite services;

(8) "Early intervention system" means the management structure established in KRS 200.654 to 200.670 and which is comprised of the interdependent array of services and activities for the provision of a statewide, comprehensive, coordinated, multidisciplinary, interagency program for infants and toddlers with disabilities and their families;

(9) "Individual family service plan" means the singular comprehensive written service plan developed by the child's multidisciplinary team, with the child's parents serving as fully participating members of the team, to be followed by all agencies and other entities involved in providing early intervention services to an infant or toddler with disabilities and the child's family;

(10) "Infants and toddlers with disabilities" and "eligible children" mean children from birth to thirty-six (36) months of age in need of early intervention services as a result of one (1) of the following circumstances:

(a) The child is experiencing developmental delays, as measured by diagnostic instruments and procedures in one (1) or more of the following skill areas: physical; cognitive; communication; social or emotional; or adaptive development;

(b) The child has a diagnosed physical or mental condition which has a high probability of resulting in developmental delay; or

(c) The child has a diagnosis of pervasive developmental disorder;

(11) "Multidisciplinary team" means the child-specific group responsible for determining the services needed by the infant or toddler with disabilities and the child's family, and development of the individualized family services plan. The team for each child shall include the parent or guardian of the child and individuals representing at least two (2) applicable disciplines which may include but need not be limited to the following: physical therapy; speech therapy; social work; nursing; or education;

(12) "Point of entry" means an easily identifiable, highly accessible nonstigmatized entry into services; and

(13) "Qualified service provider" means an entity, including but not limited to an individual, program, department, or agency, responsible for the delivery of early intervention services to eligible infants and toddlers with disabilities and their families who has met the highest minimum standards of state-approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the entity is providing early intervention services.

(Enact. Acts 1994, ch. 313, § 3, effective July 15, 1994; 1998, ch. 426, § 174, effective July 15, 1998; 2002, ch. 162, § 2, effective July 15, 2002.)

200.656. Kentucky Early Intervention System.

There is hereby created in state government the Kentucky Early Intervention System to provide services for infants and toddlers with a disability and their families. For administrative purposes, the Kentucky Early Intervention System shall be attached to the Cabinet for Health Services.

(Enact. Acts 1994, ch. 313, § 4, effective July 15, 1994; 1998, ch. 426, § 175, effective July 15, 1998.)

200.658. Kentucky Early Intervention System Interagency Coordination Council — Membership — Duties — Annual report — Conflict of interest to bar voting.

(1) There is hereby created the Kentucky Early Intervention System Interagency Coordinating Council to be comprised of twenty-five (25) members to be appointed by the Governor to serve a term of three (3) years. The members of the council shall be geographically and culturally representative of the population of the Commonwealth and conform to the requirements of federal law and regulations. For administrative purposes, the council shall be attached to the Early Childhood Development Authority. Pursuant to federal law and regulations, the membership shall be as follows:

(a) At least five (5) members shall be the parents, including minority parents, of a child with a disability who is twelve (12) years of age or less, with at least one (1) being the parent of a child six (6) years of age or less. Each parent shall have knowledge of or experience with programs for infants and toddlers with disabilities;

(b) At least five (5) members shall be public or private providers of early intervention services to infants and toddlers with disabilities;

(c) At least one (1) member shall be a member of the Kentucky General Assembly;

(d) At least one (1) member shall be representative of an entity responsible for personnel preparation and may include personnel from an institution of higher education or preservice training organization;

(e) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Public Health;

(f) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Medicaid Services;

(g) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Mental Health and Mental Retardation Services;

(h) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Community Based Services;

(i) At least one (1) member shall be the commissioner or designee of the Department of Education;

(j) At least one (1) member shall be the commissioner or designee of the Department of Insurance; and

(k) At least one (1) member shall be a representative of the Commission for Children with Special Health Care Needs.

(2) In matters concerning the Kentucky Early Intervention System, the council shall advise and assist the cabinet in areas including, but not limited to, the following:

(a) Development and implementation of the statewide system and the administrative regulations promulgated pursuant to KRS 200.650 to 200.676;

(b) Achieving the full participation, coordination, and cooperation of all appropriate entities in the state, including, but not limited to, individuals, departments, and agencies, through the promotion of interagency agreements;

(c) Establishing a process to seek information from service providers, service coordinators, parents, and others concerning the identification of service delivery problems and the resolution of those problems;

(d) Resolution of disputes, to the extent deemed appropriate by the cabinet;

(e) Provision of appropriate services for children from birth to three (3) years of age;

(f) Identify sources of fiscal and other support services for early intervention programs;

(g) Preparing applications to Part C of the Federal Individuals with Disabilities Education Act (IDEA) and any amendments to the applications; and

(h) Transitioning of infants and toddlers with disabilities and their families from the early intervention system to appropriate services provided under Part B of the Federal Individuals with Disabilities Education Act (IDEA) operated by the state Department of Education.

(3) The council shall prepare no later than December 30 of each year an annual report on the progress toward and any barriers to full implementation of the Kentucky Early Intervention System for infants and toddlers with disabilities and their families. The report shall include recommendations concerning the Kentucky Early Intervention System and shall be submitted to the Governor, Legislative Research Commission, and the Secretary of the United States Department of Education.

(4) No member of the council shall cast a vote on any matter which would provide direct financial benefit to that member or otherwise give the appearance of the existence of a conflict of interest.

(Enact. Acts 1994, ch. 313, § 5, effective July 15, 1994; 1998, ch. 426, § 176, effective July 15, 1998; 2000, ch. 14, § 30, effective July 14, 2000; 2000, ch. 308, § 7, effective July 14, 2000.)

Legislative Research Commission Note. (7/14/2000). This section was amended by 2000 Ky. Acts chs. 14 and 308, which do not appear to be in conflict and have been codified together.

Compiler's Notes. Parts C and B of the Federal Individuals with Disabilities Education Act (IDEA) referred to in subsections (2)(g) and (h) of this section are compiled as 20 U.S.C., §§ 1431 to 1445 and 20 U.S.C. §§ 1411 to 1420, respectively.

200.660. Duties of the cabinet — Authority for administrative regulations.

The cabinet shall:

(1) Administer all funds appropriated to implement the provisions of KRS 200.650 to 200.676;

(2) Identify and coordinate all available financial resources for early intervention within the Commonwealth from federal, state, local, and private sources, including but not limited to:

(a) Title V of the Federal Social Security Act relating to maternal and child health;

(b) Title XIX of the Federal Social Security Act relating to Medicaid and the Early Periodic Screening Diagnostic and Treatment (EPSDT) program;

(c) The Federal Head Start Act;

(d) The Federal Individuals with Disabilities Education Act, Parts B and H;

(e) The Federal Elementary and Secondary Education Act of 1964 Title I, Chapter I, Part B, Subpart 2 as amended;

(f) The Federal Developmentally Disabled Assistance and Bill of Rights Act, P.L. 100-146;

(g) Other federal programs; and

(h) Private insurance.

(3) Develop a sliding fee scale of the cost of early intervention services to families, including those circumstances where no fee shall be required;

(4) Make available, in addition to the services specified in KRS 200.654(7), social skill development and behavioral therapy services to infants and toddlers with a diagnosis of pervasive developmental disorders;

(5) Enter into contracts with service providers within a local community aided by the district committee in identifying providers;

(6) Develop procedures to monitor and evaluate services that are provided to infants and toddlers with disabilities and their families;

(7) Develop procedures to ensure that early intervention services identified on the individualized family service plan are provided to eligible infants and toddlers with disabilities and their families in a timely manner pending resolution of any disputes among public agencies or service providers; and

(8) In conjunction with the council and district early intervention committees, promulgate administrative regulations, pursuant to KRS Chapter 13A, necessary to implement the provisions of KRS 200.650 to 200.676.

(Enact. Acts 1994, ch. 313, § 6, effective July 15, 1994; 2002, ch. 162, § 3, effective July 15, 2002.)

Compiler's Notes. Title V of the Federal Social Security Act referred to in subsection (2) (a) is compiled as 42 U.S.C. §§ 701 to 709; title XIX of the Federal Social Security Act referred to in subsection (2) (b) is compiled as 42 U.S.C. §§ 1396 to 1396u; the Federal Head Start Act referred to in subsection (2) (c) is compiled as 42 U.S.C. §§ 9831 to 9852; the Federal Individuals with Disabilities Education Act, Parts B and H referred to in subsection (2) (d) is compiled as 20 U.S.C. §§ 1411 to 1420 and 1471 to 1485; the Federal Elementary

and Secondary Education Act of 1964, Title I, Chapter I, Part B, Subpart 2 referred to in subsection (2) (e) is compiled as 20 U.S.C. §§ 2741 to 2749; and the Federal Developmentally Disabled Assistance and Bill of Rights Act, P.L. 100-146 is compiled as 42 U.S.C. §§ 6000 to 6083.

200.662. District early intervention committee — Membership — Duties.

The cabinet shall establish one (1) district early intervention committee in each of the fifteen (15) area development districts. Each committee shall have from fifteen (15) to twenty-five (25) members of whom at least five (5) shall be parents, at least five (5) shall be early intervention service providers, and at least one (1) shall be a representative from each of the following: the local health department, the local office of the Department for Community Based Services, the local community mental health and mental retardation center, and the local Commission for Handicapped Children. Each committee may include representatives from one (1) or more of the following: a child day-care facility, a public school, a provider of medical services, a provider of therapy services, a home health agency if operated separately from the local health department, a university or college, a family resource center, a local business, a local charity, or others deemed appropriate. Each committee shall:

(1) Advise and assist the cabinet and the council in the development, implementation, and monitoring of the Kentucky Early Intervention System;
(2) Identify local resources available to infants and toddlers with disabilities and their families;
(3) Assist in identifying the unmet needs of infants and toddlers with disabilities and their families;
(4) Assist in establishing and maintaining a point of entry to the early intervention system; and
(5) Assist in the establishment of local interagency agreements for early intervention services and provide a forum for coordinating district early intervention services.

(Enact. Acts 1994, ch. 313, § 7, effective July 15, 1994; 2000, ch. 14, § 31, effective July 14, 2000.)

200.664. Individualized family services plans.

(1) Upon identification of an eligible infant or toddler with disabilities, representatives of the entity serving as point of entry shall cause a multidisciplinary team, as defined in KRS 200.654, to be created for the child and family.
(2) The multidisciplinary team shall develop an individualized family service plan, as defined in KRS 200.654, for the child and family.
(3) The individualized family services plan shall include:
    (a) A comprehensive multidisciplinary evaluation of the present level of development of and services needed by the child and an assessment of and plan to address the resources, priorities, and concerns of the family;
    (b) An explanation of the multidisciplinary evaluation and all service options to be made available in the family's cultural language, in their primary mode of communication, or through a speech or language interpreter, whichever is necessary to facilitate comprehension.
(4) The plan shall be developed within forty-five (45) days of the referral date of the child and family to the point of entry. If the completion of the initial evaluation and assessment is delayed and will not be completed within the forty-five (45) day time period due to the request of the child's parent, illness of the child, or other reasonable circumstances beyond the control of the multidisciplinary team, the point of entry shall document the reason for the delay and shall develop and implement an interim individualized family service plan.
(5) The informed written consent of the parent or guardian is required prior to the implementation of the plan. The parent may reject some services contained in the plan, however, no services to which the parent consents shall be withheld if the parent does not consent to all services in the plan.
(6) The plan shall be reviewed by members of the child's current multidisciplinary team or other appropriate entities at no more than six (6) month intervals or more frequently if deemed appropriate based on the needs of the infant or toddler and the family.

(Enact. Acts 1994, ch. 313, § 8, effective July 15, 1994.)

200.666. Cabinet's monitoring of personnel standards for service providers — Personnel development.

(1) The cabinet shall monitor personnel standards for service providers to ensure the qualified service providers necessary to carry out the provisions of KRS 200.650 to 200.676 are appropriately and adequately prepared and trained in order to comply with the requirements of federal law and regulations.
(2) The cabinet shall provide the components of a comprehensive system of personnel development which shall include:
    (a) Preservice and inservice training conducted on an interdisciplinary basis to the extent appropriate; and
    (b) Training provided for a variety of entities, including but not limited to, public and private providers, primary referral sources, parents, paraprofessionals, and persons who serve as professional service coordinators or case managers.
(3) Training may include:
    (a) Implementing innovative strategies and activities for the recruitment and retention of early intervention service providers;
    (b) Promoting the preparation of early intervention providers who are fully and appropriately qualified to provide early intervention;
    (c) Training personnel to work in rural areas; and
    (d) Recruiting and training personnel to coordinate transition services for infants and toddlers with disabilities from an early intervention program to a preschool program.
(4) The cabinet shall coordinate with other agencies in the provision of the comprehensive system of personnel development activities.

(Enact. Acts 1994, ch. 313, § 9, effective July 15, 1994.)

200.668. Identification of eligible infants and toddlers.

The cabinet shall attempt to identify all infants and toddlers eligible for Kentucky Early Intervention System services through implementation of an aggressive child find effort to be coordinated with the child find efforts of the Department of Education as set forth in administrative regulations promulgated pursuant to KRS 156.070, 156.160, 157.220, 157.260, 167.015, and KRS Chapter 13A.

(Enact. Acts 1994, ch. 313, § 10, effective July 15, 1994.)

200.670. Public awareness effort.

In order to ensure access to early intervention services, the cabinet shall establish an effective and continuous public awareness effort. The effort shall:

(1) Be directed at a number of primary referral sources, utilizing a means and language which is understandable, accessible, responsive, and cognizant of the referral sources' needs and their abilities to respond to those needs;
(2) Reinforce the coordinated and family-centered nature of all early intervention programs within the comprehensive statewide system of services; and
(3) Be relevant and meaningful to parents and to the general public.

(Enact. Acts 1994, ch. 313, § 11, effective July 15, 1994.)

200.672. Rights of disabled child, parent, or guardian being served by the system.

Kentucky's participation in Part C of the Federal Individuals with Disabilities Education Act requires that an infant or toddler with a disability who is being served by the Kentucky Early Intervention System and the parent or guardian of that child shall have the following rights:

(1) To a timely, multidisciplinary evaluation and assessment;
(2) To appropriate early intervention services for children and families;
(3) To refuse evaluation, assessment, or services;
(4) To written notice before a change is made in the identification, evaluation, or placement of the child, or in the provision of services to the child or family;
(5) To written notice before a refusal of services is made in the identification, evaluation, or placement of the child, or in the provision of services to the child or family;
(6) To confidentiality of personally identifiable information, including the right of the parent or guardian to be provided written notice of, and written consent to, the exchange of information among agencies, consistent with federal and state laws;
(7) To determine if any family member will accept or decline an early intervention service under KRS 200.650 to 200.676, in accordance with state law, without jeopardizing other early intervention services under KRS 200.650 to 200.676;
(8) To review all records and, if appropriate, to amend records;
(9) To bring an advocate or attorney into any and all dealings with the early intervention system; and
(10) To administrative process and judicial review in accordance with KRS Chapter 13B to resolve complaints.

(Enact. Acts 1994, ch. 313, § 12, effective July 15, 1994; 1996, ch. 318, §§ 92, 95, effective July 15, 1996; 2000, ch. 10, § 1, effective July 14, 2000.)

Legislative Research Commission Note. (7/15/96). This statute was amended by 1996 Ky. Acts ch. 318, secs. 92 and 95, which are in conflict. Section 95 prevails as the last section in order of position. See Home Folks Mobile Homes, Inc. v. Revenue Cabinet, 700 SW2d 75 (Ky. Ct. App. 1985).

Compiler's Notes. Part C of the Federal Individuals with Disabilities Education Act, referred to in this section, is codified as 20 U.S.C. §§ 1431 to 1445.

200.674. Restriction of use of early intervention funds — Maintenance of July 1, 1993 funding level.

The use of early intervention funds provided under KRS 200.650 to 200.676 shall not be used to supplant existing funds from other sources. All local and state programs for infants and toddlers with disabilities and their families shall maintain the funding which supported programs for infant and toddler and their families at levels as of July 1, 1993.

(Enact. Acts 1994, ch. 313, § 13, effective July 15, 1994.)

200.676. Construction of KRS 200.650 to 200.676.

Nothing in KRS 200.650 to 200.676 shall be construed to permit the following:

(1) The reduction of local, state, or federal medical or other assistance available for infants and toddlers with disabilities and their families;
(2) The alteration of eligibility under Title V of the Federal Social Security Act relating to maternal and child health;
(3) The alteration of eligibility under Title XIX of the Federal Social Security Act relating to Medicaid for infants and toddlers with disabilities; or
(4) The reduction of early intervention services provided by any state department or agency.

(Enact. Acts 1994, ch. 313, § 14, effective July 15, 1994.)

Compiler's Notes. Titles V and XIX of the Federal Social Security Act referred to in subsections (2) and (3) of this section are compiled as 42 U.S.C. §§ 701 to 709 and 1396 to 1396u, respectively.

Early Childhood Services

200.700. Early Childhood Development Authority — Membership — Meetings.

(1) The Early Childhood Development Authority is established as a public agency and political subdivision of the Commonwealth with all powers, duties, and responsibilities conferred upon it by statute and essential to perform its functions including, but not limited to, employing other persons, consultants, attorneys, and agents. The

authority shall be attached to the Office of the Governor, Office of Early Childhood Development, for administrative purposes and shall establish necessary advisory councils. The authority shall have the ability to make expenditures from the early childhood development fund and shall ensure that expenditures made from the early childhood development fund are in conformance with its duties as established by the General Assembly.

(2) The authority shall consist of the following seventeen (17) members:
   (a) The executive director of the Governor's Office of Early Childhood Development, who shall serve as chair;
   (b) The secretary of the Education, Arts, and Humanities Cabinet;
   (c) The secretary of the Cabinet for Health Services;
   (d) The secretary of the Cabinet for Families and Children;
   (e) One (1) nonvoting ex officio member from the House of Representatives who shall be appointed by and serve at the pleasure of the Speaker of the House;
   (f) One (1) nonvoting ex officio member from the Senate who shall be appointed by and serve at the pleasure of the President of the Senate;
   (g) Seven (7) private sector members knowledgeable about the health, education, and development of preschool children who shall be appointed by the Governor. At least one (1) private sector member shall be appointed from each congressional district;
   (h) Three (3) citizens at large of the Commonwealth who shall be appointed by the Governor; and
   (i) One (1) early childhood development advocate.

(3) No later than thirty (30) days after July 14, 2000, the governing bodies of each of the following organizations shall recommend three (3) persons, at least one (1) of whom shall be male and at least one (1) of whom shall be female, as candidates for initial appointment by the Governor as private sector members to the authority:
   (a) The Kentucky AFL-CIO;
   (b) The Kentucky Chamber of Commerce;
   (c) The Kentucky League of Cities;
   (d) The Kentucky Medical Association;
   (e) The Louisville Urban League and Lexington Urban League;
   (f) The Kentucky County Judge/Executives Association; and
   (g) The Kentucky Council on Postsecondary Education.

(4) The Governor shall select the private sector members of the authority by selecting one (1) nominee from each list of the three (3) nominees submitted to the Governor by each organization listed under subsection (3) of this section. The Governor shall fill a vacancy occurring before the expiration of the appointed term from the appropriate list of nominees. If there are no nominees remaining on the appropriate list, the Governor shall request a list of additional nominees from the appropriate organization.

(5) (a) The initial terms of the private sector and citizen at-large members of the authority shall be for:
      1. One (1) year for two (2) of the initial terms;
      2. Two (2) years for three (3) of the initial terms;
      3. Three (3) years for two (2) of the initial terms; and
      4. Four (4) years for four (4) of the initial appointments.
   (b) All succeeding appointments shall be for four (4) years from the expiration date of the preceding appointment.
   (c) Members shall serve until a successor has been appointed.

(6) Private sector and citizen at-large members shall serve without compensation but shall be reimbursed for reasonable and necessary expenses.

(7) In making appointments to the authority, the Governor shall assure broad geographical, ethnic, and gender diversity representation from the major sectors of Kentucky's early childhood development community. In filling vacancies, the Governor shall attempt to assure the continuing representation on the authority of broad constituencies of Kentucky's early childhood development community.

(8) Upon the expiration of the term of any member, the governing body of the organization that made the original recommendation shall recommend three (3) persons, at least one (1) of whom shall be male and at least one (1) of whom shall be female, between sixty (60) and thirty (30) days before the expiration of the term of any authority member who is appointed as a result of a previous recommendation. The Governor shall, during March of the year that any organization is to recommend three (3) persons, request the organization to recommend three (3) persons for possible appointment to the authority. If there is no response, the Governor shall make the appointment from the population of the Commonwealth.

(9) The authority shall meet at least quarterly and at other times upon call of the chair or a majority of the authority.

(10) Members of the authority shall serve on a voluntary basis, receive a fixed per diem set by the authority, and be reimbursed for their expenses in accordance with state travel expense and reimbursement administrative regulations.

(Enact. Acts 2000, ch. 308, § 1, effective July 14, 2000.)

Compiler's Notes. Section 29 of Acts 2000, ch. 308, effective July 14, 2000, read: "As used in subsection (1) of Section 1 of this Act [this section], 'early childhood development fund' means the fund with that name created in House Bill 583 of this 2000 Regular Session from a distribution of moneys in the tobacco settlement agreement fund established by KRS 248.654, or created in other legislation of this 2000 Regular Session."

Section 30 of Acts 2000, ch. 308, effective July 14, 2000, read: "This Act may be cited as the Early Childhood Development Act."

200.703. Duties of Early Childhood Development Authority — Implementation of programs — Disbanding or suspension of councils — Expiration of authority, councils, and initiatives — Health Babies Work Group — Vision examinations — Requests for proposals.

(1) The authority shall establish priorities for programs and the expenditure of funds that include, but are not limited to, the following:
   (a) Implementation of public health initiatives identified by the General Assembly;
   (b) Provision of preconceptional and prenatal vitamins, with priority for folic acid for the prevention of neural tube defects;
   (c) Voluntary immunization for children not covered by public or private health insurance;
   (d) Availability of high-quality, affordable early child-care and education options; and
   (e) Increased public awareness of the importance of the early childhood years for the well-being of all Kentucky's citizens.

(2) The authority shall develop a state plan on a biennial basis that identifies early childhood development funding priorities. Every two (2) years the authority shall review its priorities and make necessary adjustments to its state plan. The state plan shall incorporate priorities included in "KIDS NOW: Kentucky Invests in Developing Success, a Report from the Governor's Early Childhood Task Force, November 1999," and recommendations identified by the community early childhood councils. The authority shall file a report on the state plan with the Governor and the Legislative Research Commission by July 15 of odd-numbered years.

(3) Programs funded by the authority shall be implemented by the appropriate agencies within the Cabinet for Health Services; the Cabinet for Families and Children; the Education, Arts, and Humanities Cabinet; the Finance and Administration Cabinet; or other appropriate administrative agency.

(4) The authority shall assure that a public hearing is held on the expenditure of funds. Advertisement of the public hearing shall be published at least once but may be published two (2) more times, if one (1) publication occurs not less than seven (7) days nor more than twenty-one (21) days before the scheduled date of the public hearing.

(5) The authority shall promulgate administrative regulations in accordance with KRS Chapter 13A to:
   (a) Coordinate and improve early childhood development services, outcomes, and policies;
   (b) Establish procedures that relate to its governance;
   (c) Designate service areas of the Commonwealth where the community early childhood councils may be established to identify and address the early childhood development needs of young children and their families for the communities that they serve;
   (d) Establish procedures that relate to the monitoring of grants, services, and activities of the community early childhood councils and their governance;
   (e) Establish procedures for accountability and measurement of the success of programs that receive funds from the authority; and
   (f) Establish standards for the payment of funds to a designated service provider and grantee of a community early childhood council. These standards shall include requirements relating to:
      1. The financial management of funds paid to grantees;
      2. The maintenance of records; and
      3. An independent audit of the use of grant funds.

(6) The authority may disband or suspend a council, and may remove one (1) or more members for nonperformance or malfeasance. The authority may also recover funds that have been determined by the authority to have been misappropriated or misspent in relation to a grant award.

(7) An appeal to the authority may be made by a council as to a decision made by the authority on the disbanding or suspension of a council, service provider, or grantee on a determination that funds have been misappropriated or misspent and are subject to recovery. The appeal shall be conducted in accordance with KRS Chapter 13B.

(8) The authority, councils established by the authority, and initiatives funded by the authority with expenditures from the early childhood development fund shall expire when:
   (a) Funds are no longer designated to the Commonwealth from the master settlement agreement signed on November 22, 1998, between the participating tobacco manufacturers and the forty (40) settling states or related federal legislation; or
   (b) Funds are no longer designated to the early childhood development fund from gifts, grants, or federal funds to fund the authority, the councils established by the authority, or any programs that had been funded by the authority with expenditures from the early childhood development fund.

(9) (a) The authority shall establish a Healthy Babies Work Group, consisting of representatives from the Cabinet for Families and Children; the Cabinet for Health Services; public schools; local libraries; the Kentucky March of Dimes; family resource centers; agencies that provide benefits under the Special Supplementation Food Program for Women, Infants, and Children; the Folic Acid Awareness Campaign; physicians; secondary health education and consumer sciences teachers; the Spina Bifida Association of Kentucky; and other persons as appropriate. Representatives shall reflect the geographic, racial, and gender diversity of the Commonwealth.
   (b) The Healthy Babies Work Group shall collaborate on development and implementation of a

public awareness campaign to inform the citizens of the Commonwealth about the benefits of good nutrition, folic acid, smoking cessation, and healthy lifestyle choices that lead to healthy babies, the effects of alcohol and substance abuse on fetal and early childhood development, and the need for a vision examination of children at age three (3). The work group shall work with local health departments for the vision examination outreach program.

(10) The authority shall work with local entities, including, but not limited to, health departments and service providers, to establish to the extent of available funding a vision examination program for children who are not eligible for the Kentucky Children's Health Insurance Program or Medicaid, and who do not have insurance coverage for a vision examination.

(11) The authority shall develop a request for proposal process by which local early childhood councils may request any funding appropriated to the authority for use by the councils.

(Enact. Acts 2000, ch. 308, § 2, effective July 14, 2000.)

200.707. Community early childhood councils.

(1) The family resource center and the child-care resource and referral agency in the service area shall form a community early childhood council and appoint members to the council for each service area designated under KRS 200.703. A council shall be composed of no fewer than seven (7) and no more than twenty-seven (27) members. Members may be appointed who represent local agencies and organizations, including, but not limited to, the organizations or agencies listed below, with no more than one (1) member from each:

(a) Early childhood advocate;
(b) Faith community;
(c) School district;
(d) Family resource center;
(e) Military establishment;
(f) Head Start or Early Head Start;
(g) Child-care (profit, nonprofit, or family child-care);
(h) Child-care resource and referral agency or child-care subsidy agent;
(i) Child-care consumer or parent;
(j) County cooperative extension service;
(k) Department for public health;
(l) University, college, or technical school;
(m) United Way;
(n) Kentucky Early Intervention System;
(o) Agency administering services to children with disabilities;
(p) Home visitation agency;
(q) Family literacy agency;
(r) Civic organization;
(s) Public library;
(t) Regional training center;
(u) Community action agency;
(v) Government;
(w) Business community;
(x) Home schooling association;
(y) Health care professional;
(z) Foster care parent; or
(aa) Adoptive parent.

(2) Members shall serve on a community early childhood council on a voluntary basis and receive no compensation or expense reimbursement for their service.

(3) (a) Members shall serve for a term of two (2) years and until their successors are appointed, except that for those members initially appointed, the terms shall be as follows:

1. One-third (⅓) of the members shall be appointed for three (3) years;
2. One-third (⅓) shall be appointed for two (2) years; and
3. One-third (⅓) shall be appointed for one (1) year.

(b) Vacancies shall be appointed for unexpired terms in the same manner as original appointments.

(4) A community early childhood council shall collaborate with the District Early Intervention Committee, the Preschool Interagency Planning Council, and other existing interagency groups in the service area.

(5) A community early childhood council may apply for a competitive grant from the authority, consistent with a state plan for grant participation as established by the authority. Grant proposals shall:

(a) Include a needs assessment and budget proposal for the respective service area served by a council;
(b) Not include administrative costs that exceed five percent (5%); and
(c) Contain a signed statement from each member of the council certifying that no program, agency, or individual that may receive part of an award would constitute a conflict of interest under KRS Chapter 11A for the council member. Issues concerning conflicts of interest shall be submitted to the Executive Branch Ethics Commission for resolution.

(6) A community early childhood council shall submit a quarterly report to the authority that details the activities and services of the council, including the progress that the council has made toward addressing the early childhood development goals for its designated service area and recommendations that may be included in the state plan.

(7) Any records that are in the custody of a community early childhood council, a designated service provider, or a grantee that contain personal and identifying information relating to a family or children receiving services through the council shall be confidential and not subject to public disclosure, except as otherwise authorized by law.

(Enact. Acts 2000, ch. 308, § 4, effective July 14, 2000.)

CHAPTER 207

AID TO THE NEEDY BLIND—EQUAL OPPORTUNITIES

SECTION.

EQUAL OPPORTUNITIES ACT

207.135. Protections available to persons with HIV — Employment discrimination prohibited.

EQUAL OPPORTUNITIES ACT

207.135. Protections available to persons with HIV — Employment discrimination prohibited.

(1) Any person with acquired immunodeficiency syndrome, acquired immunodeficiency syndrome related complex, or human immunodeficiency virus shall have every protection made available to individuals with disabilities under KRS 207.130 to 207.240 and Section 504, Public Law No. 93-112, the Rehabilitation Act of 1973.

(2) (a) No person may require an individual to take a human immunodeficiency virus related test as a condition of hiring, promotion, or continued employment, unless the absence of human immunodeficiency virus infection is a bona fide occupational qualification for the job in question.

(b) A person who asserts that a bona fide occupational qualification exists for human immunodeficiency virus-related testing shall have the burden of proving that:

1. The human immunodeficiency virus-related test is necessary to ascertain whether an employee is currently able to perform in a reasonable manner the duties of the particular job or whether an employee will present a significant risk of transmitting human immunodeficiency virus infection to other persons in the course of normal work activities; and
2. There exists no means of reasonable accommodation short of requiring the test.

(3) (a) A person shall not discriminate against an otherwise qualified individual in housing, public accommodations, or governmental services on the basis of the fact that such individual is, or is regarded as being, infected with human immunodeficiency virus.

(b) A person or other entity receiving or benefiting from state financial assistance shall not discriminate against an otherwise qualified individual on the basis of the fact that such individual is, or is regarded as being, infected with human immunodeficiency virus.

(c) A person who asserts that an individual who is infected with human immunodeficiency virus is not otherwise qualified shall have the burden of proving that no reasonable accommodation can be made to prevent the liklihood that the individual will, under the circumstances involved, expose other individuals to a significant possibility of being infected with human immunodeficiency virus.

(d) No person shall fail or refuse to hire or discharge any individual, segregate or classify any individual in any way which would deprive or tend to deprive that individual of employment opportunities or adversely affect his or her status as an employee, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment on the basis of the fact that the individual is a licensed health care professional who treats or provides patient care to persons infected with human immunodeficiency virus.

(Enact. Acts 1990, ch. 443, § 49, effective July 13, 1990; 1994, ch. 405, § 63, effective July 15, 1994.)

Compiler's Notes. The Rehabilitation Act of 1973, P.L. 93-112, referred to in subsection (1), is compiled as 29 U.S.C. § 701 et seq.

TITLE XVIII

PUBLIC HEALTH

CHAPTER 211

STATE HEALTH PROGRAMS

SECTION.

CABINET FOR HEALTH SERVICES

211.287. Funding by Department for Public Health of position relating to student health services.

CABINET FOR HEALTH SERVICES

211.287. Funding by Department for Public Health of position relating to student health services.

(1) The Department for Public Health shall provide fifty percent (50%) of the costs for the position created in KRS 156.501(2). The Department for Public Health may enter into a contractual arrangement, such as a Memorandum of Agreement, with the Department of Education to share the costs.

(2) The Department for Public Health shall provide access, information, assistance, and support to the education school nurse consultant necessary to assist and support the Department of Education to fulfill the duties specified in KRS 156.501.

(3) It is the intent of the General Assembly that there be no duplication of services or duties between the Department of Education and the Department for Public Health relating to school health services and that the position created in KRS 156.501(2) serve as a technical advisor and liaison among

state agencies, local school districts, and local health departments.

(Enact. Acts 2002, ch. 294, § 3, effective July 15, 2002.)

CHAPTER 212

LOCAL HEALTH PROGRAMS

SECTION.

General Provisions

212.210. Powers and duties of the Cabinet for Health Services and local health boards.

Penalties

212.990. Penalties.

General Provisions

212.210. Powers and duties of the Cabinet for Health Services and local health boards.

(1) The Cabinet for Health Services and the local boards of health may examine into all nuisances, sources of filth, and causes of sickness that may, in their opinion, be injurious to the health of the inhabitants in any county in this state, or in any vessel within any harbor or port in any county in this state. Whenever any such nuisance, source of filth, or cause of sickness is found to exist on any private property, or in any vessel within any port or harbor in any county in this state, or upon any watercourse in this state, the Cabinet for Health Services or the local board of health may order, in writing, the owner or occupant thereof, at his own expense, to remove the same within twenty-four (24) hours, or within such reasonable time thereafter as the board may order.

(2) If drinking water used by school children is found to be dangerous to their health, the local board of health or Cabinet for Health Services may order that a supply of pure water be furnished at the expense of the county or city board of education.

(3) If in the opinion of the local board of health or Cabinet for Health Services a school building is constructed in violation of law and is found to be unsanitary or unsafe for the housing of children, the local board of health or Cabinet for Health Services may institute an action in the Circuit Court of the county where the building is situated, and the court, after due hearing and verifying the facts, may order a safe and sanitary school building to be erected within a reasonable time by the county or city board of education in accordance with the laws of the state governing the erection of schoolhouses and the control of disease, and the rules and regulations of the Cabinet for Health Services.

(4) Any local board of health shall, for the purpose of controlling and eradicating rats and other unsanitary nuisances, require the owner or possessor of any building designed for human habitation and containing two (2) or more apartment units, to provide, where a specific area has been designated for the depositing of refuse on the premises, waste receptacles approved by the board. The board may further require that the design, construction, and maintenance of the area in which the waste receptacles are kept meet reasonable standards set by the board.

(2054a-14, 2057: amend. Acts 1970, ch. 281, § 1; 1974, ch. 74, Art. VI, § 107(3); 1998, ch. 426, § 353, effective July 15, 1998.)

Cross-References. Foods and drugs, powers and duties of local health boards with respect to, KRS 217.380.

Hotel and restaurant inspection and regulation, duty of local health boards with respect to, KRS Chapter 219.

Mattresses, manufacture of regulated by local health boards, KRS 214.290.

Quarantine, actions to prevent introduction and spread of disease within state, KRS 214.020.

Opinions of Attorney General. A local health department is not confined by any statute as to the frequency or bases for inspection of a school building and grounds or facilities. OAG 77-138.

Penalties

212.990. Penalties.

(1) Any owner or occupant who fails to comply with an order made under the provisions of subsection (1) of KRS 212.210 shall be fined not less than ten dollars ($10) nor more than one hundred dollars ($100) and each day's continuance of the nuisance, source of filth, or cause of sickness, after the owner or occupant has been notified to remove it, shall be a separate offense.

(2) Any person who violates KRS 212.715 or any rule or regulation adopted by any consolidated local government, city, county, or city-county board of health, except as otherwise provided by subsection (3) of this section for counties containing cities of the first class or consolidated local government, shall be fined not less than ten dollars ($10) nor more than one hundred dollars ($100) for each day the violation continues.

(3) The violation of any health regulation promulgated by the city-county board of health or of any order made by the board under KRS 212.350 to 212.620, directing the abatement of a nuisance, source of filth, or cause or probable cause of sickness, is hereby declared to be a misdemeanor, and any person, firm, or corporation, or member of a firm or officer or director of a corporation, upon conviction thereof shall be fined not less than five dollars ($5) nor more than one hundred dollars ($100) for each such offense. If any offense is continued for more than one (1) day, each day upon which such offense occurs or is continued shall be considered and constitute a separate offense and a separate fine may be imposed therefor.

(4) Any physician who fails to comply with the provisions of KRS 212.343, upon conviction thereof shall be fined not more than five hundred dollars ($500).

(5) Failure to procure the informed consent of those required to give their consent pursuant to KRS

212.345, prior to performing a nontherapeutic sterilization shall be punishable by imprisonment in the county jail not to exceed one (1) year or a fine not to exceed one thousand dollars ($1,000), or both.

(6) Any physician violating KRS 212.347 shall be imprisoned in the county jail not to exceed one (1) year or shall pay a fine not to exceed one thousand dollars ($1,000), or both.

(2055, 2057: amend. Acts 1942, ch. 41, § 21; 1958, ch. 96, § 9; 1974, ch. 352, § 6; 1984, ch. 111, § 179, effective July 13, 1984; 2002, ch. 346, § 210, effective July 15, 2002.)

CHAPTER 213

VITAL STATISTICS

SECTION.

213.031. Duties of state registrar.

213.031. Duties of state registrar.

The state registrar, under the supervision of the commissioner of health, shall:

(1) Administer and enforce the provisions of this chapter and the administrative regulations issued hereunder; issue instructions for the efficient administration of the system of vital statistics; direct the system and Office of Vital Statistics and be custodian of its records; supervise the activities of all persons when they are engaged in the operation of the system; and conduct training programs to promote uniformity of the system's policy and procedures throughout the Commonwealth;

(2) With the approval of the cabinet, design, furnish, and distribute forms required by this chapter and the administrative regulations issued hereunder, or prescribe other means for transmission of data to accomplish the purpose of complete and accurate reporting and registration;

(3) Coordinate and maintain in accordance with administrative regulations promulgated pursuant to this subsection, a system by which a child's Social Security number is transferred by the Office of Vital Statistics to the Department of Education after receiving parental permission for the number to be used for planning and tracking purposes by the Department of Education, local school districts, and the office. The regulations, at a minimum, shall establish a process to allow a parent or guardian when completing a certificate of birth to request that a Social Security number be assigned the child and that the number be automatically transmitted to the Department of Education for student identification purposes;

(4) Assist in preparing and publishing reports of vital statistics of the Commonwealth and other reports as required;

(5) Provide to local health departments copies of or data derived from certificates and reports required under this chapter. The state registrar shall establish a schedule with each local health department for transmittal of the copies or data. The copies shall remain the property of the Office of Vital Statistics, and the uses which may be made of them and the period of their retention in the county shall be governed by the state registrar;

(6) Prepare and maintain a complete continuous index of all vital records registered under this chapter and provide, at not more than two (2) year intervals, a copy of the index to each local registrar; and

(7) Investigate cases of irregularity or violation of this chapter and when the cabinet deems it necessary, report violations to the Commonwealth's attorney of the proper county for prosecution.

(Enact. Acts 1990, ch. 369, § 5, effective July 13, 1990; 1992, ch. 195, § 11, effective July 14, 1992.)

CHAPTER 214

DISEASES

SECTION.

General Provisions

214.032. Definition for KRS 158.035, 214.010, 214.020, and 214.032 to 214.036.
214.034. Immunization of children — Testing and treatment of children for tuberculosis — Requirement for reception and retention of current immunization certificate by schools and child-care facilities.
214.036. Exceptions to testing or immunization requirement.
214.185. Diagnosis and treatment of disease, addictions, or other conditions of minor.

Blood Supply Screening

214.468. Donation of blood to nonprofit voluntary program by person age seventeen or older.

Penalties

214.990. Penalties.

General Provisions

214.032. Definition for KRS 158.035, 214.010, 214.020, and 214.032 to 214.036.

As used in KRS 158.035, 214.010, 214.020, and 214.032 to 214.036 the term "child" means a person under eighteen (18) years of age.

(Enact. Acts 1962, ch. 95, § 1; 1968, ch. 87, § 1.)

Compiler's Notes. The term "child" does not appear in either KRS 214.010 or 214.020.

214.034. Immunization of children — Testing and treatment of children for tuberculosis — Requirement for reception and retention of current immunization certificate by schools and child-care facilities.

Except as otherwise provided in KRS 214.036:

(1) All parents, guardians, and other persons having care, custody, or control of any child shall have the child immunized against diphtheria, tetanus, po-

liomyelitis, pertussis, measles, rubella, mumps, hepatitis B, and haemophilis influenzae disease in accordance with testing and immunization schedules established by regulations of the Cabinet for Health Services. Additional immunizations may be required by the Cabinet for Health Services through the promulgation of an administrative regulation pursuant to KRS Chapter 13A if recommended by the United States Public Health Service or the American Academy of Pediatrics. All parents, guardians, and other persons having care, custody, or control of any child shall also have any child found to be infected with tuberculosis examined and treated according to administrative regulations of the Cabinet for Health Services promulgated under KRS Chapter 13A. The persons shall also have booster immunizations administered to the child in accordance with the regulations of the Cabinet for Health Services.

(2) A local health department may, with the approval of the Department of Public Health, require all first-time enrollees in a public or private school within the health department's jurisdiction to be tested for tuberculosis prior to entering school. Following the first year of school, upon an epidemiological determination made by the state or local health officer in accordance with administrative regulations promulgated by the Cabinet for Health Services, all parents, guardians, and other persons having care, custody, or control of any child shall have the child tested for tuberculosis, and shall have any child found to be infected with tuberculosis examined and treated according to administrative regulations of the Cabinet for Health Services. Nothing in this section shall be construed to require the testing for tuberculosis of any child whose parent or guardian is opposed to such testing, and who objects by a written sworn statement to the testing for tuberculosis of the child on religious grounds. However, in a suspected case of tuberculosis, a local health department may require testing of this child.

(3) All public or private primary or secondary schools, and preschool programs shall require a current immunization certificate for any child enrolled as a regular attendee, as provided by administrative regulation of the Cabinet for Health Services, promulgated under KRS Chapter 13A, to be on file within two (2) weeks of the child's attendance.

(4) All public or private primary schools shall require a current immunization certificate for hepatitis B for any child enrolled as a regular attendee in the sixth grade, as provided by administrative regulation of the Cabinet for Health Services, promulgated under KRS Chapter 13A, to be on file within two (2) weeks of the child's attendance. This provision shall sunset following the 2008-2009 school year unless otherwise authorized by the General Assembly.

(5) For each child cared for in a day-care center, certified family child-care home, or any other licensed facility which cares for children, a current immunization certificate, as provided by administrative regulation of the Cabinet for Health Services, promulgated under KRS Chapter 13A, shall be on file in the center, home, or facility within thirty (30) days of entrance into the program or admission to the facility.

(6) Any forms relating to exemption from immunization requirements shall be available at public or private primary or secondary schools, preschool programs, day-care centers, certified family child-care homes, or other licensed facilities which care for children.

(Enact. Acts 1962, ch. 95, § 2; 1968, ch. 87, § 2; 1972, ch. 341, § 2; 1974, ch. 74, Art. VI, § 107(1), (3); 1976, ch. 14, § 1; 1976, ch. 128, § 4; 1982, ch. 271, § 1, effective July 15, 1982; 1996, ch. 306, § 1, effective July 15, 1996; 1998, ch. 302, § 1, effective July 15, 1998; 1998, ch. 426, § 395, effective July 15, 1998; 2000, ch. 349, § 1, effective July 14, 2000.)

Legislative Research Commission Note. (7/15/98). A reference in this statute to the former Department of Health Services has been changed to the Department of Public Health under 1998 Ky. Acts ch. 426, sec. 629, and KRS 7.136(2).

Cross-References. Preschool education program for four (4) year old children, 704 KAR 3:410.

Opinions of Attorney General. A certificate stating that a child has been tested for tuberculosis is required for initial enrollment in any public or private elementary or secondary school system irrespective of age or grade of the child. OAG 76-255.

Although it is principally no longer required that a child be tested for tuberculosis as a condition to be met before enrolling in school, and the state board could so recognize this fact by appropriate regulation, the law clearly still requires under this section that all children are to be tested for tuberculosis. Even absent a required schedule for tuberculosis testing, children should be so tested before enrolling in school for the first time. OAG 82-131.

It is mandatory by law that children are to be tested for tuberculosis and, of course, treated if the child is found to be infected with tuberculosis. OAG 82-131.

NOTES TO DECISIONS

1. Constitutionality.

Since the primary effect of the state immunization program was to improve and protect the health and well-being of citizens, the exemption for members of a religious denomination, the teachings of which are opposed to medical immunization against disease, did not make this statute unconstitutional as being in violation of the establishment clause of the First Amendment. Kleid v. Board of Educ., 406 F. Supp. 902 (W.D. Ky. 1976).

214.036. Exceptions to testing or immunization requirement.

Nothing contained in KRS 158.035, 214.010, 214.020, 214.032 to 214.036, and 214.990 shall be construed to require the testing for tuberculosis or the immunization of any child at a time when, in the written opinion of his attending physician, such testing or immunization would be injurious to the child's health. Nor shall KRS 158.035, 214.010, 214.020, 214.032 to 214.036, and 214.990 be construed to require the immunization of any child whose parents are opposed to medical immunization against disease, and who object by a written sworn statement to the immunization of such child on religious grounds. Provided, however, that in

the event of an epidemic in a given area, the Cabinet for Health Services may, by emergency regulation, require the immunization of all persons within the area of epidemic, against the disease responsible for such epidemic.

(Enact. Acts 1962, ch. 95, § 4; 1968, ch. 87, § 4; 1974, ch. 74, Art. VI, § 107(3); 1976, ch. 128, § 4; 1980, ch. 55, § 1, effective July 15, 1980; 1998, ch. 426, § 396, effective July 15, 1998.)

Cross-References. Certificate of immunization required to enroll student in school, KRS 158.035.

Opinions of Attorney General. Unless a child is excepted from immunization or testing for tuberculosis under this section, a child who does not comply with immunization and testing requirements cannot enroll in any public or private school system, and the child's failure to attend school will subject the parents or the custodians to the penalties set forth in KRS 159.990. OAG 76-256.

Cited: Piatt v. Louisville & Jefferson County Bd. of Educ., 556 F.2d 809 (6th Cir. 1977).

NOTES TO DECISIONS

1. Constitutionality.

Since the primary effect of the state immunization program was to improve and protect the health and well-being of citizens, this statute was not unconstitutional as being in violation of the establishment clause of the First Amendment. Kleid v. Board of Educ., 406 F. Supp. 902 (W.D. Ky. 1976).

214.185. Diagnosis and treatment of disease, addictions, or other conditions of minor.

(1) Any physician, upon consultation by a minor as a patient, with the consent of such minor may make a diagnostic examination for venereal disease, pregnancy, alcohol or other drug abuse or addiction and may advise, prescribe for, and treat such minor regarding venereal disease, alcohol and other drug abuse or addiction, contraception, pregnancy, or childbirth, all without the consent of or notification to the parent, parents, or guardian of such minor patient, or to any other person having custody of such minor patient. Treatment under this section does not include inducing of an abortion or performance of a sterilization operation. In any such case, the physician shall incur no civil or criminal liability by reason of having made such diagnostic examination or rendered such treatment, but such immunity shall not apply to any negligent acts or omissions.

(2) Any physician may provide outpatient mental health counseling to any child age sixteen (16) or older upon request of such child without the consent of a parent, parents, or guardian of such child.

(3) Notwithstanding any other provision of the law, and without limiting cases in which consent may be otherwise obtained or is not required, any emancipated minor or any minor who has contracted a lawful marriage or borne a child may give consent to the furnishing of hospital, medical, dental, or surgical care to his or her child or himself or herself and such consent shall not be subject to disaffirmance because of minority. The consent of the parent or parents of such married or emancipated minor shall not be necessary in order to authorize such care. For the purpose of this section only, a subsequent judgment of annulment of marriage or judgment of divorce shall not deprive the minor of his adult status once obtained. The provider of care may look only to the minor or spouse for payment for services under this section unless other persons specifically agree to assume the cost.

(4) Medical, dental, and other health services may be rendered to minors of any age without the consent of a parent or legal guardian when, in the professional's judgment, the risk to the minor's life or health is of such a nature that treatment should be given without delay and the requirement of consent would result in delay or denial of treatment.

(5) The consent of a minor who represents that he may give effective consent for the purpose of receiving medical, dental, or other health services but who may not in fact do so, shall be deemed effective without the consent of the minor's parent or legal guardian, if the person rendering the service relied in good faith upon the representations of the minor.

(6) The professional may inform the parent or legal guardian of the minor patient of any treatment given or needed where, in the judgment of the professional, informing the parent or guardian would benefit the health of the minor patient.

(7) Except as otherwise provided in this section, parents, the Cabinet for Health Services, or any other custodian or guardian of a minor shall not be financially responsible for services rendered under this section unless they are essential for the preservation of the health of the minor.

(Enact. Acts 1970, ch. 104, § 1; 1972, ch. 163, paras. (1) to (6); 1974, ch. 74, Art. VI, § 107(1), (13); 1988, ch. 283, § 2, effective July 15, 1988; 1998, ch. 426, § 402, effective July 15, 1998.)

Blood Supply Screening

214.468. Donation of blood to nonprofit voluntary program by person age seventeen or older.

Any person seventeen (17) years of age or older may donate blood in a voluntary blood program, which is not operated for profit, without consent of the person's parent or legally-authorized representative. However, the parent or legally-authorized representative shall not be held financially responsible for any medical complications arising from the blood donation. Before soliciting blood donations from students in high schools, joint vocational schools, or technical schools, a blood program, in cooperation with school authorities, shall make reasonable efforts to notify the parents or legally-authorized representatives of the students that the students will be requested to donate blood.

(Enact. Acts 1992, ch. 70, § 1, effective July 14, 1992; 1994, ch. 325, § 7, effective July 15, 1994.)

PENALTIES

214.990. Penalties.

(1) Every head of a family who willfully fails or refuses and every physician who fails or refuses to comply with KRS 214.010 shall be guilty of a violation for each day he neglects or refuses to report. Repeated failure to report is sufficient cause for the revocation of a physician's certificate to practice medicine in this state.

(2) Any owner or person having charge of any public or private conveyance, including watercraft, who refuses to obey the rules and regulations made by the Cabinet for Health Services under KRS 214.020 shall be guilty of a Class B misdemeanor.

(3) Any physician or other person legally permitted to engage in attendance upon a pregnant woman during pregnancy or at delivery who fails to exercise due diligence in complying with KRS 214.160 and 214.170 shall be guilty of a violation.

(4) Any person who violates any of the provisions of KRS 214.280 to 214.310 shall be guilty of a Class A misdemeanor.

(5) Any person who violates any provision of KRS 214.034 or KRS 158.035 shall be guilty of a Class B misdemeanor.

(6) Any person who violates any provision of KRS 214.420 shall be guilty of a violation. Each violation shall constitute a separate offense.

(7) Any person who knowingly violates any provision of KRS 214.452 to 214.466 shall be guilty of a Class D felony. Each violation shall constitute a separate offense.

(2049, 2055a, 2056, 2062b-3, 2062b-8, 2062d-9, 2635c-12, 3909, 4615, G.S., ch. 102, Art. II, § 8: amend. Acts 1954, ch. 223, § 5; 1962, ch. 95, § 5; 1968, ch. 87, § 7; 1974, ch. 74, Art. VI, § 107(3); 1978, ch. 384, § 65, effective June 17, 1978; 1984, ch. 113, § 5, effective July 13, 1984; 1986, ch. 294, § 4, effective July 15, 1986; 1988, ch. 76, § 10, effective July 15, 1988; 1992, ch. 463, § 23, effective July 14, 1992; 1998, ch. 426, § 415, effective July 15, 1998.)

Cross-References. Children entering school to present certificate of immunization, KRS 158.035.

Sentence of imprisonment for felony, KRS 532.060.

Sentence of imprisonment for misdemeanor, KRS 532.090.

CHAPTER 216

HEALTH FACILITIES AND SERVICES

SECTION.

MISCELLANEOUS HEALTH CARE PROVISIONS

216.2970. Auditory screening of infants at hospitals and birthing centers — Forwarding of reports.

MISCELLANEOUS HEALTH CARE PROVISIONS

216.2970. Auditory screening of infants at hospitals and birthing centers — Forwarding of reports.

(1) As a condition of licensure or relicensure, all hospitals offering obstetric services and alternative birthing centers with at least forty (40) births per year shall provide an auditory screening for all infants using one (1) of the methods approved by the Early Childhood Development Authority by administrative regulation promulgated in accordance with KRS Chapter 13A.

(2) An auditory screening report that indicates a finding of potential hearing loss shall be forwarded by the hospital or alternative birthing center within twenty-four (24) hours of receipt to the:

(a) Attending physician;

(b) Parents; and

(c) Commission for Children with Special Health Care Needs for evaluation or referral for further evaluation in accordance with KRS 211.647.

(3) An auditory screening report that does not indicate a potential hearing loss shall be forwarded within one (1) week to the Commission for Children with Special Health Care Needs with no information that personally identifies the child.

(Enact. Acts 2000, ch. 308, § 11, effective July 14, 2000.)

CHAPTER 217

FOODS, DRUGS, AND POISONS

SECTION.

FOOD, DRUG AND COSMETIC ACT

217.125. Authority of secretary and cabinet to promulgate administrative regulations — Certain permits required — Fees.

FOOD, DRUG AND COSMETIC ACT

217.125. Authority of secretary and cabinet to promulgate administrative regulations — Certain permits required — Fees.

(1) The authority to promulgate regulations for the efficient administration and enforcement of KRS 217.005 to 217.215 is hereby vested in the secretary. The secretary may make the regulations promulgated under KRS 217.005 to 217.215 consistent with those promulgated under the federal act and the Fair Packaging and Labeling Act. Regulations promulgated may require permits to operate and include provisions for regulating the issuance, suspension, and reinstatement of permits. The authority to promulgate regulations pur-

suant to KRS 217.005 to 217.205 is restricted to the Cabinet for Health Services.

(2) No person shall operate a food processing establishment, food storage warehouse, salvage distributor, or salvage processing plant without having obtained an annual permit to operate from the cabinet. An application for the permit to operate shall be made to the cabinet upon forms provided by it and shall be accompanied by the required fee as shall be provided by regulation. The secretary shall establish a fee schedule according to authorization in the state budget document. Fees collected by the cabinet shall be deposited in the State Treasury and credited to a revolving fund account for use by the cabinet in carrying out the provisions of KRS 217.025 to 217.390 and the regulations adopted by the secretary pursuant thereto. The balance of the account shall lapse to the general fund at the end of each biennium.

(3) No person shall operate a retail food establishment without having obtained a permit to operate from the cabinet. An application for a permit to operate any retail food establishment shall be made to the cabinet upon forms provided by it and shall contain the information the cabinet may reasonably require.

(4) Except as otherwise provided in subsection (6) of this section, each application for a temporary food service establishment or for an annual permit to operate a retail food establishment shall be accompanied by the required fee. The secretary shall establish a fee schedule according to authorization in the state budget document.

(5) Upon receipt of an application for a permit to operate a food processing establishment, food storage warehouse, salvage distributor, or salvage processing plant or a retail food establishment accompanied by the required fee, the cabinet shall issue a permit if the establishment meets the requirements of KRS 217.005 to 217.215 and regulations adopted by the cabinet. Retail food establishments holding a valid and effective permit on January 1, 1973, even though not fully meeting the construction requirements of KRS 217.005 to 217.215 and the regulations adopted pursuant thereto, may continue to be eligible for permit renewal if in good repair and capable of being maintained in a safe and sanitary manner.

(6) Private, parochial, and public school cafeterias or lunchroom facilities through the twelfth grade, charitable food kitchens, and all facilities operated by the Cabinet for Health Services, the Cabinet for Families and Children, or Department of Corrections shall be exempt from the payment of fees, but shall comply with all other provisions of KRS 217.005 to 217.215 and the state retail food establishment code. For this subsection, the term "charitable food kitchens" means a not-for-profit, benevolent food service establishment where more than one-half (½) of the employees are volunteers.

(7) Each annual permit to operate a food processing establishment, food storage warehouse, salvage distributor, or salvage processing plant or a retail food establishment, unless previously suspended or revoked, shall expire on December 31 following its date of issuance, and be renewable annually upon application accompanied by the required fee, except as otherwise provided in subsection (6) of this section, and if the establishment is in compliance with KRS 217.005 to 217.215 and regulations of the cabinet.

(8) Each permit to operate a food processing establishment, food storage warehouse, salvage distributor, salvage processing plant, or a retail food establishment shall be issued only for the premises and person named in the application and shall not be transferable. Permits issued shall be posted in a conspicuous place in the establishment.

(Enact. Acts 1960, ch. 247, § 13; 1974, ch. 74, Art. VI, § 107 (22); 1978, ch. 292, § 7, effective June 17, 1978; 1982, ch. 247, § 11, effective July 15, 1982; 1990, ch. 458, § 2, effective July 13, 1990; 1992, ch. 211, § 79, effective July 14, 1992; 1998, ch. 7, § 2, effective February 19, 1998, retroactive to January 1, 1998; 1998, ch. 426, § 457, effective July 15, 1998.)

Legislative Research Commission Note. (7/15/98). This section was amended by 1998 Ky. Acts chs. 7 and 426 which do not appear to be in conflict and have been codified together.

Compiler's Notes. The Federal Fair Packaging and Labeling Act referred to in subsection (1) of this section is compiled as in 15 U.S.C. § 1437.

Section 3 of Acts 1998, ch. 7, reads: "This Act is retroactive to January 1, 1998."

Cross-References. Administrative regulations, KRS ch. 13A.

Cited: Dumon v. Commonwealth, 488 S.W.2d 343 (Ky. 1972), cert. denied, 412 U.S. 928, 93 S. Ct. 2752, 37 L. Ed. 2d 156 (1973).

Collateral References. 25 Am. Jur. 2d, Drugs, Narcotics, and Poisons, § 7; 35 Am. Jur. 2d, Food, §§ 5, 6.

36A C.J.S., Food, § 4(2).

CHAPTER 219

HOTEL, FOOD SERVICE, AND MOBILE HOME AND RECREATIONAL VEHICLE PARK REGULATIONS

SECTION.

HOTELS AND FOOD SERVICE ESTABLISHMENTS

219.021. Permits for hotels — Fee — Exemptions.

PENALTIES

219.991. Penalties.

HOTELS AND FOOD SERVICE ESTABLISHMENTS

219.021. Permits for hotels — Fee — Exemptions.

(1) No person shall operate a hotel without first having obtained a permit to operate from the cabinet. An application for a permit to operate any hotel shall be made to the cabinet upon forms provided by it and shall contain the information the cabinet requires.

(2) Each application for an annual permit to operate a hotel shall be accompanied by a fee of twenty-five dollars ($25).
(3) Upon receipt of an application for a permit to operate a hotel accompanied by the required fee, the cabinet shall issue a permit if the hotel meets the requirements of KRS 219.011 to 219.081 and regulations adopted by the cabinet. Hotels holding a valid and effective permit on January 1, 1973, even though not fully meeting the construction requirements of KRS 219.011 to 219.081 and the regulations adopted pursuant thereto, may continue to be eligible for permit renewal if in good repair and capable of being maintained in a safe and sanitary manner and if there is no change in ownership of the establishment.
(4) Each annual permit to operate a hotel, unless previously suspended or revoked, shall expire on December 31 following its date of issuance, and be renewable annually upon application accompanied by the required fee of twenty-five dollars ($25), provided the hotel is in compliance with KRS 219.011 to 219.081 and regulations of the cabinet.
(5) Each permit to operate a hotel shall be issued only for the premises and person named in the application and shall not be transferable. Permits issued shall be posted in a conspicuous place in the hotel.

(Enact. Acts 1972, ch. 337, § 3; 1974, ch. 74, Art. VI, § 84; 1982, ch. 247, § 15, effective July 15, 1982; 1990, ch. 458, § 10, effective July 13, 1990.)

PENALTIES

219.991. Penalties.

(1) Any person who operates a hotel without a permit as provided in KRS 219.011 to 219.081 or who fails to comply with any other provisions of KRS 219.011 to 219.081 or any administrative regulation promulgated pursuant thereto shall be guilty of a misdemeanor and shall on conviction thereof be subject to a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500), or by imprisonment for not more than thirty (30) days, or both; but if the violation is committed after a conviction of the person under this section has become final, the person shall be subject to a fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000), or by imprisonment for not more than ninety (90) days, or both.
(2) Any person who operates, constructs, or alters a community without a permit as provided for in KRS 219.310 to 219.410 or who violates any other provision of KRS 219.310 to 219.410 or any administrative regulation promulgated by the secretary or order issued pursuant thereto shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100). Each day of violation shall constitute a separate offense.

(Enact. Acts 1972, ch. 281, § 12; 1972, ch. 337, § 9; 1974, ch. 74, Art. VI, § 107(22); 1990, ch. 458, § 15, effective July 13, 1990; 2002, ch. 242, § 11, effective July 15, 2002.)

CHAPTER 223

SANITARIANS, WATER PLANT OPERATORS, AND WATER WELL CONSTRUCTION PRACTICES

SECTION.

WATER PLANT OPERATORS

223.160. Operators of water treatment plant to have certificate of competency — Limited certificate of competency.

WATER PLANT OPERATORS

223.160. Operators of water treatment plant to have certificate of competency — Limited certificate of competency.

(1) It is the intent of KRS 223.160 to 223.220 and 223.991 that every operator in responsible charge of a water treatment plant or water distribution system be required to hold a valid and effective certificate of competency issued by the Natural Resources and Environmental Protection Cabinet in a class equal to or higher than the class of the particular treatment plant or distribution system where he is currently employed in order to protect the public health. Operators other than those in responsible charge of such facilities shall also be eligible to apply for certification.
(2) An operator of a water treatment facility for a school and for a semipublic water supply shall be entitled to a limited certificate of competency for his particular facility provided he has demonstrated that he has the knowledge and experience required to operate properly the particular water treatment facility for which he is responsible. A limited certificate of competency so issued is not transferable to any other water treatment facility, nor is the period of operation under such a limited certificate eligible for consideration toward the experience requirements for a certificate of competency as provided in subsection (1) of this section.

(Enact. Acts 1966, ch. 156, § 1; 1972 (1st Ex. Sess.), ch. 3, § 37; 1974, ch. 74, Art. VI, § 107(1), (11); 1976, ch. 299, § 44; 1984, ch. 387, § 2, effective July 13, 1984.)

CHAPTER 224

ENVIRONMENTAL PROTECTION

SUBCHAPTER 20. AIR QUALITY

ASBESTOS CONTROL

SECTION.

224.20-300. Purpose.
224.20-310. Fee.

SUBCHAPTER 99. PENALTIES

224.99-010. Penalties.

Subchapter 20. Air Quality

Asbestos Control

224.20-300. Purpose.

For the purpose of adopting the Asbestos Hazard Emergency Response Act, called AHERA, Public Law (99-519), as amended, the Department of Environmental Protection, Division for Air Quality, may develop, adopt, and maintain a comprehensive statewide asbestos assessment and response program and an accreditation program that shall replicate the federal environmental protection agency model plan issued April 30, 1987 and the provisions of Title 40 of the Code of Federal Regulations, Part 763, Subpart E. The programs shall include, but not be limited to:

(1) Identifying and controlling asbestos hazards in public and private schools, grades K-12;

(2) Providing for accreditation of asbestos inspectors, management planners, abatement project designers, abatement contractors, supervisors, and abatement workers;

(3) Reviewing training courses to determine if they are approvable under the criteria established in the April 30, 1987 model plan and any other criteria adopted by the Division for Air Quality; and

(4) Reviewing school asbestos management plans and inspecting school buildings for compliance with this section.

(Enact. Acts 1988, ch. 413, § 1, effective April 8, 1988; 1992, ch. 204, § 1, effective July 14, 1992.)

Compiler's Notes. This section was formerly compiled as KRS 224.550.

The Asbestos Hazard Emergency Response Act (P.L. 99-519), referred to in the introductory paragraph of this section, is compiled as 20 U.S.C. § 4011 et seq.

224.20-310. Fee.

The cabinet may charge a fee necessary to recover all costs incurred by the implementation and operation of the asbestos programs required under KRS 224.20-300. (Enact. Acts 1988, ch. 413, § 2, effective April 8, 1988; 1992, ch. 204, § 2, effective July 14, 1992.)

Compiler's Notes. This section was formerly compiled as KRS 224.560.

Subchapter 99. Penalties

224.99-010. Penalties.

(1) Any person who violates KRS 224.10-110(2) or (3), 224.70-110, 224.73-120, 224.20-050, 224.20-110, 224.46-580, 224.01-400, or who fails to perform any duties imposed by these sections, or who violates any determination, permit, administrative regulation, or order of the cabinet promulgated pursuant thereto shall be liable for a civil penalty not to exceed the sum of twenty-five thousand dollars ($25,000) for each day during which such violation continues, and in addition, may be concurrently enjoined from any violations as hereinafter provided in this section and KRS 224.99-020.

(2) Any person who violates KRS 224.10-110(4) or (5), or KRS 224.40-100, 224.40-305, or any provision of this chapter relating to noise, or who fails to perform any determination, permit, administrative regulation, or order of the cabinet promulgated pursuant thereto shall be liable for a civil penalty not to exceed the sum of five thousand dollars ($5,000) for said violation and an additional civil penalty not to exceed five thousand dollars ($5,000) for each day during which such violation continues, and in addition, may be concurrently enjoined from any violations as hereinafter provided in this section and KRS 224.99-020.

(3) (a) Any person who shall knowingly violate any of the provisions of this chapter relating to noise or any determination or order of the cabinet promulgated pursuant to those sections which have become final shall be guilty of a Class A misdemeanor. Each day upon which the violation occurs shall constitute a separate violation.

(b) For offenses by motor vehicles, a person shall be guilty of a violation.

(4) Any person who knowingly violates KRS 224.70-110, 224.73-120, 224.40-100, 224.20-110, 224.20-050, 224.40-305, or 224.10-110(2) or (3), or any determination, permit, administrative regulation, or order of the cabinet promulgated pursuant to those sections which have become final, or who knowingly provides false information in any document filed or required to be maintained under this chapter, or who knowingly renders inaccurate any monitoring device or method, or who tampers with a water supply, water purification plant, or water distribution system so as to knowingly endanger human life, shall be guilty of a Class D felony, and upon conviction thereof, shall be punished by a fine not to exceed twenty-five thousand dollars ($25,000), or by imprisonment for a term of not less than one (1) year and not more than five (5) years, or by both fine and imprisonment, for each separate violation. Each day upon which a violation occurs shall constitute a separate violation.

(5) If any person engages in generation, treatment, storage, transportation, or disposal of hazardous waste in violation of the hazardous waste management provisions of this chapter or contrary to a permit, order, or rule issued or promulgated under this chapter, or fails to provide information or to meet reporting requirements required by terms and conditions of a permit or administrative regulations promulgated pursuant to this chapter, the secretary may issue an order requiring compliance within a specified time period or may commence a civil action in a court of appropriate jurisdiction. The violator shall be liable for a civil penalty not to exceed the sum of twenty-five thousand dollars ($25,000) for each day during which the violation continues, and in addition, may be enjoined from any violations in a court of appropriate jurisdiction.

(6) Any person who knowingly is engaged in generation, treatment, storage, transportation, or dis-

posal of hazardous waste in violation of this chapter or contrary to a permit, order, or administrative regulation issued or promulgated under this chapter, or knowingly makes a false statement, representation, or certification in an application for or form pertaining to a permit or in a notice or report required by the terms and conditions of an issued permit, shall be guilty of a Class D felony, and upon conviction thereof, shall be punished by a fine not to exceed twenty-five thousand dollars ($25,000) for each day of violation, or by imprisonment for a term of not less than one (1) year and not more than five (5) years, or by both fine and imprisonment, for each separate violation. Each day upon which a violation occurs shall constitute a separate violation.

(7) Nothing contained in subsections (4) or (5) of this section shall abridge the right of any person to recover actual compensatory damages resulting from any violation.

(8) Any person who violates any provision of this chapter to which no express penalty provision applies, except as provided in KRS 211.995, or who fails to perform any duties imposed by those sections, or who violates any determination or order of the cabinet promulgated pursuant thereto shall be liable for a civil penalty not to exceed the sum of one thousand dollars ($1,000) for said violation and an additional civil penalty not to exceed one thousand dollars ($1,000) for each day during which the violation continues, and in addition, may be concurrently enjoined from any violations as hereinafter provided in this section and KRS 224.99-020.

(9) The Franklin Circuit Court shall hold concurrent jurisdiction and venue of all civil, criminal, and injunctive actions instituted by the cabinet or by the Attorney General on its behalf for the enforcement of the provisions of this chapter or the orders and administrative regulations of the cabinet promulgated pursuant thereto.

(10) Any person who deposits leaves, clippings, prunings, garden refuse, or household waste materials in any litter receptacle, except with permission of the owner of the receptacle, or who places litter into a receptacle in such a manner that the litter may be carried away or deposited by the elements upon any property or water not owned by him is guilty of a Class B misdemeanor.

(11) In addition to or in lieu of the penalties set forth in this section or in KRS Chapters 532 and 534, any person found guilty of a second or subsequent offense related to littering may be ordered by the court to pick up litter for not less than four (4) hours.

(12) Any person who violates KRS 224.20-300, 224.20-310, any other provision of this chapter, or any determination, permit, administrative regulation, or order of the cabinet relating to the Asbestos Hazard Emergency Response Act of 1986 (AHERA), Public Law 99-519, as amended, shall be liable to the Commonwealth of Kentucky for a civil penalty in an amount not to exceed twenty-five thousand dollars ($25,000) for each violation. Each day a violation continues shall, for purposes of this subsection, constitute a separate violation of provisions of this chapter relating to AHERA.

(13) A violation of KRS 224.50-413 shall be subject to a fifty dollar ($50) fine for each day the violation continues.

(Enact. Acts 1974, ch. 355, §§ 8, 10; 1978, ch. 113, § 12, effective June 17, 1978; 1978, ch. 119, § 14, effective June 17, 1978; 1978, ch. 257, § 3, effective June 17, 1978; 1980, ch. 264, § 12, effective July 15, 1980; 1982, ch. 22, § 2, effective July 15, 1982; 1982, ch. 74, § 19, effective July 15, 1982; 1982, ch. 145, § 2, effective July 15, 1982; 1984, ch. 369, § 1, effective July 13, 1984; 1986, ch. 331, § 39, effective July 15, 1986; 1988, ch. 413, § 3, effective April 8, 1988; 1990, ch. 84, § 3, effective July 13, 1990; 1990, ch. 434, § 1, effective July 13, 1990; 1992, ch. 204, § 3, effective July 14, 1992; 1992, ch. 463, § 25, effective July 14, 1992; 1994, ch. 162, § 2, effective July 15, 1994; 1994, ch. 403, § 2, effective July 15, 1994.)

Legislative Research Commission Note. (7/15/94). This section was amended by 1994 Ky. Acts chs. 162 and 403 which do not appear to be in conflict and have been codified together.

Compiler's Notes. The Asbestos Hazard Emergency Response Act of 1986, referred to in subsection (12) of this section, is compiled as 20 U.S.C. § 4011 et seq.

This section was formerly compiled as KRS 224.994.

TITLE XIX

PUBLIC SAFETY AND MORALS

CHAPTER 227

FIRE PREVENTION AND PROTECTION

SECTION.

FIRE PREVENTION AND PROTECTION

227.220. Duties of state fire marshal and chief state building official relating to fire loss.

PENALTIES

227.990. Penalties.

FIRE PREVENTION AND PROTECTION

227.220. Duties of state fire marshal and chief state building official relating to fire loss.

(1) The state fire marshal shall enforce or aid in the enforcement of all laws, administrative regulations, and ordinances of the state and its political subdivisions relating to fire loss as defined in KRS 227.200:

(a) The prevention or reduction of loss by fire or by other hazard or risk insured by property or casualty insurance companies doing business in this state, except as to disability insurance and workers' compensation, and shall enforce

any other regulations or methods adopted for the prevention of loss from such hazards or risks in order to promote the safety of persons or property;

(b) The manufacture, transportation, storage, sale, or use of combustibles, explosives, and hazardous materials or equipment;

(c) The design, construction, and maintenance of property which has a direct bearing on safety to life and property;

(d) The construction, installation, maintenance, or equipment of fire alarm systems, fire protection and extinguishing equipment, and fire escapes and other means of access to or exit from property; and

(e) Arson and related offenses.

(2) The chief state building official shall enforce and administer all applicable provisions of the Kentucky Building Code, including all the provisions designed for the prevention of fire loss, and shall have all the powers and duties awarded by KRS Chapter 198B and the Kentucky Building Code.

(3) The state fire marshal is authorized to:

(a) Investigate the cause, origin, and circumstances of fires and explosions for the purpose of detecting and suppressing arson and related offenses, or for the purpose of minimizing or preventing fire loss;

(b) Supervise and make periodic inspections of all property within the state, and assist cities having fire departments in making like periodic inspections of all property in cities, except occupied private dwellings;

(c) Issue and enforce reasonable emergency orders and orders in accordance with KRS 227.330 for the prevention of fire loss, and for the adoption, approval, and installation of safety measures, remodeling, and equipment as will minimize fire loss;

(d) Provide technical and engineering advice and assistance to state and local governmental agencies in relation to fire prevention or fire protection;

(e) Direct and assist owners of educational institutions, places of public assembly, institutional buildings, public buildings, factories, business buildings, or other places where persons congregate, in the instruction of fire prevention, and the holding of fire drills;

(f) Conduct fire prevention and educational campaigns;

(g) Conduct examinations into the cause, origin, or circumstances of fire losses;

(h) Hold administrative hearings in accordance with the KRS Chapter 13B, as may be required by law or deemed by the state fire marshal necessary or desirable as to any matter within the scope of this chapter. All administrative hearings shall be public, unless the state fire marshal, or an authorized designee, determines that a private hearing would be in the public interest, in which case, and only with the consent of all parties to the hearing, the hearing shall be private;

(i) Direct research in the field of fire protection and accept gifts and grants for these purposes; and

(j) Recommend curricula for advanced courses and seminars in fire science training in colleges and institutions of higher education.

(Enact. Acts 1954, ch. 201, § 3; 1978, ch. 305, § 3, effective June 17, 1978; 1980, ch. 295, § 71, effective July 15, 1980; 1996, ch. 318, § 138, effective July 15, 1996.)

Cross-References. Blasting regulations, KRS 351.310 to 351.375.

Explosives, carriers transporting to be plainly marked, KRS 276.450.

Explosives, vehicles transporting to carry fire extinguishers, KRS 189.160.

Explosives, vehicles transporting to be marked, KRS 189.160.

Fire hazard seasons, KRS 149.400.

Fires not to be set without taking precautions to prevent spread, KRS 149.370.

Insurance violations, enforcement, KRS 304.2-140.

Right-of-way of railroad company to be clear of combustible material, KRS 149.385.

Spark arresters, railroad engines to have, KRS 149.385.

Tax on amounts paid to stock and mutual other than life insurance companies to defray cost of enforcing laws for prevention of losses insured against, KRS 136.350, 136.360.

Penalties

227.990. Penalties.

(1) Except for manufactured homes manufactured under the federal act, any person who violates any provision of this chapter or any provision of a lawful order, rule, or regulation made under the provisions of this chapter, or who induces another to violate any provisions of this chapter or of any lawful order, rule, or regulation made thereunder, upon conviction thereof shall be fined not less than twenty-five dollars ($25) nor more than one thousand dollars ($1,000), or confined in the county jail for not more than sixty (60) days, or both. Each day such violations exist shall, in the discretion of the courts, be considered as a separate offense.

(2) Any person who, for manufactured homes manufactured under the federal act, violates any provision of the federal act or of KRS 227.550 to 227.660 or any regulation or final order issued thereunder shall be liable for a civil penalty not to exceed one thousand dollars ($1,000) for each such violation. Each violation of a provision of KRS 227.550 to 227.660 or of the federal act or any regulation or order issued thereunder shall constitute a separate violation with respect to each manufactured home or mobile home or with respect to each failure or refusal to allow or perform an act required thereby, except that the maximum civil penalty may not exceed one million dollars ($1,000,000) for any related series of violations occurring within one (1) year from the date of the first violation.

(3) Any individual, or a director, officer, or agent of a corporation who knowingly and willfully violates the federal act or KRS 227.550 to 227.660 in a

manner which threatens the health or safety of any purchaser shall be fined not more than one thousand dollars ($1,000) or imprisoned not more than one (1) year in the county jail, or both.

(4) Any person violating the provisions of KRS 227.702 to 227.750, the regulations issued thereunder, or any order issued thereunder, or who knowingly induces another, directly or indirectly, to violate the provisions of those sections, shall be fined not more than one thousand dollars ($1,000), or imprisoned in the county jail for not more than thirty (30) days, or both.

(Enact. Acts 1954, ch. 201, § 22; 1978, ch. 305, § 16, effective June 17, 1978; 1979 (Ex. Sess.), ch. 19, § 4, effective May 12, 1979; 1980, ch. 49, § 19, effective July 15, 1980; 1980, ch. 200, § 10, effective July 15, 1980; 1982, ch. 436, § 10, effective July 15, 1982; 1996, ch. 340, § 13, effective July 15, 1996.)

Compiler's Notes. A former section KRS 227.990 (762b-24, 1376L-2) was repealed by Acts 1954, ch. 201, § 23.

CHAPTER 236

BOILER AND PRESSURE VESSEL SAFETY

SECTION.

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236.005. Title.

This chapter shall be known and may be cited as the Boiler and Pressure Vessel Safety Act, and, except as otherwise provided herein, shall apply to all boilers and pressure vessels.

(Enact. Acts 1962, ch. 89, § 1; 1980, ch. 207, § 1, effective July 15, 1980.)

Compiler's Notes. The functions, powers and duties of the Commission on Fire Protection Personnel Standards and Education and the Department of Public Safety regarding boiler safety in this chapter have been transferred and vested in the department of Housing, Buildings, and Construction.

236.010. Definitions.

As used in this chapter:

(1) "Boiler" or "boilers" means and includes a closed vessel in which water or other liquid is heated, steam or vapor is generated, steam is superheated, or in which any combination of these functions is accomplished, under pressure or vacuum, for use externally to itself, by the direct application of energy from the combustion of fuels, or from electricity, solar or nuclear energy. The term "boiler" shall include fired units for heating or vaporizing liquids other than water where these units are separate from processing systems and are complete within themselves:

(a) "Power boiler" means a boiler in which steam or other vapor is generated at a pressure of more than fifteen (15) pounds per square inch gauge;

(b) "High pressure, high temperature water boiler" means a water boiler operating at pressures exceeding one hundred sixty (160) pounds per square inch gauge or temperatures exceeding two hundred fifty (250) degrees Fahrenheit; and

(c) "Heating boiler" means a steam or vapor boiler operating at pressures not exceeding fifteen (15) pounds per square inch gauge or a hot water boiler operating at pressures not exceeding one hundred sixty (160) pounds per square inch gauge or temperatures not exceeding two hundred fifty (250) degrees Fahrenheit.

(2) "Pressure vessel" means a vessel in which the pressure is obtained from an external source or by the application of heat other than those vessels defined in subsection (1) of this section.

(3) "Commissioner" means the commissioner of housing, buildings and construction.

(4) "Department" means the Department of Housing, Buildings and Construction.

(5) "ASME" means American Society of Mechanical Engineers.

(6) "Board" means Board of Boiler and Pressure Vessel Rules.

(7) "Certificate inspection" means an inspection, the report of which is used by the chief boiler inspector to determine whether or not a certificate, as provided by subsection (1) of KRS 236.120, may be issued.

(8) "Rule" or "regulation" means a general regulation adopted by the commissioner upon advisement of the board and filed and approved in accordance with KRS Chapter 13A designed to insure the

safety of boilers and pressure vessels that affects or may affect property rights of a designated class of owners, or designed for the prevention of loss or damage to property, loss of life or personal injury from boiler or pressure vessel explosion or from certain indicated hazards related thereto.

(9) "Order" or "summary order" means an order of the state fire marshal, the chief boiler inspector or a boiler inspector, made in accordance with this chapter or KRS Chapter 227 and designed for the prevention of loss or damage to property, loss of life, or personal injury from boiler or pressure vessel malfunction or explosion, that affects or may affect the property rights of a particular owner of designated property.

(10) "Division" means the Division of Fire Prevention in the department, headed by the state fire marshal.

(11) "Qualified welder" means a welder or welding machine operator who has passed the tests required by Section IX of the ASME code.

(12) "Person" or "firm" means any individual, firm, partnership or corporation.

(Enact. Acts 1962, ch. 89, § 1; 1974, ch. 209, § 1; 1978, ch. 117, § 31, effective July 1, 1978; 1980, ch. 207, § 2, effective July 15, 1980.)

236.020. Board of Boiler and Pressure Vessel Rules.

(1) In the Department of Housing, Buildings and Construction, Division of Fire Prevention, there shall be a Board of Boiler and Pressure Vessel Rules, which shall hereafter be referred to as the board, consisting of seven (7) members including the chief boiler inspector who shall serve as chairman. The other members shall be appointed to the board by the Governor; one (1) for a term of one (1) year, one (1) for a term of two (2) years, two (2) for a term of three (3) years, and two (2) for a term of four (4) years, or until their successors are appointed and qualified. At the expiration of their respective terms of office they, or their successors identifiable with the same interest respectively as provided in this section, shall be appointed for terms of four (4) years each. The Governor may at any time remove any member of the board. Upon the death or incapacity of any member the Governor shall fill the vacancy for the remainder of the vacated term with a representative of the same interests with which his predecessor was identified. Of these six (6) appointed members, one (1) shall be a practical steam operating engineer of high pressure boilers, or any other representative of owners and users of high pressure boilers or pressure vessels within the state; one (1) shall be a representative of the boiler manufacturers or pressure vessel manufacturers within the state; one (1) shall be a representative of a boiler insurance company licensed to do business within the state; one (1) shall be a representative of the boilermakers within the state selected from a list of five (5) names submitted by the Kentucky State Building and Construction Trades Council; one (1) shall be a representative of pipe erecting concerns doing business within the state; and one (1) shall be a metallurgist, welder, or a person representing the welding industry. The board shall meet at least four (4) times each year at the Capitol or other place designated by the board. No approval, decision, or ruling of the board shall be effective unless supported by the vote of at least five (5) members thereof.

(2) The members of the board shall serve without salary and shall receive their actual necessary expenses, incurred while in the performance of their duties as members of the board, to be paid in the same manner as in the case of other state officers.

(3) The division shall provide such administrative support and assistance as may be necessary for the board to carry out its duties and responsibilities under this chapter.

(Enact. Acts 1962, ch. 89, § 2; 1970, ch. 246, § 1; 1974, ch. 74, Art. V, § 24(11); 1978, ch. 117, § 32, effective July 1, 1978; 1980, ch. 207, § 3, effective July 15, 1980; 1990, ch. 284, § 2, effective July 13, 1990.)

236.030. Administrative regulations.

After reasonable notice and opportunity to be heard in accordance with KRS Chapter 13A, the commissioner of housing, buildings and construction, upon advisement by the board, shall, by administrative regulation, fix reasonable standards for the safe construction, installation, inspection and repair of boilers, pressure vessels and associated pressure piping in this state. Such administrative regulations shall be enforced by the Department of Housing, Buildings and Construction, Division of Fire Prevention.

(Enact. Acts 1962, ch. 89, § 3; 1970, ch. 246, § 2; 1974, ch. 74, Art. V, § 24(11); 1978, ch. 117, § 33, effective July 1, 1978; 1980, ch. 207, § 4, effective July 15, 1980.)

Legislative Research Commission Note. Technical corrections to this section have been made by the Reviser of Statutes under authority of KRS 7.136.

Cross-References. Regulations, requisites of filing, KRS 13A.220.

236.040. Conformity required.

(1) No boiler or pressure vessel which does not conform to the rules and regulations formulated by the commissioner governing new construction and installation shall be installed and operated in this state from the date upon which the first rules and regulations under this chapter pertaining to new construction and installation shall have become effective.

(2) All new connecting piping subjected to pressure emanating from a power boiler or pressure vessel shall be considered part of the boiler or pressure vessel installation, subject to the same boiler or pressure vessel code requirements, and shall be designed in accordance with the rules of ASME power piping code ANSI 31.1 or its subsequent revisions and ASME boiler and pressure vessel code Sections I, and VIII (division 1) and their subsequent revisions. Inspection of such piping

shall be performed by an inspector qualified under KRS 236.070 or KRS 236.080.

(3) All new connecting piping subjected to pressure emanating from a heating boiler shall be considered part of the heating boiler installation, subject to the same boiler code requirements and shall be designed in accordance with the rules of the ASME heating boiler code, Section 4 and its subsequent revisions and this chapter. Inspection of such piping shall be performed by a boiler and pressure vessel inspector.

(Enact. Acts 1962, ch. 89, § 4; 1970, ch. 246, § 3; 1980, ch. 207, § 5, effective July 15, 1980.)

236.050. Maximum working pressure allowed.

(1) The maximum allowable working pressure of a boiler or pressure vessel carrying the ASME code symbol shall be determined by the applicable sections of the code under which it was constructed and stamped.

(2) The maximum allowable working pressure of a boiler or pressure vessel which does not carry the ASME code symbol shall be computed in accordance with the ASME "Suggested Rules Governing Existing Installations", Section I appendix, Section IV appendix, and Section VIII appendix and the regulations adopted in accordance with KRS 236.030.

(3) This chapter shall not be construed as in any way preventing the use or sale of a boiler referred to in this section, provided it has been made to conform to the rules and regulations of the commissioner governing existing installations; and provided, further, it has not been found upon inspection to be in an unsafe condition.

(Enact. Acts 1962, ch. 89, § 5; 1980, ch. 207, § 6, effective July 15, 1980.)

236.060. Application of KRS 236.005 to 236.150.

(1) KRS 236.005 to 236.150 shall not apply to boilers or pressure vessels or related piping under federal control.

(2) KRS 236.005 to 236.150 shall not apply to the following boilers or related piping:

(a) Boilers or pressure vessels located on farms and used solely for agricultural purposes;

(b) Boilers or pressure vessels located at any oil refineries;

(c) Boilers or pressure vessels located at any utility operating under a certificate issued pursuant to KRS 278.020, if the boilers or pressure vessels are inspected by a special boiler inspector under the provisions of KRS 236.110, except that the inspection interval provided for in KRS 236.110 shall be extended to eighteen (18) months;

(d) Steam or vapor boilers used for heating purposes carrying a pressure of not more than fifteen (15) pounds per square inch gauge, and which are located in private residences or in apartment houses of less than six (6) families;

(e) Hot water heating boilers carrying a pressure of not more than thirty (30) pounds per square inch gauge which are located in private residences or in apartment houses of less than six (6) families or hot water supply boilers which are located in private residences or in apartment houses of less than six (6) families;

(f) Any unfired pressure vessels used as containers for liquefied petroleum gases and subject to the jurisdiction of the Department of Housing, Buildings and Construction under KRS Chapter 234;

(g) Pressure vessels used for transportation of compressed gases if constructed and operated in compliance with specifications and regulations of another state or federal authority;

(h) Pressure vessels containing air located on vehicles operating under the regulations of another state or federal authority;

(i) Pressure vessels operating at a maximum pressure of fifteen (15) PSI or less;

(j) Single wall pressure vessels having an inside diameter of six (6) inches;

(k) Pressure vessels with a nominal water containing capacity of one hundred twenty (120) gallons or less, to be used for domestic supply purposes, for containing water under pressure, including those containing air, the compression of which serves only as a cushion;

(l) Pressure vessels containing water heated by steam or other indirect means when none of the following are exceeded:

1. Heat input of two hundred thousand (200,000) BTU/Hr.;
2. Water temperature of two hundred ten (210) degrees Fahrenheit;
3. Water storage capacity of one hundred twenty (120) gallons;

(m) Coil type hot water boilers without a steam space and where no steam is generated within the confines of the unit but where water flashes into steam when released to atmospheric pressure by the operation of a manually operated nozzle, unless one (1) of the following is exceeded:

1. Three quarter (¾) inch inside diameter tubing or pipe size with no drum or header attached;
2. Six (6) gallon water containing capacity;
3. Three hundred fifty (350) degrees Fahrenheit water temperature;

(n) Water heaters which are directly fired with oil, gas, or electricity, when none of the following limitations are exceeded:

1. Heat input of two hundred thousand (200,000) BTU/Hr.;
2. A water temperature of two hundred ten (210) degrees Fahrenheit;
3. A water containing capacity of one hundred twenty (120) gallons;

(o) Pressure vessels which may be classified as:

1. Pressure containers which are integral parts of components of rotating or reciprocating mechanical devices such as pumps, compressors, turbines, generators, engines, and hydraulic or pneumatic cylinders where the primary design con-

siderations or stresses are derived from the functional requirements of the device; or

2. Structures whose primary function is the transport of fluids from one location to another within a system of which it is an integral part, that is, piping system.

(3) The fees required by KRS 236.120(1) and 236.130 shall not apply to standard and miniature antique and hobby boiler-operated tractors and equipment used solely for exhibition, if the boiler uses a fifty (50) pounds per square inch or less gauge.

(Enact. Acts 1962, ch. 89, § 6; 1970, ch. 246, § 4; 1974, ch. 74, Art. V, § 24(11); 1978, ch. 117, § 34, effective July 1, 1978; 1980, ch. 207, § 7, effective July 15, 1980; 1990, ch. 284, § 1, effective July 13, 1990; 1994, ch. 89, § 1, effective July 15, 1994; 2000, ch. 415, § 1, effective July 14, 2000.)

236.070. Boiler and pressure vessel inspectors.

The department shall employ boiler and pressure vessel inspectors who shall have had at the time of appointment not less than five (5) years practical experience in the construction, maintenance, repair or operation of high pressure boilers and pressure vessels as a mechanical engineer, practical steam operating engineer, boilermaker, pressure vessel inspector or boiler inspector, and who shall have passed the examination provided for in KRS 236.090.

(Enact. Acts 1962, ch. 89, § 7; 1980, ch. 207, § 8, effective July 15, 1980.)

236.080. Special boiler inspector — Salary prohibited — Duties — Report — Right of access.

(1) In addition to the boiler inspectors authorized by KRS 236.070, the department shall, upon the request of any company authorized to insure against loss from explosion of boilers and pressure vessels in this state, issue to any boiler inspectors of said company commissions as special boiler inspectors, provided that each such special boiler inspector before receiving such commission, shall satisfactorily pass the examination provided for in KRS 236.090, or, in lieu of such examination, shall hold a commission or certificate of competency as an inspector of boilers and pressure vessels for a state that has a standard of examination substantially equal to that of this Commonwealth or a commission as an inspector of boilers and pressure vessels issued by the National Board of Boiler and Pressure Vessel Inspectors.

(2) Such special boiler inspectors shall receive no salary from, nor shall any of their expenses be paid by, the state and the continuance of a special inspector's commission shall be conditioned upon his continuing in the employ of an insurance company duly authorized as aforesaid and upon his maintenance of the standards imposed by this chapter.

(3) Such special inspectors shall inspect all boilers and pressure vessels insured by their respective companies, and, when so inspected and reported as required, the owners and users of such insured boilers and pressure vessels shall be exempt from the payment to the state of the inspection fees as provided for in KRS 236.120 and 236.130.

(4) Each company employing such special boiler inspectors shall within thirty (30) days following each certificate inspection made by such inspectors, file a report of such inspection with the division upon appropriate forms prescribed by the division. Other than the certificate inspection report, no reporting of other inspections shall be required except when such inspections disclose that the boiler is in a dangerous condition.

(5) Boiler and pressure vessel inspectors, whether employees of the department or special inspectors, shall have free access, during reasonable hours, to any premises in the state where a boiler or pressure vessel is being constructed or is being installed, for the purpose of ascertaining whether such boiler or pressure vessel is constructed and installed or is being installed in accordance with the law, and any orders, rules or regulations in existence at that time.

(Enact. Acts 1962, ch. 89, § 8; 1980, ch. 207, § 9, effective July 15, 1980.)

236.090. Examination.

Examination for a certificate of competency or a national board commission for boiler inspectors or special boiler inspectors shall be in writing and shall be given and monitored by the boiler inspection section. Examinations are given on the first Wednesday and Thursday of the months of March, June, September and December of each year. The record of an applicant's examination shall be accessible to said applicant and his employer.

(Enact. Acts 1962, ch. 89, § 9; 1980, ch. 207, § 10, effective July 15, 1980.)

236.100. Suspension or revocation of appointment — Notice and hearing — Reinstatement — Penalty for falsification of application or inspection report.

(1) Any boiler inspector's or special inspector's appointment or commission may be suspended or revoked by the department, after due investigation and hearing thereon, for the incompetence or untrustworthiness of the holder thereof, or for willful falsification of any matter or statement contained in his application or in a report of any inspection made by him. Written notice of and an opportunity for a hearing on any suspension or revocation under this subsection shall be given by the department to the inspector, and in the case of a special boiler inspector, also to his employer in accordance with the provisions of KRS Chapter 13B.

(2) A person whose appointment or commission has been suspended shall be entitled to apply to the commissioner, after ninety (90) days from the date of the suspension, for reinstatement of the appointment or commission.

(3) Any willful falsification of an application or inspection report shall constitute a misdemeanor

and shall subject the inspector or special inspector to the penalties provided in KRS 236.990.

(Enact. Acts 1962, ch. 89, § 10; 1980, ch. 207, § 11, effective July 15, 1980; 1996, ch. 318, § 154, effective July 15, 1996.)

236.110. Inspection of boilers and pressure vessels required — Certificate inspection — Periods of inspection — Penalty for falsifying certificate of inspection.

(1) Each boiler or pressure vessel used or proposed to be used within this state, except boilers or pressure vessels exempt under KRS 236.060, shall be thoroughly inspected as to their construction, installation, and condition as follows:

(a) Power boilers shall receive a certificate inspection annually which shall be an internal inspection where construction permits; otherwise it shall be as complete an inspection as possible. Such boilers shall also be externally inspected while under pressure if possible.

(b) Low pressure steam or vapor heating boilers, hot water heating boilers and hot water supply boilers shall receive a certificate inspection biennially; said inspection shall include internal inspection where construction permits. External inspections are required where construction does not permit internal inspection.

(c) Pressure vessels shall be inspected at time of installation to ascertain that they are in conformance with KRS 236.040. Subsequent reinspections, if any, shall be set by regulation of the department.

(d) A grace period of two (2) months beyond the periods specified in paragraphs (a), (b), and (c) of this subsection may elapse between inspections.

(e) The department may at its discretion permit longer periods between inspections.

(f) All new boiler or pressure vessel installations to be used within this state, excepting boilers or pressure vessels exempted under KRS 236.060, shall be inspected during the installation period to ascertain that all pressure piping conforms to the requirements of KRS 236.040. An inspection certificate may not be issued on any new installation until these requirements are fulfilled.

(g) It shall be the responsibility of the installing contractor to request the above inspection by notifying the boiler inspection section of the state fire marshal's office that the installation is ready for such inspection. This must be accomplished prior to covering of any welded or mechanical joints on pressure piping or valves by insulation, paint, or structural materials. The contractor shall provide ready access for the inspector to all parts of the piping system.

(h) Inspection of pressure piping applies only to new boiler or pressure vessel installations, or reinstallations, or installation of secondhand boilers (as defined under "Boiler Rules and Regulations"). No annual or biennial reinspection is required once the system has been approved.

(i) "Existing installations," as applied to inspection of piping systems is defined as any boiler and piping system completed and approved for operation prior to July 1, 1970. Such existing installations will not be subject to the foregoing piping inspection unless adjudged patently unsafe for operation by a boiler inspector holding a commission issued by the National Board of Boiler and Pressure Vessel Inspectors. If an existing installation is so adjudged the owner will be granted full rights of appeal as set forth under KRS 236.150.

(j) At such time as an existing installation undergoes extensive overhaul or more than fifty (50) linear feet of pressure piping requires renewal or is added to the existing system, the entire system of piping carrying pressure emanating from the boilers shall be subject to inspection and will be brought up to standards required by KRS 236.040.

(k) The installing contractor of a piping system carrying pressure emanating from a boiler or pressure vessel subject to inspection under provisions of KRS 236.050 to 236.150, shall pay to the department, upon completion of inspection, fees in accordance with a schedule set up by the board and approved by the commissioner.

(l) Operation of a pressure piping system in conjunction with a boiler or pressure vessel, either of which has not been inspected and approved as set forth above, shall be subject to fines and penalties as set forth in KRS 236.990.

(2) The inspections required in this section shall be made by a boiler and pressure vessel inspector or by a special boiler inspector except that all new installations shall be inspected by a boiler inspector employed by the department.

(3) If at any time a hydrostatic, pneumatic, or any other nondestructive test shall be deemed necessary for ascertaining acceptability, the same shall be made by the contractor or owner-user, whoever is responsible for the condition, and be witnessed by a boiler inspector or special boiler inspector.

(4) All boilers to be installed in this state after July 1, 1970, and all pressure vessels installed in this state after July 15, 1980, shall be inspected during construction as required by the applicable rules and regulations of the department by a boiler and pressure vessel inspector authorized to inspect boilers and pressure vessels in this state, or, if constructed outside of the state, by an inspector holding a commission from the national board as an inspector of boilers and pressure vessels.

(5) No person shall willfully falsify any statement designed to secure the issuance, renewal or reinstatement of a certificate of inspection. Violation of this subsection shall subject such a person to the penalties stated in KRS 236.990.

(Enact. Acts 1962, ch. 89, § 11; 1970, ch. 246, § 5; 1978, ch. 384, § 98, effective June 17, 1978; 1980, ch. 207, § 12, effective July 15, 1980.)

236.120. Inspection certificate fee — Certificate — Term — Posting — Termination — Suspension — Reissuance.

(1) If, upon inspection, a boiler or pressure vessel is found to comply with the administrative regulations of the department, the owner, user, or insurance company of it shall pay to the department the sum of fifteen dollars ($15). When the inspection is made by a special inspector, the inspector shall attach the certificate fee to his report. The chief boiler inspector, or his duly authorized representative, shall issue to the owner or user a certificate of inspection for the boiler or pressure vessel bearing the date of inspection and specifying the maximum pressure under which the boiler may be operated. An inspection certificate shall be valid for not more than fourteen (14) months from its date in the case of power boilers, and twenty-six (26) months in the case of low pressure steam or vapor heating boilers, hot water heating boilers, or hot water supply boilers. Certificates shall be posted under glass in the room containing the boiler inspected or, in the case of a portable boiler, shall be kept in a tool box accompanying the boiler.

(2) No certificate of inspection issued for an insured boiler, inspected by a special inspector, shall be valid after the insurance on the boiler for which it was issued terminates. Boilers shall be insured by a company duly authorized by this state to carry the insurance.

(3) The commissioner or his authorized representative may at any time suspend a certificate of inspection if, in his opinion, the boiler or pressure vessel for which it was issued cannot be operated without menace to the public safety, or if the boiler or pressure vessel is found not in compliance with this chapter or the administrative regulations of the department. A special boiler inspector shall have corresponding powers with respect to suspending certificates of inspection for boilers insured by the company employing him. The suspension of a certificate of inspection shall continue in effect until the boiler or pressure vessel conforms to this chapter and administrative regulations of the board, and until the inspection certificate is reinstated.

(4) A suspended certificate of inspection shall be reissued on the recommendation of the boiler inspector or special boiler inspector who first caused the suspension or at the discretion of the chief boiler inspector.

(Enact. Acts 1962, ch. 89, § 12; 1980, ch. 207, § 13, effective July 15, 1980; 1994, ch. 2, § 1, effective July 15, 1994.)

236.130. Inspection fees.

(1) The owner or user of a boiler or pressure vessel required by this chapter to be inspected shall pay to the department, upon completion of inspection, reasonable fees not to exceed the cost of inspection as established by the commissioner upon advice of the board pursuant to KRS Chapter 13A.

(2) All other inspections, including shop inspections and inspection of secondhand or used boilers made by the boiler inspector shall be charged for at the rate set by regulation promulgated by the commissioner upon advice of the board pursuant to KRS Chapter 13A.

(3) All fees received by the department shall be held in a trust and agency fund from which the expenses of administering this chapter and other departmental responsibilities may be paid and no portion of said fund shall lapse into the general fund at the end of each fiscal year.

(Enact. Acts 1962, ch. 89, § 14; 1980, ch. 207, § 14, effective July 15, 1980; 1986, ch. 127, § 1, effective July 15, 1986.)

236.150. Appeal to commissioner — Judicial review.

(1) Any person aggrieved by an order or act of a boiler and pressure vessel inspector, under this chapter, may, within fifteen (15) days of notice thereof, appeal from the order or act to the commissioner who shall schedule and conduct an administrative hearing in accordance with KRS Chapter 13B.

(2) Any person aggrieved by a final order of the commissioner may file a petition in the Franklin Circuit Court for judicial review in accordance with KRS Chapter 13B.

(Enact. Acts 1962, ch. 89, § 16; 1968, ch. 152, § 128; 1980, ch. 207, § 15, effective July 15, 1980; 1996, ch. 318, § 155, effective July 15, 1996.)

236.210. License required for installing, erecting and repairing boilers — Issuance — Renewal — Exception.

(1) No person, except contractor-installers of boilers operating at more than five hundred (500) pounds per square inch gauge or at more than four hundred sixty-seven (467) degrees Fahrenheit, shall engage in the business of installing, erecting, or repairing boilers unless he first obtains a license from the commissioner on recommendation of the board.

(2) Each person, firm or corporation must pass an examination prepared by the board and administered by the department.

(3) A license shall be issued by the commissioner or the chief boiler inspector upon recommendation of the board and payment of a reasonable fee not to exceed the cost of examination and other expenses involved as established by the commissioner upon advice of the board pursuant to KRS Chapter 13A.

(4) The license shall be renewable annually, not later than the first of the month following the expiration date, upon payment of a reasonable fee not to exceed the costs involved in such renewal as established by the commissioner upon advice of the board pursuant to KRS Chapter 13A.

(5) All individuals in the employ of a licensee shall not be required to be licensed.

(Enact. Acts 1974, ch. 209, § 2; 1980, ch. 207, § 16, effective July 15, 1980; 1986, ch. 127, § 2, effective July 15, 1986.)

Collateral References. 53 C.J.S., Licenses, §§ 37-48.

236.220. Procedure for suspension or revocation of license.

(1) A license issued under KRS 236.210 to 236.260 may be suspended or revoked for falsification of any information contained in the application. Written notice of a suspension shall be given to the licensee by the chief boiler inspector within ten (10) days of the first notification of the violation. A person whose license has been suspended may appeal to the board, and a hearing shall be conducted in accordance with KRS Chapter 13B.

(2) If the board has reason to believe that a licensee is no longer qualified to hold his license, the board shall hold a hearing to be conducted in accordance with KRS Chapter 13B. If, as a result of the hearing, the board finds that the licensee is no longer qualified to hold his license, the board shall state in a final order that the license is revoked or suspended.

(3) A person whose license has been suspended may apply for reinstatement of the license after ninety (90) days from the date of the suspension.

(Enact. Acts 1974, ch. 209, § 3; 1980, ch. 207, § 17, effective July 15, 1980; 1996, ch. 318, § 156, effective July 15, 1996.)

236.230. Reissue of lost or destroyed license.

If a license is lost or destroyed, a new license shall be issued in its place, without submitting another application, upon request and payment of a fee of five dollars ($5).

(Enact. Acts 1974, ch. 209, § 4.)

236.240. Permit required for installation or major repair — Fees.

(1) No person shall install, erect or make major repairs affecting the strength of a boiler or pressure vessel without first securing a permit from the department. Permits shall be issued only to persons licensed under KRS 236.210 to 236.260.

(2) No work shall be performed except by or under the supervision of such licensed person. The permit fees shall be set by the board.

(3) The permit fees will include one (1) interim inspection and one (1) final inspection for issuance of boiler certificate of inspection.

(4) Special inspections and more than two (2) inspections requested by the licensee for each permit will be charged fees in accordance with KRS 236.130.

(Enact. Acts 1974, ch. 209, § 5; 1980, ch. 207, § 18, effective July 15, 1980.)

236.250. Exceptions to permit requirements and fee provisions.

(1) No person shall make major repairs affecting the strength or safety of boilers or pressure vessels without first securing a permit from the department unless repairs have been authorized by a boiler inspector or special boiler inspector pending issuance of the permit or unless such repairs are emergency repairs authorized by the department, a special boiler inspector or a boiler inspector pending issuance of the permit. No permit will be required for emergency items not affecting the strength of the boiler or pressure vessel, when performed by qualified persons regularly employed by firms utilizing properly qualified procedures. Permits shall only be issued to persons licensed under the provisions of this chapter. A permit fee shall be paid directly to the department, and shall accompany the repair application.

(2) Payment of permit to repair fees will not be required from firms utilizing properly qualified welding procedures and regularly employing qualified welders, certified by and registered with the department, to weld on boilers owned and operated by such firms.

(Enact. Acts 1974, ch. 209, § 6; 1980, ch. 207, § 19, effective July 15, 1980.)

236.260. Access to premises.

The commissioner, the chief boiler inspector or any deputy inspector shall have free access, during reasonable hours, to any premises in the state where a boiler or pressure vessel is being constructed, installed or repaired for the purpose of ascertaining whether the work being performed is in accordance with the provisions of KRS Chapter 236 or any orders or regulations made thereunder.

(Enact. Acts 1974, ch. 209, § 7; 1980, ch. 207, § 20, effective July 15, 1980.)

236.990. Penalties.

(1) It shall be unlawful for any person, firm, partnership, or corporation to operate in this state a boiler or pressure vessel without a valid certificate of inspection. The operation of a boiler or pressure vessel without a valid certificate, or at a pressure exceeding that specified in an inspection certificate, shall constitute a Class B misdemeanor on the part of the owner, user, or operator. Each day of unlawful operation shall constitute a separate offense.

(2) Any person who violates the provisions of KRS 236.040(1); 236.080(4); 236.110(1), (4) and (5); 236.210(1); 236.220(1); 236.240(1) and (2); 236.250(1); or any proper order or administrative regulation made or promulgated thereunder; or who hinders or obstructs an authorized inspector in the performance of his duties under this chapter, shall be subject to the penalties in subsection (1) above.

(3) Any person who willfully violates any provision of this chapter, or any administrative regulation, emergency order or order of the state fire marshal, or an authorized deputy state fire marshal, or the chief boiler inspector, or of any authorized boiler or pressure vessel inspector, promulgated or made pursuant to this chapter, shall be subject to suspension or revocation of any appointment, commission, certification, registration, license, or permit made or issued by the department and held by that person, in accordance with the procedures specified in KRS 236.220, or in lieu of a suspension or revocation, shall be subject to an administrative fine of not less than ten dollars ($10) and not exceeding five hundred dollars ($500) after notice and hearing by the board in accordance with KRS

236.220. Each day these violations exist shall, in the discretion of the board, be considered as a separate violation.

(4) As an aid to enforcement of the provisions of this chapter, or of any administrative regulation or order relating thereto, the state fire marshal or his authorized deputy or employee may take any administrative action or bring any legal action in the manner authorized in KRS Chapter 227 that is designed to prevent or correct any condition constituting or threatening to constitute a violation of any provision of this chapter.

(Enact. Acts 1962, ch. 89, § 13; 1980, ch. 207, §§ 21, 22, effective July 15, 1980; 1996, ch. 318, § 157, effective July 15, 1996.)

CHAPTER 237

FIREARMS AND DESTRUCTIVE DEVICES

SECTION.

CARRYING CONCEALED DEADLY WEAPON

237.110. License to carry concealed deadly weapon — Criteria — Suspension or revocation — Prohibitions — Reciprocity — Reports — Requirements for training classes.

237.115. Construction of KRS 237.110 — Prohibition by local government units of carrying concealed deadly weapons in governmental buildings — Restriction on criminal penalties.

CARRYING CONCEALED DEADLY WEAPON

237.110. License to carry concealed deadly weapon — Criteria — Suspension or revocation — Prohibitions — Reciprocity — Reports — Requirements for training classes.

(1) The Department of State Police is authorized to issue licenses to carry concealed firearms or other deadly weapons to persons qualified as provided in this section. The Department of State Police or the Administrative Office of the Courts shall conduct a record check, covering all offenses and conditions which are required under 18 U.S.C. sec. 922(g) and this section, in the manner provided by 18 U.S.C. sec. 922(s). Licenses shall be valid throughout the state for a period of five (5) years from the date of issuance. Any person in compliance with the terms of the license may carry a concealed firearm or other deadly weapon or combination of firearms and other deadly weapons on or about his person. The licensee shall carry the license at all times the licensee is carrying a concealed firearm or other deadly weapon and shall display the license upon request of a law enforcement officer. Violation of the provisions of this subsection shall constitute a noncriminal violation with a penalty of twenty-five dollars ($25), payable to the clerk of the District Court.

(2) The Department of State Police, following the record check required by subsection (1) of this section, shall issue a license if the applicant:

(a) Is a resident of the state and has been a resident for six (6) months or longer immediately preceding the filing of the application;

(b) Is twenty-one (21) years of age or older;

(c) Is not ineligible to possess a firearm pursuant to 18 U.S.C. sec. 922(d)(1) or (g) or KRS 527.040;

(d) Has not been committed to a state or federal facility for the abuse of a controlled substance or been convicted of a misdemeanor violation of KRS Chapter 218A or similar laws of any other state relating to controlled substances within a three (3) year period immediately preceding the date on which the application is submitted;

(e) Does not chronically and habitually use alcoholic beverages as evidenced by the applicant having two (2) or more convictions for violating KRS 189A.010 within the three (3) years immediately preceding his application or if the applicant has been committed as an alcoholic pursuant to KRS Chapter 222, or similar laws of any other state, within the three (3) year period immediately preceding the date on which the application is submitted;

(f) Demonstrates competence with a firearm by completion of a firearms safety or training course or class offered or approved by the Department of Criminal Justice Training.

Classes presented pursuant to this paragraph shall include instruction on handguns, the safe use of handguns, the care and cleaning of handguns, handgun marksmanship principles, and actual range firing of a handgun in a safe manner. Classes presented pursuant to this paragraph shall include information on laws relating to firearms as described in KRS Chapters 237 and 527 and the law of the use of force as described in KRS Chapter 503. The Department of Criminal Justice Training shall promulgate uniform administrative regulations concerning the certification and decertification of all firearms instructors practicing in the Commonwealth of Kentucky. Notwithstanding any other provision of the Kentucky Revised Statutes, no person shall qualify as having demonstrated competence with a firearm pursuant to this subsection, unless certified by a governmental agency of the Commonwealth of Kentucky, or of the federal government. The Administrative Office of the Courts shall publish and make available, at no cost, information in a manner suitable for distribution to class participants. A legible photocopy of a certificate of completion of any of the courses or classes or a notarized affidavit from the instructor, school, club, organization, or group that conducts or teaches the course or class attesting to the completion of the course or class by the applicant shall constitute evidence of qualification under this paragraph. Peace officers who are currently certified as peace officers by the Kentucky Law Enforcement Council pursuant

to KRS 15.380 to 15.404 and peace officers who are retired and are members of the Kentucky Employees Retirement System, State Police Retirement System, or County Employees Retirement System or other retirement system operated by or for a city, county, or urban-county in Kentucky shall be deemed to have met the training requirement;

(g) Has not been adjudicated an incompetent under KRS Chapter 202B or has waited three (3) years from the date his competency was restored by the court order under KRS Chapter 202B; and

(h) Has not been involuntarily committed to a mental institution pursuant to KRS Chapter 202A, unless he possesses a certificate from a psychiatrist licensed in this state that he has not suffered from disability for a period of three (3) years.

(3) The Department of State Police may deny a license if the applicant has been found guilty of a violation of KRS 508.030 or 508.080 within the three (3) year period prior to the date on which the application is submitted or may revoke a license if the licensee has been found guilty of a violation of KRS 508.030 or 508.080 within the preceding three (3) years.

(4) The Department of State Police shall deny, suspend, or revoke a license to carry a concealed deadly weapon upon written notice by the Cabinet for Families and Children that the person has a child support arrearage which equals or exceeds the cumulative amount which would be owed after one (1) year of nonpayment, or for failure, after receiving appropriate notice, to comply with a subpoena or warrant relating to paternity or child support proceedings.

(5) The application for a permit, or renewal of a permit, to carry a concealed deadly weapon shall be obtained from the office of the sheriff in the county in which the person resides. The completed application and all accompanying material plus an application fee or renewal fee, as appropriate, of sixty dollars ($60) shall be presented to the office of the sheriff of the county in which the applicant resides. A full-time or part-time peace officer who is currently certified as a peace officer by the Kentucky Law Enforcement Council who is authorized by his or her employer or government authority to carry a concealed deadly weapon at all times and all locations within the Commonwealth pursuant to KRS 527.020 or a retired peace officer who is a member of the Kentucky Employees Retirement System, State Police Retirement System, County Employees Retirement System, or other retirement system operated by or for a city, county, or urban-county in Kentucky shall be exempt from paying the application or renewal fees. The sheriff shall transmit the application and accompanying material to the Department of State Police within five (5) working days. Twenty dollars ($20) of the application fee shall be retained by the office of the sheriff for official expenses of the office. Twenty dollars ($20) shall be sent to the Department of State Police with the application. Ten dollars ($10) shall be transmitted by the sheriff to the Administrative Office of the Courts to fund background checks for youth leaders, and ten dollars ($10) shall be transmitted to the Administrative Office of the Courts to fund background checks for applicants for concealed weapons. The application shall be completed, under oath, on a form promulgated by the Department of State Police by administrative regulation which shall only include:

(a) The name, address, place and date of birth, gender, and Social Security number of the applicant;

(b) A statement that, to the best of his knowledge, the applicant is in compliance with criteria contained within subsections (2) and (3) of this section;

(c) A statement that the applicant has been furnished a copy of this section and is knowledgeable about its provisions;

(d) A statement that the applicant has been furnished a copy of, has read, and understands KRS Chapter 503 as it pertains to the use of deadly force for self-defense in Kentucky; and

(e) A conspicuous warning that the application is executed under oath and that a materially false answer to any question, or the submission of any materially false document by the applicant, subjects the applicant to criminal prosecution under KRS 523.030.

(6) The applicant, if a resident of the Commonwealth, shall submit to the sheriff of the applicant's county of residence:

(a) A completed application as described in subsection (5) of this section;

(b) A recent color photograph of the applicant, as prescribed by administrative regulation; and

(c) A photocopy of a certificate or an affidavit or document as described in subsection (2)(f) of this section.

(7) The Department of State Police shall, within ninety (90) days after the date of receipt of the items listed in subsection (6) of this section, either:

(a) Issue the license; or

(b) Deny the application based solely on the grounds that the applicant fails to qualify under the criteria listed in subsection (2) or (3) of this section. If the Department of State Police denies the application, it shall notify the applicant in writing, stating the grounds for denial and informing the applicant of a right to submit, within thirty (30) days, any additional documentation relating to the grounds of denial. Upon receiving any additional documentation, the Department of State Police shall reconsider its decision and inform the applicant within twenty (20) days of the result of the reconsideration. The applicant shall further be informed of the right to seek de novo review of the denial in the District Court of his place of residence within ninety (90) days from the date of the letter advising the applicant of the denial.

(8) The Department of State Police shall maintain an automated listing of licenseholders and pertinent

information, and this information shall be available on-line, upon request, at all times to all Kentucky law enforcement agencies. Except as provided in this subsection, information on applications for licenses, names and addresses, or other identifying information relating to license holders shall be confidential and shall not be made available except to law enforcement agencies. Requests for information to be provided to any requester other than a bona fide law enforcement agency which has direct access to the Law Enforcement Information Network of Kentucky shall be made, in writing, directly to the commissioner of the Department of State Police, together with the fee required for the providing of the information. The Department of State Police shall, upon proper application and the payment of the required fee, provide to the requester in hard copy form only, a list of names of all holders in the Commonwealth of a license to carry a concealed deadly weapon. No identifying information other than the name shall be provided, and information for geographic areas or other subdivisions of any type from the list shall not be provided and shall be confidential. The fee to be charged shall be the same as for other public records provided by the Department of State Police. No request for lists of local or statewide permit holders shall be made to any state or local law enforcement agency, peace officer, or other agency of government other than the Department of State Police, and no state or local law enforcement agency, peace officer, or agency of government, other than the Department of State Police, shall provide any information not entitled to it by law. The names of all persons, other than law enforcement agencies and peace officers, requesting information under this section shall be a public record.

(9) Within thirty (30) days after the changing of a permanent address, or within thirty (30) days after the loss or destruction of a license, the licensee shall notify the Department of State Police of the loss or destruction. Failure to notify the Department of State Police shall constitute a noncriminal violation with a penalty of twenty-five dollars ($25) payable to the clerk of the District Court. When a licensee makes application to change his or her residence address or other information on the license, neither the sheriff nor the Department of State Police shall require a surrender of the license until a new license is in the office of the applicable sheriff and available for issuance. Upon the issuance of a new license, the old license shall be destroyed by the sheriff.

(10) If a license is lost or destroyed, the license shall be automatically invalid, and the person to whom the same was issued may, upon payment of fifteen dollars ($15) to the Department of State Police, obtain a duplicate, upon furnishing a notarized statement to the Department of State Police that the license has been lost or destroyed.

(11) A license issued under this section shall be suspended or revoked if the licensee becomes ineligible to be issued a license under the criteria set forth in subsection (2)(a), (c), (d), (e), (f), or (h) of this section. When a domestic violence order or emergency protective order is issued pursuant to the provisions of KRS Chapter 403 against a person holding a license issued under this section, the holder of the permit shall surrender the license to the court or to the officer serving the order. The officer to whom the license is surrendered shall forthwith transmit the license to the court issuing the order. The license shall be suspended until the order is terminated, or until the judge who issued the order terminates the suspension prior to the termination of the underlying domestic violence order or emergency protective order, in writing and by return of the license, upon proper motion by the license holder. Subject to the same conditions as above, a peace officer against whom an emergency protective order or domestic violence order has been issued shall not be permitted to carry a concealed deadly weapon when not on duty, the provisions of KRS 527.020 to the contrary notwithstanding.

(12) Not less than ninety (90) days prior to the expiration date of the license, the Department of State Police shall mail to each licensee a written notice of the expiration and a renewal form prescribed by the Department of State Police. The licensee may renew his license on or before the expiration date by filing with the sheriff of his county of residence the renewal form, a notarized affidavit stating that the licensee remains qualified pursuant to the criteria specified in subsections (2) and (3) of this section, and the required renewal fee. The license shall be renewed to a qualified applicant upon receipt of the completed renewal application and appropriate payment of fees. When a licensee makes application for a renewal of his or her license, neither the sheriff nor the Department of State Police shall require a surrender of the license until the new license is in the office of the applicable sheriff and available for issuance. Upon the issuance of a new license, the old license shall be destroyed by the sheriff. A licensee who fails to file a renewal application on or before its expiration date may renew his license by paying, in addition to the license fees, a late fee of fifteen dollars ($15). No license shall be renewed six (6) months or more after its expiration date, and the license shall be deemed to be permanently expired six (6) months after its expiration date. A person whose license has permanently expired may reapply for licensure pursuant to subsections (5), (6), and (7) of this section.

(13) No license issued pursuant to this section shall authorize any person to carry a concealed firearm into:

(a) Any police station or sheriff's office;

(b) Any detention facility, prison, or jail;

(c) Any courthouse, solely occupied by the Court of Justice courtroom, or court proceeding.

(d) Any meeting of the governing body of a county, municipality, or special district; or any meeting of the General Assembly or a committee of the General Assembly, except that nothing in this section shall preclude a member of

the body, holding a concealed deadly weapon license, from carrying a concealed deadly weapon at a meeting of the body of which he is a member;

(e) Any portion of an establishment licensed to dispense beer or alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to that purpose;

(f) Any elementary or secondary school facility without the consent of school authorities as provided in KRS 527.070, any child-caring facility as defined in KRS 199.011, any day-care center as defined in KRS 199.894, or any certified family child-care home as defined in KRS 199.8982, except however, any owner of a certified child-care home may carry a concealed firearm into the owner's residence used as a certified child-care home;

(g) An area of an airport to which access is controlled by the inspection of persons and property; or

(h) Any place where the carrying of firearms is prohibited by federal law.

(14) The owner, business or commercial lessee, or manager of a private business enterprise, day-care center as defined in KRS 199.894 or certified or licensed family child-care home as defined in KRS 199.8982, or a health-care facility licensed under KRS Chapter 216B, except facilities renting or leasing housing, may prohibit persons holding concealed deadly weapon licenses from carrying concealed deadly weapons on the premises and may prohibit employees, not authorized by the employer, holding concealed deadly weapons licenses from carrying concealed deadly weapons on the property of the employer. If the building or the premises are open to the public, the employer or business enterprise shall post signs on or about the premises if carrying concealed weapons is prohibited. Possession of weapons, or ammunition, or both in a vehicle on the premises shall not be a criminal offense so long as the weapons, or ammunition, or both are not removed from the vehicle or brandished while the vehicle is on the premises. A private but not a public employer may prohibit employees or other persons holding a concealed deadly weapons license from carrying concealed deadly weapons, or ammunition, or both in vehicles owned by the employer, but may not prohibit employees or other persons holding a concealed deadly weapons license from carrying concealed deadly weapons, or ammunition, or both in vehicles owned by the employee, except that the Justice Cabinet may prohibit an employee from carrying any weapons, or ammunition, or both other than the weapons, or ammunition, or both issued or authorized to be used by the employee of the cabinet, in a vehicle while transporting persons under the employee's supervision or jurisdiction. Carrying of a concealed weapon, or ammunition, or both in a location specified in this subsection by a license holder shall not be a criminal act but may subject the person to denial from the premises or removal from the premises, and, if an employee of an employer, disciplinary measures by the employer.

(15) All moneys collected by the Department of State Police pursuant to this section shall be used to administer the provisions of this section. By March 1 of each year, the Department of State Police and the Administrative Office of the Courts shall submit reports to the Governor, the President of the Senate, and the Speaker of the House of Representatives, indicating the amounts of money collected and the expenditures related to this section and KRS 237.115, 244.125, 527.020, and 527.070, and the administration of the provisions of this section and KRS 237.115, 244.125, 527.020, and 527.070.

(16) The General Assembly finds as a matter of public policy that it is necessary to provide statewide uniform standards for issuing licenses to carry concealed firearms and to occupy the field of regulation of the bearing of concealed firearms to ensure that no person who qualifies under the provisions of this section is denied his rights. The General Assembly does not delegate to the Department of State Police the authority to regulate or restrict the issuing of licenses provided for in this section beyond those provisions contained in this section. This section shall be liberally construed to carry out the constitutional right to bear arms for self-defense.

(17) (a) A person who has a valid license issued by another state of the United States to carry a concealed deadly weapon in that state may, subject to provisions of Kentucky law, carry a concealed deadly weapon in Kentucky, and his license shall be considered as valid in Kentucky.

(b) The Department of State Police shall, not later than thirty (30) days after July 15, 1998, and not less than once every six (6) months thereafter, make written inquiry of the concealed deadly weapon carrying licensing authorities in each other state as to whether a Kentucky resident may carry a concealed deadly weapon in their state based upon having a valid Kentucky concealed deadly weapon license, or whether a Kentucky resident may apply for a concealed deadly weapon carrying license in that state based upon having a valid Kentucky concealed deadly weapon license. The Department of State Police shall attempt to secure from each other state permission for Kentucky residents who hold a valid Kentucky concealed deadly weapon license to carry concealed deadly weapons in that state, either on the basis of the Kentucky license or on the basis that the Kentucky license is sufficient to permit the issuance of a similar license by the other state. The Department of State Police shall enter into a written reciprocity agreement with the appropriate agency in each state that agrees to permit Kentucky residents to carry concealed deadly weapons in the other state on the basis of a Kentucky-issued concealed deadly weapon license or that will issue

a license to carry concealed deadly weapons in the other state based upon a Kentucky concealed deadly weapon license. If a reciprocity agreement is reached, the requirement to recontact the other state each six (6) months shall be eliminated as long as the reciprocity agreement is in force. The information shall be a public record and shall be available to individual requesters free of charge for the first copy and at the normal rate for open records requests for additional copies.

(18) By March 1 of each year, the Department of State Police shall submit a statistical report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, indicating the number of licenses issued, revoked, suspended, and denied since the previous report and in total and also the number of licenses currently valid. The report shall also include the number of arrests, convictions, and types of crimes committed since the previous report by individuals licensed to carry concealed weapons.

(19) The following provisions shall apply to concealed deadly weapon training classes conducted by the Department of Criminal Justice Training or any other agency pursuant to this section:

(a) No concealed deadly weapon instructor trainer shall have his or her certification as a concealed deadly weapon instructor trainer reduced to that of instructor or revoked except after a hearing conducted pursuant to KRS Chapter 13B in which the instructor is found to have committed an act in violation of the applicable statutes or administrative regulations;

(b) No concealed deadly weapon instructor shall have his or her certification as a concealed deadly weapon instructor license suspended or revoked except after a hearing conducted pursuant to KRS Chapter 13B in which the instructor is found to have committed an act in violation of the applicable statutes or administrative regulations;

(c) Each concealed deadly weapon instructor or instructor trainer shall notify the Department of Criminal Justice Training not less than fourteen (14) days prior to the beginning of concealed deadly weapon applicant or concealed deadly weapon instructor training of the time, date, and location at which the class will be conducted. The department, upon the request of a firearms instructor trainer or certified firearms instructor, may permit a class to begin on less than fourteen (14) days' notice. The notice need not contain the names of the students. The notice may be made by mail, facsimile, e-mail, or other method which will result in the receipt of or production of a hard copy of the application. The postmark, facsimile date, or e-mail date shall be considered as the date on which the notice was sent;

(d) Each concealed deadly weapon instructor or instructor trainer who teaches a concealed deadly weapon applicant or concealed deadly weapon instructor class shall supply the Department of Criminal Justice training with a class roster indicating which students enrolled but did not successfully complete the class, and which students enrolled and successfully completed the class which contains the name and address of each student, within five (5) working days of the completion of the class. The information may be sent by mail, facsimile, e-mail, or other method which will result in the receipt of or production of a hard copy of the information. The postmark, facsimile date, or e-mail date shall be considered as the date on which the notice was sent;

(e) An instructor trainer who assists in the conduct of a concealed deadly weapon instructor class or concealed deadly weapon applicant class for more than two (2) hours shall be considered as to have taught a class for the purpose of maintaining his or her certification. All class record forms shall include spaces for assistant instructors to sign and certify that they have assisted in the conduct of a concealed deadly weapon instructor or concealed deadly weapon class;

(f) An instructor who assists in the conduct of a concealed deadly weapon applicant class for more than two (2) hours shall be considered as to have taught a class for the purpose of maintaining his or her license. All class record forms shall include spaces for assistant instructors to sign and certify that they have assisted in the conduct of a concealed deadly weapon class;

(g) If the Department of Criminal Justice Training believes that a firearms instructor trainer or certified firearms instructor has not in fact complied with the requirements for teaching a certified firearms instructor or applicant class by not teaching the class as specified in KRS 237.126, or who has taught an insufficient class as specified in KRS 237.128, the department shall send to each person who has been listed as successfully completing the concealed deadly weapon applicant class or concealed deadly weapon instructor class a verification form on which the time, date, date of range firing if different from the date on which the class was conducted, location, and instructor of the class is listed by the department and which requires the person to answer "yes" or "no" to specific questions regarding the conduct of the training class. The form shall be completed under oath and shall be returned to the Department of Criminal Justice Training not later than thirty (30) days after its receipt. Failure to complete the form, to sign the form, or to return the form to the Department of Criminal Justice training within the time frame specified in this section or who, as a result of information on the returned form, is determined by the Department of Criminal Justice Training, following a hearing pursuant to KRS Chapter 13B, to not have received the

training required by law shall be grounds for the Department of State Police to revoke the person's concealed deadly weapon license, following a hearing conducted pursuant to KRS Chapter 13B, at which hearing the person is found to have violated the provisions of this section or who has been found not to have received the training required by law;

(h) The department shall randomly inspect certified firearms instructor classes being conducted by firearms instructor trainers and shall randomly inspect applicant classes being conducted by firearms instructor trainers or certified firearms instructors to ascertain if the class is being conducted in conformity to the provisions of applicable statutes and administrative regulations and that the paperwork in the class matches the paperwork ultimately submitted by the firearms instructor trainer or certified firearms instructor for that same class. The department shall annually, not later than December 31 of each year, report to the Legislative Research Commission:

1. The number of random inspections;
2. The results of those inspections;
3. The number of deficiencies noted;
4. The nature of the deficiencies noted;
5. If a deficiency was noted, the categories of action taken by the department to either correct the deficiency or discipline the instructor, or a combination thereof;
6. The number of firearms instructor trainers and certified firearms instructors whose certifications were suspended, revoked, denied, or who were otherwise disciplined;
7. The reasons for the imposition of suspensions, revocations, denials, or other discipline; and
8. Suggestions for improvement of the concealed deadly weapon applicant training program and instructor process.

(i) If a concealed deadly weapon license holder is convicted of, pleads guilty to, or enters an Alford plea to a felony offense, then his or her concealed deadly weapon license shall be forthwith revoked by the Department of State Police as a matter of law;

(j) If a concealed deadly weapon instructor or instructor trainer is convicted of, pleads guilty to, or enters an Alford plea to a felony offense, then his or her concealed deadly weapon instructor certification or concealed deadly weapon instructor trainer certification shall be revoked by the Department of Criminal Justice Training as a matter of law; and

(k) The provisions of this section shall be deemed to be retroactive to March 1, 2002, and the following shall be in effect:

1. Action to eliminate the firearms instructor trainer program as done by emergency administrative regulation is rescinded, the program shall remain in effect, and no firearms instructor trainer shall have his or her certification reduced to that of certified firearms instructor;
2. The Kentucky State Police may revoke the concealed deadly weapon license of any person who received no firearms training as required by KRS 237.126 and administrative regulations or who received insufficient training as required by KRS 237.128 and administrative regulations, if the person voluntarily admits nonreceipt of training or admits receipt of insufficient training, or if either nonreceipt of training or receipt of insufficient training is proven following a hearing conducted pursuant to KRS Chapter 13B. Any action taken by the Kentucky State Police, other than revoking a permit for voluntary admission of nonreceipt of training or receipt of insufficient training to revoke a concealed deadly weapon license of a person suspected of nonreceipt of training or receipt of insufficient training, between March 1, 2002, and July 15, 2002, is suspended until the conduct of a KRS Chapter 13B hearing after July 15, 2002; and
3. Any person who has received a training affidavit requiring the person to verify training conducted during a firearms instructor course or applicant course from the Department of Criminal Justice Training between March 1, 2002, and July 15, 2002, shall have the time to respond to the training affidavit extended to August 1, 2002. The department shall notify each person who has not, as of July 15, 2002, returned his or her training affidavit of the extension of time to file the affidavit.

(Enact. Acts 1996, ch. 119, § 1, effective October 1, 1996; 1998, ch. 417, § 1, effective July 15, 1998; 1998, ch. 494, § 1, effective July 15, 1998; 1998, ch. 606, § 136, effective July 15, 1998; 2000, ch. 455, § 1, effective July 14, 2000; 2002, ch. 368, § 2, effective July 15, 2002.)

Legislative Research Commission Note. (7/15/96). 1996 Ky. Acts ch. 119, sec. 6 provides, "With respect to the training requirements of [this statute], [this statute] shall be deemed to be retroactive, and training completed prior to [October 1, 1996] may be used and shall be deemed to satisfy the training requirements of [this statute]."

Compiler's Notes. Section 2 of Acts 2000, ch. 455, effective July 14, 2000, read: "Any person licensed to carry a concealed firearm upon the effective date of this Act shall automatically have his or her license to carry a concealed firearm extended to a period of five (5) years."

237.115. Construction of KRS 237.110 — Prohibition by local government units of carrying concealed deadly weap-

ons in governmental buildings — Restriction on criminal penalties.

(1) Nothing contained in KRS 237.110 shall be construed to limit, restrict, or prohibit in any manner the right of a college, university, or any postsecondary education facility, including technical schools and community colleges, to control the possession of deadly weapons on any property owned or controlled by them or the right of a unit of state, city, county, urban-county, or charter county government to prohibit the carrying of concealed deadly weapons by licensees in that portion of a building actually owned, leased, or occupied by that unit of government.

(2) The legislative body of a state, city, county, or urban-county government may, by statute, administrative regulation, or ordinance, prohibit or limit the carrying of concealed deadly weapons by licensees in that portion of a building owned, leased, or controlled by that unit of government. That portion of a building in which the carrying of concealed deadly weapons is prohibited or limited shall be clearly identified by signs posted at the entrance to the restricted area. The statute or ordinance shall exempt any building used for public housing by private persons, highway rest areas, firing ranges, and private dwellings owned, leased, or controlled by that unit of government from any restriction on the carrying or possession of deadly weapons. The statute, administrative regulation, or ordinance shall not specify any criminal penalty for its violation but may specify that persons violating the statute or ordinance may be denied entrance to the building, ordered to leave the building, and if employees of the unit of government, be subject to employee disciplinary measures for violation of the provisions of the statute or ordinance. The provisions of this section shall not be deemed to be a violation of KRS 65.870 if the requirements of this section are followed. The provisions of this section shall not apply to any other unit of government.

(3) Unless otherwise specifically provided by the Kentucky Revised Statutes or applicable federal law, no criminal penalty shall attach to carrying a concealed firearm or other deadly weapon with a permit at any location at which an unconcealed firearm or other deadly weapon may be constitutionally carried.

(Enact. Acts 1996, ch. 119, § 5, effective October 1, 1996.)

Opinions of Attorney General. While subsection (1) of this section recognizes the right of colleges and universities to control possession of deadly weapons, generally, on their properties, subsection (1) of this section limits other units of state government, city governments, county governments, urban-county governments, and charter county governments to prohibiting only the carrying of concealed deadly weapons. The Kentucky General Assembly, therefore, has recognized that the governing board of a college or university of this Commonwealth has a right to control the possession of all deadly weapons on its properties, regardless of whether the weapons are concealed or carried openly. OAG 96-40.

TITLE XXI

AGRICULTURE AND ANIMALS

CHAPTER 247

PROMOTION OF AGRICULTURE AND HORTICULTURE

SECTION.

EXPERIMENT STATION AND EXTENSION WORK

247.080. Boards of education may aid extension work.

EXPERIMENT STATION AND EXTENSION WORK

247.080. Boards of education may aid extension work.

County boards of education may appropriate such sums of money out of their annual funds as in their wisdom are necessary to aid in carrying on extension work in agriculture and home economics in their respective counties, in connection with the University of Kentucky.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 610, effective July 13, 1990.)

Opinions of Attorney General. Appropriations for extension work under KRS 247.300 and this section shall not exceed the current revenues as provided in Ky. Const., §§ 157 and 158. OAG 63-494.

If adequate funds were available, there would be no liability on the part of the members of the fiscal court for appropriating funds for extension work under this section in excess of the maximum specified in KRS 247.300 (2). OAG 63-494.

The appropriation for extension work under KRS 247.300 is mandatory; any appropriation under this section is permissive. OAG 63-494.

The limit of the appropriation by the fiscal court of a county under KRS 247.300 (1) and (2) is $5,000 per year, but under this section, the court may appropriate additional funds of the county out of their annual funds as may be necessary for extension work in agriculture and home economics. OAG 63-494.

A fiscal court has no statutory authority to appropriate money out of its annual funds toward the purchase of land to be used as a county fairground. OAG 63-643.

The county agent is not an employee or official of the county. OAG 70-110.

The purchase of land by a county through its fiscal court for the purpose of leasing the same to the 4-H Association of the county who in turn would sublet the property to the United States department of agriculture would not be within the powers of the fiscal court under KRS 67.080 (2), nor under this section which provides that the court may aid extension work in agriculture in connection with the University of Kentucky, nor under KRS 247.300 authorizing the fiscal court to appropriate money for the farm bureau but not for the purchase and lease of property under the subject arrangement and the subject purposes. OAG 72-53.

Where a fiscal court considered a motion to employ a full time 4-H agent and such motion was defeated, the fiscal court, in dealing with this legislative function of appropriation, could reconsider at another meeting the matter of making an appropriation for the 4-H agent employment. OAG 77-515.

NOTES TO DECISIONS

ANALYSIS

1. County agent.
2. Extension work.

1. County Agent.

County agent, for whom salary is appropriated under this section, is not a necessary county officer, and county may not become indebted in making such appropriation in violation of Ky. Const., § 157. Carman v. Hickman County, 185 Ky. 630, 215 S.W. 408 (1919); Knott County v. Michael, 264 Ky. 36, 94 S.W.2d 44 (1936).

County farm agent is not such a necessary county officer as to authorize his employment where to do so would carry county indebtedness beyond limit fixed by Ky. Const., § 157. Adair County Farm Bureau v. Fiscal Court, 263 Ky. 23, 91 S.W.2d 537 (1936).

County agent, for whom a salary is appropriated under this section, is agent of university but not agent of county and appropriations for such purpose must be made from "annual" funds of county. Knott County v. Michael, 264 Ky. 36, 94 S.W.2d 44 (1936).

2. Extension Work.

Appropriations for extension work in agriculture and home economics are not authorized under this section unless the work is done jointly or in connection with University of Kentucky. Jefferson County ex rel. Grauman v. Jefferson County Fiscal Court, 269 Ky. 444, 107 S.W.2d 320 (1937).

CHAPTER 259

STRAYS AND ANIMALS RUNNING AT LARGE

SECTION.

259.200. Trespassing on park, camp grounds or floodwalls prohibited.
259.990. Penalties.

259.200. Trespassing on park, camp grounds or floodwalls prohibited.

No person shall permit any cattle to run or trespass upon any state or national parks, encampment grounds, scout camps, grounds dedicated to religious, educational or recreational purposes or floodwalls erected at public expense.

(4645n-2: amend. Acts 1954, ch. 229, § 1.)

259.990. Penalties.

(1) Any person who violates any of the provisions of KRS 259.110 to 259.140 shall be fined ten dollars ($10).
(2) Any person who violates KRS 259.150 shall be fined fifty dollars ($50).
(3) Any person who violates KRS 259.200 shall be fined not less than ten dollars ($10) nor more than one hundred dollars ($100), and each head of cattle trespassing shall constitute a separate offense.
(4) Any person who violates KRS 259.210 shall be fined not less than five dollars ($5) nor more than twenty-five dollars ($25).

(4645m-4, 4645n-2, 4656: amend. Acts 1950, ch. 20, § 5; 1954, ch. 229, § 2.)

Compiler's Notes. Original subsection (1) (4658) of this section was repealed by Acts 1950, ch. 20, § 6.

TITLE XXIII

PRIVATE CORPORATIONS AND ASSOCIATIONS

CHAPTER 271B

BUSINESS CORPORATIONS

SUBTITLE 3. PURPOSES AND POWERS

SECTION.

271B.3-020. General powers.

SUBTITLE 3. PURPOSES AND POWERS

271B.3-020. General powers.

(1) Unless its articles of incorporation provide otherwise, every corporation shall have perpetual duration and succession in its corporate name and shall have the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation power to:
   (a) Sue and be sued, complain and defend in its corporate name;
   (b) Have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;
   (c) Make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for managing the business and regulating the affairs of the corporation;
   (d) Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;
   (e) Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
   (f) Purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in and with shares or other interests in, or obligations of, any other entity;
   (g) Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations (which may be convertible into or include the option to purchase other securities of the corporation), and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;
   (h) Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(i) Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;
(j) Conduct its business, locate offices, and exercise the powers granted by this chapter within or without this state;
(k) Elect directors and appoint officers, employees and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;
(*l*) Pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;
(m) Make donations for the public welfare or for charitable, scientific, or educational purposes;
(n) Transact any lawful business that will aid governmental policy; and
(o) Make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the corporation.

(2) Notwithstanding the provisions of subsection (1)(b) of this section, the presence or absence of a corporate seal on or from a writing shall neither add to nor detract from the legality thereof nor affect its validity in any manner or respect.

(Enact. Acts 1988, ch. 23, § 23, effective January 1, 1989.)

CHAPTER 273

RELIGIOUS, CHARITABLE AND EDUCATIONAL SOCIETIES — NONSTOCK, NONPROFIT CORPORATIONS

SECTION.

RELIGIOUS, CHARITABLE AND EDUCATIONAL SOCIETIES

273.070. Incorporated college may establish adjunct schools and colleges.
273.080. Power over adjunct school or college.
273.130. Disposition of property in case of dissolution of religious society.

RELIGIOUS, CHARITABLE AND EDUCATIONAL SOCIETIES

273.070. Incorporated college may establish adjunct schools and colleges.

Any incorporated college or university in this state may establish adjunct schools and colleges in any part of the state to be operated in connection with it. In order to establish and operate any adjunct school or college the institution establishing it may solicit and receive subscriptions and donations.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 611, effective July 13, 1990.)

Collateral References. 14 C.J.S., Colleges and Universities, §§ 10-14, 18.

273.080. Power over adjunct school or college.

All property procured for any adjunct school or college shall be held and applied by the governing body of the institution establishing it for the purpose of establishing and maintaining the adjunct school. The governing body may procure grounds and erect buildings for its use and occupation, appoint and remove its teachers, prescribe a course of study for its students, confer degrees of graduation from it, and exercise the same general supervision and control over it that they may exercise over their own institution.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 612, effective July 13, 1990.)

Collateral References. 14 C.J.S., Colleges and Universities, §§ 10-14, 18.

273.130. Disposition of property in case of dissolution of religious society.

If any religious society holding land dissolves, the title shall vest in the trustees of the county seminary in which the land lies for the use of that seminary, and if there is no such seminary, then in the county judge/executive, for the benefit of common schools in the county.

(Repealed and reenact. Acts 1990, ch. 476, Pt. V, § 613, effective July 13, 1990.)

TITLE XXIV

PUBLIC UTILITIES

CHAPTER 281

MOTOR CARRIERS

SECTION.

DEPARTMENT OF VEHICLE REGULATION

281.605. Exemption of motor vehicles used for certain purposes.

DEPARTMENT OF VEHICLE REGULATION

281.605. Exemption of motor vehicles used for certain purposes.

The provisions of this chapter shall not apply, except as to safety regulations, to:

(1) Motor vehicles used as school buses and while engaged in the transportation of students, under the supervision and control and at the direction of school authorities;
(2) Except as provided in paragraph (e) of this subsection, motor vehicles, regardless of ownership, used exclusively:
(a) For the transportation of agricultural and dairy products, including fruit, livestock, meats, fertilizer, wood, lumber, cotton, products of grove or orchard, poultry, and eggs, while owned by the producer of the products, including landlord where the relation of land-

lord and tenant or landlord and cropper is involved, from the farm to a market, warehouse, dairy, or mill, or from one (1) market, warehouse, dairy, or mill to another market, warehouse, dairy, or mill;

(b) For the transportation of agricultural and dairy products, livestock, farm machinery, feed, fertilizer, and other materials and supplies essential to farm operation, from market or shipping terminal to farm;

(c) For both the purposes described in paragraphs (a) and (b) of this subsection;

(d) For the transportation of agricultural and dairy products from farm to regularly organized fairs and exhibits and return; or

(e) Motor vehicles used for the transportation of fly ash, in bags, sacks, or other containers, the aggregate weight of which does not exceed ten thousand (10,000) pounds; or bottom ash, waste ash, sludge, and pozatec which is being removed from the premises of a power generator facility for the purpose of disposal;

(3) Motor vehicles used exclusively as church buses and while operated in the transportation of persons to and from a church or place of worship or for other religious work under the supervision and control and at the direction of church authorities;

(4) Motor vehicles used exclusively for the transportation of property belonging to a nonprofit cooperative association or its members where the vehicle is owned or leased exclusively by the association;

(5) Motor vehicles owned in whole or in part by any person and used by such person to transport commodities of which such person is the bona fide owner, lessee, consignee, or bailee; provided, however, that such transportation is for the purpose of sale, lease, rent, or bailment, and is an incidental adjunct to an established private business owned and operated by such person within the scope and in furtherance of any primary commercial enterprise of such person other than the business of transportation of property for hire;

(6) Motor vehicles used in pick-up or delivery service within a city or within a city and its commercial area for a carrier by rail;

(7) Motor vehicles used exclusively for the transportation of coal from the point at which such coal is mined to a railhead or tipple where the railhead or tipple is located at a point not more than fifty (50) air miles from the point at which the coal is mined;

(8) Motor vehicles used as ambulances in transporting wounded, injured, or sick animals or as ambulances as defined in KRS 311A.010;

(9) Motor vehicles used by transit authorities as created and defined in KRS Chapter 96A except as required by KRS 96A.170. Vehicles operated under the authority and direct responsibility of such transit authorities, through contractual agreement, shall be included within this exemption, without regard to the legal ownership of the vehicles, but only for such times as they are operated under the authority and responsibility of the transit authority;

(10) Motor vehicles having a seating capacity of fifteen (15) or fewer passengers and while transporting persons between their places of residence, on the one hand, and, on the other, their places of employment, provided the driver himself is on his way to or from his place of employment, and further provided that any person who operates or controls the operation of vehicles hereunder of which said person is the owner or lessee, and any spouse of said person and any partnership or corporation with said person or his spouse having an interest therein doing such, shall be eligible to so operate an aggregate number of not more than one (1) vehicle on other than a nonprofit basis;

(11) Motor vehicles used to transport cash letters, data processing material, instruments, or documents, regardless of the ownership of any of said cash letters, data processing material, instruments, or documents;

(12) Motor vehicles operated by integrated intermodal small package carriers who provide intermodal-air-and-ground-transportation. For the purposes of this section, "integrated intermodal small package carrier" shall mean an air carrier holding a certificate of public convenience and necessity or qualifying as an indirect air carrier that undertakes, by itself or through a company affiliated through common ownership, to provide intermodal-air-and-ground-transportation, and "intermodal-air-and-ground-transportation" shall mean transportation involving the carriage of articles weighing not more than one hundred fifty (150) pounds by aircraft or other forms of transportation, including by motor vehicle, wholly within the Commonwealth of Kentucky. The incidental or occasional use of aircraft in transporting packages or articles shall not constitute an integrated intermodal operation within the meaning of this section;

(13) Motor vehicles operated pursuant to a grant of funds in furtherance of and governed by 49 U.S.C. secs. 5310 or 5311, including all amendments, and whose operators have jurisdictions and services approved annually by the Transportation Cabinet in accordance with 49 C.F.R. Title VI;

(14) Motor vehicles used to transport children to educational events or conservation camps run by, or sponsored by, the Department of Fish and Wildlife; or

(15) Motor vehicles used to transport children to events or camps run by, or sponsored by, the Kentucky Sheriffs Association.

(Enact. Acts 1950, ch. 63, § 8; 1954, ch. 188, § 2; 1958, ch. 123, § 1; 1958, ch. 130, § 6; 1962, ch. 96, § 1; 1964, ch. 95, § 6; 1968, ch. 152, § 135; 1972, ch. 269, § 1; 1974, ch. 138, § 3; 1978, ch. 62, § 1, effective June 17, 1978; 1978, ch. 232, § 5, effective June 17, 1978; 1980, ch. 349, § 1, effective July 15, 1980; 1984, ch. 238, § 1, effective July 13, 1984; 1990, ch. 403, § 1, effective July 13, 1990; 1994, ch. 448, § 1, effective July 15, 1994; 1996, ch. 233, § 2, effective July 15, 1996; 1998, ch. 607, § 5, effective July 15, 1998; 2000, ch. 343, § 15, effective July 14, 2000; 2002, ch. 211, § 38, effective July 15, 2002; 2002, ch. 318, § 1, effective July 15, 2002.)

Legislative Research Commission Note. (7/15/2002). This section was amended by 2002 Ky. Acts chs. 211 and 318,

which do not appear to be in conflict and have been codified together.

NOTES TO DECISIONS

.05. Legislative Intent.
The legislature specifically exempted school buses from the provisions of this section, except as to safety regulations. Cornette v. Commonwealth, 899 S.W.2d 502 (Ky. Ct. App. 1995).

TITLE XXV

BUSINESS AND FINANCIAL INSTITUTIONS

CHAPTER 287

BANKS AND TRUST COMPANIES

SECTION.
287.280. Maximum debt of persons to bank or trust company.
287.290. Exceptions to maximum debt to banks.
287.330. Assets may be pledged or surety bonds provided as collateral security — Security not required if deposit insured.

Compiler's Notes. Under authority of Acts 1984, ch. 388, § 17 "Department of Financial Institutions" should be substituted for "Department of Banking and Securities" and "Commissioner of Financial Institutions" should be substituted for "Commissioner of Banking and Securities" wherever they appear throughout the chapter.

287.280. Maximum debt of persons to bank or trust company.

(1) No bank or trust company shall permit any person to become indebted to it or to become obligated as guarantor or surety to it in an amount exceeding twenty percent (20%) of its capital stock actually paid in and its actual amount of surplus, unless the person pledges with it good collateral security or executes to it a mortgage upon real or personal property which at the time is of more than the cash value of the indebtedness or obligation above all other encumbrances; but the indebtedness or obligation of any person shall not exceed thirty percent (30%) of the paid-in capital and actual surplus of the bank or trust company.

(2) No bank or trust company shall permit any of its directors or executive officers to become indebted to it or become obligated as guarantor or surety to it in an amount which exceeds that which any other person is authorized by this section to become indebted or obligated.

(3) In computing the indebtedness of any person, the liability of any partnership in which the person acts as a general partner shall be included, and any obligation entered into for the benefit of a person, partnership or association shall be included in the total liabilities of the person, partnership or association.

(4) Except as otherwise provided in this section, the same security, both in kind and amount, shall be required from stockholders as from nonstockholders.

(5) The discount of bills of exchange drawn against actually existing value, and the purchase or discounting of commercial or business paper actually owned by the person negotiating the paper shall not be considered as borrowed money within the meaning of this section in fixing the limit of indebtedness or obligation of any person selling or negotiating the paper to a bank.

(581, 583, 609, 610: amend. Acts 1986, ch. 444, § 9, effective July 15, 1986; 1986, ch. 472, § 1, effective July 15, 1986; 1992, ch. 77, § 3, effective July 14, 1992.)

Legislative Research Commission Note. This section was amended by two 1986 Acts which do not appear to be in conflict and have been compiled together. However, in combining the amendments it was necessary to retain the words "in an amount" in subsection (2) of this section which had been deleted by Acts 1986, ch. 472, § 1.

287.290. Exceptions to maximum debt to banks.
In the case of obligations to banks and trust companies, the limitations and restrictions of KRS 287.280 shall not apply to:

(1) Obligations of the United States or of the State of Kentucky;

(2) Obligations guaranteed as to principal and interest by the United States or the State of Kentucky; or all obligations to the extent secured or covered by guarantees or by commitments or agreements to take over or to purchase the same made by any federal reserve bank or by the United States or by any department, bureau, board, commission or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States; or consolidated bonds issued by or for federal land banks or consolidated debentures issued by or for federal intermediate credit banks under the Act of Congress known as the "Federal Farm Loan Act," and amendments thereto; or consolidated debentures issued by or for banks for cooperatives under the Act of Congress known as the "Farm Credit Act of 1933," and amendments thereto; or obligations issued by the federal home loan banks; or obligations which are insured by the federal housing administrator pursuant to Title 12, Section 12, Section 1713, United States Code, if the debentures to be issued in payment of such insured obligations are guaranteed as to the principal and interest by the United States; or obligations of national mortgage associations; except that the commissioner may make, alter and repeal regulations respecting the total liabilities of any person which:
   (a) Are secured by direct obligations of the United States or the State of Kentucky, and
   (b) Have a face value at least equal to the amount of such liabilities, and

(c) Will mature within five (5) years from the date such liabilities were incurred.

(3) Obligations of Kentucky counties and school districts incurred through borrowing in anticipation of the current year's tax receipts as authorized by KRS 68.320 and 160.540.

(583: amend. Acts 1944, ch. 15; 1946, ch. 177; 1960, ch. 152; 1970, ch. 209, § 7.)

Cross-References. Authorized investments for banks and trust companies, KRS 386.030, 386.050.

287.330. Assets may be pledged or surety bonds provided as collateral security — Security not required if deposit insured.

(1) Banks, subject to statutory or charter limitations, may pledge such portion of their assets or provide surety bonds as may be required by law as collateral security for government deposits made with them, or any of them, by or under the authority of the United States, or for any other deposit required by law to be secured.

(2) Notwithstanding any law requiring security for deposits in the form of collateral, surety bond, or in any other form, security for such deposits shall not be required to the extent said deposits are insured under the provisions of Section 12B of the Federal Reserve Act (38 Stat. 251) as amended.

(3) If a bank proposes to sell its assets and transfer its deposit liability to another bank and the purchasing bank is unwilling to accept a sufficient amount of the assets to cover the liability to depositors and other creditors, the selling bank may, with the consent of the commissioner, pledge all or a part of its remaining or unacceptable assets to secure a loan for an amount sufficient to cover the remaining liability to the depositors and other creditors.

(579: amend. Acts 1984, ch. 324, § 27, effective July 13, 1984; 1998, ch. 554, § 4, effective July 15, 1998.)

Compiler's Notes. The Federal Reserve Act referred to in subsection (2) of this section is compiled throughout Title 12 of the United States Code.

CHAPTER 304

INSURANCE CODE

Subtitle 12. Trade Practices and Frauds

SECTION.

304.12-260. Prohibition against refusal of liability insurer to pay on policy for school's posting of Ten Commandments.

Subtitle 12. Trade Practices and Frauds

304.12-260. Prohibition against refusal of liability insurer to pay on policy for school's posting of Ten Commandments.

Because the posting of the Ten Commandments in a public school building is a lawful posting of a historical document under KRS 158.195, no liability insurer shall refuse to pay under the terms of the policy an insured who is sued for posting the Ten Commandments in compliance with KRS 158.195 in a public school building on the grounds that this act by the insured constitutes an illegal act for which the insurer is not liable to pay under the terms of the policy.

(Enact. Acts 2000, ch. 237, § 1, effective July 14, 2000.)

TITLE XXVI

OCCUPATIONS AND PROFESSIONS

CHAPTER 309

MISCELLANEOUS OCCUPATIONS AND PROFESSIONS

SECTION.

Interpretation for the Deaf and Hard of Hearing

309.300. Definitions for KRS 309.300 to 309.319.
309.301. Licensing for interpreters required — Exceptions.
309.302. Kentucky Board of Interpreters for the Deaf and Hard of Hearing.
309.304. Powers and duties of board — Administrative regulations.
309.306. Fees credited to revolving fund.
309.308. Kentucky Board of Interpreters for the Deaf and Hard of Hearing Policy Committee.
309.310. Duties of policy committee.
309.312. Eligibility for license and temporary license.
309.314. Renewal and reinstatement of license — Continuing education.
309.316. Classification of offenses — Investigation of wrongdoing — Hearing — Sanctions — Hearing for denial of application.
309.318. Board's disciplinary powers — Reasons for sanctions — Appeal to Franklin Circuit Court.
309.319. Penalty.

Interpretation for the Deaf and Hard of Hearing

309.300. Definitions for KRS 309.300 to 309.319.

As used in KRS 309.300 to 309.319, unless the context otherwise requires:

(1) "Board" means Kentucky Board of Interpreters for the Deaf and Hard of Hearing.

(2) "Committee" means Kentucky Board of Interpreters for the Deaf and Hard of Hearing Policy Committee.

(3) "Consumer" means a person who is deaf, hard of hearing, or who requires special communication techniques in order to communicate.

(4) "Interpreter" means a person who engages in the practice of interpreting.

(5) "Interpreting" means the translating or transliterating of English concepts to any necessary specialized vocabulary used by a consumer or the translating of a consumer's specialized vocabulary to English concepts. Necessary specialized vocabular-

ies include, but are not limited to, American Sign Language, English-based sign language, cued speech, and oral interpreting.

(6) "Nationally recognized certification" means certification granted by a national organization that is based on a skills assessment of the applicant. These organizations include, but are not limited to, the Registry of Interpreters for the Deaf, the National Association of the Deaf, and the National Training, Evaluation, and Certification Unit.

(Enact. Acts 1998, ch. 11, § 1, effective July 15, 1998.)

309.301. Licensing for interpreters required — Exceptions.

(1) Effective July 1, 2003, no person shall represent himself or herself as an interpreter or engage in the practice of interpreting as defined in KRS 309.300 unless he or she is licensed in accordance with the provisions of KRS 309.300 to 309.319.

(2) The provisions of KRS 309.300 to 309.319 shall not apply to:

(a) Nonresident interpreters working in the Commonwealth less than twenty (20) days per year;

(b) Interpreters working at religious activities;

(c) Interpreters working as volunteers without compensation. However, all volunteers interpreting for state agencies must be eligible for licensure as described in KRS 309.312;

(d) Interpreters working in an emergency. An emergency is a situation where the consumer decides that the delay necessary to obtain a licensed interpreter is likely to cause injury or loss to the consumer; or

(e) The activities and services of an interpreter intern or a student in training who is:

1. Enrolled in a program of study in interpreting at an accredited institution of higher learning;

2. Interpreting under the supervision of a licensed interpreter as part of a supervised program of study; and

3. Identified as an interpreter intern or student in training.

(Enact. Acts 1998, ch. 11, § 2, effective July 15, 1998.)

309.302. Kentucky Board of Interpreters for the Deaf and Hard of Hearing.

(1) There is hereby created a board to be known as the "Kentucky Board of Interpreters for the Deaf and Hard of Hearing."

(2) The board shall consist of seven (7) members appointed by the Governor as follows:

(a) Five (5) practicing interpreters who hold current nationally recognized certification and have at least five (5) years interpreting experience;

(b) One (1) deaf interpreter with past or current nationally recognized certification; and

(c) One (1) consumer with knowledge about interpreter issues.

(3) After the initial term of each appointment, all members shall be appointed for a term of four (4) years.

(4) Board members shall not be allowed to succeed themselves but a former member may be reappointed to the board if that member has not served in the preceding four (4) years.

(5) The members of the board shall receive no compensation for their services on the board, but they shall be reimbursed for actual and necessary expenses incurred in the performance of their official duties.

(6) The board shall annually elect a chairman, a vice chairman, and a secretary-treasurer from the members of the board.

(7) The board shall hold at least one (1) meeting annually and additional meetings as the board may deem necessary. The additional meetings may be held upon call of the chairman or upon written request of a quorum. Four (4) members of the board shall constitute a quorum to conduct business.

(8) Upon recommendation of the board, the Governor may remove any member of the board for neglect of duty or malfeasance in office.

(Enact. Acts 1998, ch. 11, § 3, effective July 15, 1998.)

309.304. Powers and duties of board — Administrative regulations.

(1) The board shall administer and enforce the provisions of this chapter and shall have the responsibility of evaluating the qualifications of applicants for licensure and the issuance of licenses.

(2) The board may issue subpoenas, examine witnesses, pay appropriate witness fees, administer oaths, and investigate allegations of practices violating the provisions of this chapter.

(3) The board shall promulgate necessary and reasonable administrative regulations in accordance with KRS Chapter 13A and this chapter to effectively carry out and enforce the provisions of KRS 309.300 to 309.319, including regulations to establish authorized fees. Fees shall not exceed amounts necessary to generate sufficient funds to effectively carry out and enforce the provisions of KRS 309.300 to 309.319.

(4) The board may conduct hearings in accordance with KRS Chapter 13B and keep records and minutes necessary to carry out the functions of KRS 309.300 to 309.319.

(5) The board may renew licenses and require continuing education as a condition for renewal.

(6) The board may suspend or revoke licenses, or impose supervisory or probationary conditions upon licensees, or impose administrative disciplinary fines, issue written reprimands, or any combination thereof.

(7) The board may seek injunctive relief in Franklin Circuit Court to stop the unlawful practice of interpreting by unlicensed persons.

(8) The board may employ any persons it deems necessary to carry on the work of the board, and shall define their duties and fix their compensation.

(9) Beginning in 1999, on October 1 of each year, the board shall submit a report to the Legislative Research Commission indicating:

(a) The current number of licensed interpreters; and
(b) The number of complaints received against interpreters and any disciplinary action taken within the previous calendar year.

(Enact. Acts 1998, ch. 11, § 4, effective July 15, 1998.)

309.306. Fees credited to revolving fund.

(1) All fees and other moneys received by the board under the provisions of KRS 309.300 to 309.319 shall be deposited in the State Treasury to the credit of a revolving fund for the use of the board.
(2) No part of this revolving fund shall revert to the general fund of this Commonwealth.
(3) This revolving fund shall pay for the reimbursement of board members for actual and necessary expenses incurred in the performance of their official duties, the compensation of all of the employees of the board, and those operational expenses incurred in fulfilling the board's duties as described in administrative regulation.

(Enact. Acts 1998, ch. 11, § 5, effective July 15, 1998.)

309.308. Kentucky Board of Interpreters for the Deaf and Hard of Hearing Policy Committee.

(1) There is hereby created a committee to be known as the "Kentucky Board of Interpreters for the Deaf and Hard of Hearing Policy Committee."
(2) The committee shall consist of eleven (11) members as follows:
(a) The president or a designee of:
1. Kentucky Association of the Deaf; and
2. Kentucky Registry of Interpreters for the Deaf;
(b) A representative from:
1. Kentucky Commission on the Deaf and Hard of Hearing (KCDHH);
2. Eastern Kentucky University Interpreter Training Program;
3. Kentucky Department of Education;
4. Kentucky Department of Vocational Rehabilitation;
5. Kentucky School for the Deaf;
6. Cabinet for Families and Children; and
7. Cabinet for Health Services; and
(c) Two members-at-large, who are consumers, appointed by the board.
(3) The members of the committee shall receive no compensation for their services on the committee. The member from the Kentucky Association of the Deaf, the member from the Kentucky Registry of Interpreters for the Deaf, and the members-at-large shall be reimbursed for actual and necessary expenses incurred in the performance of their committee duties.

(Enact. Acts 1998, ch. 11, § 6, effective July 15, 1998.)

309.310. Duties of policy committee.

(1) The committee shall provide ongoing advice and input to the board regarding the criteria for licensure and the ratio between consumer demand and the existing supply of licensed interpreters or those eligible for licensure.
(2) The committee shall make recommendations to the board regarding the content of relevant administrative regulations.
(3) The committee shall provide ongoing review of professional development and support systems for interpreters including existing public and private education programs and training resources within the Commonwealth.

(Enact. Acts 1998, ch. 11, § 7, effective July 15, 1998.)

309.312. Eligibility for license and temporary license.

(1) To be eligible for licensure by the board as an interpreter, the applicant shall submit an application which includes:
(a) An application fee; and
(b) Current certification from a nationally recognized organization at the requisite level for sign language interpreters, oral interpreters, or cued speech transliterators as determined by the board and promulgated by administrative regulation.
(2) The board shall issue an interpreter license to an applicant who fulfills these requirements. The front of the license shall clearly list all certifications held by the licensee.
(3) The board may issue a temporary license as an interpreter to an applicant who is certified at a level below that required for licensure in subsection (1) of this section. A temporary license shall be available for a person who is training under the supervision of a licensed interpreter under circumstances defined by the board in administrative regulation. A temporary license is valid for only a certain period until the licensee achieves the minimum level of certification required for licensure under subsection (1) of this section. A temporary license is not renewable although extensions may be granted under circumstances defined by administrative regulation.
(a) For graduates of a baccalaureate interpreter training program, a temporary license shall be valid for up to one (1) year.
(b) For graduates of an associate of arts interpreter training program, a temporary license shall be valid for up to two (2) years.
(c) For nondegree applicants, a temporary license shall be valid for up to two (2) years.
(4) Upon payment of the application fee, the board shall grant licensure to an applicant holding a valid license, certificate, or equivalent issued by another state if it is based upon standards equivalent to or exceeding the standards required by KRS 309.300 to 309.319.

(Enact. Acts 1998, ch. 11, § 8, effective July 15, 1998.)

309.314. Renewal and reinstatement of license — Continuing education.

(1) Each person licensed as an interpreter shall annually, on or before July 1, submit to the board current proof of nationally recognized certification and pay a fee for the renewal of the interpreter license. The amount of the fee shall be promulgated by administrative regulation of the board.

All licenses not renewed by July 1 of each year shall expire.

(2) A sixty (60) day grace period shall be allowed after July 1, during which time individuals may continue to practice and may renew their licenses upon payment of the renewal fee plus a late renewal fee as promulgated by administrative regulation of the board.

(3) All licenses not renewed by August 31 shall terminate based on the failure of the individual to renew in a timely manner. Upon termination, the licensee is no longer eligible to practice in the Commonwealth.

(4) After the sixty (60) day grace period, but before five (5) years from the date of termination, individuals with a terminated license may have their licenses reinstated upon payment of the renewal fee plus a reinstatement fee as promulgated by administrative regulation of the board.

(5) A suspended license is subject to expiration and termination and may be renewed as provided in KRS 309.300 to 309.319. Renewal shall not entitle the licensee to engage in the practice of interpreting until the suspension has ended or is otherwise removed by the board and the right to practice is restored by the board.

(6) A revoked license is subject to expiration and termination but shall not be renewed. If it is reinstated, the licensee shall pay the reinstatement fee as set forth in subsection (4) of this section and the renewal fee as set forth in subsection (1) of this section.

(7) The board may require that a person applying for renewal or reinstatement of licensure show evidence of completion of continuing education as prescribed by the board by administrative regulation.

(Enact. Acts 1998, ch. 11, § 9, effective July 15, 1998.)

309.316. Classification of offenses — Investigation of wrongdoing — Hearing — Sanctions — Hearing for denial of application.

(1) The board shall by administrative regulation classify types of offenses and the recommended administrative action. The type of action to be taken shall be based on the nature, severity, and frequency of the offense. Administrative action authorized in this section shall be in addition to any criminal penalties provided in KRS 309.300 to 309.319 or under other provisions of law.

(2) The board may investigate allegations of wrongdoing upon complaint or upon its own volition. The board shall establish procedures for receiving and investigating complaints by administrative regulation.

(3) If the board's investigation reveals evidence supporting the complaint, the board shall set the matter for hearing in accordance with the provisions of KRS Chapter 13B before suspending, revoking, imposing probationary or supervisory conditions or an administrative fine, issuing a written reprimand, or any combination of actions regarding any license under the provisions of this chapter.

(4) If, after an investigation that includes opportunity for the licensee to respond, the board determines that a violation took place but was not of a serious nature, it may issue a written admonishment to the licensee. A copy of the admonishment shall be placed in the permanent file of the licensee. The licensee shall have the right to file a response to the admonishment within thirty (30) days of its receipt and to have the response placed in the permanent licensure file. The licensee may alternatively, within thirty (30) days of the receipt, file a request for hearing with the board. Upon receipt of this request, the board shall set aside the written admonishment and set the matter for hearing under the provisions of KRS Chapter 13B.

(5) After denying an application under the provisions of KRS 309.300 to 309.319, the board may grant a hearing to the denied applicant in accordance with the provisions of KRS Chapter 13B.

(Enact. Acts 1998, ch. 11, § 10, effective July 15, 1998.)

309.318. Board's disciplinary powers — Reasons for sanctions — Appeal to Franklin Circuit Court.

(1) The board may refuse to issue a license or suspend, revoke, impose probationary conditions upon, impose an administrative fine, issue a written reprimand, or any combination thereof regarding any licensee upon proof that the licensee has:

(a) Been convicted of a crime as described in KRS 335B.010(4) or an offense that otherwise directly relates to the occupation of interpreter. A plea of "no contest" may be treated as a conviction for purposes of disciplinary action;

(b) Knowingly misrepresented or concealed a material fact in obtaining a license or in reinstatement thereof;

(c) Committed any fraudulent act or practice;

(d) Been incompetent or negligent in the practice of interpreting;

(e) Violated any state statute or administrative regulation governing the practice of interpreting;

(f) Violated the code of ethics of the national organization issuing the licensee's certification as incorporated in administrative regulation; or

(g) Violated any federal or state law considered by the board to be applicable to the practice of interpreting.

(2) When the board issues a written reprimand to the licensee, a copy of the reprimand shall be placed in the permanent file of the licensee. The licensee shall have the right to submit a response within thirty (30) days of its receipt and to have that response filed in the permanent file.

(3) At any time during the investigative or hearing processes, the board may accept an assurance of voluntary compliance from the licensee which effectively deals with the complaint.

(4) The board may reconsider, modify, or reverse its probation, suspensions, or other disciplinary action.

(5) Five (5) years from the date of a revocation, any person whose license has been revoked may petition the board for reinstatement. The board shall investigate the petition and may reinstate the license upon a finding that the individual has complied with any terms prescribed by the board and is again able to competently engage in the practice of interpreting.
(6) Any party aggrieved by a disciplinary action of the board may bring an action in Franklin Circuit Court in accordance with the provisions of KRS Chapter 13B.
(Enact. Acts 1998, ch. 11, § 11, effective July 15, 1998.)

309.319. Penalty.
Any person who shall violate or aid in the violation of any of the provisions of KRS 309.301 shall be guilty of a Class B misdemeanor.
(Enact. Acts 1998, ch. 11, § 12, effective July 15, 1998.)

CHAPTER 319

PSYCHOLOGISTS

SECTION.
319.010. Definitions.
319.015. Activities not included in practice of psychology.

319.010. Definitions.
As used in this chapter unless the context requires otherwise:
(1) "Association" means the Kentucky Psychological Association;
(2) "Board" means the Kentucky Board of Examiners of Psychology;
(3) "Credential holder" means any person who is regulated by the board;
(4) "EPPP" means the Examination for Professional Practice in Psychology developed by the Association of State and Provincial Psychology Boards;
(5) "License" means the credential issued by the board to a licensed psychologist, licensed psychological practitioner, certified psychologist with autonomous functioning, certified psychologist, or a licensed psychological associate;
(6) "Practice of psychology" means rendering to individuals, groups, organizations, or the public any psychological service involving the application of principles, methods, and procedures of understanding, predicting, and influencing behavior, such as the principles pertaining to learning, perception, motivation, thinking, emotions, and interpersonal relationships; the methods and procedures of interviewing, counseling, and psychotherapy; of constructing, administering, and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotion, and motivation. The application of said principles in testing, evaluation, treatment, use of psychotherapeutic techniques, and other methods includes, but is not limited to: diagnosis, prevention, and amelioration of adjustment problems and emotional, mental, nervous, and addictive disorders and mental health conditions of individuals and groups; educational and vocational counseling; the evaluation and planning for effective work and learning situations; and the resolution of interpersonal and social conflicts;
(7) "Psychotherapy" means the use of learning, conditioning methods, and emotional reactions, in a professional relationship, to assist a person or persons to modify feelings, attitudes, and behavior which are intellectually, socially, or emotionally maladjustive or ineffectual; and
(8) "Psychologist" means any person who holds himself or herself out by any title or description of services incorporating the words "psychologic," "psychological," "psychologist," "psychology," "psychopractice," or any other term or terms that imply he or she is trained, experienced, or an expert in the field of psychology.
(Enact. Acts 1948, ch. 169, § 1; 1964, ch. 154, § 1; 1986, ch. 128, § 2, effective July 15, 1986; 2001, ch. 80, § 2, effective June 21, 2001.)

Opinions of Attorney General. This section exempts from the definition of psychology and, therefore, from the licensing requirements of KRS Chapter 319, "the teaching of principles of psychology for accredited educational institutions," a fortiori, the teaching of the principles of psychotherapy for accredited educational institutions is similarly exempted and no further licensing would be required. OAG 80-326.

A practitioner of "thanatology," which is described as the counseling and helping of families to cope with the news that a loved one is terminally ill and to help said families after the death of the loved one, should either be a licensed physician or a licensed social worker. A licensed psychologist is also probably legally qualified to practice "thanatology." OAG 83-402.

Cited: Mosley v. Commonwealth, 420 S.W.2d 679 (Ky. 1967).

Collateral References. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, § 11.

319.015. Activities not included in practice of psychology.
Nothing in this chapter shall be construed to limit:
(1) The activities, services, and use of title on the part of a person in the employ of the federal government;
(2) Persons in the employ of accredited institutions of higher education from engaging in the teaching of psychology, the conduct of psychological research, the provision of consultation services to organizations or institutions, or the provision of expert testimony, but not including the delivery or supervision of direct psychological services to individuals or groups;
(3) Persons licensed, certified, or registered under any other provision of the Kentucky Revised Statutes from rendering services consistent with the laws regulating their professional practice and the ethics of their profession. They shall not represent themselves to be psychologists or use the term "psychological" in describing their services;
(4) The activities of a student, intern, or resident in psychology, pursuing a course of study approved by the department of psychology of an educational

institution rated acceptable by the board for qualifying training and experience, provided such activities are recognized by transcript as a part of his or her supervised course of study;

(5) The recognized educational activities of teachers in accredited public and private schools, the authorized duties of guidance counselors who are certified by the Education Professional Standards Board, or the activities of persons using psychological techniques in business and industrial organizations for employment placement, promotion, or job adjustment of their own officers and employees;

(6) Persons who are credentialed as school psychologists by the Education Professional Standards Board from using the title "school psychologist" and practicing psychology as defined in KRS 319.010, if their practice is restricted to regular employment within a setting under the purview of the Education Professional Standards Board. These individuals shall be employees of the educational institution and not independent contractors providing psychological services to educational institutions;

(7) A duly ordained minister, priest, rabbi, Christian Science practitioner, or other clergyman from carrying out his or her responsibilities while functioning in a ministerial capacity within a recognized religious organization serving the spiritual needs of its constituency, if he or she does not hold himself or herself out as a psychologist; or

(8) Any nonresident temporarily employed in this state from rendering psychological services for not more than thirty (30) days every two (2) years, if he or she holds a valid current license or certificate as a psychologist in his or her home state or country and registers with the board prior to commencing practice in the Commonwealth.

(Enact. Acts 1964, ch. 154, § 15; 1986, ch. 128, § 3, effective July 15, 1986; 1992, ch. 104, § 2, effective July 14, 1992; 1996, ch. 362, § 6, effective July 15, 1996; 2001, ch. 80, § 3, effective June 21, 2001; 2002, ch. 79, § 10, effective July 15, 2002.)

Opinions of Attorney General. A person employed as a school psychologist is not within the group of school personnel excluded from the provisions of this chapter by subsection (4) of this section and must be licensed under this chapter in order to be employed as a school psychologist. OAG 67-180.

The members of the staff of the Reading Research Institute of Berea College are not required to be licensed as psychologists under KRS Chapter 319 in order to be authorized to administer tests to students to carry on the work of the institute, since such work is not against the public interest and constitutes the conduct of research in problems of human behavior and subsection (1) of this section exempts from licensure the activities of a person in the employ of an accredited institution of higher education to the extent that such activities are a part of such person's official duties. OAG 68-209.

Unless the Board of Examiners of Psychologists grants an exception or the statute is amended, a school psychologist must have both a psychologist's license and a state Department of Education certificate. OAG 74-5.

CHAPTER 322

PROFESSIONAL ENGINEERS AND LAND SURVEYORS

SECTION.

ENGINEERS AND SURVEYORS

322.010. Definitions for chapter.
322.020. Practice of engineering or land surveying without license prohibited.
322.360. Public work required to be done under professional engineer or licensed architect.

PENALTIES

322.990. Penalties.

ENGINEERS AND SURVEYORS

322.010. Definitions for chapter.

As used in this chapter, unless the context requires otherwise:

(1) "Board" means the State Board of Licensure for Professional Engineers and Land Surveyors;

(2) "Engineer" means a person who is qualified to engage in the practice of professional engineering by reason of special knowledge and use of:

(a) The mathematical, physical, and engineering sciences; and

(b) The principles and methods of engineering analysis and design, acquired by engineering education and practical engineering experience;

(3) "Professional engineer" means a person who is licensed as a professional engineer by the board;

(4) "Engineering" means any professional service or creative work, the adequate performance of which requires engineering education, training, and experience as an engineer.

(a) "Engineering" shall include:

1. Consultation, investigation, evaluation, planning, certification, and design of engineering works and systems;

a. Engineering design and engineering work associated with design/build projects;

b. Engineering works and systems which involve earth materials, water or other liquids, and gases;

c. Planning the use of land, air, and waters; and

d. Performing engineering surveys and studies;

2. The review of construction for the purpose of assuring compliance with drawings and specifications; any of which embraces this service or work, either public or private, in connection with any utilities, structures, certain buildings, building systems, machines, equipment, processes, work systems, or projects with which the public

welfare or the safeguarding of life, health, or property is concerned, when that professional service or work requires the application of engineering principles and data;

3. The teaching of engineering design courses in any program accredited by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology or any engineering program deemed equivalent by the board;
4. The negotiation or solicitation of engineering services on any project in this state, regardless of whether the persons engaged in the practice of engineering:
   a. Are residents of this state;
   b. Have their principal place of business in this state; or
   c. Are in responsible charge of the engineering services performed; and
5. The services of a professional engineer who engages in the practice of land surveying incident to the practice of engineering that does not relate to the location or determination of land boundaries.

(b) "Engineering" shall not include the professional services performed by persons who:
1. Develop or administer construction project safety programs, construction safety compliance, construction safety rules or regulations, or related administrative regulations; or
2. Only operate or maintain machinery or equipment;

(5) "Practice of engineering" means the performance of any professional service included in subsection (4)(a) of this section;

(6) "Engineer in training" means a person who has passed the Fundamentals of Engineering Examination and is otherwise qualified to earn experience toward licensure as a professional engineer;

(7) "Responsible charge of engineering" means direct control and personal supervision of engineering, or teaching experience with the rank equivalent to assistant professor or higher in a board-approved engineering program;

(8) "Land surveyor" means a person who is qualified to engage in the practice of land surveying by reason of special knowledge and use of mathematics, the physical and applied sciences, and the principles and methods of land surveying, acquired by education and practical experience in land surveying;

(9) "Professional land surveyor" means a person who is licensed as a professional land surveyor by the board;

(10) "Land surveying" means any professional service or work, the adequate performance of which requires the education, training, and experience as a land surveyor.

(a) "Land surveying" shall include, but not be limited to, the following:
1. Measuring and locating, establishing, or reestablishing lines, angles, elevations, natural and man-made features in the air, on the surface and immediate subsurface of the earth, within underground workings, and on the beds or surfaces of bodies of water involving the:
   a. Determination or establishment of the facts of size, shape, topography, and acreage;
   b. Establishment of photogrammetric and geodetic control that is published and used for the determination, monumentation, or description of property boundaries;
   c. Subdivision, division, and consolidation of lands;
   d. Measurement of existing improvements, including condominiums, after construction and the preparation of plans depicting existing improvements, if the improvements are shown in relation to property boundaries;
   e. Layout of proposed improvements, if those improvements are to be referenced to property boundaries;
   f. Preparation of physical written descriptions for use in legal instruments of conveyance or real property and property rights;
   g. Preparation of subdivision record plats;
   h. Determination of existing grades and elevations of roads and land;
   i. Creation and perpetuation of alignments related to maps, record plats, field note records, reports, property descriptions, and plans and drawings that represent them; and
   j. Certification of documents; and
2. The negotiation or solicitation of land surveying services on any project in this state, regardless of whether the persons engaged in the practice of land surveying:
   a. Are residents of this state;
   b. Have their principal office or place of business in this state; or
   c. Are in responsible charge of the land surveying services or work performed.

(b) "Land surveying" shall not include:
1. The measurement of crops or agricultural land area under any agricultural program sponsored by an agency of the federal government or the state of Kentucky;
2. The services of a professional engineer who engages in the practice of land surveying incident to the practice of engineering, if the land surveying work does not relate to the location or determination of land boundaries; or
3. The design of grades and elevations of roads and land;

(11) "Practice of land surveying" means the performance of any professional service included in subsection (10)(a) of this section;

(12) "Land surveyor in training" means a person who has passed the Fundamentals of Land Surveying Examination and is otherwise qualified to earn experience toward licensure as a professional land surveyor;
(13) "Responsible charge of land surveying" means direct control and personal supervision of land surveying, or teaching experience with the rank equivalent to assistant professor or higher in a board-approved land surveying program;
(14) "Business entity" means a corporation, partnership, or firm;
(15) "Offer to practice" means:
(a) A promise or commitment to engage in any act directly related to engineering or land surveying;
(b) Undertaking to engage in the practice of engineering or land surveying; or
(c) Any claim, express or implied, by any person representing himself or herself to be a professional engineer or professional land surveyor;
(16) "Certification" means affixing a seal or stamp, signature, and date by a professional engineer or professional land surveyor to represent that the services or work addressed therein was performed by that professional engineer or professional land surveyor according to his or her knowledge, information, and belief, and that it was completed in accordance with applicable standards of practice. "Certification" shall not mean a guaranty or warranty, either express or implied;
(17) The "Fundamentals of Engineering Examination" means the examination with that name developed by the National Council of Examiners for Engineering and Surveying;
(18) The "Fundamentals of Land Surveying Examination" means the examination with that name developed by the National Council of Examiners for Engineering and Surveying;
(19) The "Principles and Practice of Engineering Examination" means the examination with that name developed by the National Council of Examiners for Engineering and Surveying; and
(20) The "Principles and Practice of Land Surveying Examination" means the examination with that name developed by the National Council of Examiners for Engineering and Surveying.
(1599e-2: amend. Acts 1966, ch. 68, § 1; 1972, ch. 148, § 1; 1974, ch. 308, § 55; 1974, ch. 350, § 1; 1980, ch. 332, § 1, effective July 15, 1980; 1982, ch. 273, § 1, effective July 15, 1982; 1986, ch. 291, § 1, effective July 15, 1986; 1992, ch. 96, § 1, effective July 14, 1992; 1998, ch. 214, § 1, effective January 1, 1999.)

322.020. Practice of engineering or land surveying without license prohibited.
(1) Unless licensed as a professional engineer, no person shall:
(a) Engage in the practice of engineering;
(b) Offer to practice engineering; or
(c) Use, assume, or advertise in any way any title or description tending to convey the impression that he or she is a professional engineer.
(2) Unless licensed as a professional land surveyor, no person shall:
(a) Engage in the practice of land surveying;
(b) Offer to practice land surveying; or
(c) Use, assume, or advertise in any way any title or description tending to convey the impression that he or she is a professional land surveyor.
(1599e-1, 1599e-12, 1599e-21: amend. Acts 1972, ch. 148, § 2; 1986, ch. 291, § 2, effective July 15, 1986; 1998, ch. 214, § 3, effective January 1, 1999.)

322.360. Public work required to be done under professional engineer or licensed architect.
(1) Neither the state nor any of its political subdivisions shall engage in the construction of any public work involving engineering, unless the plans, specifications, and estimates have been prepared and the construction executed under the direct supervision of a professional engineer or a licensed architect.
(2) Subsection (1) of this section shall not apply to any public work, including a highway or capital project under KRS 56.491, that involves only maintenance or repair of the facility. Maintenance or repair shall not include any work which alters, modifies, or changes the original characteristics of the design.
(1599e-18: amend. Acts 1972, ch. 247, § 2; 1974, ch. 74, Art. II, § 9(1); 1986, ch. 291, § 31, effective July 15, 1986; 1998, ch. 214, § 31, effective January 1, 1999.)

Cross-References. Capital construction process, 702 KAR 4:160.

PENALTIES

322.990. Penalties.
Any person who violates any provision of this chapter shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or be imprisoned not more than three (3) months, or both.
(1599e-21: amend. Acts 1986, ch. 291, § 38, effective July 15, 1986; 1998, ch. 214, § 40, effective January 1, 1999.)

CHAPTER 323

ARCHITECTS

SECTION.
323.010. Definitions.
323.020. License required.
323.031. Applicability of chapter.
323.033. Buildings requiring services of licensed architect.
323.050. Qualifications for license — Examinations.
323.060. Persons who may be licensed without examination.
323.080. Fees.

PENALTIES

323.990. Penalties.

323.010. Definitions.

As used in this chapter, unless the context requires otherwise:

(1) "Board" means the Kentucky Board of Architects.

(2) An "architect" is any person who engages in the practice of architecture as hereinafter defined;

(3) The "practice of architecture" is the rendering or offering to render certain services, hereinafter described, in connection with the design and construction of a structure or group of structures which have as their principal purpose human habitation or use, and the utilization of space within and surrounding such structures. The services referred to in the previous sentence include planning, providing preliminary studies, designs, drawings and specifications, and administration of construction contracts;

(4) A "building" is a structure which has as its principal purpose human habitation or use;

(5) "Use group" is the classification of a building or structure based on the purpose for which it is used, as set forth in the Kentucky Building Code;

(6) "Consultant" is an individual, partnership, or firm acting subordinately and in a position of service to an architect engaged in the practice of architecture as defined; and

(7) "Administration of construction contracts" means:

(a) Conducting periodic site visits;

(b) Reviewing shop drawings and reviewing other submittals required of the contractor by the terms of the construction contract documents;

(c) Reporting to the owner any violations of applicable building codes and any substantial deviations from the contract documents that the architect observes; or

(d) Reporting to the building official any violations of applicable building codes that the architect observes.

(Enact. Acts 1960, ch. 218, § 1; 1980, ch. 332, § 3, effective July 15, 1980; 2002, ch. 111, § 1, effective July 15, 2002.)

Cross-References. Architect may perform engineering work incidentally, KRS 322.030.

Cited: Board of Educ. v. Elliott, 276 Ky. 790, 125 S.W.2d 733 (1939).

323.020. License required.

Except as otherwise provided hereinafter, no person shall practice architecture in the Commonwealth of Kentucky without first obtaining a license under the provisions of this chapter, it being the purpose of this chapter to safeguard the life, health, property and welfare of the public.

(73-1: amend. Acts 1960, ch. 218, § 2.)

NOTES TO DECISIONS

1. Purpose.

The purpose of this chapter is to safeguard life, health and property and to promote public welfare, and for that reason an unlicensed architect cannot enforce a contract for services as an architect. Board of Educ. v. Elliott, 276 Ky. 790, 125 S.W.2d 733 (1939).

323.031. Applicability of chapter.

(1) If the drawings and specifications are signed by the author thereof with the true titles of their occupations as may be required by law, this chapter does not apply to:

(a) Any building which is to be used for farm purposes only;

(b) Any building classified by use group other than those listed under KRS 323.033;

(c) Any structure not classified as a building by KRS 323.010(4).

(2) Provisions of this chapter shall not apply to:

(a) Any individual, partnership, or firm acting solely as a consultant to an architect licensed in the Commonwealth;

(b) An architect or other person acting solely as an officer or employee of the United States government.

(3) A licensed professional engineer may prepare plans and specifications for and supervise the construction of structures as an incident to the practice of his own profession.

(Enact. Acts 1980, ch. 332, § 5, effective July 15, 1980; 1990, ch. 190, § 1, effective July 13, 1990.)

323.033. Buildings requiring services of licensed architect.

(1) Except as otherwise provided in this section, the following buildings, or additions to existing buildings, classified by use group shall require the services of an architect licensed in the Commonwealth of Kentucky;

(a) Assembly use group having a capacity of one hundred (100) persons or more, except church buildings having a capacity of four hundred (400) persons or less or six thousand (6,000) square feet or less;

(b) Business use group having a capacity of one hundred (100) persons or more;

(c) Institutional use group, regardless of capacity;

(d) Mercantile use group having a capacity of one hundred (100) persons or more;

(e) Residential use group of more than twelve (12) dwelling units or having a capacity of fifty (50) persons or more;

(f) Educational use groups regardless of capacity; and

(g) Mixed use group containing one (1) or more of the use group classifications and capacities listed under paragraphs (a) through (f) of this subsection.

(2) Alterations or new construction requiring compliance with the Kentucky Building Code for any building containing one (1) or more of the use group classifications and capacities listed under subsection (1) of this section shall require the services of an architect licensed in the Commonwealth of Kentucky; except that, when such alterations or new construction predominantly involve primarily structural components or mechanical or electrical systems, services may be performed by one (1) or more licensed professional engineers.

(3) Buildings, or additions to existing buildings, containing one (1) or more of the use group classifica-

tions and capacities listed under subsection (1) of this section shall require, in addition to the services of an architect, the services of one (1) or more licensed engineers.

(4) The following buildings and additions to existing buildings, classified by use group, shall require the services of either an architect or a professional engineer registered in the Commonwealth of Kentucky:
   (a) Factory and industrial use group having a capacity of one hundred (100) persons or more;
   (b) High hazard use group, regardless of capacity;
   (c) Storage use group having a capacity of one hundred (100) persons or more; and
   (d) Utility and miscellaneous use groups having a capacity of one hundred (100) persons or more.

(5) The services required in subsections (1) to (4) of this section shall include the administration of construction contracts.

(Enact. Acts 1980, ch. 332, § 4, effective July 15, 1980; 1990, ch. 190, § 2, effective July 13, 1990; 2002, ch. 111, § 8, effective July 15, 2002.)

323.050. Qualifications for license — Examinations.

(1) Except as otherwise provided in this chapter, an applicant seeking to obtain a license to practice architecture in Kentucky shall satisfactorily pass the examination that is prescribed by the board.

(2) Every applicant for examination shall:
   (a) Be of good moral character; and
   (b) Hold a professional degree in architecture accredited by the National Architectural Accrediting Board (NAAB), or its equivalent as determined by administrative regulations promulgated by the board, with such additional experience as the board may prescribe and approve.

(3) Examinations shall be available on a regular basis at a place identified by the testing service and shall be given in accordance with the terms and conditions agreed upon by the board and the testing service. Procedures concerning the examination shall be set out in administrative regulations promulgated by the board.

(73-5: amend. Acts 1960, ch. 218, § 4; 1972, ch. 201, § 1; 1990, ch. 190, § 3, effective July 13, 1990; 1996, ch. 23, § 1, effective July 15, 1996; 2002, ch. 111, § 2, effective July 15, 2002.)

323.060. Persons who may be licensed without examination.

Any person who is a licensed architect in another state or country where the qualifications prescribed at the time of licensing were, in the opinion of the board, equal to those prescribed in the Commonwealth at the date of application, and where reciprocal licensing privileges satisfactory to the board are granted to licensees of the Commonwealth, may be granted a license without an examination.

(73-5: amend. Acts 1960, ch. 218, § 5.)

NOTES TO DECISIONS

1. Construction.

This section means that the board shall form an opinion as to the applicant's qualifications on the basis of the data submitted with the application and such independent investigation as the board may consider necessary to establish the truth of the facts stated in the application concerning the extent, nature, and quality of the work the applicant has performed. Baker v. Commonwealth, 272 S.W.2d 803 (Ky. 1954).

323.080. Fees.

(1) The board shall promulgate administrative regulations that establish fees for the following services. These fees shall not exceed the following:

(a) For processing the application for the examination	$100
(b) For a license certificate upon satisfactorily passing the examination	25
(c) For the restoration of a voluntarily surrendered license	150
(d) For a license to an architect satisfactorily licensed in another state or country	200
(e) For reinstatement of a license revoked for failure to pay the annual renewal fee or suspended by the board, in addition to application and arrears as determined by the board	150
(f) Renewal certificate	150

(2) The proper fee as prescribed above shall be paid to the board, and shall not be refunded in whole or in part.

(3) The cost of taking the examination shall be borne by the applicant.

(73-11, 73-13: amend. Acts 1960, ch. 218, § 6; 1972, ch. 201, § 2; 1990, ch. 190, § 4, effective July 13, 1990; 1996, ch. 23, § 2, effective July 15, 1996.)

PENALTIES

323.990. Penalties.

Any person who violates any provision of this chapter shall be fined not less than five hundred dollars ($500) nor more than three thousand dollars ($3,000), or imprisoned not more than three (3) months, or both.

(73-14: amend. Acts 1960, ch. 218, § 22; 1990, ch. 190, § 14, effective July 13, 1990.)

CHAPTER 332

DRIVER TRAINING SCHOOLS AND INSTRUCTORS

SECTION.

332.110. [Repealed, reenacted and amended.]

332.110. Application of chapter. [Repealed, reenacted and amended.]

Compiler's Notes. This section (Acts 1966, ch. 63, § 2; 1976, ch. 245, § 1; 1997 (1st Ex. Sess.), ch. 1, § 146, effective May 30, 1997) was repealed, reenacted and amended as KRS 165A.515 by Acts 2002, ch. 280, § 14, effective April 9, 2002.

CHAPTER 334A

SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

SECTION.

334A.020. Definitions for chapter.
334A.030. License required for speech-language pathology or audiology.
334A.033. License for speech-language pathology assistant — Requirements for licensure — Supervision requirements.
334A.035. Interim licenses.
334A.050. Qualifications of applicant for license.
334A.060. Licensure without examination.
334A.160. Maximum fees prescribed for licenses.
334A.170. Renewal of licenses — Fees.
334A.190. Caseload limitations for speech-language pathologists in the public schools.
334A.990. Penalty.

334A.020. Definitions for chapter.

As used in this chapter, unless the context otherwise requires:

(1) "Board" means the Kentucky Board of Speech-Language Pathology and Audiology;

(2) "Person" means any individual, organization, or corporate body, except that only individuals can be licensed under this chapter;

(3) "Speech-language pathologist" means one who practices speech-language pathology. A speech-language pathologist may describe himself to the public by any title or description of services incorporating the words "speech-language pathologist," "speech-language pathology," "speech-language therapy," "speech-language correction," "speech-language correctionist," "speech-language therapist," "speech clinic," "speech clinician," "language pathologist," "language pathology," "language therapist," "logopedics," "logopedist," "communicology," "communicologist," "aphasiologist," "voice therapy," "voice therapist," "voice pathology," "voice pathologist," "phoniatrist," "communication disorders," or any similar titles or descriptions;

(4) "The practice of speech pathology" means the application of principles, methods, and procedures for the measurement, testing, audiometric screening, identification, appraisal, determination of prognosis, evaluation, consultation, remediation, counseling, instruction, and research related to the development and disorders of speech, voice, verbal and written language, cognition/communication, or oral and pharyngeal sensori-motor competencies for the purpose of designing and implementing programs for the amelioration of these disorders and conditions. Any representation to the public by title or by description of services, methods, or procedures for the evaluation, counseling, remediation consultation, measurement, testing, audiometric screening, identification, appraisal, determination of prognosis, instruction, and research of persons suffering or suspected of suffering from conditions or disorders affecting speech, voice, verbal and written language, cognition/communication, or oral and pharyngeal sensori-motor competencies shall be considered to be the practice of speech-language pathology;

(5) "Audiologist" is defined as one who practices audiology. An audiologist may describe himself to the public by any title or description of services incorporating the words "audiologist," "audiology," "audiological," "hearing center," "hearing clinic," "hearing clinician," "hearing therapist," "audiometry," "audiometrist," "audiometrics," "otometry," "otometrist," or any similar titles or descriptions of service;

(6) "The practice of audiology" means the application of principles, methods, and procedures of measurement, testing, appraisal, prediction, consultation, counseling, and instruction related to hearing and disorders of hearing for the purpose of modifying communicative disorders involving speech, language, auditory behavior, or other aberrant behavior related to hearing loss; planning, directing, conducting, or participating in identification and hearing conservation programs; and habilitative and rehabilitative programs, including hearing aid recommendations and evaluation, auditory training, or speech reading;

(7) "Continuing professional education" in speech-language pathology and audiology consists of planned learning experiences beyond a basic educational program leading to a degree. These experiences are designed to promote knowledge, skills, and attitudes of speech-language pathology and audiology practitioners to enable them to provide improved health care to the public.

(8) "Speech-language pathology assistant" means one who assists in the practice of speech-language pathology only under the supervision and direction of an appropriately qualified supervisor and only within the public school system in the Commonwealth. Any speech pathology services provided without appropriate supervision or outside the public school system shall be deemed to be the unlicensed practice of speech pathology and shall subject the offending party to penalties established pursuant to KRS 334A.990.

(9) "Assisting in the practice of speech pathology" means the provision of certain specific components of a speech or language service program provided by a speech-language pathology assistant under the supervision and direction of an appropriately qualified supervisor.

(a) If the training, supervision, documentation, and planning are appropriate, the following tasks may be delegated to a speech-language pathology assistant:

1. Conduct speech-language and hearing screenings without interpretation following specified screening protocols developed by a speech-language pathologist and audiologist, respectively;
2. Follow documented treatment plans or protocols as prescribed by the supervisor;
3. Document student progress toward meeting established objectives as stated in the treatment plan;
4. Provide direct treatment assistance to identified students under the supervision of the supervisor;

5. Assist with clerical and other related duties as directed by the supervisor;
6. Report to the supervisor about the treatment plan based on a student's performance;
7. Schedule activities, prepare charts, records, graphs, or otherwise display data. This shall not include report generation;
8. Perform simple checks and maintenance of equipment;
9. Participate with the supervisor in research projects, inservice training, and public relations programs;
10. Assist in the development and maintenance of an appropriate schedule for service delivery;
11. Assist in implementing collaborative activities with other professionals;
12. Assist in administering tests for diagnostic evaluations and progress monitoring; and
13. Participate in parent conferences, case conferences, or any interdisciplinary team in consultation with, or in the presence of, the supervisor.

(b) The following activities shall be outside the scope of practice of the speech-language pathology assistant:
1. Performing any activity which violates the code of ethics promulgated by the board by administrative regulation;
2. Interpreting test results, or performing diagnostic evaluations without supervision;
3. Conducting client or family counseling without the recommendation, guidance, and approval of the supervisor;
4. Writing, developing, or modifying a student's individualized treatment plan in any way without the recommendation, guidance, and approval of the supervisor;
5. Treating students without following the individualized treatment plan prepared by the supervisor or without access to supervision;
6. Signing any due process document without the co-signature of the supervisor;
7. Selecting or discharging students;
8. Disclosing clinical or confidential information, either orally or in writing, to anyone not designated by the supervisor;
9. Making referrals for additional services; and
10. Representing himself or herself as something other than a speech-language pathology assistant.

(10) "Supervisor" means a person who holds a Kentucky license as a speech-language pathologist or who holds Education Professional Standards Board master's level certification as a teacher of exceptional children in the areas of speech and communication disorders as established by administrative regulation.

(Enact. Acts 1972, ch. 236, § 2; 1986, ch. 483, § 2, effective July 15, 1986; 1994, ch. 32, § 1, effective July 15, 1994; 2000, ch. 375, § 4, effective July 14, 2000.)

Cross-References. Certificates for teachers of exceptional children — communication disorders, 704 KAR 20:500.

334A.030. License required for speech-language pathology or audiology.

(1) Licensure shall be granted as a speech-language pathologist, speech-language pathology assistant, or audiologist independently. A person may be licensed in more than one (1) area if he meets the respective qualifications.

(2) No person shall practice or represent himself as a speech-language pathologist, speech-language pathology assistant, or audiologist in this state unless he is licensed in accordance with the provisions of this law.

(3) A licensed speech-language pathology assistant employed by a public school shall receive the same salary and benefits available to certified teachers with Rank III and the corresponding years of experience.

(Enact. Acts 1972, ch. 236, § 3; 1986, ch. 483, § 3, effective July 15, 1986; 1994, ch. 32, § 2, effective July 15, 1994.)

Opinions of Attorney General. Speech pathologists and audiologists employed at comprehensive care centers operated by the various regional mental health-mental retardation boards must be licensed pursuant to this section as they are not state employees entitled to exemption under KRS 334A.040(3)(b). OAG 74-384.

NOTES TO DECISIONS

1. Deceptive Practices.

Private trade organization engaged in scheme of certifying people as "certified hearing aid audiologist" knew or should have known that customers would be deceived by use of this term in reference to people who had not met the statutory requirements for audiologist, and thus violated the Consumer Protection Act by the use of false, misleading and deceptive practices. National Hearing Aid Soc'y v. Commonwealth ex rel. Hancock, 551 S.W.2d 247 (Ky. Ct. App. 1977).

334A.033. License for speech-language pathology assistant — Requirements for licensure — Supervision requirements.

(1) The board may issue a license to practice as a speech-language pathology assistant under the following conditions:
(a) The practice shall be limited to the public schools and shall be under the supervision of an appropriately qualified supervisor;
(b) The requirements for supervision shall be set forth in administrative regulations promulgated by the board and shall include requirements that:
1. A person holding an interim license as a speech-language pathology assistant shall receive no less than three (3) hours per week of documented direct supervision and three (3) hours per week of indirect supervision from an appropriate supervisor as determined by the board;
2. A person holding a license as a speech-language pathology assistant with less

than three (3) years of full-time experience shall receive no less than two (2) hours per week of documented direct supervision and two (2) hours per week of indirect supervision from an appropriate supervisor as determined by the board;

3. A person holding a license as a speech-language pathology assistant with three (3) or more years of full-time experience shall receive no less than one (1) hour per week of documented direct supervision and one (1) hour per week of indirect supervision, unless, in the professional judgment of the supervisor, the ability of the speech-language pathology assistant requires a higher level of supervision in order to avoid compromising the quality of services provided to students; and

4. Supervision shall be adjusted proportionally for less than full-time employment;

(c) An individual shall not supervise or be listed as the supervisor for more than two (2) speech-language pathology assistants; and

(d) The supervisor shall delegate to the assistant the appropriate tasks pursuant to KRS 334A.020 and the supervisor and assistant shall work together to provide the appropriate services to all assigned pupils taking into account the severity and complexity of the needs of individual students and the respective workloads of the supervisor and assistant. The maximum number of pupils served by each speech-language pathology assistant shall not exceed the direct service caseload of the speech-language pathologist as established in KRS 334A.190.

(2) To be eligible for licensure by the board as a speech-language pathology assistant, the applicant shall meet the following requirements:

(a) A baccalaureate degree in the area of speech-language pathology as defined by administrative regulation;

(b) Completion of postgraduate professional experience deemed appropriate by the board by administrative regulation; and

(c) List on the application the name of the appropriately qualified supervisor who has agreed to provide supervision as set forth by the board by administrative regulation.

(Enact. Acts 1994, ch. 32, § 4, effective July 15, 1994; 1996, ch. 219, § 1, effective July 15, 1996; 2000, ch. 375, § 7, effective July 14, 2000.)

Cross-References. Certificates for teachers of exceptional children — communication disorders, 704 KAR 20:500.

334A.035. Interim licenses.

(1) A person who has a master's degree in the area of speech-language pathology or audiology or substantive equivalent course work as defined by the board's administrative regulations and who has completed supervised direct clinical practicum with individuals presenting a variety of disorders of communication, the experience being obtained with a training institution or in one (1) of its cooperating programs, shall apply for an interim license during the time that person is completing postgraduate professional experience deemed necessary by the board. This postgraduate professional experience shall be completed under the supervision of a speech-language pathologist who holds a Kentucky license, if the applicant is seeking interim licensure in speech-language pathology, or under an audiologist who holds a Kentucky license, if the applicant is seeking interim licensure in audiology. A person with interim licensure shall make every effort to take and pass an examination approved by the board. Upon completion of postgraduate professional experience deemed necessary by the board, the speech-language pathologist or audiologist shall make immediate application to the board for permanent licensure, if all requirements have been completed satisfactorily, or for renewal of the interim license at the discretion of the board. Failure to do so shall result in forfeiture of the interim license.

(2) A person who has a baccalaureate degree in the area of speech-language pathology as defined by administrative regulation and who does not hold a valid and current master's degree level credential as a speech-hearing specialist issued by the Education Professional Standards Board, shall apply for an interim license as a speech-language pathology assistant during the time that person is completing their professional experience as established by the board by administrative regulation. This professional experience shall be completed under the supervision of an appropriately qualified supervisor. Upon completion of the professional experience, the speech-language pathology assistant shall make immediate application to the board for permanent licensure, if all requirements have been completed satisfactorily, or for renewal of the interim license at the discretion of the board. Failure to do so shall result in forfeiture of the interim license.

(3) In order to regulate the quality of professional service to children in the public schools of the Commonwealth, any speech-language pathologist employed by the public schools shall apply for and maintain appropriate licensure until the time the Kentucky Education Professional Standards Board promulgates an administrative regulation requiring speech-language pathologists to meet the requirements of KRS 334A.050(2)(a) and (b).

(Enact. Acts 1988, ch. 152, § 1, effective March 31, 1988; 1994, ch. 32, § 3, effective July 15, 1994; 2000, ch. 375, § 5, effective July 14, 2000.)

Cross-References. Certificates for teachers of exceptional children — communication disorders, 704 KAR 20:500.

334A.050. Qualifications of applicant for license. To be eligible for licensure by the board as a speech-language pathologist or audiologist, the applicant must:

(1) Be a citizen of the United States or have declared his intention to become a citizen. A statement by

the applicant under oath that he is a citizen or that he intends to apply for citizenship when he becomes eligible to make application shall be sufficient proof of compliance with this subsection;

(2) Show evidence of meeting the following professionally accepted academic and practicum standards:
   (a) Master's degree in the area of speech-language pathology or audiology or substantive equivalent. The specific course work for this requirement is to be determined by the board and delineated in the administrative regulations;
   (b) Completion of supervised direct clinical practicum with individuals presenting a variety of disorders of communication, the experience being obtained with the training institution or in one (1) of its cooperating programs; and
   (c) Completion of postgraduate professional experience as deemed necessary by the board; and

(3) Pass the national examinations in speech-language pathology or audiology which are approved by the American Speech and Hearing Association and in effect at the time of application for licensure. Written examinations may be supplemented by such oral examinations as the board shall determine. An applicant who fails his examination may be reexamined at a subsequent examination upon payment of another licensing fee.

(Enact. Acts 1972, ch. 236, § 5; 1978, ch. 384, § 109, effective June 17, 1978; 1986, ch. 483, § 5, effective July 15, 1986; 1988, ch. 152, § 3, effective March 31, 1988.)

334A.060. Licensure without examination.

(1) The board may waive the examination and grant a license to applicants who present proof of current licensure in a state which has standards that are at least equivalent to those of this state.

(2) The board may waive the examination and grant a license to those who hold the Certificate of Clinical Competence of the American Speech and Hearing Association in the area for which they are applying for licensure.

(Enact. Acts 1972, ch. 236, § 6; 1986, ch. 483, § 6, effective July 15, 1986; 1988, ch. 152, § 4, effective March 31, 1988; 1994, ch. 32, § 5, effective July 15, 1994; 2000, ch. 375, § 6, effective July 14, 2000.)

Cross-References. Certificates for teachers of exceptional children — communication disorders, 704 KAR 20:500.

334A.160. Maximum fees prescribed for licenses.

The amount of fees prescribed in connection with a license as a speech-language pathologist, speech-language pathology assistant, or audiologist shall be as follows:

(1) The initial license fee for licensure as a speech-language pathologist or an audiologist shall not exceed one hundred dollars ($100);

(2) The delinquency fee for all credentials shall not exceed twenty dollars ($20);

(3) The application fee for all credentials shall not exceed fifty dollars ($50);

(4) The inactive license fee for all credentials shall not exceed ten dollars ($10);

(5) The speech-language pathology assistant license fee shall not exceed seventy-five dollars ($75); and

(6) The interim license fee shall not exceed seventy-five dollars ($75).

(Enact. Acts 1972, ch. 236, § 16; 1986, ch. 483, § 11, effective July 15, 1986; 1988, ch. 152, § 6, effective March 31, 1988; 1994, ch. 32, § 6, effective July 15, 1994.)

334A.170. Renewal of licenses — Fees.

(1) Each licensed speech-language pathologist, speech-language pathology assistant, or audiologist shall annually, on or before January 30, pay to the board a renewal fee not to exceed seventy-five dollars ($75) for a renewal of his license. A thirty (30) day grace period shall be allowed after January 30, during which time licenses may be renewed on payment of a renewal fee plus grace period fee which combined shall not exceed ninety dollars ($90). After expiration of the grace period, the board may renew each license upon payment of a renewal fee plus a delinquency fee which combined shall not exceed one hundred twenty-five dollars ($125). No person who applies for renewal, whose license has expired, shall be required to submit to any examination as a condition to renewal, if the renewal application is made within five (5) years from the date of expiration.

(2) A suspended license is subject to expiration and shall be renewed as provided in this chapter, but the renewal shall not entitle the licensee, while the license remains suspended and until it is reinstated, to engage in the licensed activity, or in any other activity or conduct in violation of the order of judgment by which the license was suspended. A license revoked on disciplinary grounds shall be subject to expiration as provided in this chapter, but it shall not be renewed. If it is reinstated after its expiration, the licensee, as a condition of reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last preceding regular renewal date before the date on which it is reinstated, plus the delinquency fee, if any, accrued at the time of its revocation.

(3) A person who fails to renew his license within the five (5) years after its expiration may not renew it, and it shall not be restored, reissued, or reinstated thereafter. The person may apply for and obtain a new license if he meets the requirements of this chapter.

(4) A person applying for renewal of licensure shall show evidence of completion of continuing professional education in speech-language pathology or audiology as prescribed by the board by administrative regulation.

(Enact. Acts 1976, ch. 305, § 7; 1980, ch. 280, § 15, effective July 1, 1982; 1986, ch. 423, § 192, effective July 1, 1987; 1988, ch. 152, § 7, effective March 31, 1988; 1994, ch. 32, § 7, effective July 15, 1994.)

334A.190. Caseload limitations for speech-language pathologists in the public schools.

(1) The caseload limitations for speech-language pathologists in the public schools shall not exceed sixty-five (65) pupils.

(2) The total caseload of speech-language pathologists who supervise assistants may be increased by no more than one-half (½) of the amount set forth in subsection (1) of this section for each speech-language pathology assistant working under their supervision.

(Enact. Acts 1996, ch. 219, § 2, effective July 15, 1996; 2000, ch. 375, § 8, effective July 14, 2000.)

Cross-References. Certificates for teachers of exceptional children — communication disorders, 704 KAR 20:500.

334A.990. Penalty.

(1) Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six (6) months, or by a fine not exceeding one thousand dollars ($1,000) or by both.

(2) When any person other than a licensed speech-language pathologist, speech-language pathology assistant, or audiologist has engaged in any act or practice which constitutes an offense against this chapter, the Franklin Circuit Court, on application of the board, may issue an injunction or other appropriate order restraining the conduct.

(Enact. Acts 1972, ch. 236, § 19; 1986, ch. 483, § 13, effective July 15, 1986; 1994, ch. 32, § 8, effective July 15, 1994.)

TITLE XXVII

LABOR AND HUMAN RIGHTS

CHAPTER 337

WAGES AND HOURS

SECTION.
337.010. Definitions for chapter and specific ranges in chapter.

EMPLOYMENT AND VOLUNTEER FIREFIGHTING

337.100. Volunteer firefighter, rescue squad member, emergency medical technician, peace officer, or emergency management agency member absent from employment due to emergency.

PUBLIC WORKS

337.505. Definition of "prevailing wage," fringe benefits included.
337.510. Public authority's duties as to inclusion of prevailing wage in proposals and contracts.
337.512. Duties of individual officers with respect to prevailing wage law.
337.520. Determination of prevailing wages — Administrative regulations — Filing wage contract.
337.522. Hearings — Publication of determination — Revisions — Prevailing wage review boards attached to Labor Cabinet for administrative purposes.
337.524. Which rates to apply while review is pending.
337.525. Judicial review.
337.530. Contractor to pay prevailing wages and post rates — Payroll records — On-site inspections.
337.550. Department to aid in enforcement — Remedies of laborer.

PENALTIES

337.990. Penalties.

337.010. Definitions for chapter and specific ranges in chapter.

(1) As used in this chapter, unless the context requires otherwise:

(a) "Commissioner" means commissioner of the Department of Workplace Standards under the direction and supervision of the secretary of the Labor Cabinet;

(b) "Department" means Department of Workplace Standards in the Labor Cabinet;

(c) "Wages" includes any compensation due to an employee by reason of his employment, including salaries, commissions, vested vacation pay, overtime pay, severance or dismissal pay, earned bonuses, and any other similar advantages agreed upon by the employer and the employee or provided to employees as an established policy. The wages shall be payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to the allowances made in this chapter;

(d) "Employer" is any person, either individual, corporation, partnership, agency, or firm who employs an employee and includes any person, either individual, corporation, partnership, agency, or firm acting directly or indirectly in the interest of an employer in relation to an employee; and

(e) "Employee" is any person employed by or suffered or permitted to work for an employer.

(2) As used in KRS 337.275 to 337.325, 337.345, and KRS 337.385 to 337.405, unless the context requires otherwise:

(a) "Employee" is any person employed by or suffered or permitted to work for an employer, but shall not include:

1. Any individual employed in agriculture;
2. Any individual employed in a bona fide executive, administrative, supervisory, or professional capacity, or in the capacity of outside salesman, or as an outside collector as the terms are defined by administrative regulations of the commissioner;
3. Any individual employed by the United States;
4. Any individual employed in domestic service in or about a private home. The

provisions of this section shall include individuals employed in domestic service in or about the home of an employer where there is more than one (1) domestic servant regularly employed;

5. Any individual classified and given a certificate by the commissioner showing a status of learner, apprentice, worker with a disability, sheltered workshop employee, and student under administrative procedures and administrative regulations prescribed and promulgated by the commissioner. This certificate shall authorize employment at the wages, less than the established fixed minimum fair wage rates, and for the period of time fixed by the commissioner and stated in the certificate issued to the person;
6. Employees of retail stores, service industries, hotels, motels, and restaurant operations whose average annual gross volume of sales made for business done is less than ninety-five thousand dollars ($95,000) for the five (5) preceding years exclusive of excise taxes at the retail level or if the employee is the parent, spouse, child, or other member of his employer's immediate family;
7. Any individual employed as a baby-sitter in an employer's home, or an individual employed as a companion by a sick, convalescing, or elderly person or by the person's immediate family, to care for that sick, convalescing, or elderly person and whose principal duties do not include housekeeping;
8. Any individual engaged in the delivery of newspapers to the consumer;
9. Any individual subject to the provisions of KRS Chapters 7, 16, 27A, 30A, and 18A provided that the secretary of the Personnel Cabinet shall have the authority to prescribe by administrative regulation those emergency employees, or others, who shall receive overtime pay rates necessary for the efficient operation of government and the protection of affected employees;
10. Any employee employed by an establishment which is an organized nonprofit camp, religious, or nonprofit educational conference center, if it does not operate for more than seven (7) months in any calendar year; or
11. Any employee whose function is to provide twenty-four (24) hour residential care on the employer's premises in a parental role to children who are primarily dependent, neglected, and abused and who are in the care of private, nonprofit childcaring facilities licensed by the Cabinet for Families and Children under KRS 199.640 to 199.670.

(b) "Agriculture" means farming in all its branches, including cultivation and tillage of the soil; dairying; production, cultivation, growing, and harvesting of any agricultural or horticultural commodity; raising of livestock, bees, furbearing animals, or poultry; and any practice, including any forestry or lumbering operations, performed on a farm in conjunction with farming operations, including preparation and delivery of produce to storage, to market, or to carriers for transportation to market;

(c) "Gratuity" means voluntary monetary contribution received by an employee from a guest, patron, or customer for services rendered;

(d) "Tipped employee" means any employee engaged in an occupation in which he customarily and regularly receives more than thirty dollars ($30) per month in tips; and

(e) "U.S.C." means the United States Code.

(3) As used in KRS 337.505 to 337.550, unless the context requires otherwise:

(a) "Construction" includes construction, reconstruction, improvement, enlargement, alteration, or repair of any public works project by contract fairly estimated to cost more than two hundred fifty thousand dollars ($250,000). No public works project, if procured under a single contract and subject to the requirements of this section, may be divided into multiple contracts of lesser value to avoid compliance with the provisions of this section;

(b) "Contractor" and "subcontractor" include any superintendent, foreman, or other authorized agent of any contractor or subcontractor who is in charge of the construction of the public works or who is in charge of the employment or payment of the employees of the contractor or subcontractor who are employed in performing the work to be done or being done by the contractor or subcontractor under the particular contract with any public authority;

(c) 1. "Locality" shall be determined by the commissioner. The commissioner may designate more than one (1) county as a single locality, but if more than one (1) county is designated, the multicounty locality shall not extend beyond the boundaries of a state Senatorial district. The commissioner shall not designate less than an entire county as a locality. If there is not available in the locality a sufficient number of competent, skilled laborers, workmen, and mechanics to efficiently and properly construct the public works, "locality" shall include any other locality nearest the one in which the work of construction is to be performed and from which such available skilled laborers, workmen, and mechanics may be obtained in sufficient number to perform the work; and

2. "Locality" with respect to contracts advertised or awarded by the Transportation Cabinet of this state shall be determined by the secretary of the Transportation

Cabinet. The secretary may designate any number of counties as constituting a single locality. The secretary may also designate all counties of the Commonwealth as a single locality, but he shall not designate less than an entire county as a locality;

(d) "Public authority" means any officer, board, or commission of this state, or any political subdivision or department thereof in the state, or any institution supported in whole or in part by public funds, including publicly owned or controlled corporations, authorized by law to enter into any contract for the construction of public works and any nonprofit corporation funded to act as an agency and instrumentality of the government agency in connection with the construction of public works, and any "private provider", as defined in KRS 197.500, which enters into any contract for the construction of an "adult correctional facility", as defined in KRS 197.500; and

(e) "Public works" includes all buildings, roads, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, and all other structures or work, including "adult correctional facilities", as defined in KRS 197.500, constructed under contract with any public authority.

(4) If the federal government or any of its agencies furnishes by loans or grants any part of the funds used in constructing public works, and if the federal government or its agencies prescribe predetermined prevailing minimum wages to be paid to mechanics, workmen, and laborers employed in the construction of the public works, and if KRS 337.505 to 337.550 is also applicable, those wages in each classification which are higher shall prevail.

(1599c-4, 1599c-39, 2290c-1, 2290c-2, 4767a-1, 4767a-17: amend. Acts 1966, ch. 158, § 1; 1968, ch. 100, § 6; 1970, ch. 33, § 1; 1974, ch. 341, § 1; 1974, ch. 391, § 1; 1976, ch. 223, § 1; 1978, ch. 141, § 1, effective June 17, 1978; 1978, ch. 340, § 1, effective June 17, 1978; 1982, ch. 54, § 1, effective July 15, 1982; 1984, ch. 414, § 12, effective July 13, 1984; 1986, ch. 208, § 2, effective July 15, 1986; 1994, ch. 405, § 85, effective July 15, 1994; 1994, ch. 492, § 1, effective July 15, 1994; 1996, ch. 48, § 1, effective July 15, 1996; 1996, ch. 100, § 1, effective July 15, 1996; 1996, ch. 115, § 1, effective July 15, 1996; 1998, ch. 154, § 92, effective July 15, 1998; 1998, ch. 426, § 558, effective July 15, 1998; 1998, ch. 606, § 113, effective July 15, 1998.)

Legislative Research Commission Note. (7/15/98). This section was amended by 1998 Ky. Acts chs. 154, 426, and 606 which do not appear to be in conflict and have been codified together.

Cross-References. Apprenticeship, KRS Chapter 343.

Child labor, KRS Chapter 339.

Contracts, KRS Chapters 371, 372.

Drivers of carriers, regulation of working hours, KRS 281.730.

Employment agencies, KRS Chapter 340.

General Assembly not to pass special acts to regulate labor, trade, mining or manufacturing, Const., § 59 (24).

Health of employees, KRS Chapter 338.

Housing commissions may require contractors to comply with wage and hour rules, KRS 80.500.

Labor cabinet, KRS Chapter 336.

Liens for wages, KRS 376.150 to 376.190, 376.360.

Occupations and professions, KRS Chapters 311 to 335.

Person not to deprive another of employment because of membership in national guard, KRS 38.460.

Safety of employees, KRS Chapter 338.

Secretary to administer wage law, KRS 336.050.

Unemployment compensation based on wages, KRS 341.260 to 341.285.

Workers' compensation, KRS Chapter 342.

Opinions of Attorney General. Housemothers and housefathers in dormitories or homes operated by an alternative residential program and owned by the local school board would not be exempt from state minimum and overtime wages as domestic servants or babysitters in the private home of the employer. OAG 77-782.

The minimum wage law does not affect teachers and other certified school personnel since they are exempted as "professional" employees. OAG 79-337.

Any attempt to avoid the prevailing wage provisions in building a facility (not a learning building) by simply including it in a learning building project, would violate the prevailing wage law. OAG 82-480.

By the plain language of subdivision (3)(e) of this section defining "public works," source of funds is not germane to the determination of whether buildings constructed as institutions of learning are exempt so long as the public works construction project is for a learning building. OAG 82-480.

Under the 1982 amendments of the definitions of "construction" and "public works," prevailing wages need not be paid on a public works construction project that will cost less than $250,000; with a public works construction project in the form of buildings to be used as institutions of learning, irrespective of costs and irrespective of source of funds utilized, prevailing wages need not be paid. With a public works construction project, other than for buildings to be used as institutions of learning, in an amount exceeding $250,000, prevailing wages need be paid only if 50 percent or more of the project is being financed with state funds. OAG 82-480.

Under the 1982 amendments to this section, "buildings constructed as institutions of learning" are excluded from the definition of "public works" with the result being that prevailing wages need not be paid in constructing such buildings; such buildings could include adjunct facilities when such adjunct facilities are all a part of the "learning building" project and are all a part of one (1) contract. The General Assembly did not intend that support facilities such as sewers, sewage disposal plants, access roads and the like necessary for the complete utilization of the learning buildings are to be treated differently than the learning building structure itself. OAG 82-480.

Employment and Volunteer Firefighting

337.100. Volunteer firefighter, rescue squad member, emergency medical technician, peace officer, or emergency management agency member absent from employment due to emergency.

(1) No employer shall terminate an employee who is a volunteer firefighter, rescue squad member, emergency medical technician, peace officer, or a member of an emergency management agency because that employee, when acting as a volunteer firefighter, rescue squad member, emergency med-

ical technician, peace officer, or a member of an emergency management agency, is absent or late to the employee's employment in order to respond to an emergency prior to the time the employee is to report to his or her place of employment.

(2) An employer may charge any time that an employee who is a volunteer firefighter, rescue squad member, emergency medical technician, peace officer, or a member of an emergency management agency loses from employment because of the employee's response to an emergency against the employee's regular pay.

(3) An employer may request an employee who loses time from the employee's employment to respond to an emergency to provide the employer with a written statement from the supervisor or acting supervisor of the volunteer fire department, rescue squad, emergency medical services agency, law enforcement agency, or the director of the emergency management agency stating that the employee responded to an emergency and listing the time and date of the emergency.

(4) Any employee that is terminated in violation of the provisions of this section may bring a civil action against his or her employer. The employee may seek reinstatement to the employee's former position, payment of back wages, reinstatement of fringe benefits, and where seniority rights are granted, the reinstatement of seniority rights. In order to recover, the employee shall file this action within one (1) year of the date of the violation of this section.

(Enact. Acts 2001, ch. 162, § 1, effective June 21, 2001; 2002, ch. 17, § 1, effective July 15, 2002.)

Public Works

337.505. Definition of "prevailing wage," fringe benefits included.

For the purpose of KRS 337.505 to 337.550, the term "prevailing wage" for each classification of laborers, workmen, and mechanics engaged in the construction of public works within the Commonwealth of Kentucky, means the sum of:

(1) The basic hourly rate paid or being paid subsequent to the labor commissioner's most recent wage determination to the majority of laborers, workmen, and mechanics employed in each classification of construction upon reasonably comparable construction in the locality where the work is to be performed; such rate shall be determined by the commissioner in accordance with paragraphs (a), (b), and (c) of subsection (3) of KRS 337.520; in the event that there is not a majority paid at the same rate, then the basic hourly rate of pay shall be the average basic hourly rate which shall be determined by adding the basic hourly rates paid to all workers in the classification and dividing by the total number of such workers, and

(2) An additional amount per hour equal to the hourly rate of contribution irrevocably made or to be made by an employer on behalf of employees within each classification of construction to a trustee or to a third person pursuant to an enforceable commitment to carry out a financially responsible plan or program, which was communicated in writing to the employees affected, for the following fringe benefits: medical or hospital care, pensions on retirement, death compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, accident insurance, vacation and holiday pay, defraying costs of apprenticeship or other similar programs, or other bona fide fringe benefits, but only where the employer is not required by other federal, state or local law to provide any of such benefits: provided, said additional amount may, at the discretion of the employer, be paid either in cash to the employee or by contributions for fringe benefits, or partly in cash and partly by such contributions, it being the intention of this subsection to recognize fringe benefits as a part of the prevailing wage rate where made in accordance with this subsection.

(Enact. Acts 1962, ch. 173, § 1; 1968, ch. 33, § 1; 1970, ch. 33, § 2; 1974, ch. 341, § 2; 1982, ch. 54, § 2, effective July 15, 1982.)

337.510. Public authority's duties as to inclusion of prevailing wage in proposals and contracts.

(1) Before advertising for bids or entering into any contract for construction of public works, every public authority shall notify the department in writing of the specific public work to be constructed, and shall ascertain from the department the prevailing rates of wages for each classification of laborers, workmen, and mechanics for the class of work called for in the construction of such public works in the locality where the work is to be performed. This schedule of the prevailing rate of wages shall include a statement that it has been determined in accordance with the provisions of KRS 337.505 to 337.550 and shall be attached to and made part of the specifications for the work and shall be printed on the bidding blanks and made a part of every contract for the construction of public works.

(2) The public authority advertising and awarding the contract shall cause to be inserted in the proposal and contract a stipulation to the effect that not less than the prevailing hourly rate of wages as determined by the commissioner shall be paid to all laborers, workmen, and mechanics performing work under the contract. It shall also require in all the contractor's bonds that the contractor include such provisions as will guarantee the faithful performance of the prevailing hourly wage clause as provided by contract. It shall be the duty of the public authority awarding the contract, and its agents and officers, to take cognizance of all complaints of all violations of the provisions of KRS 337.505 to 337.550 committed in the course of the execution of the contract, and when making payments to the contractor becoming due under the contract, to withhold, and retain therefrom all sums and amounts due and owing as a result of

any violation thereof. It shall be lawful for any contractor to withhold from any subcontractor under him sufficient sums to cover any penalties withheld from him by the awarding authority, on account of the subcontractor's failure to comply with the terms thereof and if payment has already been made to him, the contractor may recover from him the amount of the penalty in a suit at law.

(2290c-2: amend. Acts 1960, ch. 56, § 1; 1970, ch. 33, § 3; 1974, ch. 341, § 3.)

Cited: Kerth v. Hopkins County Bd. of Educ., 346 S.W.2d 737 (Ky. 1961); Board of Educ. v. Faulkner, 433 S.W.2d 853 (Ky. 1968).

337.512. Duties of individual officers with respect to prevailing wage law.

(1) No public official, authorized to contract for or construct public works shall fail, before advertising for bids or undertaking such construction, to ascertain from the commissioner the prevailing rates of wages as provided in KRS 337.505 to 337.550.

(2) No member of a public authority authorized to contract for or construct public works shall vote for the award of any contract for the construction of such public works, or vote for the disbursement of any funds on account of the construction of such public works, unless such public authority has first ascertained from the commissioner the prevailing rates of wages of laborers, workmen, and mechanics for the classes of work called for by such public works in the locality where the work is to be performed and the determination of prevailing wages has been made a part of the proposal specifications and contract for such public works.

(Enact. Acts 1970, ch. 33, § 4; 1974, ch. 341, § 4.)

337.520. Determination of prevailing wages — Administrative regulations — Filing wage contract.

(1) The commissioner shall make initial determinations and current revisions of schedules of rates of prevailing wages, of the amount of fringe benefits included as defined in KRS 337.505, and the number of hours applicable. The commissioner may promulgate administrative regulations to carry out the provisions and purposes of KRS 337.505 to 337.550 and to prevent their circumvention or evasion. The administrative regulations shall not include a provision that each contractor and subcontractor furnish a sworn affidavit with respect to the wages paid each employee. No administrative regulation shall be issued by the commissioner except upon reasonable notice to, and opportunity to be heard by, any interested person.

(2) The commissioner shall require the filing of all wage contracts of all laborers, workmen, and mechanics in this state which have been agreed to between bona fide organizations of labor and an employer or associations of employers. The contracts shall be filed within ten (10) days after they are signed.

(3) The commissioner shall have the authority to determine schedules and current revisions of the rates of prevailing wages as defined in KRS 337.505, but in no case shall the commissioner determine wages to be paid for a legal day's work to laborers, workmen, and mechanics engaged in the construction of public works at less than the prevailing wages paid in the localities. The commissioner, in determining what rates of wages prevail, shall consider the following criteria:

(a) Wage rates paid on previous public works constructed in the localities. In considering the rates, the commissioner shall ascertain, insofar as practicable, the names and addresses of the contractors, including subcontractors, the locations, approximate costs, dates of construction and types of projects, the number of workers employed on each project, and the respective wage rates paid each worker who was engaged in the construction of these projects.

(b) Wage rates previously paid on reasonably comparable private construction projects constructed in the localities. In considering the rates the commissioner shall ascertain, insofar as practicable, the names and addresses of the contractors, including subcontractors, the locations, approximate costs, dates of construction and types of projects, the number of workers employed on each project, and the respective wage rates paid each worker who was engaged in the construction of these projects.

(c) Collective bargaining agreements or understandings between bona fide organizations of labor and their employers located in the Commonwealth of Kentucky which agreements apply or pertain to the localities in which the public works are to be constructed.

(4) The wage rates to be used by the public authority in a contract for the construction of public works shall be the prevailing wage as of the date the public works project is advertised and offered for bid. If contracts are not awarded within ninety (90) days after the date of offering for bid, the public authority shall ascertain the prevailing rate of wages from the department before the contract is awarded. The schedule or scale of prevailing wages shall be incorporated in and made a part of each contract.

(5) The commissioner may promulgate administrative regulations authorizing the employment of apprentices and trainees in skilled trades at wages lower than the applicable prevailing wage.

(2290c-3: amend. Acts 1960, ch. 56, § 2; 1962, ch. 173, § 2(1) to (4); 1968, ch. 33, § 2; 1970, ch. 33, § 6; 1974, ch. 341, § 5; 1982, ch. 54, § 3, effective July 15, 1982; 1996, ch. 48, § 2, effective July 15, 1996.)

Cross-References. Administrative regulations, adoption and effective dates, KRS 13A.330.

Opinions of Attorney General. Where a school district advertised for bids and opened them at the specified time but delayed awarding a contract until some time not more than 90 days later, during which period of time a new wage rate was issued and, as no changes were made in the contract price or work specifications, and as no justification was shown for a

true "emergency" authorizing waiver of the bidding statutes under KRS 424.260, the wage rate to be paid by the contractor should be that in effect on the date of advertisement for bids and not the new rate that was in effect at the time bids were awarded. OAG 73-774; 74-8.

Where the amount received from federal revenue sharing is less than 25 percent of the cost of a school construction project, the state law and not the federal applies to the wage rate and the prevailing wage scale to be used is the latest determination for the county made by the state Commissioner (now Secretary) of Labor. OAG 74-329.

337.522. Hearings — Publication of determination — Revisions — Prevailing wage review boards attached to Labor Cabinet for administrative purposes.

(1) The commissioner or his authorized representative shall conduct a public hearing for the purpose of making initial determinations or current revisions of a prevailing wage schedule for the construction of public works pertaining to a locality. The commissioner shall, within sixty (60) days of the hearing, publish his wage determination. The hearing shall be conducted in the locality after notice has been given as provided in subsection (3) of this section. The commissioner shall not be required to utilize this section in any locality where the United States Department of Labor has issued a prevailing wage under the Davis-Bacon or related acts, in which case, the commissioner may adopt the wage schedule and any modifications issued by the United States Department of Labor and published in the Federal Register.

(2) A public authority or any interested person may request and shall be granted an additional hearing solely for the purpose of having considered a review of the commissioner's determination of the prevailing wage schedule for the construction of public works in the locality; after notice has been given as provided in subsection (3) of this section, the hearing shall be conducted in the locality by a prevailing wage review board consisting of one (1) member representing employers in the construction industry, one (1) member representing labor in the construction industry, and one (1) member appointed by the public authority requesting the hearing. The member appointed by the public authority shall reside in the locality in which the public works are to be constructed. The members of the board representing employers in the construction industry and labor in the construction industry shall be appointed for periods of not more than four (4) years by the Governor from a list of prospective members recommended by bona fide associations representing the construction industry and bona fide labor organizations representing workers employed in the construction industry, and the members shall serve on the board for all hearings during their tenure. Prevailing wage review boards shall have the authority to revise prevailing wage schedules for the construction of public works; however, the revisions shall be governed by the same criteria and regulations governing wage determinations of the commissioner. A revision of a prevailing wage schedule for the construction of public works shall require a vote of a majority of the members. The members of a prevailing wage review board shall receive their actual necessary expenses incurred in carrying out their duties and the expenses shall be paid out of the general fund of the Commonwealth of Kentucky.

(3) Notice of hearings as required in subsections (1) and (2) of this section shall be given by advertising one (1) time in the newspaper having the largest circulation in the locality, and the advertisement shall be run not less than ten (10) nor more than twenty (20) days prior to the date of the hearing. The advertisement shall set forth all pertinent information of the hearing regarding the time, place, and purpose of the hearing.

(4) The prevailing wage review boards shall be attached to the Labor Cabinet for administrative purposes.

(Enact. Acts 1962, ch. 173, § 2(5) to (7); 1972, ch. 275, § 1; 1974, ch. 341, § 6; 1984, ch. 414, § 15, effective July 13, 1984; 1996, ch. 48, § 3, effective July 15, 1996.)

Compiler's Notes. This section was formerly compiled as KRS 337.520(5) to (7).

337.524. Which rates to apply while review is pending.

If a review of the commissioner's determination is requested pursuant to subsection (2) of KRS 337.522, the wage rates to be used by the public authority in a contract for the construction of public works advertised during the pendency of the proceedings provided in subsection (2) of KRS 337.522, or on appeal pursuant to KRS 337.525, shall be the latest rate determined by the commissioner and which is being reviewed. The public authority shall place in its advertisement, bid documents and contracts, a statement to the effect that the prevailing wage rates contained therein are presently being reviewed and subject to change by appropriate reviewing authorities, and if said rates are modified or altered, the contractors shall be responsible for the payment of the wage rates finally determined. Should any rates be increased from that determined by the commissioner, the contractor may recover from the public authority any additional sums of money which he may be required to pay as a result of said wage modification or alteration. Should any rates be decreased from that determined by the commissioner, the public authority shall be barred from any recovery of the difference previously earned by or paid to employees.

(Enact. Acts 1970, ch. 33, § 12.)

337.525. Judicial review.

(1) Any person or party claiming to be aggrieved by any final determination of prevailing wages by the prevailing wage review board may appeal to the Franklin Circuit Court. The appeal shall state fully the grounds upon which an appeal is sought and assign all errors relied upon. A copy of the appeal and summons shall be served upon the Department of Workplace Standards and the mem-

bers of the prevailing wage review board and within thirty (30) days after such service, or within such further time as the court may allow, the department on behalf of the prevailing wage review board shall submit to the court a certified copy of all matters considered by the prevailing wage review board from which it made its final wage determination.

(2) No new or additional evidence may be introduced in the Franklin Circuit Court except as to the fraud or misconduct of some person engaged in the administration of this chapter and affecting the order, ruling or award. The court shall otherwise hear the appeal upon the record as certified by the Department of Workplace Standards and shall dispose of same in summary manner. The court shall not substitute its judgment for that of the prevailing wage review board, the court's review being limited to determining whether or not:
   (a) The prevailing wage review board acted without or in excess of its powers;
   (b) The prevailing wage review board's final wage determination was procured by fraud;
   (c) The determination is not in conformity with the provisions of this chapter;
   (d) The determination is clearly erroneous on the basis of the information contained in the record; or
   (e) The final wage determination is arbitrary or capricious.

(3) The Franklin Circuit Court thereafter shall enter an order affirming or setting aside the prevailing wage review board's wage determination. The court may also remand the case to the prevailing wage review board for further proceedings.

(4) An appeal may be taken to the Court of Appeals from any decision of the Franklin Circuit Court under this section.

(Enact. Acts 1962, ch. 173, § 5; 1970, ch. 33, § 7; 1984, ch. 414, § 16, effective July 13, 1984.)

337.530. Contractor to pay prevailing wages and post rates — Payroll records — On-site inspections.

(1) Where a prevailing rate of wages has been determined and prescribed, the contract executed between a public authority and the successful bidder or contractor shall contain a provision requiring the successful bidder and all of his subcontractors to pay not less than the rate of wages so established. The successful bidder or contractor and all subcontractors shall strictly comply with these provisions of the contract.

(2) All contractors and subcontractors required by KRS 337.505 to 337.550 and by contracts with any public authority to pay not less than the prevailing rate of wages, shall pay such wages in legal tender without any deductions. These provisions shall not apply where the employer and employee enter into an agreement in writing at the beginning of or during any term of employment covering deductions for food, sleeping accommodations or any similar item if this agreement is submitted by the employer to the department and is approved by the department as fair and reasonable. All contractors and subcontractors affected by the terms of KRS 337.505 to 337.550 shall keep full and accurate payroll records covering all disbursements of wages to their employees to whom they are required to pay not less than the prevailing rate of wages. Such records shall indicate the hours worked each day by each employee in each classification of work and the amount paid each employee for his work in each classification. They shall be open to the inspection and transcript of the commissioner or his authorized representative at any reasonable time, and shall be in compliance with all regulations issued by the commissioner. These payroll records shall not be destroyed or removed from this state for one (1) year following the completion of the improvement in connection with which they are made.

(3) Each contractor and subcontractor subject to the provisions of KRS 337.505 to 337.550 shall post and keep posted in a conspicuous place or places at the site of the construction work a copy or copies of prevailing rates of wages and working hours as prescribed in the contract with the public authority, showing the rates of wages prescribed and the working hours for each class of laborers, workmen, and mechanics employed by him in the work of constructing the public works provided for in the contract with the public authority.

(4) Every employer shall permit the commissioner or his authorized agents to question any of his employees at the site of the public work and during work hours in respect to the wages paid, hours worked and duties of such employee or other employees.

(2290c-4: amend. Acts 1960, ch. 56, § 3; 1962, ch. 173, § 4; 1970, ch. 33, § 8; 1974, ch. 341, § 7; 1982, ch. 54, § 4, effective July 15, 1982.)

NOTES TO DECISIONS

1. Error in Judgment.

Where in the specifications for a school construction contract the wage scale for carpenters was to be $2.00 per hour as established by city ordinance but through typographical error was set forth in a judgment construing the contract as $3.00 per hour, the $2.00 rate was binding. Board of Educ. v. Faulkner, 433 S.W.2d 853 (Ky. 1968).

337.550. Department to aid in enforcement — Remedies of laborer.

(1) Any laborer, workman, or mechanic employed on public works may file a complaint of any violation of any provision of KRS 337.505 to 337.550 with the department. The department shall assist him in the collection of claims of wages due him and shall also assist to the fullest extent in the administration and enforcement of KRS 337.505 to 337.550. The commissioner shall investigate and enforce the provisions of KRS 337.505 to 337.550 to the fullest and shall bring all actions to collect wages due any laborer, workman, or mechanic and shall take action against any contractor or subcontractor to restrain violations of KRS 337.505 to 337.550. If any contractor or subcontractor is found

to be in violation of any provisions of KRS 337.505 to 337.550, then the commissioner shall inform the secretary for finance and administration of the Commonwealth of Kentucky, and the secretary for finance and administration shall hold such contractor or subcontractor ineligible to bid on public works until such time as that contractor or subcontractor is in substantial compliance as determined by the commissioner.

(2) A laborer, workman, or mechanic may by civil action recover any sum due him as the result of the failure of his employer to comply with the terms of KRS 337.505 to 337.550. The commissioner may also bring any legal action necessary to collect claims on behalf of any or all laborers, workmen, or mechanics. No employer shall take any punitive measure or action against an employee because such employee has made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under KRS 337.505 to 337.550. The commissioner shall not be required to pay the filing fee, or other costs, in connection with such action.

(2290c-6: amend. Acts 1970, ch. 33, § 10; 1974, ch. 341, § 9; 1978, ch. 340, § 5, effective June 17, 1978.)

Opinions of Attorney General. In view of the fact that the notice of the violation of the Prevailing Wage Law by a subcontractor was communicated several days after bids were opened for the construction of a building at Kentucky State University, the ineligibility of the subcontractor did not apply to the bids that were opened for such construction, since to hold that it did apply would mean that subsection (1) of this section could be retroactively applied, when in fact, under the law, the statute cannot be applied retroactively. OAG 78-723.

Penalties

337.990. Penalties.

The following civil penalties shall be imposed, in accordance with the provisions in KRS 336.985, for violations of the provisions of this chapter:

(1) Any firm, individual, partnership, or corporation that violates KRS 337.020 shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense. Each failure to pay an employee the wages when due him under KRS 337.020 shall constitute a separate offense.

(2) Any employer who violates KRS 337.050 shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000).

(3) Any employer who violates KRS 337.055 shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense and shall make full payment to the employee by reason of the violation. Each failure to pay an employee the wages as required by KRS 337.055 shall constitute a separate offense.

(4) Any employer who violates KRS 337.060 shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) and shall also be liable to the affected employee for the amount withheld, plus interest at the rate of ten percent (10%) per annum.

(5) Any employer who violates the provisions of KRS 337.065 shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense and shall make full payment to the employee by reason of the violation.

(6) Any person who fails to comply with KRS 337.070 shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense and each day that the failure continues shall be deemed a separate offense.

(7) Any employer who violates any provision of KRS 337.275 to 337.325, KRS 337.345, and KRS 337.385 to 337.405, or willfully hinders or delays the commissioner or his authorized representative in the performance of his duties under KRS 337.295, or fails to keep and preserve any records as required under KRS 337.320 and 337.325, or falsifies any record, or refuses to make any record or transcription thereof accessible to the commissioner or his authorized representative shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000). A civil penalty of not less than one thousand dollars ($1,000) shall be assessed for any subsequent violation of KRS 337.285(2) to (7) and each day the employer violates KRS 337.285(2) to (7) shall constitute a separate offense and penalty.

(8) Any employer who pays or agrees to pay wages at a rate less than the rate applicable under KRS 337.275 and 337.285, or any wage order issued pursuant thereto shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000).

(9) Any employer who discharges or in any other manner discriminates against any employee because the employee has made any complaint to his employer, to the commissioner, or to his authorized representative that he has not been paid wages in accordance with KRS 337.275 and 337.285 or regulations issued thereunder, or because the employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to KRS 337.385, or because the employee has testified or is about to testify in any such proceeding, shall be deemed in violation of KRS 337.275 to 337.325, KRS 337.345, and KRS 337.385 to 337.405 and shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000).

(10) Any employer who violates KRS 337.365 shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000).

(11) Any person who violates KRS 337.530 shall be assessed a civil penalty of not less than one hun-

dred dollars ($100) nor more than one thousand dollars ($1,000).

(12) Any contractor or subcontractor who violates any wage or work hours provision in any contract under KRS 337.505 to 337.550 shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense, and the contractor or subcontractor shall make full restitution to all employees to whom he is legally indebted by reason of said violation. The prime contractor shall be jointly and severally liable with a subcontractor for wages due an employee of the subcontractor. For a flagrant or repeated violation the offending contractor or subcontractor shall be barred from bidding on, or working on, any and all public works contracts, either in his name or in the name of any other company, firm, or other entity in which he might be interested for a period of two (2) years from the date of the last offense. Each day of violation shall constitute a separate offense, and the violation as affects each individual worker shall constitute a separate offense.

(13) Any public authority, public official, or member of a public authority who willfully fails to comply or to require compliance with KRS 337.505 to 337.550 shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense. Each day of violation shall constitute a separate offense. If a public authority, public official or member of a public authority willfully or negligently fails to comply with KRS 337.505 to 337.550 and the failure results in damages, injury or loss to any person, the public authority, public official, or member of a public authority may be held liable in a civil action.

(14) A person shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) when that person discharges or in any other manner discriminates against an employee because the employee has:

(a) Made any complaint to his employer, the commissioner, or any other person; or

(b) Instituted, or caused to be instituted, any proceeding under or related to KRS 337.420 to 337.433; or

(c) Testified, or is about to testify, in any such proceedings.

(576a-2, 1350, 1599c-19, 1599c-20, 2290c-4, 2290c-7, 4767a-16, 4866b-7: amend. Acts 1944, ch. 63, § 2; 1960, ch. 56, § 4, effective June 16, 1960; 1970, ch. 33, § 11; 1974, ch. 391, § 13; 1976, ch. 222, § 2; 1980, ch. 188, § 262, effective July 15, 1980; 1990, ch. 42, § 3, effective July 13, 1990; 2002, ch. 329, § 2, effective July 15, 2002.)

Legislative Research Commission Note. (10/23/90). Through an apparent clerical or typographical error, the reference to KRS 337.505 to 337.550 in the first sentence of what is now subsection (13) of this statute was transformed into "KRS 337.505 or 337.550." Compare 1970 Ky. Acts ch. 33, sec. 11, with 1974 Ky. Acts ch. 391, sec. 13. Pursuant to KRS 7.136(1), 446.270, and 446.280. the prior wording has been restored.

CHAPTER 339

CHILD LABOR

SECTION.

339.205. "Commissioner" defined.
339.210. Definition of "gainful occupation."
339.220. Minor under fourteen not to be employed — Exception.
339.230. Restrictions on employment of minor between fourteen and eighteen.
339.250. Furnishing or selling articles to minors for illegal sale.
339.270. Lunch period.
339.360. Issuance of age certificates.
339.370. Age certificate as evidence of age in other proceedings.
339.400. Employer's register — Posting copy of law and working hours.
339.430. Machinery used in school courses.
339.450. Enforcement of law — Right to enter and inspect premises and records.
339.990. Penalties.

339.205. "Commissioner" defined.

As used in this chapter, "commissioner" shall mean the commissioner of the Department of Workplace Standards, under the direction and supervision of the secretary of the Labor Cabinet.

(Enact. Acts 1984, ch. 414, § 24, effective July 13, 1984.)

339.210. Definition of "gainful occupation."

As used in KRS 339.220 to 339.450 "gainful occupation" does not include employment in farm work or in domestic service in a private home, nor occasional employment by a householder in connection with the household and not in connection with the householder's business or occupation, such as grass cutting or carrying ashes or similar casual domestic tasks, nor the delivery of newspapers on regularly scheduled routes, nor to employment as an actor or performer in motion pictures or theatrical productions, or in radio or television productions, nor to employment of minors by their own parents or persons standing in the place of a parent in occupations other than manufacturing, mining, or those found by the commissioner of labor to be particularly hazardous.

(Enact. Acts 1948, ch. 107, § 1; 1984, ch. 256, § 1, effective July 13, 1984.)

Cross-References. Alcoholic beverage licensee not to employ person under 21, except in bottling house or office, KRS 244.090.

Compulsory school attendance, KRS Chapter 159.

General Assembly to fix minimum age of employment in certain occupations, Const., § 243.

Workers' compensation, minor of 16 is sui juris for purposes of; effect of age certificate on right to receive compensation, KRS 342.065.

339.220. Minor under fourteen not to be employed — Exception.

No minor under fourteen (14) years of age shall be employed, permitted or suffered to work in, about or in

connection with any gainful occupation at any time, except for employment in connection with an employment program supervised and sponsored by the school or school district such child attends, which program has been approved by the Department of Education and subject to the regulations of the commissioner of the Department of Workplace Standards.
(Enact. Acts 1948, ch. 107, § 2; 1970, ch. 143, § 1; 1984, ch. 414, § 25, effective July 13, 1984.)

339.230. Restrictions on employment of minor between fourteen and eighteen.

A minor who has passed his fourteenth birthday but is under eighteen (18) years of age may be employed, permitted, or suffered to work in, about, or in connection with any gainful occupation, except:

(1) If he is under sixteen (16) years of age, he may not be employed during regular school hours, unless:
   (a) The school authorities have made arrangements for him to attend school at other than the regular hours, in which event he may be employed subject to regulations of the commissioner of workplace standards during such of the regular school hours as he is not required to be in attendance under the arrangement; or,
   (b) He has graduated from high school.

(2) A minor who has passed his fourteenth birthday but is under eighteen (18) years of age, may not be employed, permitted, or suffered to work:
   (a) In any place of employment or at any occupation, that the commissioner of workplace standards shall determine to be hazardous or injurious to the life, health, safety, or welfare of such minor;
   (b) More than the number of days per week, nor more than the number of hours per day that the commissioner of workplace standards shall determine to be injurious to the life, health, safety, or welfare of such minor. The commissioner of workplace standards in promulgating these regulations may make them more restrictive than those promulgated by the United States Secretary of Labor under provisions of the Fair Labor Standards Act and its amendments, but in no event may he make them less restrictive;
   (c) During the hours of the day that the commissioner of workplace standards shall determine to be injurious to the life, health, safety, or welfare of such minor. The commissioner of workplace standards in promulgating these regulations may make them more restrictive than those promulgated by the United States Secretary of Labor under provisions of the Fair Labor Standards Act and its amendments but in no event may he make them less restrictive; and
   (d) In, about, or in connection with any establishment where alcoholic liquors are distilled, rectified, compounded, brewed, manufactured, bottled, sold for consumption, or dispensed unless permitted by the rules and regulations of the Alcoholic Beverage Control Board (except he may be employed in places where the sale of alcoholic beverages by the package is merely incidental to the main business actually conducted); or in a pool or billiard room.

(3) The commissioner of workplace standards shall promulgate regulations to properly protect the life, health, safety, or welfare of minors. He may consider sex, age, premises of employment, substances to be worked with, machinery to be operated, number of hours, hours of the day, nature of the employment, and other pertinent factors. The commissioner of workplace standards in promulgating these regulations may make them more restrictive than those promulgated by the United States Secretary of Labor under provisions of the Fair Labor Standards Act and its amendments but in no event may he make them less restrictive, provided, however, these regulations shall have no effect on the definition of "gainful occupation" under KRS 339.210. To advise the commissioner with respect to the regulations, the Governor shall appoint a committee of four (4) persons which shall consist of a representative from the Cabinet for Health Services, the Department of Education, the Kentucky Commission on Human Rights and the Personnel Cabinet. The regulations promulgated in accordance with this section shall be reviewed by such committee whenever deemed necessary by the commissioner of workplace standards.

(Enact. Acts 1948, ch. 107, § 3; 1950, ch. 105; 1952, ch. 178, § 1; 1970, ch. 143, § 2; 1974, ch. 74, Art. VI, § 94; 1984, ch. 256, § 2, effective July 13, 1984; 1984, ch. 414, § 27, effective July 13, 1984; 1998, ch. 154, § 93, effective July 15, 1998; 1998, ch. 426, § 561, effective July 15, 1998.)

Legislative Research Commission Note. (7/15/98). This section was amended by 1998 Ky. Acts chs. 154 and 426 which do not appear to be in conflict and have been codified together.

Cross-References. Alcoholic beverage licensee not to employ person under 21, except in bottling house or office, KRS 244.090.

Safety and health of employees, KRS Chapter 338.

339.250. Furnishing or selling articles to minors for illegal sale.

No person shall furnish or sell to any minor any article of any description with the knowledge that the minor intends to sell said article in violation of KRS 339.210 to 339.450. No person shall continue to furnish or sell articles of any description to a minor after having received written notice from any officer charged with the enforcement of KRS 339.210 to 339.450, that the minor is not permitted to sell such articles.
(Enact. Acts 1948, ch. 107, § 5; 1984, ch. 256, § 3, effective July 13, 1984.)

339.270. Lunch period.

No minor under eighteen (18) years of age shall be permitted to work for more than five (5) hours continuously without an interval of at least thirty (30) min-

utes for a lunch period, and no period of less than thirty (30) minutes shall be deemed to interrupt a continuous period of work.
(Enact. Acts 1948, ch. 107, § 7.)

339.360. Issuance of age certificates.
Upon request, it shall be the duty of the local board of education through its superintendent or other authorized agent to issue to any minor under the age of eighteen (18) years desiring to enter employment a certificate of age upon presentation of proof of age. Every employer shall be required to obtain from any employee proof of age that the employee is at least eighteen (18) years of age.
(Enact. Acts 1948, ch. 107, § 15; 1984, ch. 256, § 4, effective July 13, 1984.)

339.370. Age certificate as evidence of age in other proceedings.
A certificate of age duly issued shall be conclusive evidence of the age of the minor for whom issued in any proceeding involving the employment of the minor under the child labor or workers' compensation law or any other labor law of the state, as to any act occurring subsequent to its issuance.
(Enact. Acts 1948, ch. 107, § 16; 1984, ch. 256, § 5, effective July 13, 1984.)

Cross-References. Effect of age certificate on right to recover worker's compensation, KRS 342.065.

339.400. Employer's register — Posting copy of law and working hours.
Every person employing minors under eighteen (18) years of age shall keep a separate register containing the names, ages, and addresses of such employees, and the time of commencing and stopping of work for each day, and the time of the beginning and ending of the daily meal period, and shall post and keep conspicuously posted in the establishment wherein any such minor is employed, permitted, or suffered to work, a printed abstract of KRS 339.210 to 339.450, and a list of the occupations prohibited to such minors, together with a notice stating the working hours per day for each day in the week required of them. These records and files shall be open at all times to the inspection of the school directors of pupil personnel and probation officers, and representatives of the Labor Cabinet and Department of Education.
(Enact. Acts 1948, ch. 107, § 19; 1966, ch. 89, § 14.)

339.430. Machinery used in school courses.
Nothing in KRS 339.210 to 339.450 shall prevent the use of suitable machinery for instruction in schools where the mechanical arts are taught in connection with and as part of the usual school curriculum. The use of such machinery in any public or private school shall be subject to the approval of the board of education of the district where the school is situated, and shall be subject to the general industrial safety standards as to supplying safeguards for the protection of those using such machinery.
(Enact. Acts 1948, ch. 107, § 22.)

339.450. Enforcement of law — Right to enter and inspect premises and records.
(1) It shall be the duty of the Department of Workplace Standards and of the inspectors and agents of said department, with the assistance of the school directors of pupil personnel, police officers and juvenile session of District Court probation officers, to enforce the provisions of KRS 339.210 to 339.450, to make complaints against persons violating the provisions of those sections, and to prosecute violations thereof. The Department of Workplace Standards, its inspectors and agents shall have authority to enter and inspect at any time any place or establishment covered by KRS 339.210 to 339.450, and to have access to age certificates kept on file by the employer and such other records as may aid in the enforcement of KRS 339.210 to 339.450. School directors of pupil personnel are likewise empowered to visit and inspect places where minors may be employed, and shall report any cases of employment that they find in violation of KRS 339.210 to 339.450 to the Department of Workplace Standards.
(2) Any person authorized to enforce KRS 339.210 to 339.450 may require an employer of a minor for whom an age certificate is not on file either to furnish him within ten (10) days the evidence showing that the minor is at least eighteen (18) years of age or to cease to employ or permit or suffer such minor to work. Proof of the making of such demand and of failure to deliver such proof of age shall be prima facie evidence, in any prosecution brought for violation of KRS 339.210 to 339.450, that such minor is under eighteen (18) years of age and is unlawfully employed.
(Enact. Acts 1948, ch. 107, § 24; 1966, ch. 89, § 15; 1980, ch. 188, § 178, effective July 15, 1980; 1984, ch. 256, § 6, effective July 13, 1984; 1984, ch. 414, § 32, effective July 13, 1984.)

Legislative Research Commission Note. This section was amended by two 1984 Acts which do not appear to be in conflict and have been compiled together.
Cross-References. School attendance officers may investigate places where children are employed, KRS 159.130.

339.990. Penalties.
Anyone who employs or permits or suffers any minor to be employed or to work in violation of KRS 339.210 to 339.450, or of any order or ruling issued under the provisions thereof, or obstructs the Department of Workplace Standards, its officers, or agents, or any other person authorized to inspect places of employment under KRS 339.210 to 339.450, or anyone who, having under his control or custody any minor, permits or suffers him to be employed or to work in violation of KRS 339.210 to 339.450, or who sells to a minor any article with the knowledge that the minor intends to sell the article in violation of KRS 339.210 to 339.450 shall be assessed a civil penalty, in accordance with the provisions of KRS 336.985, of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000). Every employer who continues to employ a minor in violation of KRS 339.210 to 339.450 after he

has been notified by the Department of Workplace Standards, its officers or agents, shall be assessed a civil penalty, in accordance with the provisions of KRS 336.985, of one hundred dollars ($100) for each day the violation continues and the employment of any minor in violation of KRS 339.210 to 339.450 shall with respect to each minor so employed constitute a separate and distinct offense.

(Enact. Acts 1948, ch. 107, § 25; 1984, ch. 256, § 7, effective July 13, 1984; 1984, ch. 414, § 33, effective July 13, 1984; 1990, ch. 42, § 4, effective July 13, 1990.)

Cross-References. Parent responsible for violation of school attendance law by child after notice of violation, KRS 159.180.

CHAPTER 342

WORKERS' COMPENSATION

SECTION.

342.630. Coverage of employers.
342.640. Coverage of employees.

PENALTIES

342.990. Penalties — Restitution.

342.630. Coverage of employers.

The following shall constitute employers mandatorily subject to, and required to comply with, the provisions of this chapter:

(1) Any person, other than one engaged solely in agriculture, that has in this state one (1) or more employees subject to this chapter.

(2) The state, any agency thereof, and each county, city of any class, school district, sewer district, drainage district, tax district, public or quasipublic corporation, or any other political subdivision or political entity of the state that has one (1) or more employees subject to this chapter.

(Enact. Acts 1972, ch. 78, § 3.)

Kentucky Bench & Bar. Joiner, Should Kentucky Student Athletes Be Covered by the Workers' Compensation Statutes?, Vol. 50, No. 2, Spring 1986 Ky. Bench & Bar 16.

Cited: Vater v. Newport Bd. of Educ., 511 S.W.2d 670 (Ky. 1974).

342.640. Coverage of employees.

The following shall constitute employees subject to the provisions of this chapter, except as exempted under KRS 342.650:

(1) Every person, including a minor, whether lawfully or unlawfully employed, in the service of an employer under any contract of hire or apprenticeship, express or implied, and all helpers and assistants of employees, whether paid by the employer or employee, if employed with the knowledge, actual or constructive, of the employer;

(2) Every executive officer of a corporation;

(3) Every person in the service of the state or any of its political subdivisions or agencies, or of any county, city of any class, school district, drainage district, tax district, public or quasipublic corporation, or other political entity, under any contract of hire, express or implied, and every official or officer of those entities, whether elected or appointed, while performing his official duties shall be considered an employee of the state. Every person who is a member of a volunteer ambulance service, fire, or police department shall be deemed, for the purposes of this chapter, to be in the employment of the political subdivision of the state where the department is organized. Every person who is a regularly-enrolled volunteer member or trainee of an emergency management agency, as established under KRS Chapters 39A to 39E, shall be deemed, for the purposes of this chapter, to be in the employment of this state. Every person who is a member of the Kentucky National Guard, while the person is on state active duty as defined in KRS 38.010(4), shall be deemed, for the purposes of this chapter, to be in the employment of this state;

(4) Every person performing service in the course of the trade, business, profession, or occupation of an employer at the time of the injury; and

(5) Subject to the provisions in subsection (4) of this section, every person regularly selling or distributing newspapers on the street or to customers at their homes or places of business. For the purposes of this chapter, the person shall be deemed an employee of an independent news agency for whom he is selling or distributing newspapers, or, in the absence of an independent agency, of each publisher whose newspapers he sells or distributes.

(Enact. Acts 1972, ch. 78, § 4, effective January 1, 1973; 1976, ch. 161, § 3; 1986, ch. 271, § 1, effective July 15, 1986; 1987 (Ex. Sess.), ch. 1, § 52, effective October 26, 1987; 1992, ch. 307, § 11, effective April 9, 1992; 1996 (1st Ex. Sess.), ch. 1, § 28, effective December 12, 1996; 1998, ch. 226, § 110, effective July 15, 1998.)

Legislative Research Commission Note. (12/12/96). 1996 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 28 stated that it is was amending this statute, but the proposed changes to the statute were eliminated by legislative action on this Act although the statute itself was not delected from the bill.

Opinions of Attorney General. Vocational and industrial arts students are not employees and therefore are not required to be covered under the Kentucky Workers' Compensation Act. OAG 76-388.

NOTES TO DECISIONS

ANALYSIS

1. Employee.
8. Student trainees.

1. Employee.

A participant in an apprenticeship program conducted by a plumbers' union was not an "employee," notwithstanding that he was paid for the on-the-job part of his apprenticeship program, where he was injured while being instructed in the classroom, an activity for which he received no remuneration. Jecker v. Plumbers' Local 107, 2 S.W.3d 107 (Ky. Ct. App. 1999).

8. Student Trainees.

Workers' compensation benefits are not available to

unremunerated student trainees. Salvation Army v. Mathews, 847 S.W.2d 751 (Ky. Ct. App. 1993).

PENALTIES

342.990. Penalties — Restitution.

(1) The commissioner shall initiate enforcement of civil and criminal penalties imposed in this section.

(2) When the commissioner receives information that he deems sufficient to determine that a violation of this chapter has occurred, he shall seek civil penalties pursuant to subsections (3) to (7) of this section, or criminal penalties pursuant to subsections (8) and (9) of this section, or both.

(3) The commissioner shall initiate enforcement of a civil penalty by simultaneously citing the appropriate party for the offense and stating the civil penalty to be paid.

(4) If, within fifteen (15) working days from the receipt of the citation, a cited party fails to notify the commissioner that he intends to contest the citation, then the citation shall be deemed final.

(5) If a cited party notifies the commissioner that he intends to challenge a citation issued under this section, the commissioner shall cause the matter to be heard as soon as practicable by an administrative law judge and in accordance with the provisions of KRS Chapter 13B. The burden of proof shall be upon the attorney representing the commissioner to prove the offense stated in the citation by a preponderance of the evidence. The parties shall stipulate to uncontested facts and issues prior to the hearing before the administrative law judge. The administrative law judge shall issue a ruling within sixty (60) days following the hearing.

(6) A party may appeal the ruling of the administrative law judge to the Franklin Circuit Court in conformity with KRS 13B.140.

(7) The following civil penalties shall be applicable for violations of particular provisions of this chapter:

(a) Any employer, insurer, or payment obligor subject to this chapter who fails to make a report required by KRS 342.038 within fifteen (15) days from the date it was due, shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense.

(b) Any employer, insurer, or payment obligor acting on behalf of an employer who fails to make timely payment of a statement for services under KRS 342.020(1) without having reasonable grounds to delay payment may be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense.

(c) Any person who violates KRS 342.020(9), 342.035(2), 342.040, 342.340, 342.400, 342.420, or 342.630 shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense. With respect to employers who fail to maintain workers' compensation insurance coverage on their employees, each employee of the employer and each day of violation shall constitute a separate offense. With respect to KRS 342.040, any employer's insurance carrier or other party responsible for the payment of workers' compensation benefits shall be fined for failure to notify the commissioner of a failure to make payments when due if a report indicating the reason payment of income benefits did not commence within twenty-one (21) days of the date the employer was notified of an alleged work-related injury or disease is not filed with the commissioner within twenty-one (21) days of the date the employer received notice, and if the employee has not returned to work within that period of time. The date of notice indicated in the report filed with the department pursuant to KRS 342.038(1), shall raise a rebuttable presumption of the date on which the employer received notice.

(d) Any person who violates any of the provisions of KRS 342.165(2), 342.335, 342.395, 342.460, 342.465, or 342.470 shall be fined not less than two hundred dollars ($200) nor more than two thousand dollars ($2,000) for each offense. With respect to KRS 342.395, each required notice of rejection form executed by an employee or potential employee of an employer shall constitute a separate offense.

(e) Any person who fails to comply with the data reporting provisions of administrative regulations promulgated by the commissioner pursuant to KRS 342.039, or with utilization review and medical bill audit administrative regulations promulgated pursuant to KRS 342.035(5), shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each violation.

(f) Except as provided in paragraph (g) of this subsection, a person who violates any of the provisions of KRS 342.335(1) or (2) where the claim, compensation, benefit, or money referred to in KRS 342.335(1) or (2) is less than or equal to three hundred dollars ($300) shall be fined per occurrence not more than one thousand dollars ($1,000) per individual nor five thousand dollars ($5,000) per corporation, or twice the amount of gain received as a result of the violation, whichever is greater.

(g) Any person who violates any of the provisions of KRS 342.335(1) or (2) where the claim, compensation, benefit, or money referred to in KRS 342.335(1) or (2) exceeds three hundred dollars ($300) shall be fined per occurrence not more than five thousand dollars ($5,000) per individual nor ten thousand dollars ($10,000) per corporation, or twice the amount of gain received as a result of the violation, whichever is greater.

(h) Any person who violates the employee leasing provision of this chapter shall be fined not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000) for each violation.

(i) Any violation of the provisions of this chapter relating to self-insureds shall constitute

grounds for decertification of such self-insured, a fine of not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000) per occurrence, or both.

(j) Actions to collect the civil penalties imposed under this subsection shall be instituted in the Franklin District Court and the Franklin Circuit Court.

(8) The commissioner shall initiate enforcement of a criminal penalty by causing a complaint to be filed with the appropriate local prosecutor. If the prosecutor fails to act on the violation within twenty (20) days following the filing of the complaint, the commissioner shall certify the inaction by the local prosecutor to the Attorney General who shall initiate proceedings to prosecute the violation. The provisions of KRS 15.715 shall not apply to this section.

(9) The following criminal penalties shall be applicable for violations of particular provisions of this chapter:

(a) Any person who violates KRS 342.020(9), 342.035(2), 342.040, 342.400, 342.420, or 342.630, shall, for each offense, be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or imprisoned for not less than thirty (30) days nor more than one hundred eighty (180) days, or both.

(b) Any person who violates any of the provisions of KRS 342.165(2), 342.335, 342.460, 342.465, or 342.470 shall, for each offense, be fined not less than two hundred dollars ($200) nor more than two thousand dollars ($2,000), or imprisoned for not less than thirty (30) days nor more than one hundred and eighty (180) days, or both.

(c) Any corporation, partnership, sole proprietorship, or other form of business entity and any officer, general partner, agent, or representative of the foregoing who knowingly utilizes or participates in any employee leasing arrangement or mechanism as defined in KRS 342.615 for the purpose of depriving one (1) or more insurers of premium otherwise properly payable or for the purpose of depriving the Commonwealth of any tax or assessment due and owing and based upon said premium shall upon conviction thereof be subject to a fine of not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000), or imprisonment for not more than one hundred eighty (180) days, or both, for each offense.

(d) Notwithstanding any other provisions of this chapter to the contrary, when any employer, insurance carrier, or individual self-insured fails to comply with this chapter for which a penalty is provided in subparagraphs (7), (8), and (9) above, such person, if the person is an owner in the case of a sole proprietorship, a partner in the case of a partnership, a principal in the case of a limited liability company, or a corporate officer in the case of a corporation, who knowingly authorized, ordered, or carried out the violation, failure, or refusal shall be personally and individually liable, both jointly and severally, for the penalties imposed in the above cited subparagraphs. Neither the dissolution nor withdrawal of the corporation, partnership, or other entity from the state, nor the cessation of holding status as a proprietor, partner, principal, or officer shall discharge the foregoing liability of any person.

(10) Fines paid pursuant to subsections (7) and (9) of this section shall be paid into the special fund.

(11) In addition to the penalties provided in this section, the commissioner and any administrative law judge, or court of jurisdiction may order restitution of a benefit secured through conduct proscribed by this chapter.

(4944, 4945, 4958, 4962, 4968-5: amend. Acts 1946, ch. 61, § 4; 1960, ch. 147, § 18; 1966, ch. 255, § 283; 1972, ch. 78, § 31; 1980, ch. 188, § 276, effective July 15, 1980; 1984, ch. 96, § 2, effective July 13, 1984; 1987 (Ex. Sess.), ch. 1, § 71, effective October 26, 1987; 1994, ch. 181, Part 13, § 64, effective April 4, 1994; 1996, ch. 318, § 315, effective July 15, 1996; 1996, ch. 355, § 16, effective July 15, 1996; 1996 (1st Ex. Sess.), ch. 1, § 48, effective December 12, 1996; 2000, ch. 514, § 36, effective July 14, 2000.)

Legislative Research Commission Note. (12/12/96). The reference to "subparagraphs (7), (8), and (9) above" in subsection (9)(d) of this statute is how this text read in 1996 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 48. The normal hierarchy of subdivision in a section of the Kentucky Revised Statutes is, in descending order, subsections (indicated by Hindu-Arabic numerals in parentheses), paragraphs (indicated by lowercase letters in parentheses), subparagraphs (indicated by Hindu-Arabic numerals followed by a period), and subdivisions of subparagraphs (indicated by lowercase letters followed by a period). This statute contains no subparagraphs 7., 8., and 9., but the type of numbering used suggests that "subsections" may have been meant in this phrase instead of "subparagraphs."

(7/15/96). This section was amended by 1996 Ky. Acts chs. 318 and 355. Where these Acts are not in conflict they have been codified together. Where a conflict exists, Acts ch. 355, which was last enacted by the General Assembly prevails under KRS 446.250.

TITLE XXIX

COMMERCE AND TRADE

CHAPTER 369

INFORMATION TECHNOLOGY

SECTION.

USE OF ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES

369.010. [Repealed.]
369.020. [Repealed.]
369.030. [Repealed.]

USE OF ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES

369.010. Legislative intent of KRS 369.010 to 369.030. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1998, ch. 363, § 1, effective July 15, 1998) was repealed by Acts 2000, ch. 301, § 21, effective August 1, 2000. For present law, see KRS 369.101 et seq.

369.020. Definitions for KRS 369.010 to 369.030. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1998, ch. 363, § 2, effective July 15, 1998) was repealed by Acts 2000, ch. 301, § 21, effective August 1, 2000. For present law, see KRS 369.101 et seq.

369.030. Use of electronic record or electronic signature — Construction and scope of KRS 369.010 to 369.030. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1998, ch. 363, § 3, effective July 15, 1998) was repealed by Acts 2000, ch. 301, § 21, effective August 1, 2000. For present law, see KRS 369.101 et seq.

TITLE XXXIII

ADMINISTRATION OF TRUSTS AND ESTATES OF PERSONS UNDER DISABILITY

CHAPTER 386

ADMINISTRATION OF TRUSTS — LEGAL INVESTMENTS — UNIFORM PRINCIPAL AND INCOME ACT

SECTION.

ADMINISTRATION — INVESTMENTS

386.050. Housing authority obligations — Authorized investments — Security for public deposits — Negotiable — United States bonds.

ADMINISTRATION — INVESTMENTS

386.050. Housing authority obligations — Authorized investments — Security for public deposits — Negotiable — United States bonds.

(1) This state and all public officers, cities, political subdivisions and public bodies, all banks, trust companies, savings institutions, savings and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, and other persons carrying on an insurance business and all fiduciaries may legally invest any sinking funds, moneys or other funds belonging to them or within their control in any bonds or other obligations issued by a housing authority pursuant to the Municipal Housing Authority Act or the Rural Housing Authority Act, and any additional amendments thereto, or issued by any public housing authority or agency in the United States, when these bonds or other obligations are secured by a pledge of annual contributions to be paid by the United States or any agency thereof, or in any electric revenue bonds or other obligations issued by the Tennessee Valley Authority.

(2) These bonds and other obligations shall be authorized security for all public deposits and shall be fully negotiable in this state.

(3) Nothing in this section with regard to legal investments shall relieve any individual or corporation from any duty of exercising reasonable care in selecting securities.

(4) Any county, municipality, or other taxing district may legally invest its sinking funds, money, or other funds belonging to it or within its control in United States Defense Bonds or any other bonds or obligations for the payment of which the faith and credit of the United States Government is pledged.

(4706-11: amend. Acts 1942, ch. 57, §§ 1, 2; 1960, ch. 188, § 2; 1968, ch. 152, § 160.)

Cross-References. Bank investments, limit on, not applicable to housing commission obligations, KRS 287.290.

Insurance company investments, KRS 304.7-010 — 304.7-360.

TITLE XXXV

DOMESTIC RELATIONS

CHAPTER 406

UNIFORM ACT ON PATERNITY

SECTION.

406.011. Obligations of father — Presumption of paternity.
406.021. Determination of paternity.
406.025. Rebuttable presumption of voluntary acknowledgment-of-paternity affidavit — Temporary support order if paternity is indicated — Continuation of child support until final determination of paternity.
406.031. Limitation of action.
406.051. Remedies — District Court's concurrent jurisdiction for child custody and visitation in paternity cases.

406.011. Obligations of father — Presumption of paternity.

The father of a child which is or may be born out of wedlock is liable to the same extent as the father of a

child born in wedlock, whether or not the child is born alive, for the reasonable expense of the mother's pregnancy and confinement and for the education, necessary support and funeral expenses of the child. A child born during lawful wedlock, or within ten (10) months thereafter, is presumed to be the child of the husband and wife. However, a child born out of wedlock includes a child born to a married woman by a man other than her husband where evidence shows that the marital relationship between the husband and wife ceased ten (10) months prior to the birth of the child.
(Enact. Acts 1964, ch. 37, § 1; 1972, ch. 159, § 1.)

Cross-References. Children of illegal or void marriages, when legitimate, KRS 391.100.

Uniform reciprocal enforcement of support act, KRS Ch. 407.

406.021. Determination of paternity.

(1) Paternity may be determined upon the complaint of the mother, putative father, child, person, or agency substantially contributing to the support of the child. The action shall be brought by the county attorney or by the Cabinet for Families and Children or its designee upon the request of complainant authorized by this section.

(2) Paternity may be determined by the District Court when the mother and father of the child, either:

(a) Submit affidavits in which the mother states the name and Social Security number of the child's father and the father admits paternity of the child; or

(b) Give testimony before the District Court in which the mother states the name and Social Security number of the child's father and the father admits paternity of the child.

(3) If paternity has been determined or has been acknowledged according to the laws of this state, the liabilities of the father may be enforced in the same or other proceedings by the mother, child, person, or agency substantially contributing to the cost of pregnancy, confinement, education, necessary support, or funeral expenses. Bills for testing, pregnancy, and childbirth without requiring third party foundation testimony shall be regarded as prima facie evidence of the amount incurred. An action to enforce the liabilities shall be brought by the county attorney upon the request of such complainant authorized by this section. An action to enforce the liabilities of the cost of pregnancy, birthing costs, child support, and medical support shall be brought by the county attorney or by the Cabinet for Families and Children or its designee.

(4) Voluntary acknowledgment of paternity pursuant to KRS 213.046 shall create a rebuttable presumption of paternity.

(5) Upon a showing of service of process on the defendant and if the defendant has made no pleading to the court or has not moved to enter evidence pursuant to KRS 406.091, the court shall order paternity to be established by default.

(Enact. Acts 1964, ch. 37, § 2; 1968, ch. 200, § 11; 1972, ch. 159, § 2; 1976 (Ex. Sess.), ch. 14, § 410, effective January 2, 1978; 1990, ch. 272, § 1, effective July 13, 1990; 1994, ch. 330, § 17, effective July 15, 1994; 1998, ch. 255, § 26, effective July 15, 1998; 1998, ch. 426, § 587, effective July 15, 1998.)

Legislative Research Commission Note. (7/15/98). This section was amended by 1998 Ky. Acts chs. 255 and 426 which do not appear to be in conflict and have been codified together.

(7/15/98). A reference in this statute to the former Cabinet for Human Resources has been changed to the Cabinet for Families and Children under 1998 Ky. Acts ch. 426, sec. 629, and KRS 7.136(2).

406.025. Rebuttable presumption of voluntary acknowledgment-of-paternity affidavit — Temporary support order if paternity is indicated — Continuation of child support until final determination of paternity.

(1) Upon completion of a signed, notarized, voluntary acknowledgment-of-paternity affidavit by the mother and alleged father, obtained through the hospital-based paternity program, and submitted to the state registrar of vital statistics, paternity shall be rebuttably presumed for the earlier of sixty (60) days or the date of an administrative or judicial proceeding relating to the child, including a proceeding to establish a child support order.

(2) Upon completion of a signed, notarized, voluntary acknowledgment-of-paternity affidavit by the mother and alleged father obtained outside of the hospital and submitted to the state registrar of vital statistics, paternity shall be rebuttably presumed for the earlier of sixty (60) days or the date of an administrative or judicial proceeding relating to the child, including a proceeding to establish a child support order following the date of signatures on the notarized affidavit.

(3) Pending an administrative or judicial determination of parentage, or upon a signed, notarized, voluntary acknowledgment-of-paternity form having been transmitted by the local registrar and received by the Office of Vital Statistics, a temporary support order shall be issued upon motion of any party if paternity is indicated by genetic testing or other clear and convincing evidence.

(4) The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(5) The court shall, within fourteen (14) days from the filing of the motion, order an amount of temporary child support based upon the child support guidelines as provided by KRS 403.212. The ordered child support shall be retroactive to the date of the filing of the motion to move the court to enter an order for temporary child support without written or oral notice to the adverse party. The order shall provide that the order becomes effective seven (7) days following service of the order and movant's affidavit upon the adverse party unless the adverse party, within the seven (7) day period, files a motion for a hearing before the court. The motion for hearing shall be accompanied by the affidavit required by KRS 403.160(2)(a). Pending the hear-

ing, the adverse party shall pay child support in an amount based upon the guidelines and the adverse party's affidavit. The child support order entered following the hearing shall be retroactive to the date of the filing of the motion for temporary support unless otherwise ordered by the court.

(6) Unless good cause is shown, court or administratively ordered child support shall continue until final judicial or administrative determination of paternity.

(Enact. Acts 1996, ch. 365, § 12, effective July 15, 1996; 1998, ch. 255, § 27, effective July 15, 1998.)

406.031. Limitation of action.

(1) The determination of paternity under the provisions of KRS 406.021(1) shall be commenced within eighteen (18) years after the birth, miscarriage or stillbirth of a child. However, in such cases, liability for child support shall not predate the initiation of action taken to determine paternity as set forth in KRS 406.021 if the action is taken four (4) years or more from the date of birth.

(2) Any person for whom paternity has not yet been established and who had not reached eighteen (18) years of age as of August 16, 1984, including those persons for whom a paternity action was brought but dismissed because a statute of limitations of less than eighteen (18) years was then in effect, may bring an action to establish paternity.

(Enact. Acts 1964, ch. 37, § 3; 1972, ch. 159, § 3; 1984, ch. 379, § 6, effective July 13, 1984; 1986, ch. 487, § 17, effective July 15, 1986; 1990, ch. 418, § 15, effective July 13, 1990.)

406.051. Remedies — District Court's concurrent jurisdiction for child custody and visitation in paternity cases.

(1) The District Court has jurisdiction of an action brought under this chapter and all remedies for the enforcement of judgments for expenses of pregnancy and confinement for a wife or for education, necessary support, or funeral expenses for children born out of wedlock. An appeal may be had to the Circuit Court if prosecuted within sixty (60) days from the date of judgment. The court has continuing jurisdiction to modify or revoke a judgment for future education. All remedies under the uniform reciprocal enforcement of support act are available for enforcement of duties of support under this chapter.

(2) The District Court may exercise jurisdiction, concurrent with that of the Circuit Court, to determine matters of child custody and visitation in cases where paternity is established as set forth in this chapter. The District Court, in making these determinations, shall utilize the provisions of KRS Chapter 403 relating to child custody and visitation. The District Court may decline jurisdiction if it finds the circumstances of any case require a level of proceedings more appropriate to the Circuit Court.

(Enact. Acts 1964, ch. 37, § 5; 1976 (Ex. Sess.), ch. 14, § 412, effective January 2, 1978; 1984, ch. 16, § 9, effective July 13, 1984; 1996, ch. 314, § 1, effective July 15, 1996.)

Compiler's Notes. The uniform reciprocal enforcement of support act referred to in this section is compiled as KRS Chapter 407.

TITLE XXXVI

STATUTORY ACTIONS AND LIMITATIONS

CHAPTER 415

REPEAL OR VACATION OF CHARTERS — USURPATION

SECTION.

415.050. Duties of the Attorney General.
415.060. Proceedings for usurpation against person holding office.
415.070. Judgment against usurper — Enforcement.

415.050. Duties of the Attorney General.

For usurpation of other than county offices or franchises, the action by the Commonwealth shall be instituted and prosecuted by the Attorney General.

(C.C. 485: trans. Acts 1952, ch. 84, § 1, effective July 1, 1953.)

Opinions of Attorney General. Under this section it is the duty of the Attorney General to institute ouster proceedings when a vacancy is created on a county board of education by the unexcused absence of a member from three consecutive meetings. OAG 60-1135.

Actions taken as a school board member after filing for nomination for the office of sheriff and thus disqualifying himself would be valid until the school board member resigned or was removed from office. OAG 65-211.

A school board member is a legal member of the board until he resigns or is removed in an ouster action. OAG 70-757.

Failing to meet the qualifications or doing that which is proscribed in KRS 160.180 constitutes cause for consideration for removal of a board of education member from office for usurpation of that office by the Attorney General. OAG 78-159.

The Office of Attorney General, which has the sole responsibility and authority for bringing an ouster or quo warranto action against a school board member pursuant to this section, is not required to accept as conclusive any affidavits as to eighth grade completion which are provided pursuant to subdivision (1)(c) of KRS 160.180. OAG 82-53.

Ouster proceedings may be taken by the Attorney General pursuant to this section and KRS 415.060 against school board members who fail to obtain the required in-service training pursuant to KRS 160.180(5). OAG 85-145.

Persons who are ineligible to serve on school board should resign; however, unless a private citizen is claiming the office for himself, there is no proceeding short of an Attorney General ouster complaint which could prevent such individuals from taking the oath of office. OAG 92-160.

Where school board members were ineligible to serve on the board due to the employment of a relative by the school system and members refused to resign, the Office of the Attorney

General could instigate ouster proceedings against them. OAG 92-160.

NOTES TO DECISIONS

ANALYSIS

1. Construction.
2. Power of Attorney General.
4. State office.
5. —School board.
6. —County school superintendent.
7. —School trustee.

1. Construction.

In deciding whether the Attorney General has authority to bring ouster proceedings for usurpation of a public office, it is the governmental level of the office, rather than the nature of the usurpation for which ouster is sought which is controlling and since county school board members are state officers it is clear that usurpation of the office is to be attacked through actions brought by the Attorney General under this section. Commonwealth v. Mason, 284 S.W.2d 825 (Ky. 1955).

Courts should be slow to invoke estoppel against the state in its efforts to enforce a statute the purpose of which is to prevent "conflict of interest" situations and to prevent self-interest in the deliberation of public servants, and fact that county school board member was re-elected to a new term after the acts complained of did not "whitewash" him or furnish a defense. Stringer v. Commonwealth, 428 S.W.2d 203 (Ky. 1968).

Courts should not be deterred in giving "conflict of interest" statute its full measure of legislative intendment by other public school authorities who may be instrumental in invoking the statute for purely selfish reasons. Stringer v. Commonwealth, 428 S.W.2d 203 (Ky. 1968).

2. Power of Attorney General.

The Attorney General had the power to give authority to an attorney to institute ouster proceedings, in the Attorney General's name, against members of school board who were allegedly disqualified from holding the office. Commonwealth v. Begley, 273 Ky. 636, 117 S.W.2d 599 (1938).

A public officer may not be ousted or enjoined from the performance of his duties, except as the result of an action brought by a person who claims the office, or in the case of a state officer, in an ouster action brought by the Attorney General. Griffey v. Board of Educ., 385 S.W.2d 319 (Ky. 1964).

4. State Office.

5. —School Board.

A member of the county board of education is not a county official but an official of the state; therefore, an action to oust a member of the county board of education, alleging he is a usurper of the office, should have been brought by the Attorney General and not by the Commonwealth's attorney. Tipton v. Commonwealth, 238 Ky. 111, 36 S.W.2d 855 (1931).

The Attorney General has the authority through local counsel to institute an action to have a member of the board of education of a county declared a usurper, alleging that he has forfeited his office because of interest in contracts entered into with school board for purchase of coal. Commonwealth ex rel. Vincent v. Withers, 266 Ky. 29, 98 S.W.2d 24 (1936).

The Attorney General by an ordinary action may remove a member of a county board of education from office for wrongful acts. Richardson v. Commonwealth ex rel. Meridith, 275 Ky. 486, 122 S.W.2d 156 (1938).

A member of the county board of education is a state officer and a suit to oust him as a usurper must be brought by the Attorney General. Chadwell v. Commonwealth, 288 Ky. 644, 157 S.W.2d 280 (1941).

A superintendent of schools, not claiming office of school board member, could not bring an action to oust school board member because of illegal transactions with the board in violation of KRS 160.180, but the Attorney General, under this section and KRS 415.060, had to bring the action since the board of education is a state and not a county office. Jones v. Browning, 298 Ky. 467, 183 S.W.2d 38 (1944).

A county board of education cannot declare office of one of its members vacant because of forfeiture due to the ineligibility of the member, and appoint another to serve in his stead under KRS 160.180; proper procedure is for an action to be brought by the Attorney General to have the office declared vacant for the office is a state office. Salyers v. Lyons, 304 Ky. 320, 200 S.W.2d 749 (1947).

An action to prevent usurpation of office by an elected member of county board of education, based on ineligibility because he did not possess an eighth grade education as required by KRS 160.180, which was filed after his election and oath of office but two days before the expiration of the term of his predecessor, was properly dismissed since a usurper is one who intrudes himself into an office that is vacant or without color of title or right, ousts the incumbent and assumes to act as an officer by exercising some of the functions of the office; thus, the term must have begun and the defendant have assumed, usurped or taken possession of the office prior to the filing of a petition for ouster, and the later assumption of the office and amendment of petition cannot give life to a premature petition. Broyles v. Commonwealth, 309 Ky. 837, 219 S.W.2d 52 (1949).

If alleged misconduct by local school board members is not considered by the superintendent of public instruction, in the exercise of a fair discretion, to be such as to warrant action by the state board of education, the local citizens may still obtain a remedy through removal proceedings by the Attorney General under KRS 415.030 and this section. Hogan v. Kentucky State Bd. of Educ., 329 S.W.2d 563 (Ky. 1959).

In ouster proceeding by Attorney General under authority of this section and KRS 415.060 against school board member based on his lack of qualifications, member's failure to respond properly to request for admission that he lacked such qualifications constituted an admission of such lack, and judgment of ouster should have been granted. Commonwealth ex rel. Matthews v. Rice, 415 S.W.2d 618 (Ky. 1966).

The State Board for Elementary and Secondary Education, under the Kentucky Education Reform Act, has the authority to remove members from a county board of education for misconduct in office; there is no language in either KRS 156.132 or KRS 160.180 which suggests, let alone mandates, that the Attorney General has the exclusive power to remove district board members for violations of KRS 160.180. State Bd. for Elementary & Secondary Educ. v. Ball, 847 S.W.2d 743 (Ky. 1993).

6. —County School Superintendent.

A county school superintendent is not a county officer and thus an action against him for usurpation of office must be brought against him by the Attorney General, not by a Commonwealth's attorney. Commonwealth ex rel. Baxter v. Burnett, 237 Ky. 473, 35 S.W.2d 857 (1931). See Tipton v. Commonwealth, 238 Ky. 111, 36 S.W.2d 855 (1931).

Where a county school superintendent has accepted another state office that is incompatible with the office of school superintendent he has forfeited the office, and, since the county school superintendent is an official of the state, the Attorney General is the only one who can proceed against him for usurping the office. Commonwealth ex rel. Baxter v. Burnett, 237 Ky. 473, 35 S.W.2d 857 (1931).

7. —School Trustee.

Where one is in possession of the office of school trustee, though he be a usurper, he cannot be deprived of it at the suit of a claimant of the same office, unless the latter shows

himself entitled thereto, and since petition shows on its face that plaintiff did not have title, the petition was properly dismissed. Only one who could bring action against usurper was the Attorney General or the Commonwealth's attorney. Morgan v. Adams, 250 Ky. 441, 63 S.W.2d 479 (1933).

415.060. Proceedings for usurpation against person holding office.

A person who continues to exercise an office after having committed an act, or omitted to do an act, the commission or omission of which, by law, creates a forfeiture of his office, may be proceeded against for usurpation thereof.

(C.C. 486: trans. Acts 1952, ch. 84, § 1, effective July 1, 1953.)

NOTES TO DECISIONS

ANALYSIS

3. Acts creating forfeitures.
4. Person who must bring proceedings.

3. Acts Creating Forfeitures.

Evidence was insufficient to establish wrongful conduct by school board member which would constitute him a usurper in the office although his son was named truant officer and his daughter, a teacher, was transferred from the district high school to county high school at in increased salary. Richardson v. Commonwealth ex rel. Meridith, 275 Ky. 486, 122 S.W.2d 156 (1938).

Under statute prescribing qualifications of members of county school board of education and specifying disqualification which will operate as a forfeiture of office, a member of county board of education who cannot prove his educational qualifications in the manner prescribed is a usurper of the office and a forfeiture will be declared in a direct proceeding. Chadwell v. Commonwealth, 288 Ky. 644, 157 S.W.2d 280 (1941).

4. Person Who Must Bring Proceedings.

A superintendent of schools, not claiming office of school board member, could not bring an action to oust school board member because of illegal transactions with the board in violation of KRS 160.180, but the Attorney General, under KRS 415.050 and this section, had to bring the action since the board of education is a state and not a county office. Jones v. Browning, 298 Ky. 467, 183 S.W.2d 38 (1944).

415.070. Judgment against usurper — Enforcement.

A person adjudged to have usurped an office or franchise shall be deprived thereof by the judgment of the court, and the person adjudged entitled thereto shall be placed in possession thereof; but no one shall be adjudged entitled thereto, unless the action be instituted by him. And the court shall have power to enforce its judgment by causing the books and papers, and all other things pertaining to the office or franchise, to be surrendered by the usurper; and by preventing him from further exercising or using the same; and may enforce its orders by fine and imprisonment until obeyed.

(C.C. 487: trans. Acts 1952, ch. 84, § 1, effective July 1, 1953.)

Cross-References. Official misconduct in first and second degree, KRS 522.020, 522.030.

NOTES TO DECISIONS

ANALYSIS

2. Claimant must show title.
4. Appeal.

2. Claimant Must Show Title.

A superintendent of common schools of a county, in possession of the office, though he be a usurper, cannot be deprived of it at the suit of another claimant of the office who cannot show himself entitled thereto. Wilson v. Tye, 126 Ky. 34, 31 Ky. L. Rptr. 491, 102 S.W. 856 (1907).

4. Appeal.

Where judgment was entered holding that offices of members of county board of education were vacant because the members holding said offices were usurpers, the offices became immediately vacant and the judgment could not be suspended pending a final determination on appeal. McClendon v. Hamilton, 277 Ky. 734, 127 S.W.2d 605 (1939).

TITLE XXXVII

SPECIAL PROCEEDINGS

CHAPTER 416

EMINENT DOMAIN

SECTION.

EMINENT DOMAIN ACT OF KENTUCKY (1976)

416.540. Definitions.
416.550. Right to condemn.
416.560. Initiation of condemnation proceedings — Costs — Right of entry — Damages.
416.570. Filing of petition.
416.580. Commissioners — Appointment — Report — Compensation — Vacancy — Majority required.
416.590. Issuing summons.
416.600. Filing answer.
416.610. Trial by court on pleadings — Interlocutory judgment.
416.620. Trial of exceptions to interlocutory judgment — Questions as to compensation to be tried by jury — Appeals.
416.630. Money paid into court.
416.640. Conflicting claimants to condemned land.
416.650. Proceedings governed by Rules of Civil Procedure.
416.660. Standards for determining compensation — Changes in value — Taking date.
416.670. Limitations on condemnation powers — Rights of current landowner.
416.680. Short title.

PENALTIES

416.990. Penalties.

EMINENT DOMAIN ACT OF KENTUCKY (1976)

416.540. Definitions.

(1) "Condemn" means to take private property for a public purpose under the right of eminent domain;

(2) "Condemnor" shall mean and include any person, corporation or entity, including the Commonwealth of Kentucky, its agencies and departments, county, municipality and taxing district authorized and empowered by law to exercise the right of eminent domain;
(3) "Condemnee" means the owner of the property interest being taken;
(4) "Court" means the circuit court;
(5) "Property" means real or personal property, or both, of any nature or kind that is subject to condemnation;
(6) "Eminent domain" means the right of the Commonwealth to take for a public purpose and shall include the right of private persons, corporations or business entities to do so under authority of law.

(Enact. Acts 1976, ch. 140, § 2.)

416.550. Right to condemn.

Whenever any condemnor cannot, by agreement with the owner thereof, acquire the property right, privileges or easements needed for any of the uses or purposes for which the condemnor is authorized by law, to exercise its right of eminent domain, the condemnor may condemn such property, property rights, privileges or easements pursuant to the provisions of KRS 416.550 to 416.670. It is not a prerequisite to an action to attempt to agree with an owner who is unknown or who, after reasonable effort, cannot be found within the state or with an owner who is under a disability.

(Enact. Acts 1976, ch. 140, § 3.)

416.560. Initiation of condemnation proceedings — Costs — Right of entry — Damages.

(1) Notwithstanding any other provision of the law, a department, instrumentality or agency of a consolidated local government, city, county, or urban-county government, other than a waterworks corporation the capital stock of which is wholly owned by a city of the first class or a consolidated local government, having a right of eminent domain under other statutes shall exercise such right only by requesting the governing body of the consolidated local government, city, county, or urban-county to institute condemnation proceedings on its behalf. If the governing body of the consolidated local government, city, county, or urban-county agrees, it shall institute such proceedings under KRS 416.570, and all costs involved in the condemnation shall be borne by the department, instrumentality, or agency requesting the condemnation.
(2) If any department, instrumentality, or agency of a consolidated local government, city, county, or urban-county government, other than a waterworks corporation the capital stock of which is wholly owned by a city of the first class or a consolidated local government, operates in more than one (1) governmental unit, it shall request the governing body of the consolidated local government, city, county, or urban-county government wherein the largest part of the individual tract of the property sought to be condemned lies, to institute condemnation proceedings on its behalf.
(3) A department, instrumentality, or agency of the Commonwealth of Kentucky, other than the Transportation Cabinet and local boards of education, having a right of eminent domain under other statutes shall exercise such right only by requesting the Finance and Administration Cabinet to institute condemnation proceedings on its behalf. If the Finance and Administration Cabinet agrees, it shall institute such proceedings under KRS 416.570, and all costs involved in the condemnation shall be borne by the department, instrumentality, or agency requesting the condemnation.
(4) Prior to the filing of the petition to condemn, the condemnor or its employees or agents shall have the right to enter upon any land or improvement which it has the power to condemn, in order to make studies, surveys, tests, sounding, and appraisals, provided that the owner of the land or the party in whose name the property is assessed has been notified ten (10) days prior to entry on the property. Any actual damages sustained by the owner of a property interest in the property entered upon by the condemnor shall be paid by the condemnor and shall be assessed by the court or the court may refer the matter to commissioners to ascertain and assess the damages sustained by the condemnee, which award shall be subject to appeal.

(Enact. Acts 1976, ch. 140, § 4; 1982, ch. 239, § 1, effective July 15, 1982; 2000, ch. 45, § 1, effective July 14, 2000; 2002, ch. 346, § 230, effective July 15, 2002.)

416.570. Filing of petition.

Except as otherwise provided in KRS 416.560, a condemnor seeking to condemn property or the use and occupation thereof, shall file a verified petition in the circuit court of the county in which all or the greater portion of the property sought to be condemned is located, which petition shall state that it is filed under the provisions of KRS 416.550 to 416.670 and shall contain, in substance:
(1) Allegations sufficient to show that the petitioner is entitled, under the provisions of applicable law, to exercise the right of eminent domain and to condemn the property, or the use and occupation thereof, sought to be taken in such proceedings;
(2) A particular description of the property and the use and occupation thereof sought to be condemned; and
(3) An application to the court to appoint commissioners to award the amount of compensation the owner of the property sought to be condemned is entitled to receive therefor.

(Enact. Acts 1976, ch. 140, § 5.)

416.580. Commissioners — Appointment — Report — Compensation — Vacancy — Majority required.

(1) The circuit court, or in the absence of the circuit judge from the county, the circuit court clerk, shall appoint as commissioners three (3) impartial housekeepers of the county who are owners of land. They shall be sworn to faithfully and impartially discharge their duties under this section. The

commissioners shall view the land or material sought to be condemned and award to the owner or owners such a sum as will fairly represent the reduction in the market value of the entire property, all of or a portion of which is sought to be condemned, said sum being the difference between the market value of the entire property immediately before the taking and the market value of the remainder of the property immediately after the taking thereof, together with the fair rental value of any temporary easements sought to be condemned. Within fifteen (15) days from the date of their appointment, they shall return a written report to the office of the circuit court, stating the above values in their award and shall describe in their report the property sought to be condemned. They shall be allowed a reasonable fee which shall be taxed as costs.

(2) In the event any person appointed to serve as commissioner fails, refuses or becomes incapable of acting, the court, or judge thereof, shall forthwith appoint a qualified person to fill the vacancy. A majority of the commissioners appointed and qualified have the power to act and to make and sign the award and report. If a majority of the commissioners do not agree on a decision, three (3) new commissioners shall be appointed by the court on application by any of the parties to the action.

(Enact. Acts 1976, ch. 140, § 6.)

416.590. Issuing summons.

Upon the application of the petitioner, and the filing of any necessary affidavits, the clerk of the court shall issue process against the owner to show cause why the petitioner does not have the right to condemn the lands, or the use and occupation thereof sought to be condemned. The summons shall contain a statement of the amount of the award and shall state that an answer or other pleading, if any, must be filed within twenty (20) days from date of service. The clerk shall make such orders as to nonresidents and persons under disability as are required by the statutes and Rules of Civil Procedure in actions against them in circuit courts.

(Enact. Acts 1976, ch. 140, § 7.)

416.600. Filing answer.

Any answer or other pleading filed by the owner in response to the summons shall be filed on or before the twenty (20) days after date of service and shall be confined solely to the question of the right of the petitioner to condemn the property sought to be condemned, but without prejudice to the owner's right to except from the amount of the compensation awarded in the manner provided in KRS 416.550 to 416.670.

(Enact. Acts 1976, ch. 140, § 8.)

416.610. Trial by court on pleadings — Interlocutory judgment.

(1) After the owner has been summoned twenty (20) days, the court shall examine the report of the commissioners to determine whether it conforms to the provisions of KRS 416.580. If the report of the commissioners is not in the proper form the court shall require the commissioners to make such corrections as are necessary.

(2) If no answer or other pleading is filed by the owner or owners putting in issue the right of the petitioner to condemn the property or the use and occupation thereof sought to be condemned, the court shall enter an interlocutory judgment which shall contain, in substance:

(a) A finding that the petitioner has the right, under the provisions of KRS 416.550 to 416.670 and other applicable law to condemn the property or the use and occupation thereof;

(b) A finding that the report of the commissioners conforms to the provisions of KRS 416.580;

(c) An authorization to take possession of the property for the purposes and under the conditions and limitations, if any, set forth in the petition upon payment to the owner or to the clerk of the court the amount of the compensation awarded by the commissioners;

(d) Proper provision for the conveyance of the title to the land and material, to the extent condemned, as adjudged therein in the event no exception is taken as provided in KRS 416.620(1).

(3) Any exception from such interlocutory judgment by either party or both parties shall be confined solely to exceptions to the amount of compensation awarded by the commissioners.

(4) If the owner has filed answer or pleading putting in issue the right of the petitioner to condemn the property or use and occupation thereof sought to be condemned, the court shall, without intervention of jury, proceed forthwith to hear and determine whether or not the petitioner has such right. If the court determines that petitioner has such rights, an interlocutory judgment, as provided for in subsection (2) of this section, shall be entered. If the court determines that petitioner does not have such right, it shall enter a final judgment which shall contain, in substance:

(a) A finding that the report of the commissioners conforms to the provisions of KRS 416.580;

(b) A finding that the petitioner is not authorized to condemn the property or the use and occupation thereof for the purposes and under the conditions and limitations set forth in the petition, stating the particular ground or grounds on which the petitioner is not so authorized;

(c) An order dismissing the petition and directing the petitioner to pay all costs.

(Enact. Acts 1976, ch. 140, § 9.)

416.620. Trial of exceptions to interlocutory judgment — Questions as to compensation to be tried by jury — Appeals.

(1) Within thirty (30) days from the date of entry of an interlocutory judgment authorizing the petitioner to take possession of the property, exceptions may be filed by either party or both parties by filing with the clerk of the circuit court and serving upon the other party or parties a statement of excep-

tions, which statement shall contain any exceptions the party has to the award made by the commissioners. The statement of exceptions shall be tried, but shall be limited to the questions which are raised in the original statements of the exceptions, or as amended, but the owner shall not be permitted to raise any question, nor shall the court reconsider any question so raised, concerning the right of the petitioner to condemn the property. All questions of fact pertaining to the amount of compensation to the owner, or owners, shall be determined by a jury, which jury on the motion of either party shall be sent by the court, in the charge of the sheriff, to view the land and material. After a jury trial, and if possession previously has not been taken by the condemnor of the land and material condemned, it may do so upon the payment to the owner or to the clerk of the circuit court the amount of the compensation adjudged by the circuit court to be due the owner.

(2) Appeals may be taken to the Court of Appeals from the final judgment of the circuit court as in other cases except that an appeal by the owner shall not operate as a supersedeas.

(3) The payment by the condemnor of the amount of compensation awarded and the taking possession of the lands and material condemned shall not prejudice its right to except from the award of the commissioners or the judgment of any court, nor shall the acceptance by the owner of the amount of the compensation awarded prejudice his right to except from the award of the commissioners or the judgment of any court.

(4) All costs in the circuit court shall be adjudged against the condemnor.

(5) If the condemnor takes possession of the property condemned and the amount of compensation is thereafter increased over that awarded by the commissioners, the condemnor shall pay interest to the owner at the rate of six percent (6%) per annum upon the amount of such increase from the date the condemnor took possession of the property. If the condemnor takes possession of the property condemned and the amount of compensation is thereafter decreased below that awarded by the commissioners, the condemnor shall be entitled to a personal judgment against the owner for the amount of the decrease plus interest at the rate of six percent (6%) per annum from the date the owner accepted the amount of compensation the condemnor paid into court or to the owner. If the owner at all times refuses to accept the payment tendered by the condemnor, no interest shall be allowed in the judgment against the owner for the amount of the decrease.

(6) Upon the final determination of exceptions, or upon expiration of thirty (30) days from entry of the interlocutory judgment if no exceptions are filed, the circuit court shall make such orders as may be proper for the conveyance of the title to the extent condemned, to the property, and shall enter such final judgment as may be appropriate.

(Enact. Acts 1976, ch. 140, § 10.)

416.630. Money paid into court.

All money paid into court or paid or transferred to the clerk of a court under the provisions of KRS 416.550 to 416.670 shall be received by the clerk of the court and held subject to the order of the court, for which the clerk and his sureties on his official bond shall be responsible to the persons entitled thereto.

(Enact. Acts 1976, ch. 140, § 11.)

416.640. Conflicting claimants to condemned land.

Where there are conflicting claimants to the land sought to be condemned and all such parties are before the court, each claimant, for the purposes of the condemnation proceeding only, shall be deemed to be an owner, and the procedure for the condemnation of the land shall be as provided in KRS 416.550 to 416.670 except that, before the condemnor shall be entitled to take possession of the land, it shall be required to pay the compensation awarded therein to the circuit court clerk to be held for the benefit of, and paid over to such persons as may thereafter be determined to be entitled to receive it. In such cases, the claimants may have their rights determined in a separate action, but the filing of such action or its pendency shall in no wise stay or delay said condemnation proceedings.

(Enact. Acts 1976, ch. 140, § 12.)

416.650. Proceedings governed by Rules of Civil Procedure.

All proceedings under KRS 416.550 to 416.670 shall be governed by the provisions of the Rules of Civil Procedure except where the provisions of KRS 416.550 to 416.670 specifically or by necessary implication provide otherwise.

(Enact. Acts 1976, ch. 140, § 13.)

416.660. Standards for determining compensation — Changes in value — Taking date.

(1) In all actions for the condemnation of lands under the provisions of KRS 416.550 to 416.670, except temporary easements, there shall be awarded to the landowners as compensation such a sum as will fairly represent the difference between the fair market value of the entire tract, all or a portion of which is sought to be condemned, immediately before the taking and the fair market value of the remainder thereof immediately after the taking, including in the remainder all rights which the landowner may retain in the lands sought to be condemned where less than the fee simple interest therein is taken, together with the fair rental value of any temporary easements sought to be condemned.

(2) Any change in the fair market value prior to the date of condemnation which the condemnor or condemnee establishes was substantially due to the general knowledge of the imminence of condemnation or the construction of the project shall be disregarded in determining fair market value. The taking date for valuation purposes shall be either the date the condemnor takes the land, or

the date of the trial of the issue of just compensation, whichever occurs first.

(Enact. Acts 1976, ch. 140, § 14.)

DECISIONS UNDER PRIOR LAW

ANALYSIS

1. Measure of compensation.
5. —Comparable sales.

1. Measure of Compensation.

The landowner was entitled to receive as just compensation the difference in the fair market value of the total tract of land immediately before and immediately after the taking of a portion of the land for school purposes. Usher & Gardner, Inc. v. Mayfield Independent Bd. of Educ., 461 S.W.2d 560 (Ky. 1970).

5. —Comparable Sales.

In condemnation suit where landowners were permitted to show for comparative valuation purposes a fairly recent transaction in which school board had purchased property the question of whether the school board transaction was free and voluntary from the standpoint of the purchaser was a matter for the consideration of the jury. Commonwealth, Dep't of Hwys. v. McGeorge, 369 S.W.2d 126 (Ky. 1963).

416.670. Limitations on condemnation powers — Rights of current landowner.

(1) Development shall be started on any property which has been acquired through condemnation within a period of eight (8) years from the date of the deed to the condemnor or the date on which the condemnor took possession, whichever is earlier, for the purpose for which it was condemned. The failure of the condemnor to so begin development shall entitle the current landowner to repurchase the property at the price the condemnor paid to the landowner for the property. The current owner of the land from which the condemned land was taken may reacquire the land as aforementioned.

(2) Any condemnor who fails to develop property acquired by condemnation or who fails to begin design on highway projects pursuant to KRS Chapter 177 within a period of eight (8) years after acquisition, shall notify the current landowner of the provisions of subsection (1) of this section. If the current landowner refuses to purchase property described in this section, public notice shall be given in a manner prescribed in KRS Chapter 424 within thirty (30) days of the refusal, and the property shall be sold at auction. Provided, however, that this section shall not apply to property acquired for purposes of industrial development pursuant to KRS Chapter 152.

(3) If there are two (2) or more current owners of the land from which the condemned land was taken because the remaining land was subdivided, and if they have a common boundary with the condemned land, the condemned land shall be reacquired by allowing all owners of a parcel of the remaining land with a common boundary and from which the condemned land was taken to offer sealed bids for the condemned land within thirty (30) days of notification by the condemnor. The condemnor shall accept the highest and best sealed bid equal to or greater than the price paid at the time of condemnation. If there are no sealed bids or if all sealed bids are below the original price paid by the condemnor for the property, the property shall be sold at auction.

(Enact. Acts 1976, ch. 140, § 15; 1978, ch. 384, § 117, effective June 17, 1978; 1980, ch. 231, § 1, effective July 15, 1980.)

416.680. Short title.

KRS 416.540 to 416.670 shall be known as the "Eminent Domain Act of Kentucky."

(Enact. Acts 1976, ch. 140, § 1.)

PENALTIES

416.990. Penalties.

Any person who places any obstruction, including poles, wires, signboards, fences, gas, water, sewerage, oil or other pipelines, on any part of the right-of-way of any state highway, or under any such highway, before obtaining the permit required by subsection (3) of KRS 416.140, or who fails to remove any obstruction when given notice as provided in that subsection, shall be fined not less than ten dollars ($10.00) nor more than one hundred dollars ($100), and each day the obstruction is continued without permit or after such notice to remove shall constitute a separate offense.

(1599c-1.)

TITLE XXXVIII

WITNESSES, EVIDENCE, NOTARIES, COMMISSIONERS OF FOREIGN DEEDS, AND LEGAL NOTICES

CHAPTER 424

LEGAL NOTICES

SECTION.

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PENALTIES

424.990. Penalties.

GENERAL PROVISIONS

424.110. Definitions.

As used in KRS 424.110 to 424.370:

(1) "Publication area" means the city, county, district, or other local area for which an advertisement is required by law to be made. An advertisement shall be deemed to be for a particular city, county, district, or other local area if it concerns an official activity of the city, county, district, or other area or of any governing body, board, commission, officer, agency, or court thereof, or if the subject of the advertisement concerns particularly the people of the city, county, district, or other area;

(2) "Advertisement" means any matter required by law to be published.

(3) "Zoned edition" means a newspaper edition published at least once a week, distributed in a specific geographic region of the newspaper's circulation area, and containing reporting and advertising of interest to subscribers in that geographic region.

(Enact. Acts 1958, ch. 42, § 1; 1960, ch. 168, § 1; 1992, ch. 9, § 1, effective July 14, 1992.)

Cross-References. Fish and wildlife resources, department of, rules and regulations as to game and fish, nonapplication of chapter to, KRS 150.025.

Cited: Board of Educ. v. Hall, 353 S.W.2d 194 (1962).

424.120. Qualifications of newspapers.

(1) Except as provided in subsection (2) of this section, if an advertisement for a publication area is required by law to be published in a newspaper, the publication shall be made in a newspaper that meets the following requirements:

(a) It shall be published in the publication area. A newspaper shall be deemed to be published in the area if it maintains its principal office in the area for the purpose of gathering news and soliciting advertisements and other general business of newspaper publications, and has a second-class mailing permit issued for that office. A newspaper published outside of Kentucky shall not be eligible to carry advertisements for any county or publication area within the county, other than for the city in which its main office is located, if there is a newspaper published in the county that has a substantial general circulation throughout the county and that otherwise meets the requirements of this section; and

(b) It shall be of regular issue and have a bona fide circulation in the publication area. A newspaper shall be deemed to be of regular issue if it is published regularly, as frequently as once a week, for at least fifty (50) weeks during the calendar year as prescribed by its mailing permit, and has been so published in the area for the immediately preceding two-year period. A newspaper meeting all the criteria to be of regular issue, except publication in the area for the immediately preceding two-year period, shall be deemed to be of regular issue if it is the only paper in the publication area and has a paid circulation equal to at least ten percent (10%) of the population of the publication area. A newspaper shall be deemed to be of bona fide circulation in the publication area if it is circulated generally in the area, and maintains a definite price or consideration not less than fifty percent (50%) of its published price, and is paid for by not less than fifty percent (50%) of those to whom distribution is made; and

(c) It shall bear a title or name, consist of not less than four (4) pages without a cover, and be of a type to which the general public resorts for passing events of a political, religious, commercial, and social nature, and for current happenings, announcements, miscellaneous reading matter, advertisements, and other notices. The news content shall be at least twenty-five percent (25%) of the total column space in more than one-half (½) of its issues during any twelve-month period.

(d) If, in a publication area there is more than one (1) newspaper which meets the above requirements, the newspaper having the largest bona fide paid circulation as shown by the average number of paid copies of each issue as shown in its published statement of ownership as filed on October 1 for the publication area shall be the newspaper where advertisements required by law to be published shall be carried.

(e) For the purposes of KRS Chapter 424, publishing shall be considered as the total recurring processes of producing the newspaper, embracing all of the included contents of reading matter, illustrations, and advertising enumerated in paragraphs (a) through (d) of this subsection. A newspaper shall not be excluded from qualifying for the purposes of legal publications as provided in this chapter if its printing or reproduction processes take place outside the publication area.

(2) (a) If, in the case of a publication area smaller than the county in which it is located, there is no newspaper published in the area, the publication shall be made in a newspaper published in the county that is qualified under this section to publish advertisements for the county. If the qualified newspaper publishes a zoned edition which is distributed to regular subscribers within the publication area, any advertisement required by law to be published in the publication area may be published in the zoned edition distributed in that area.

(b) If, in any county there is no newspaper meeting the requirements of this section for pub-

lishing advertisements for that county, any advertisements required to be published for the county or for any publication area within the county shall be published in a newspaper of the largest bona fide circulation in that county published in and qualified to publish advertisements for an adjoining county in Kentucky. This subsection is intended to supersede any statute that provides or contemplates that newspaper publication may be dispensed with if there is no newspaper printed or published or of general circulation in the particular publication area.

(3) If a publication area consists of a district, other than a city, which extends into more than one (1) county, the part of the district in each county shall be considered to be a separate publication area for the purposes of this section, and an advertisement for each separate publication area shall be published in a newspaper qualified under this section to publish advertisements for the area.

(Enact. Acts 1958, ch. 42, § 2; 1960, ch. 168, § 1; 1982, ch. 180, § 1, effective July 15, 1982; 1982, ch. 430, § 3, effective July 15, 1982; 1984, ch. 201, § 1, effective July 13, 1984; 1992, ch. 9, § 2, effective July 14, 1992.)

Opinions of Attorney General. Where a member of a county board of education and her husband owned a weekly newspaper, the only newspaper in that county, school financial statements and legal notices could pursuant to this section and KRS 424.220 be published in such newspaper without violating KRS 160.180. OAG 73-438.

No conflict of interests would exist if the wife of a publisher of a paper qualified pursuant to this section to publish legal advertisements for the county board of education is elected to the board of education. OAG 74-516.

KRS 158.690 (repealed) requires the school district's annual performance report to be published annually in the newspaper with the largest circulation in the county; a district is to determine which paper is the largest circulation by applying the criteria of subdivision (1)(d) of this section. OAG 86-72.

Since the annual performance report required by KRS 158.690 (repealed) to be published is a matter required by law to be published, it is an "advertisement" within the meaning of KRS Chapter 424, and this section is applicable to the school district's duty to publish the annual performance report pursuant to KRS 158.690 (repealed). OAG 86-72.

A newspaper distributed for free may not be considered for publication of the school district's annual performance report required by KRS 158.690 (repealed). OAG 86-72.

424.130. Times and periods of publication.

(1) Except as otherwise provided in KRS 424.110 to 424.370 and notwithstanding any provision of existing law providing for different times or periods of publication, the times and periods of publications of advertisements required by law to be made in a newspaper shall be as follows:

(a) When an advertisement is of a completed act, such as an ordinance, resolution, regulation, order, rule, report, statement, or certificate and the purpose of the publication is not to inform the public or the members of any class of persons that they may or shall do an act or exercise a right within a designated period or upon or by a designated date, the advertisement shall be published one (1) time only and within thirty (30) days after completion of the act. However, a failure to comply with this paragraph shall not subject a person to any of the penalties provided by KRS 424.990 unless such failure continues for a period of ten (10) days after notice to comply has been given him by registered letter.

(b) When an advertisement is for the purpose of informing the public or the members of any class of persons that on or before a certain day they may or shall file a petition or exceptions or a remonstrance or protest or objection, or resist the granting of an application or petition, or present or file a claim, or submit a bid, the advertisement shall be published at least once, but may be published two (2) or more times, provided that one (1) publication occurs not less than seven (7) days nor more than twenty-one (21) days before the occurrence of the act or event.

(c) Excepting counties with a city of the first class or a consolidated local government, when an advertisement is for the purpose of informing the public and the advertisement is of a sale of property or is a notice of delinquent taxes, the advertisement shall be published once a week for three (3) successive weeks. For counties containing a city of the first class or a consolidated local government, when an advertisement is for the purpose of informing the public and the advertisement is a notice of delinquent taxes, or notice of the sale of tax claims, the advertisement shall be published once, preceded by a one-half (½) page notice of advertisement the preceding week. The provisions of this paragraph shall not be construed to require the advertisement of notice of delinquent state taxes which are collected by the state.

(d) Any advertisement not coming within the scope of paragraph (a), (b), or (c) of this subsection, such as one for the purpose of informing the public or the members of any class of persons of the holding of an election, or of a public hearing, or of an examination, or of an opportunity for inspection, or of the due date of a tax or special assessment, shall be published at least once but may be published two (2) or more times, provided that one (1) publication occurs not less than seven (7) days nor more than twenty-one (21) days before the occurrence of the act or event, or in the case of an inspection period, the inspection period commences.

(e) If the particular statute requiring that an advertisement be published provides that the day upon or by which, or the period within which, an act may or shall be done or a right exercised, or an event may or shall take place, is to be determined by computing time for the day of publication of an advertisement, the advertisement shall be published at least once, promptly, in accordance with the statute, and

the computation of time shall be from the day of initial publication.

(2) This section is not intended to supersede or affect any statute providing for notice of the fact that an adversary action in court has been commenced.

(Enact. Acts 1958, ch. 42, § 3; 1960, ch. 168, § 1; 1988, ch. 32, § 1, effective July 15, 1988; 2002, ch. 346, § 231, effective July 15, 2002.)

424.140. Contents or form of advertisements.

(1) Any advertisement of a hearing, meeting or examination shall state the time, place and purpose of the same.

(2) Any advertisement of an election shall state the time and purpose of the election, and if the election is upon a public question the advertisement shall state the substance of the question.

(3) Any advertisement for bids or of a sale shall describe what is to be bid for or sold, the time and place of the sale or for the receipt of bids, and any special terms of the sale.

(4) Where any statute provides that, within a specified period of time after action by any governmental agency, unit or body, members of the public or anyone interested in or affected by such action shall or may act, and it is provided by statute that notice of such governmental action be published, the advertisement shall state the time and place when and where action may be taken.

(Enact. Acts 1958, ch. 42, § 4; 1960, ch. 168, § 1.)

424.150. Person responsible for publishing.

When any statute providing for newspaper publication of an advertisement does not designate the person responsible for causing the publication to be made, the responsible person shall be:

(1) Where the advertisement is of the filing of a petition or application, the person by whom the same is filed;

(2) Where the advertisement is of an activity or action of:

(a) An individual public officer, the officer himself;

(b) A city, the city clerk if there be one; if not, the mayor;

(c) A county, the county clerk;

(d) A district, or a board, commission or agency of a city, county or district, the chief administrative or executive officer or agent thereof;

(e) A court, the clerk thereof;

(f) A state department or agency, the head thereof.

(Enact. Acts 1958, ch. 42, § 5; 1960, ch. 168, § 1; 1978, ch. 384, § 525, effective June 17, 1978; 1986, ch. 23, § 15, effective July 15, 1986.)

424.160. Rates.

(1) For all newspaper advertising required by law, the publisher is entitled to receive payment for each insertion at a rate per column inch, computed as or published no larger than nine (9) point type on ten (10) point leading. The rate shall not exceed the lowest rate paid by advertisers for comparable matter in the same publication.

(2) If by law or by the nature of the matter to be published, a display form of advertisement is required, or if the person or officer responsible for causing an advertisement to be published determines in his discretion that a display form is practicable or feasible, and so directs the newspaper, the advertisement shall be published in display form and the newspaper shall be entitled to receive its established display rate.

(3) If it is provided by statute that an advertisement shall be published of the filing of a petition or application seeking official action, the filing, if required by other than a governmental official or agency, shall not be deemed complete unless there is deposited with the petition or application an amount sufficient to pay the cost of publication.

(4) The expense of advertisements in judicial proceedings shall be taxed as costs by the clerk of the court.

(Enact. Acts 1958, ch. 42, § 6; 1960, ch. 168, § 1; 1982, ch. 430, § 4, effective July 15, 1982; 1992, ch. 396, § 1, effective July 14, 1992.)

424.170. Proof of publication.

(1) The affidavit of the publisher or proprietor of a newspaper, stating that an advertisement has been published in his newspaper and the times it was published, attached to a copy of the advertisement, constitutes prima facie evidence that the publication was made as stated in the affidavit.

(2) The affidavit of the person responsible for publishing as described in KRS 424.150, stating that an advertisement has been delivered by first class mail to each residence within the publication area, attached to a copy of the advertisement, constitutes prima facie evidence that the publication was made as stated in the affidavit and that the expenditure for the cost of postage, all supplies, and reproduction of the advertisement did not exceed the cost of newspaper publication of the advertisement.

(Enact. Acts 1958, ch. 42, § 7; 1982, ch. 430, § 5, effective July 15, 1982.)

424.195. Supplementation of printed notice by broadcast in certain cases.

(1) Any official of the Commonwealth of Kentucky or any of its political subdivisions who is required by law to publish any legal notice or notice of event may supplement, not to exceed twelve (12) publications unless otherwise ordered by a court of competent jurisdiction thereof by use of radio or television spot announcements, or both, when, in his judgment, the public interest will be served thereby; except, that notices by political subdivisions may be made only by stations having a broadcast studio within the county of origin of the legal notice, and that broadcast notices shall call attention solely to published or posted notices required by statute.

(2) Each radio or television station broadcasting a legal notice or notice of event shall for a period of three (3) months subsequent to such broadcast retain at its office a copy of the transcript of the

text of the notices actually broadcast and such shall be available for public inspection.

(3) The radio or television station which broadcasts the legal notice authorized by this section shall be entitled to receive payment of an amount equal to the customary charges of such station for such service.

(4) The publication of legal notices under this section shall be restricted to legal notices relating to those official acts of public officers requiring a final determination by order of any court of competent jurisdiction in the Commonwealth.

(Enact. Acts 1970, ch. 100, § 1.)

MATTERS REQUIRED TO BE PUBLISHED

424.220. Financial statements.

(1) Excepting officers of a city of the first class or a consolidated local government, a county containing such a city or consolidated local government, a public agency of such a city, consolidated local government, or county, or a joint agency of such a city, consolidated local government, and county, or of a school district of such a city, consolidated local government, or county, and excepting officers of a city of the second class or an urban-county government, every public officer of any school district, city, consolidated local government, county, or subdivision, or district less than a county, whose duty it is to collect, receive, have the custody, control, or disbursement of public funds, and every officer of any board or commission of a city, consolidated local government, county, or district whose duty it is to collect, receive, have the custody, control, or disbursement of funds collected from the public in the form of rates, charges, or assessments for services or benefits, shall at the expiration of each fiscal year prepare an itemized, sworn statement of the funds collected, received, held, or disbursed by him during the fiscal year just closed, unless he has complied with KRS 424.230. Pursuant to subsections (2) and (3) of KRS 91A.040, each city of the sixth class shall prepare an itemized, sworn statement of the funds collected, received, held, or disbursed by the city which complies with the provisions of this section.

(2) The statement shall show:

(a) The total amount of funds collected and received during the fiscal year from each individual source; and

(b) The total amount of funds disbursed during the fiscal year to each individual payee and the purpose for which the funds were expended.

(3) Only the totals of amounts paid to each individual as salary or commission and public utility bills shall be shown. The amount of salaries paid to all nonelected county employees shall be shown as lump-sum expenditures by category, including but not limited to road department, jails, solid waste, public safety, and administrative personnel.

(4) The amount of salaries paid to all teachers shall be shown as a lump-sum instructional expenditure for the school district and not by amount paid to individual teachers. The amount of salaries paid to all other employees of the board shall be shown as lump-sum expenditures by category, including but not limited to administrative, maintenance, transportation, and food service. The local board of education and the fiscal court shall have accessible a factual list of individual salaries for public scrutiny and the local board and the fiscal court shall furnish by mail a factual list of individual salaries of its employees to a newspaper qualified under KRS 424.120 to publish advertisements for the district, which newspaper may then publish as a news item the individual salaries of school or county employees.

(5) The officer shall procure and include in or attach to the financial statement, as a part thereof, a certificate from the cashier or other proper officer of the banks in which the funds are or have been deposited during the past year, showing the balance, if any, of funds to the credit of the officer making the statement.

(6) The officer shall, except in a city electing to publish its audit in lieu of the financial statement in accordance with KRS 91A.040(6), within sixty (60) days after the close of the fiscal year cause the financial statement to be published in full in a newspaper qualified under KRS 424.120 to publish advertisements for the city, county, or district, as the case may be. Promptly after the publication is made, the officer shall file a written or printed copy of the advertisement with proof of publication, in the office of the county clerk of the county and with the Auditor of Public Accounts. Promptly after the publication is made, the officer shall also file one (1) copy of the financial statement with the Kentucky Department for Local Government.

(7) In lieu of the publication requirements of subsection (6) of this section, the appropriate officer of any municipally owned electric, gas, or water system may elect to satisfy the requirements of subsection (6) of this section by:

(a) Preparation of a certified audit by a certified public accountant, performed in accordance with generally accepted principles of accounting, for the fiscal year;

(b) Publishing in a newspaper qualified under KRS 424.120 to publish advertisements for the city, county, or district as the case may be, the statement of revenue and expenditures from such audit, together with the statement that the audit report is available for inspection at the offices of the utility; and

(c) Making such audit available for inspection on request of anyone during normal working hours of the utility.

(8) In lieu of the publication requirements of subsection (6) of this section, the appropriate officer of a county may elect to satisfy the requirements of subsection (6) of this section by publishing an audit, prepared in accordance with KRS 43.070 or 64.810, in the same manner that city audits are published in accordance with KRS 91A.040(7).

(Enact. Acts 1958, ch. 42, § 12; 1960, ch. 168, § 1; 1962, ch. 170, § 1; 1976, ch. 71, § 1; 1978, ch. 384, § 526, effective June 17, 1978; 1982, ch. 430, § 7, effective

July 15, 1982; 1984, ch. 277, § 1, effective July 13, 1984; 1988, ch. 32, § 2, effective July 15, 1988; 1990, ch. 52, § 3, effective July 13, 1990; 1998, ch. 69, § 79, effective July 15, 1998; 2002, ch. 346, § 232, effective July 15, 2002.)

Opinions of Attorney General. A school district must publish the financial statement required by this section relative to the receipt and disbursement of funds received under the elementary and secondary education act, title I, even though the source of the funds is entirely federal money. OAG 67-422.

The name of the teacher must be reflected along with the gross or total salary paid. OAG 71-128.

Where a member of a county board of education and her husband own a weekly newspaper, the only newspaper in the county, school financial statements and legal notices could be published in such newspaper pursuant to this section and KRS 424.120 without violating KRS 160.180. OAG 73-438.

Under the expressed provisions of this section, as amended in 1976, only the lump sum of salaries paid to teachers and other employees of the school district must be shown in the published financial statement. OAG 76-393; 76-415.

Under this section a qualified newspaper may, at its expense, publish as a news item the individual salaries of school employees. OAG 77-418.

It is necessary, in order to comply with this section, that a school district include in its financial statement receipts and disbursements for a cafeteria account. OAG 82-622.

424.230. Optional monthly or quarterly statements.

Any officer who is subject to the provisions of KRS 424.220 may elect to prepare and publish monthly or quarterly statements, in lieu of the annual statements required by KRS 424.220. All of the provisions of KRS 424.220 shall be applicable to such a monthly or quarterly statement except that (1) the statement shall cover only the preceding month or quarter, as the case may be, and (2) the publication shall be made within thirty (30) days after the end of the month or quarter, as the case may be. Any officer who has elected to proceed under this section shall not be exempted from the requirements of KRS 424.220 for any fiscal year unless he has caused to be prepared and published, in accordance with this section, a proper statement for each month or quarter of the fiscal year.
(Enact. Acts 1958, ch. 42, § 13.)

424.250. School district budget.

At the same time that copies of the budget of a school district are filed with the clerk of the tax levying authority for the district, as provided in KRS 160.470, the board of education of the district shall cause the budget to be advertised for the district by publishing a copy of the budget in a newspaper.
(Enact. Acts 1958, ch. 42, § 15.)

Cross-References. School districts, KRS ch. 160.

Opinions of Attorney General. While the amending of KRS 160.470 and the making of each school district their own tax levying authority repeals that part of this section as to filing the budget with a clerk, the other part of the statute calling for the budget to be published in a newspaper is capable of being observed. OAG 82-603.

424.260. Bids for materials, supplies, equipment, or services.

(1) Except where a statute specifically fixes a larger sum as the minimum for a requirement of advertisement for bids, no city, county, or district, or board or commission of a city or county, or sheriff or county clerk, may make a contract, lease, or other agreement for materials, supplies except perishable meat, fish, and vegetables, equipment, or for contractual services other than professional, involving an expenditure of more than twenty thousand dollars ($20,000) without first making newspaper advertisement for bids.

(2) If the fiscal court requires that the sheriff or county clerk advertise for bids on expenditures of less than twenty thousand dollars ($20,000), the fiscal court requirement shall prevail.

(3) (a) Nothing in this statute shall limit or restrict the ability of a local school district to acquire supplies and equipment outside of the bidding procedure if those supplies and equipment meet the specifications of the contracts awarded by the Division of Material and Procurement Services or a federal, local, or cooperative agency and are available for purchase elsewhere at a lower price. A board of education may purchase those supplies and equipment without advertising for bids if, prior to making the purchases, the board of education obtains certification from the district's finance or purchasing officer that the items to be purchased meet the standards and specifications fixed by state price contract, federal (GSA) price contract, or the bid of another school district whose bid specifications allow other districts to utilize their bids, and that the sales price is lower than that established by the various price contract agreements or available through the bid of another school district whose bid specifications would allow the district to utilize their bid.

(b) The procedures set forth in paragraph (a) of this subsection shall not be available to the district for any specific item once the bidding procedure has been initiated by an invitation to bid and a publication of specifications for that specific item has been published. In the event that all bids are rejected, the district may again avail itself of the provisions of paragraph (a) of this subsection.

(4) This requirement shall not apply in an emergency if the chief executive officer of the city, county, or district has duly certified that an emergency exists, and has filed a copy of the certificate with the chief financial officer of the city, county, or district, or if the sheriff or the county clerk has certified that an emergency exists, and has filed a copy of the certificate with the clerk of the court where his necessary office expenses are fixed pursuant to KRS 64.345 or 64.530, or if the superintendent of the board of education has duly certified that an emergency exists, and has filed a copy of the certificate with the chief state school officer.

(5) The provisions of subsection (1) of this section shall not apply for the purchase of wholesale elec-

tric power for resale to the ultimate customers of a municipal utility organized under KRS 96.550 to 96.900.

(Enact. Acts 1958, ch. 42, § 16; 1960, ch. 168, § 1; 1972, ch. 147, § 1; 1974, ch. 97, § 1; 1978, ch. 197, § 12, effective June 17, 1978; 1982, ch. 282, § 4, effective April 2, 1982; 1990, ch. 95, § 1, effective July 13, 1990; 1992, ch. 178, § 1, effective July 14, 1992; 1996, ch. 89, § 5, effective July 15, 1996; 2000, ch. 5, § 11, effective July 14, 2000; 2000, ch. 225, § 3, effective July 14, 2000; 2000, ch. 510, § 3, effective July 14, 2000.)

Legislative Research Commission Note. (7/14/2000). This section was amended by 2000 Ky. Acts chs. 5, 225, and 510, which do not appear to be in conflict and have been codified together.

Cross-References. Model Procurement Code, KRS 45A.005 to 45A.990.

Bidding procedures, 702 KAR 3:135.

Opinions of Attorney General. If a board of education buys oil and gasoline for school buses in bulk and the purchase price exceeds $1,000, the purchasing of these supplies should be done through bid advertising. OAG 60-1217.

A board of education is not required to advertise for bids in the selection of school bus drivers. OAG 61-634.

The employment of school bus drivers is not within the purview of either KRS 162.070 or this section. OAG 61-634.

Change orders as provided for in a contract for the construction of public school buildings are proper when they do not substantially alter the nature of the contract or may be regarded as matters incidental to or which relate to an integral part of the original contract and specifications, but if they are so great as to constitute a new construction contract or to deal with an unrelated matter, this proposition would not apply. OAG 62-845.

The question of whether competitive bids are required for a change order depends more on the nature of the change order than the amount of money involved. OAG 62-845.

If records of the school board indicate that in prior years the annual cost of paint totals $1,000 or more, the board should advertise for bids on all paint purchased, unless the board is certain that the amount will not exceed $1,000. OAG 62-901.

Where the school board ordered several pieces of related school equipment and furniture from a single vendor and the total amount exceeded $1,000, bids should have been taken. OAG 62-901.

Where the school board is going to make two purchases of the same type of supplies within a span of three or four months and the total amount would exceed $1,000, the amount of supplies needed should be estimated and bids taken. OAG 62-901.

The employment of a fiscal agent by a board of education would constitute a contractual relationship for professional services and advertisement for professional services and advertisement for bids for this service is not required. OAG 63-938.

If the individual students exercise their own initiative in the purchase of class rings, senior portraits and senior invitations and the school has no control and does not use its accounting procedures in the purchase, bids do not have to be taken and the individual choices must be respected. OAG 66-228.

A school board member is prohibited from contracting with the board of which he is a member, despite the fact that the contract is let pursuant to sealed bids. OAG 67-212.

Purchases of athletic equipment of over $1,000 by a district school board would have to be made by the bidding procedure even though the purchase money was derived from admissions to athletic exhibitions. OAG 69-327.

Where a school board had no gasoline storage facilities, it should have conducted competitive bidding for retail gasoline rates. OAG 70-74.

Where coal purchases exceeding $1,000 were made at various times by a school board without competitive bidding, the contracts were void, the public funds paid out pursuant to such a transaction were recoverable, and the acceptance of benefits would not permit recovery on a quantum meruit basis. OAG 70-74.

Where a district board of education desires to pay all or any part of the premiums on group policies for district employes, the advertising and competitive bid procedure of this section should be followed where the amount to be paid by the board is in excess of $1,000. OAG 70-687.

Where without observing this section the local school board was presented with claims for $281,207 for work on the construction of a new school building which was performed on the basis of an oral agreement between the contractor and the then school superintendent, none of the county's revenue-sharing money can be legally spent in replacing the capital outlay fund money and school building fund money, which funds were illegally spent on a void contract, as this would be a violation of this section. OAG 73-684.

The state board of education has enacted regulations for bidding on the purchase of school equipment and any bidding not conforming to these regulations can be reported to the superintendent of public instruction who is empowered by KRS 156.132 to make written charges against any superintendent or board member who is guilty of misconduct or unlawful acts. OAG 73-740.

Where a school district advertised for bids and opened them at the specified time but delayed awarding a contract until some time not more than 90 days later, during which period of time a new wage rate was issued, since no changes were made in the contract price or work specifications and no justification was shown for an "emergency" authorizing waiver of the bidding statutes under this section, the wage rate to be paid by the contractor should be that in effect on the date of advertisement for bids and not the new rate that was in effect at the time bids were awarded. OAG 73-744; 74-8.

This section's requirement that local boards of education solicit bids for the purchase of gasoline need not be complied with during the effective duration of the federal petroleum allocation and price regulations which mandated that each school district retain its current gasoline supplier. OAG 74-285; 76-600.

There was no need for the board of education to advertise for bids on office space as the words "lease or other agreement for materials, supplies or equipment" do not cover such space. OAG 74-404.

When a school district purchases textbooks and materials under the provisions of KRS 156.400 to 156.476, the statutory bidding procedures required by this section are not applicable. OAG 75-27.

If the cost of services in connection with the production of a school yearbook are as much as $2,500, then, in accordance with this section and Regulations 702 KAR 3:130 and 3:140, schools should advertise for bids and the expenditures must be supervised by the board of education which has the ultimate responsibility. OAG 75-618 (affirming OAG 66-51, 66-228 and 66-417).

A local public school district must advertise for bids on each categorically separate food commodity it desires to purchase where the cost of procurement will exceed twenty-five hundred dollars over the period of a school year. OAG 76-556.

A procedure followed by a board of education in awarding contracts for construction, repair and maintenance services that may develop in the future would not comply with this section which contemplates contracts where job specifications are advertised for a specific project and bids are received containing a firm total cost figure. OAG 76-661.

Where a contract relating to the purchase of class rings by students at a county public school would in no way involve school funds, bidding would be unnecessary. OAG 77-255.

A local school board may directly purchase items or equipment, for a construction project, by competitive bidding, which it would then have installed by others under separate competitive bids. OAG 79-501.

Although site work can be, and is usually interpreted to be, a part of a project involving school building construction or remodeling, site work unrelated to school building construction does not come within the scope of KRS 162.070. Thus, where a school district wished to correct a drainage problem at one of its schools, this section and the $7,500 "small purchases" ceiling was applicable to the contract for drainage site work. OAG 82-407.

To the extent that KRS 162.070 and this section are in conflict, the provisions and therefore the $7,500 amount found in this section, as amended in 1982, must be deemed to prevail over the lower $5,000 amount remaining in KRS 162.070. OAG 82-407.

Under this section, a cafeteria plan of insurance coverage for school teachers need not be bid; under the Model Procurement Code if a contract is for group life insurance, group health and accident insurance, group professional liability insurance, workers' compensation insurance, and unemployment insurance, the contract may be noncompetitively negotiated. OAG 83-151.

If reasonably detailed specifications describing the scope of a project are first prepared, such that competing potential bidders can know with particularity the product for which a bid might be tendered, and bids are solicited in relation to those specifications in conformity with KRS 424.130, and 424.140, the design/build approach to construction procurement might be utilized by a county. OAG 92-143.

Where the construction inspector hired by the board of education is merely inspecting the building constructed by the general contractor and reporting back to the board, and the contract specifically releases the construction inspector from any responsibility for the actual construction of the school, these activities did not constitute professional services. The construction inspector lacked the necessary decision-making responsibility. Since the construction inspector was not considered to be supplying professional services, he was not exempt from the bidding requirements of this section. OAG 92-144.

Where self-insured groups of Kentucky Association of Counties contracted with third party administrators to provide professional services involving the use of training, discretion, and judgment in the field of insurance, such professional services contracts may be entered into without any type of open bid. OAG 94-1.

Where bid invitation contained no indication of either the quantity of materials to be purchased nor the projects for which the materials would be used, the bid invitation did not grant reasonable notice of county's intentions and did not comply with the statute. OAG 94-20.

NOTES TO DECISIONS

1. Construction.

Since the provisions of former law regarding the maximum amounts that could be expended by school boards for buildings, improvements and materials before being required to advertise for competitive bids were less than the amount provided for in this section as enacted in 1958, such former law was to that extent repealed and superseded by this section. Floyd County Bd. of Educ. v. Hall, 353 S.W.2d 194 (Ky. 1962).

424.290. Election ballot.

(1) Not less than three (3) days before any primary or regular election the county clerk shall cause to be published in a newspaper a copy of the face of the voting machines, or where an electronic or electromechanical voting system is used, a copy of the ballot cards or supplementary material on which appear the names of candidates or issues to be voted upon. Where the lists of candidates or issues to be voted upon differ for various precincts within the county, the county clerk shall cause to be published only one (1) set of data with appropriate notations showing the differences in the various precincts. If supplemental paper ballots have been approved as provided in KRS 118.215, the paper ballot shall be published at the same time as other material required to be published by this subsection. The cost of publication shall be paid by the county, except that the cost of publishing any voting data required to be published by this subsection that is limited to a city election or a district election other than a school district election shall be paid by the city or the district as the case may be.

(2) "Copy," as used in subsection (1) of this section, means a summary of candidates and issues to be voted upon showing all the pertinent information that will appear, upon which the voters will cast their votes at a particular polling place.

(Enact. Acts 1958, ch. 42, § 19; 1960, ch. 168, § 1; 1962, ch. 213; 1972, ch. 188, § 67; 1976 (Ex. Sess.), ch. 1, § 15; 1978, ch. 384, § 527, effective June 17, 1978; 1982, ch. 360, § 84, effective July 15, 1982.)

424.330. Publication of lists of delinquent taxes by counties and cities — Fee allowance.

(1) When the sheriff of any county files with the fiscal court a list of uncollectible delinquent taxes, in accordance with KRS 134.360, the fiscal court shall promptly cause a list, showing the name of and amount due from each delinquent taxpayer, to be advertised by newspaper publication. A fee of three dollars ($3) per name per publication shall be added to the amount of each tax claim published as publication costs.

(2) Cities may publish a list of uncollected delinquent taxes levied under Section 181 of the Kentucky Constitution, showing the name of and the amount due from each delinquent taxpayer, to be advertised by newspaper publication. A fee of three dollars ($3) per name per publication may be added to the amount of each tax claim published as publication costs.

(Enact. Acts 1958, ch. 42, § 23; 1988, ch. 32, § 3, effective July 15, 1988; 1992, ch. 73, § 1, effective July 14, 1992; 1994, ch. 73, § 2, effective July 15, 1994.)

424.360. Invitation to bid on municipal bonds.

No sale of general obligation bonds or revenue bonds, except bonds issued for the purpose of facilitating the construction, renovation, or purchase of new or existing housing as set forth in KRS 58.125, of any governmental unit or political subdivision, or agency thereof, shall be made except upon newspaper advertisements for bids, published for the publication area constituted by the political subdivision or government unit and published to afford statewide notice. If the bonds are in

principal amount of ten million dollars ($10,000,000) or more, an advertisement for bids shall also be published in a publication having general circulation among bond buyers.
(Enact. Acts 1958, ch. 42, § 26; 1960, ch. 168, § 1; 1984, ch. 157, § 1, effective July 13, 1984; 1986, ch. 259, § 2, effective July 15, 1986; 1992, ch. 210, § 1, effective July 14, 1992.)

424.380. Failure to comply with publication requirements.
Any resolution, regulation, ordinance or other formal action of any public agency which is required to be published, that is adopted without compliance with the publication requirements of this chapter, shall be voidable by a court of competent jurisdiction. The circuit courts of this state shall have the jurisdiction to enforce the purposes of this chapter, by injunction or other appropriate order, upon application by any citizen of this state. The cost of all proceedings, including a reasonable fee for the attorney of the citizen bringing the action, shall be assessed against the unsuccessful party.
(Enact. Acts 1982, ch. 430, § 8, effective July 15, 1982.)

PENALTIES

424.990. Penalties.
Any person who violates any provision of KRS 424.110 to 424.370 shall be fined not less than fifty dollars ($50.00) nor more than five hundred dollars ($500). In addition, any officer who fails to comply with any of the provisions of KRS 424.220, 424.230, 424.240, 424.250, 424.290 or 424.330 shall, for each such failure, be subject to a forfeiture of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500), in the discretion of the court, which may be recovered only once, in a civil action brought by any citizen of the city, county or district for which the officer serves. The costs of all proceedings, including a reasonable fee for the attorney of the citizen bringing the action, shall be assessed against the unsuccessful party.
(Enact. Acts 1958, ch. 42, § 28; 1960, ch. 168, § 1.)

TITLE XXXIX

PROVISIONAL REMEDIES, ENFORCEMENT OF JUDGMENTS, AND EXEMPTIONS

CHAPTER 427

EXEMPTIONS

SECTION.
427.130. Salaries of public officials and employees and sums due from governmental agencies are subject to attachment or garnishment—Service of process.

427.130. Salaries of public officials and employees and sums due from governmental agencies are subject to attachment or garnishment—Service of process.
(1) Salaries or sums due state, county, city and school board officers and employees shall be subject to attachment or garnishment.
(2) All sums due any person from the Commonwealth of Kentucky, or any agency or department thereof, and all sums due from any county school board, city or county, shall be subject to attachment or garnishment.
(3) Service of attachments or garnishments upon the commonwealth of Kentucky shall be made by serving the commissioner of finance, and the state treasurer. No attachment or garnishment served upon the commonwealth shall be valid unless the process shall specify the name of the employee, or other creditor, and the budget unit and division thereof through which the sum alleged to be due is payable.
(1701b: amend. Acts 1942, ch. 102, §§ 1, 2; 1948, ch. 188, § 1.)

TITLE XL

CRIMES AND PUNISHMENTS

CHAPTER 431

GENERAL PROVISIONS CONCERNING CRIMES AND PUNISHMENTS

SECTION.

KENTUCKY MULTIDISCIPLINARY COMMISSION ON CHILD SEXUAL ABUSE

431.650. Kentucky Multidisciplinary Commission on Child Sexual Abuse.

KENTUCKY MULTIDISCIPLINARY COMMISSION ON CHILD SEXUAL ABUSE

431.650. Kentucky Multidisciplinary Commission on Child Sexual Abuse.
(1) The Kentucky Multidisciplinary Commission on Child Sexual Abuse is hereby created.
(2) The commission shall be comprised of the following members:
(a) The commissioner of the Department for Community Based Services or a designee;
(b) The commissioner of the Department for Mental Health and Mental Retardation Services or a designee;
(c) One (1) social service worker who is employed by the Department for Community Based Services to provide child protective services, who shall be appointed by the secretary of the Cabinet for Families and Children;

(d) One (1) therapist who provides services to sexually abused children, who shall be appointed by the secretary of the Cabinet for Health Services.
(e) The commissioner of the Kentucky State Police or a designee;
(f) One (1) law enforcement officer who is a detective with specialized training in conducting child sexual abuse investigations, who shall be appointed by the secretary of the Justice Cabinet;
(g) One (1) employee of the Administrative Office of the Courts appointed by the Chief Justice of the Supreme Court of Kentucky;
(h) Two (2) employees of the Attorney General's Office who shall be appointed by the Attorney General;
(i) One (1) Commonwealth's attorney who shall be appointed by the Attorney General;
(j) The commissioner of the Department of Education or a designee;
(k) One (1) school counselor, school psychologist, or school social worker who shall be appointed by the commissioner of the Department of Education;
(l) The executive director of the Governor's Office of Child Abuse and Domestic Violence Services or a designee;
(m) One (1) representative of a children's advocacy center who shall be appointed by the Governor;
(n) One (1) physician appointed by the Governor; and
(o) One (1) former victim of a sexual offense or one (1) parent of a child sexual abuse victim who shall be appointed by the Attorney General.

(3) Appointees shall serve at the pleasure of the appointing authority but shall not serve longer than four (4) years without reappointment.
(4) The commission shall elect a chairperson annually from its membership.

(Enact. Acts 1994, ch. 308, § 1, effective July 15, 1994; 1996, ch. 18, § 2, effective July 15, 1996; 1998, ch. 426, § 602, effective July 15, 1998; 2000, ch. 14, § 55, effective July 14, 2000; 2000, ch. 144, § 2, effective July 14, 2000.)

Legislative Research Commission Note. (7/14/2000). This section was amended by 2000 Ky. Acts chs. 14 and 144, which do not appear to be in conflict and have been codified together.

CHAPTER 432

OFFENSES AGAINST THE STATE AND PUBLIC JUSTICE

SECTION.
432.350. Giving and taking bribes.

432.350. Giving and taking bribes.

Any member of the General Assembly or any other executive, judicial, ministerial or legislative officer of this state or of any county or city, including members of boards of education and subdistrict trustees, who takes or agrees to take any bribe to do or omit to do any act in his official capacity shall forfeit his office and be disqualified from the right of suffrage for ten (10) years. (1366: amend. Acts 1974, ch. 406, § 317.)

Cross-References. Bribery and corrupt influences, Penal Code, KRS 521.010 to 521.040.
Official misconduct in the first degree, KRS 522.020.
School system, bribery in, KRS 156.465.
State purchasing, bribery in, felony, KRS 45.991.

CHAPTER 434

OFFENSES AGAINST PROPERTY BY FRAUD

SECTION.
434.441. Definitions for KRS 434.441 and 434.442.
434.442. Fraudulent use of an educational record — Penalty.

434.441. Definitions for KRS 434.441 and 434.442.

As used in this section and KRS 434.442, unless the context otherwise requires:
(1) "Educational institutions" means those schools providing postsecondary education including technical, community and junior colleges, and colleges and universities;
(2) "Governmental agency" means any agency of the state or local government; and
(3) "Secondary school" means a school with grades nine (9) through twelve (12).

(Enact. Acts 1996, ch. 170, § 1, effective July 15, 1996.)

434.442. Fraudulent use of an educational record — Penalty.

(1) A person is guilty of fraudulent use of an educational record when that person, knowingly:
(a) Falsely makes, completes, alters, or procures to be falsely made or altered, or assists in falsely making or altering, a diploma, certificate, license, or transcript indicating academic achievement in an educational program issued by a secondary school, a postsecondary educational institution, or a governmental agency;
(b) Sells, gives, buys, or obtains, or procures to be sold, given, bought or obtained, or assists in selling, giving, buying, or obtaining, a diploma, certificate, license, or transcript which he knows is false, indicating educational achievement in an educational program issued by a secondary school, postsecondary educational institution, or a governmental agency;
(c) Presents or uses as genuine a falsely made or altered diploma, certificate, license, or transcript indicating educational achievement in an educational program in a secondary school, postsecondary educational institution, or a governmental agency; or
(d) Makes a false written representation of fact that he has received a degree or other certification indicating merit, educational achievement, or completion of an educational program

involving study, experience, or testing from a secondary school, a postsecondary educational institution, or governmental agency in an application for:

1. Employment;
2. Admission to an educational program;
3. An award; or
4. The purpose of inducing another to issue a diploma, certificate, license, or transcript indicating educational achievement in an educational program of a secondary school, postsecondary educational institution, or a governmental agency.

(2) Fraudulent use of an educational record is a Class A misdemeanor.

(Enact. Acts 1996, ch. 170, § 2, effective July 15, 1996.)

CHAPTER 438

OFFENSES AGAINST PUBLIC HEALTH AND SAFETY

SECTION.

438.047. Prohibition against certain billboard advertising of tobacco products within five hundred feet of school — Fine.
438.050. Smoking on school premises — Exception.

SALE AND DISTRIBUTION OF TOBACCO PRODUCTS

438.310. Sale of tobacco products to persons under age 18 prohibited — Penalty.
438.313. Distribution of tobacco products to persons under age 18 prohibited — Penalty — Issuance of uniform citation.

438.047. Prohibition against certain billboard advertising of tobacco products within five hundred feet of school — Fine.

(1) No cigarette or tobacco products advertising shall be posted on a billboard with display space larger than fifty (50) square feet located within five hundred (500) feet of any elementary or secondary school building or adjacent school-owned property.

(2) Any person who violates the provisions of this section shall be fined not less than one hundred dollars ($100) for each offense.

(Enact. Acts 1992, ch. 164, § 2, effective July 14, 1992.)

438.050. Smoking on school premises — Exception.

Any person, except adult employees of the school system who smoke in a room on the school premises designated by the superintendent or principal for the purpose, who smokes tobacco products in any school building or any part of any building used for school purposes, or upon school grounds, while children are assembled there for lawful purposes, except in areas in secondary schools designated and supervised by the superintendent or principal for the purpose, shall be fined not less than one dollar ($1) nor more than five dollars ($5). The exception granted for smoking areas designated by the superintendent or principal shall extend to all schools.

(1277a-4: amend. Acts 1972, ch. 19, § 1; 1976, ch. 72, § 1; 1988, ch. 435, § 2, effective July 15, 1988.)

SALE AND DISTRIBUTION OF TOBACCO PRODUCTS

438.310. Sale of tobacco products to persons under age 18 prohibited — Penalty.

(1) No person shall sell or cause to be sold any tobacco product at retail to any person under the age of eighteen (18), or solicit any person under the age of eighteen (18) to purchase any tobacco product at retail.

(2) Any person who sells tobacco products at retail shall cause to be posted in a conspicuous place in his establishment a notice stating that it is illegal to sell tobacco products to persons under age eighteen (18).

(3) Any person selling tobacco products shall require proof of age from a prospective buyer or recipient if the person has reason to believe that the prospective buyer or recipient is under the age of eighteen (18).

(4) A person who violates subsection (1) or (2) of this section shall be subject to a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for a first violation and a fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000) for any subsequent violation. The fine shall be administered by the Department of Alcoholic Beverage Control using a civil enforcement procedure.

(Enact. Acts 1990, ch. 388, § 1, effective July 13, 1990; 1992, ch. 164, § 3, effective July 14, 1992; 1994, ch. 480, § 9, effective July 15, 1994; 1996, ch. 38, § 3, effective March 5, 1996; 2000, ch. 423, § 2, effective July 14, 2000.)

Compiler's Notes. This section was formerly compiled as KRS 438.045 and was renumbered by the Reviser of Statutes effective July 15, 1994 pursuant to KRS 7.136(1).

438.313. Distribution of tobacco products to persons under age 18 prohibited — Penalty — Issuance of uniform citation.

(1) No wholesaler, retailer, or manufacturer of cigarettes or tobacco products may distribute cigarettes or tobacco products, including samples thereof, free of charge or otherwise, to any person under the age of eighteen (18).

(2) Any person who distributes cigarettes or tobacco products, including samples thereof, free of charge or otherwise shall require proof of age from a prospective buyer or recipient if the person has reason to believe that the prospective purchaser or recipient is under the age of eighteen (18).

(3) Any person who violates the provisions of this section shall be fined not less than one thousand dollars ($1,000) nor more than two thousand five hundred dollars ($2,500) for each offense. The fine shall be administered by the Department of Alco-

holic Beverage Control using a civil enforcement procedure for persons eighteen (18) years of age or older. For persons under the age of eighteen (18) years, the offense shall be deemed a status offense and shall be under the jurisdiction of the juvenile session of the District Court.

(4) All peace officers with general law enforcement authority and employees of the Department of Alcoholic Beverage Control may issue a uniform citation, but may not make an arrest, or take a child into custody, for a violation of this section. If a child fails to appear in court in response to a uniform citation issued pursuant to this section, the court may compel the attendance of the defendant in the manner specified by law.

(Repealed, reenact., and amend. Acts 1994, ch. 480, § 10, effective July 15, 1994; 1996, ch. 38, § 5, effective March 5, 1996; 1998, ch. 477, § 2, effective July 15, 1998; 2000, ch. 423, § 4, effective July 14, 2000.)

Compiler's Notes. This section was formerly compiled as KRS 365.395 and was repealed, reenacted, and amended as this section by Acts 1994, ch. 480, § 10, effective July 15, 1994.

TITLE L

KENTUCKY PENAL CODE

CHAPTER 503

GENERAL PRINCIPLES OF JUSTIFICATION

SECTION.

503.110. Use of force by person with responsibility for care, discipline, or safety of others.

503.110. Use of force by person with responsibility for care, discipline, or safety of others.

(1) The use of physical force by a defendant upon another person is justifiable when the defendant is a parent, guardian, or other person entrusted with the care and supervision of a minor or an incompetent person or when the defendant is a teacher or other person entrusted with the care and supervision of a minor, for a special purpose, and:

(a) The defendant believes that the force used is necessary to promote the welfare of a minor or mentally disabled person or, if the defendant's responsibility for the minor or mentally disabled person is for a special purpose, to further that special purpose or maintain reasonable discipline in a school, class, or other group; and

(b) The force that is used is not designed to cause or known to create a substantial risk of causing death, serious physical injury, disfigurement, extreme pain, or extreme mental distress.

(2) The use of physical force by a defendant upon another person is justifiable when the defendant is a warden or other authorized official of a correctional institution, and:

(a) The defendant believes that the force used is necessary for the purpose of enforcing the lawful rules of the institution;

(b) The degree of force used is not forbidden by any statute governing the administration of the institution; and

(c) If deadly force is used, its use is otherwise justifiable under this code.

(3) The use of physical force by a defendant upon another person is justifiable when the defendant is a person responsible for the operation of or the maintenance of order in a vehicle or other carrier of passengers and the defendant believes that such force is necessary to prevent interference with its operation or to maintain order in the vehicle or other carrier, except that deadly physical force may be used only when the defendant believes it necessary to prevent death or serious physical injury.

(4) The use of physical force by a defendant upon another person is justifiable when the defendant is a doctor or other therapist or a person assisting him at his direction, and:

(a) The force is used for the purpose of administering a recognized form of treatment which the defendant believes to be adapted to promoting the physical or mental health of the patient; and

(b) The treatment is administered with the consent of the patient or, if the patient is a minor or a mentally disabled person, with the consent of the parent, guardian, or other person legally competent to consent in his behalf, or the treatment is administered in an emergency when the defendant believes that no one competent to consent can be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent.

(Enact. Acts 1974, ch. 406, § 36; 1982, ch. 141, § 135, effective July 1, 1982.)

Compiler's Notes. This section was amended by § 147 of Acts 1980, ch. 396, which would have taken effect July 1, 1982; however, Acts 1982, ch. 141, § 146, effective July 1, 1982, repealed Acts 1980, ch. 396.

Cross-References. Discipline of school children, KRS 161.180.

NOTES TO DECISIONS

1. Wanton or Reckless Injury.

A teacher is justified in the use of physical force within certain bounds. The privilege to use force is unavailable as a defense if the teacher is wanton or reckless in believing the use of any force, or the the degree of force used, to be necessary. Holbrook v. Commonwealth, 925 S.W.2d 191 (Ky. Ct. App. 1995).

CHAPTER 506

INCHOATE OFFENSES

SECTION.

506.130. [Repealed.]
506.140. Criminal gang recruitment — Definitions for chapter.

SECTION.
506.150. Criminal gang activity or recruitment — Actions not constituting defenses.

506.130. Engaging in furtherance of criminal gang activity — Enhancement of penalty. [Repealed.]

Compiler's Notes. This section (Enact. Acts 1998, ch. 606, § 82, effective July 15, 1998) was repealed by Acts 2000, ch. 431, § 3, effective July 14, 2000. For present law, see KRS 506.140 and 506.150.

506.140. Criminal gang recruitment — Definitions for chapter.

(1) A person is guilty of criminal gang recruitment when he solicits or entices another person to join a criminal gang, or intimidates or threatens another person because the other person:
  (a) Refuses to join a criminal gang;
  (b) Has withdrawn or is attempting to withdraw from a criminal gang; or
  (c) Refuses to submit to a demand made by a criminal gang.

(2) As used in this chapter:
  (a) "Criminal gang" means any alliance, network, or conspiracy, in law or in fact, of five (5) or more persons with an established hierarchy that, through its membership or through the action of any member, engages in a continuing pattern of criminal activity. "Criminal gang" shall not include fraternal organizations, unions, corporations, associations, or similar entities, unless organized for the primary purpose of engaging in criminal activity.
  (b) "Continuing pattern of criminal activity" means a conviction by any member or members of a criminal gang for the commission, attempt, or solicitation of two (2) or more felony offenses, the commission of two (2) or more violent misdemeanor offenses, or a combination of at least one (1) of these felony offenses and one (1) of these violent misdemeanor offenses, on separate occasions within a two (2) year period for the purpose of furthering gang activity.
  (c) "Violent misdemeanor offense" means KRS 508.030, 508.050, 508.070, 508.080, 508.120, 508.150, 509.030, and 509.080.

(3) Criminal gang recruitment is a Class A misdemeanor for the first offense and a Class D felony for a second or subsequent offense.

(Enact. Acts 1998, ch. 606, § 83, effective July 15, 1998; 2000, ch. 431, § 1, effective July 14, 2000.)

506.150. Criminal gang activity or recruitment — Actions not constituting defenses.

(1) To establish the existence of a "criminal gang" as defined in KRS 506.140, any competent evidence that is probative of the existence of or membership in a criminal gang shall be admissible, including the following:
  (a) Self-proclamation;
  (b) A common name, insignia, flag, or means of recognition;
  (c) Common identifying hand or body signs, signals, or code;
  (d) A common identifying mode, style, or color of dress;
  (e) An identifying tattoo or body marking;
  (f) Membership, age, or other qualifications;
  (g) Creed of belief;
  (h) An organizational or command structure, overt or covert;
  (i) A de facto claim of territory or jurisdiction;
  (j) An initiation ritual;
  (k) A concentration or specialty; or
  (l) A method of operation or criminal enterprise.

(2) It is no defense to prosecution under KRS 506.140 that:
  (a) One (1) or more members of the gang are not criminally responsible for the offense;
  (b) One (1) or more members of the gang have been acquitted, have not been prosecuted or convicted, have been convicted of a different offense, or are under prosecution;
  (c) A person has been charged with, acquitted, or convicted of any offense under KRS 506.140;
  (d) The participants may not know each other's identity;
  (e) The membership in the criminal gang may change from time to time; or
  (f) The participants may stand in a wholesaler-retailer or other arm's length arrangement in the conduct of illicit distribution or other operations.

(3) Once the initial combination of five (5) or more persons is formed, the number or identity of persons remaining in the gang is immaterial as long as four (4) or more persons in the gang, excluding the defendant, are involved in a continuing pattern of criminal activity as defined in KRS 506.140 constituting a violation of KRS 506.140.

(Enact. Acts 1998, ch. 606, § 84, effective July 15, 1998; 2000, ch. 431, § 2, effective July 14, 2000.)

CHAPTER 508

ASSAULT AND RELATED OFFENSES

SECTION.
508.025. Assault in the third degree.

508.025. Assault in the third degree.

(1) A person is guilty of assault in the third degree when the actor:
  (a) Recklessly, with a deadly weapon or dangerous instrument, or intentionally causes or attempts to cause physical injury to:
    1. A state, county, city, or federal peace officer;
    2. An employee of a detention facility, or state residential treatment facility or state staff secure facility for residential treatment which provides for the care, treatment, or detention of a juvenile

charged with or adjudicated delinquent because of a public offense or as a youthful offender;

3. An employee of the Department for Community Based Services employed as a social worker to provide direct client services, if the event occurs while the worker is performing job-related duties;
4. A probation and parole officer;
5. A transportation officer appointed by a county fiscal court or legislative body of a consolidated local government, urban-county government, or charter government to transport inmates when the county jail or county correctional facility is closed while the transportation officer is performing job-related duties;
6. A public or private elementary or secondary school or school district classified or certified employee, school bus driver, or other school employee acting in the course and scope of the employee's employment; or
7. A public or private elementary or secondary school or school district volunteer acting in the course and scope of that person's volunteer service for the school or school district; or

(b) Being a person confined in a detention facility, or state residential treatment facility or state staff secure facility for residential treatment which provides for the care, treatment, or detention of a juvenile charged with or adjudicated delinquent because of a public offense or as a youthful offender, inflicts physical injury upon or throws or causes feces, or urine, or other bodily fluid to be thrown upon an employee of the facility.

(2) Assault in the third degree is a Class D felony.

(Enact. Acts 1982, ch. 429, § 1, effective July 15, 1982; 1990, ch. 380, § 1, effective July 13, 1990; 1994, ch. 397, § 1, effective July 15, 1994; 1996, ch. 345, § 1, effective July 15, 1996; 2000, ch. 14, § 56, effective July 14, 2000; 2000, ch. 193, § 17, effective July 14, 2000; 2000, ch. 345, § 7, effective July 14, 2000; 2002, ch. 208, § 1, effective July 15, 2002; 2002, ch. 360, § 1, effective July 15, 2002.)

Legislative Research Commission Note. (7/15/2002). This section was amended by 2002 Ky. Acts chs. 208 and 360, which do not appear to be in conflict and have been codified together.

CHAPTER 518

MISCELLANEOUS CRIMES AFFECTING BUSINESSES, OCCUPATIONS, AND PROFESSIONS

SECTION.

518.090. Assault of sports official.

518.090. Assault of sports official.

(1) A person is guilty of assault of a sports official when he intentionally causes physical injury to a sports official:

(a) Who was performing sports official duties at the time the physical injury was perpetrated; or

(b) If the physical injury occurs while the sports official is arriving at or departing from the athletic facility at which the athletic event occurred.

(2) For the purposes of this section, "sports official" means an individual who serves as a referee, umpire, linesman, or in a similar capacity that may be known by another title, and who is duly registered as or is a member of a national, state, regional, or local organization engaged, in part, in providing education and training to sports officials.

(3) A person who is guilty of assault of a sports official shall, for a first offense, be guilty of a Class A misdemeanor, unless the defendant assembles with five (5) or more persons for the purpose of assaulting a sports official, in which case it is a Class D felony.

(4) A person who is guilty of assault of a sport official shall, for a second or subsequent offense, be guilty of a Class D felony.

(Enact. Acts 1998, ch. 508, § 1, effective July 15, 1998.)

CHAPTER 525

RIOT, DISORDERLY CONDUCT AND RELATED OFFENSES

SECTION.

525.090. Loitering.

525.090. Loitering.

(1) A person is guilty of loitering when he:

(a) Loiters or remains in a public place for the purpose of gambling with cards, dice or other gambling paraphernalia, except that the provisions of this section shall not apply if the person is participating in charitable gaming defined by KRS 238.505; or

(b) Loiters or remains in a public place for the purpose of unlawfully using a controlled substance; or

(c) Loiters or remains in or about a school, college or university building or grounds, not having any reason or relationship involving custody of or responsibility for a pupil or student or any other specific legitimate reason for being there and not having written permission from anyone authorized to grant the same; or

(d) Loiters or remains in any transportation facility, unless specifically authorized to do so, for the purpose of soliciting or engaging in any business, trade or commercial transactions involving the sale of merchandise or services.

(2) Loitering is a violation.

(Enact. Acts 1974, ch. 406, § 219; 1980, ch. 267, § 8, effective July 15, 1980; 1984, ch. 102, § 2, effective July 13, 1984; 1994, ch. 66, § 18, effective March 16, 1994.)

Collateral References. Validity and construction of statute or ordinance forbidding unauthorized persons to enter upon or remain in school building or premises. 50 A.L.R.3d 340.

CHAPTER 527

OFFENSES RELATING TO FIREARMS AND WEAPONS

SECTION.

527.070. Unlawful possession of a weapon on school property — Posting of sign — Exemptions.

MINORS AND JUVENILES

527.100. Possession of handgun by minor.

527.070. Unlawful possession of a weapon on school property — Posting of sign — Exemptions.

(1) A person is guilty of unlawful possession of a weapon on school property when he knowingly deposits, possesses, or carries, whether openly or concealed, for purposes other than instructional or school-sanctioned ceremonial purposes, or the purposes permitted in subsection (3) of this section, any firearm or other deadly weapon, destructive device, or booby trap device in any public or private school building or bus, on any public or private school campus, grounds, recreation area, athletic field, or any other property owned, used, or operated by any board of education, school, board of trustees, regents, or directors for the administration of any public or private educational institution. The provisions of this section shall not apply to institutions of postsecondary or higher education.

(2) Each chief administrator of a public or private school shall display about the school in prominent locations, including, but not limited to, sports arenas, gymnasiums, stadiums, and cafeterias, a sign at least six (6) inches high and fourteen (14) inches wide stating:

UNLAWFUL POSSESSION OF A WEAPON ON SCHOOL PROPERTY IN KENTUCKY IS A FELONY PUNISHABLE BY A MAXIMUM OF FIVE (5) YEARS IN PRISON AND A TEN THOUSAND DOLLAR ($10,000) FINE.

Failure to post the sign shall not relieve any person of liability under this section.

(3) The provisions of this section prohibiting the unlawful possession of a weapon on school property shall not apply to:

(a) An adult who possesses a firearm, if the firearm is contained within a vehicle operated by the adult and is not removed from the vehicle, except for a purpose permitted herein, or brandished by the adult, or by any other person acting with expressed or implied consent of the adult, while the vehicle is on school property;

(b) Any pupils who are members of the reserve officers training corps or pupils enrolled in a course of instruction or members of a school club or team, to the extent they are required to carry arms or weapons in the discharge of their official class or team duties;

(c) Any peace officer or police officer authorized to carry a concealed weapon pursuant to KRS 527.020;

(d) Persons employed by the Armed Forces of the United States or members of the National Guard or militia when required in the discharge of their official duties to carry arms or weapons;

(e) Civil officers of the United States in the discharge of their official duties. Nothing in this section shall be construed as to allow any person to carry a concealed weapon into a public or private elementary or secondary school building;

(f) Any other persons, including, but not limited to, exhibitors of historical displays, who have been authorized to carry a firearm by the board of education or board of trustees of the public or private institution;

(g) A person hunting during the lawful hunting season on lands owned by any public or private educational institution and designated as open to hunting by the board of education or board of trustees of the educational institution;

(h) A person possessing unloaded hunting weapons while traversing the grounds of any public or private educational institution for the purpose of gaining access to public or private lands open to hunting with the intent to hunt on the public or private lands, unless the lands of the educational institution are posted prohibiting the entry; or

(i) A person possessing guns or knives when conducting or attending a "gun and knife show" when the program has been approved by the board of education or board of trustees of the educational institution.

(4) Unlawful possession of a weapon on school property is a Class D felony.

(Enact. Acts 1994, ch. 391, § 1, effective July 15, 1994; 1996, ch. 119, § 4, effective October 1, 1996.)

Opinions of Attorney General. The fact that the legislature in enacting subsection (1) of this section has elected not to criminalize the carrying of those weapons on the property of institutions of postsecondary or higher education, does not preclude the governing boards of public institutions of higher education from otherwise controlling the possession of deadly weapons on their properties. OAG 96-40.

NOTES TO DECISIONS

1. Duty to Warn of Violation

There is no duty imposed by this section to report to school officials alleged violations of KRS 527.070. James v. Wilson, — S.W.3d —, 2002 Ky. App. LEXIS 770 (Ky. Ct. App. Apr. 19, 2002).

MINORS AND JUVENILES

527.100. Possession of handgun by minor.

(1) A person is guilty of possession of a handgun by a minor when, being under the age of eighteen (18) years, he possesses, manufactures, or transports a handgun as defined by KRS 527.010, except when the person is:
   (a) In attendance at a hunter's safety course or a firearms safety course;
   (b) Engaging in practice in the use of a firearm, or target shooting at an established firing range, or any other area where the discharge of a firearm is not prohibited;
   (c) Engaging in an organized competition involving the use of a firearm, or participating in or practicing for a performance by a group organized under Section 501(c)(3) of the Internal Revenue Code or any successor thereto which uses firearms as a part of the performance;
   (d) Hunting or trapping pursuant to a valid license issued to him pursuant to the statutes or administrative regulations of this Commonwealth;
   (e) Traveling to or from any activity described in paragraphs (a) to (d) of this subsection with any unloaded handgun in his possession;
   (f) On real property which is under the control of an adult and has the permission of that adult and his parent or legal guardian to possess a handgun; or
   (g) At his residence and with the permission of his parent or legal guardian possesses a handgun and is justified under the principles of justification set forth in KRS Chapter 503 in using physical force or deadly physical force.

(2) For the purposes of subsection (1) of this section, a handgun is "loaded" if:
   (a) There is a cartridge in the chamber of the handgun; or
   (b) There is a cartridge in the cylinder of the handgun, if the handgun is a revolver; or
   (c) There is a cartridge in the magazine of a semiautomatic handgun, if the magazine is attached to the handgun; or
   (d) The handgun and the ammunition for the handgun, are carried on the person of one under the age of eighteen (18) years or are in such close proximity to him that he could readily gain access to the handgun and the ammunition and load the handgun.

(3) Possession of a handgun by a minor is a Class A misdemeanor for the first offense and a Class D felony for each subsequent offense.

(Enact. Acts 1994, ch. 30, § 1, effective July 15, 1994.)

Compiler's Notes. Section 501(c)(3) of the Internal Revenue Code referred to in subsection (1)(c) of this section is compiled as 26 U.S.C. § 501(c)(3).

Opinions of Attorney General. House Bill 359 (Acts 1994, ch. 30, § 1; codified as KRS 527.100) which restricts possession of handguns by minors is constitutional under both the Second Amendment to the Constitution of the United States and Ky. Const., § 7. OAG 94-14.

CHAPTER 532

CLASSIFICATION AND DESIGNATION OF OFFENSES — AUTHORIZED DISPOSITION

SECTION.

532.045. Persons prohibited from probation or conditional discharge — Procedure when probation or conditional discharge not prohibited.

532.045. Persons prohibited from probation or conditional discharge — Procedure when probation or conditional discharge not prohibited.

(1) As used in this section:
   (a) "Position of authority" means, but is not limited to, the position occupied by a biological parent, adoptive parent, stepparent, foster parent, relative, household member, adult youth leader, recreational staff, or volunteer who is an adult, adult athletic manager, adult coach, teacher, classified school employee, certified school employee, counselor, staff, or volunteer for either a residential treatment facility, a holding facility as defined in KRS 600.020, or a detention facility as defined in KRS 520.010(4), staff or volunteer with a youth services organization, religious leader, health care provider, or employer;
   (b) "Position of special trust" means a position occupied by a person in a position of authority who by reason of that position is able to exercise undue influence over the minor; and
   (c) "Substantial sexual conduct" means penetration of the vagina or rectum by the penis of the offender or the victim, by any foreign object; oral copulation; or masturbation of either the minor or the offender.

(2) Notwithstanding other provisions of applicable law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within the provision of this section be stricken for a person convicted of violating KRS 510.050, 510.080, 529.030 to 529.050, 529.070, 530.020, 531.310, 531.320, 531.370, or criminal attempt to commit any of these offenses under KRS 506.010, and, who meets one (1) or more of the following criteria:
   (a) A person who commits any of the offenses enumerated in this subsection against a minor by the use of force, violence, duress, menace, or threat of bodily harm;
   (b) A person who, in committing any of the offenses enumerated in this subsection, caused bodily injury to the minor;
   (c) A person convicted of any of the offenses enumerated in this subsection and who was a stranger to the minor or made friends with the minor for the purpose of committing an act constituting any of the offenses enumerated in this subsection, unless the defendant honestly and reasonably believed the minor was eighteen (18) years old or older;

(d) A person who used a dangerous instrument or deadly weapon against a minor during the commission of any of the offenses enumerated in this subsection;

(e) A person convicted of any of the offenses enumerated in this subsection and who has had a prior conviction of assaulting a minor, with intent to commit an act constituting any of the offenses enumerated in this subsection;

(f) A person convicted of kidnapping a minor in violation of the Kentucky Penal Code and who kidnapped the minor for the purpose of committing an act constituting any of the offenses enumerated in this subsection;

(g) A person who is convicted of committing any of the offenses enumerated in this subsection on more than one (1) minor at the same time or in the same course of conduct;

(h) A person who in committing any of the offenses enumerated in this subsection has substantial sexual conduct with a minor under the age of fourteen (14) years; or

(i) A person who occupies a position of special trust and commits an act of substantial sexual conduct.

Nothing in this section shall be construed to prohibit the additional period of three (3) years' conditional discharge required by KRS 532.043.

(3) If a person is not otherwise prohibited from obtaining probation or conditional discharge under subsection (2), the court may impose on the person a period of probation or conditional discharge. Probation or conditional discharge shall not be granted until the court is in receipt of the comprehensive sex offender presentence evaluation of the offender performed by an approved provider, as defined in KRS 17.550 or the Department of Corrections. The court shall use the comprehensive sex offender presentence evaluation in determining the appropriateness of probation or conditional discharge.

(4) If the court grants probation or conditional discharge, the offender shall be required, as a condition of probation or conditional discharge, to successfully complete a community-based sexual offender treatment program operated or approved by the Department of Corrections or the Sex Offender Risk Assessment Advisory Board.

(5) The offender shall pay for any evaluation or treatment required pursuant to this section up to the offender's ability to pay but not more than the actual cost of the comprehensive sex offender presentence evaluation or treatment.

(6) Failure to successfully complete the sexual offender treatment program constitutes grounds for the revocation of probation or conditional discharge.

(7) The comprehensive sex offender presentence evaluation and all communications relative to the comprehensive sex offender presentence evaluation and treatment of a sexual offender shall fall under the provisions of KRS 197.440. The comprehensive sex offender presentence evaluation shall be filed under seal and shall not be made a part of the court record subject to review in appellate proceedings and shall not be made available to the public.

(8) Before imposing sentence, the court shall advise the defendant or his counsel of the contents and conclusions of any comprehensive sex offender presentence evaluation performed pursuant to this section and afford a fair opportunity and a reasonable period of time, if the defendant so requests, to controvert them. The court shall provide the defendant's counsel and the Commonwealth's attorney a copy of the comprehensive sex offender presentence evaluation. It shall not be necessary to disclose the sources of confidential information.

(9) To the extent that this section conflicts with KRS 533.010, this section shall take precedence.

(Enact. Acts 1984, ch. 382, § 23, effective July 13, 1984; 1994, ch. 94, § 3, effective July 15, 1994; 1996, ch. 300, § 3, effective July 15, 1996; 1998, ch. 293, § 1, effective July 15, 1998; 1998, ch. 606, § 118, effective July 15, 1998; 2000, ch. 401, §§ 9, 34, effective July 14, 2000.)

Legislative Research Commission Note. (7/14/2000). This section was amended by 2000 Ky. Acts ch. 401, sections 9 and 34, which do not appear to be in conflict and have been codified together.

TITLE LI

UNIFIED JUVENILE CODE

CHAPTER 600

INTRODUCTORY MATTERS

SECTION.

600.020. Definitions for KRS Chapters 600 to 645.
600.060. No diminishment of court's inherent contempt power.

600.020. Definitions for KRS Chapters 600 to 645.

As used in KRS Chapters 600 to 645, unless the context otherwise requires:

(1) "Abused or neglected child" means a child whose health or welfare is harmed or threatened with harm when his parent, guardian, or other person exercising custodial control or supervision of the child:

(a) Inflicts or allows to be inflicted upon the child physical or emotional injury as defined in this section by other than accidental means;

(b) Creates or allows to be created a risk of physical or emotional injury as defined in this section to the child by other than accidental means;

(c) Engages in a pattern of conduct that renders the parent incapable of caring for the immediate and ongoing needs of the child including,

but not limited to, parental incapacity due to alcohol and other drug abuse as defined in KRS 222.005(12);

(d) Continuously or repeatedly fails or refuses to provide essential parental care and protection for the child, considering the age of the child;

(e) Commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child;

(f) Creates or allows to be created a risk that an act of sexual abuse, sexual exploitation, or prostitution will be committed upon the child;

(g) Abandons or exploits the child; or

(h) Does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child's well-being. A parent or other person exercising custodial control or supervision of the child legitimately practicing the person's religious beliefs shall not be considered a negligent parent solely because of failure to provide specified medical treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child; or

(i) Fails to make sufficient progress toward identified goals as set forth in the court-approved case plan to allow for the safe return of the child to the parent that results in the child remaining committed to the cabinet and remaining in foster care for fifteen (15) of the most recent twenty-two (22) months;

(2) "Aggravated circumstances" means the existence of one (1) or more of the following conditions:

(a) The parent has not attempted or has not had contact with the child for a period of not less than ninety (90) days;

(b) The parent is incarcerated and will be unavailable to care for the child for a period of at least one (1) year from the date of the child's entry into foster care and there is no appropriate relative placement available during this period of time;

(c) The parent has sexually abused the child and has refused available treatment;

(d) The parent has been found by the cabinet to have engaged in abuse of the child that required removal from the parent's home two (2) or more times in the past two (2) years; or

(e) The parent has caused the child serious physical injury;

(3) "Beyond the control of school" means any child who has been found by the court to have repeatedly violated the lawful regulations for the government of the school as provided in KRS 158.150, and as documented in writing by the school as a part of the school's petition or as an attachment to the school's petition. The petition or attachment shall describe the student's behavior and all intervention strategies attempted by the school;

(4) "Beyond the control of parents" means a child who has repeatedly failed to follow the reasonable directives of his or her parents, legal guardian, or person exercising custodial control or supervision other than a state agency, which behavior results in danger to the child or others, and which behavior does not constitute behavior that would warrant the filing of a petition under KRS Chapter 645;

(5) "Boarding home" means a privately owned and operated home for the boarding and lodging of individuals which is approved by the Department of Juvenile Justice or the cabinet for the placement of children committed to the department or the cabinet;

(6) "Cabinet" means the Cabinet for Families and Children;

(7) "Certified juvenile facility staff" means individuals who meet the qualifications of, and who have completed a course of education and training in juvenile detention developed and approved by, the Department of Juvenile Justice after consultation with other appropriate state agencies;

(8) "Child" means any person who has not reached his eighteenth birthday, unless otherwise provided;

(9) "Child-caring facility" means any facility or group home other than a state facility, Department of Juvenile Justice contract facility or group home, or one certified by an appropriate agency as operated primarily for educational or medical purposes, providing residential care on a twenty-four (24) hour basis to children not related by blood, adoption, or marriage to the person maintaining the facility;

(10) "Child-placing agency" means any agency, other than a state agency, which supervises the placement of children in foster family homes or child-caring facilities or which places children for adoption;

(11) "Clinical treatment facility" means a facility with more than eight (8) beds designated by the Department of Juvenile Justice or the cabinet for the treatment of mentally ill children. The treatment program of such facilities shall be supervised by a qualified mental health professional;

(12) "Commitment" means an order of the court which places a child under the custodial control or supervision of the Cabinet for Families and Children, Department of Juvenile Justice, or another facility or agency until the child attains the age of eighteen (18) unless the commitment is discharged under KRS Chapter 605 or the committing court terminates or extends the order;

(13) "Community-based facility" means any nonsecure, homelike facility licensed, operated, or permitted to operate by the Department of Juvenile Justice or the cabinet, which is located within a reasonable proximity of the child's family and home community, which affords the child the opportunity, if a Kentucky resident, to continue family and community contact;

(14) "Complaint" means a verified statement setting forth allegations in regard to the child which contain sufficient facts for the formulation of a subsequent petition;

(15) "Court" means the juvenile session of District Court unless a statute specifies the adult session of District Court or the Circuit Court;

(16) "Court-designated worker" means that organization or individual delegated by the Administrative

Office of the Courts for the purposes of placing children in alternative placements prior to arraignment, conducting preliminary investigations, and formulating, entering into, and supervising diversion agreements and performing such other functions as authorized by law or court order;

(17) "Deadly weapon" has the same meaning as it does in KRS 500.080;

(18) "Department" means the Department for Community Based Services;

(19) "Dependent child" means any child, other than an abused or neglected child, who is under improper care, custody, control, or guardianship that is not due to an intentional act of the parent, guardian, or person exercising custodial control or supervision of the child;

(20) "Detention" means the safe and temporary custody of a juvenile who is accused of conduct subject to the jurisdiction of the court who requires a restricted environment for his or her own or the community's protection;

(21) "Detention hearing" means a hearing held by a judge or trial commissioner within twenty-four (24) hours, exclusive of weekends and holidays, of the start of any period of detention prior to adjudication;

(22) "Diversion agreement" means an agreement entered into between a court-designated worker and a child charged with the commission of offenses set forth in KRS Chapters 630 and 635, the purpose of which is to serve the best interest of the child and to provide redress for those offenses without court action and without the creation of a formal court record;

(23) "Emergency shelter" is a group home, private residence, foster home, or similar homelike facility which provides temporary or emergency care of children and adequate staff and services consistent with the needs of each child;

(24) "Emotional injury" means an injury to the mental or psychological capacity or emotional stability of a child as evidenced by a substantial and observable impairment in the child's ability to function within a normal range of performance and behavior with due regard to his age, development, culture, and environment as testified to by a qualified mental health professional;

(25) "Firearm" shall have the same meaning as in KRS 237.060 and 527.010;

(26) "Foster family home" means a private home in which children are placed for foster family care under supervision of the cabinet or a licensed child-placing agency;

(27) "Habitual runaway" means any child who has been found by the court to have been absent from his place of lawful residence without the permission of his custodian for at least three (3) days during a one (1) year period;

(28) "Habitual truant" means any child who has been found by the court to have been reported as a truant as defined in KRS 159.150 three (3) or more times during a one (1) year period;

(29) "Hospital" means, except for purposes of KRS Chapter 645, a licensed private or public facility, health care facility, or part thereof, which is approved by the cabinet to treat children;

(30) "Independent living" means those activities necessary to assist a committed child to establish independent living arrangements;

(31) "Informal adjustment" means an agreement reached among the parties, with consultation, but not the consent, of the victim of the crime or other persons specified in KRS 610.070 if the victim chooses not to or is unable to participate, after a petition has been filed, which is approved by the court, that the best interest of the child would be served without formal adjudication and disposition;

(32) "Intentionally" means, with respect to a result or to conduct described by a statute which defines an offense, that the actor's conscious objective is to cause that result or to engage in that conduct;

(33) "Intermittent holding facility" means a physically secure setting, which is entirely separated from sight and sound from all other portions of a jail containing adult prisoners, in which a child accused of a public offense may be detained for a period not to exceed twenty-four (24) hours, exclusive of weekends and holidays prior to a detention hearing as provided for in KRS 610.265, and in which children are supervised and observed on a regular basis by certified juvenile facility staff;

(34) "Juvenile holding facility" means a physically secure facility, approved by the Department of Juvenile Justice, which is an entirely separate portion or wing of a building containing an adult jail, which provides total sight and sound separation between juvenile and adult facility spatial areas and which is staffed by sufficient certified juvenile facility staff to provide twenty-four (24) hours per day supervision;

(35) "Least restrictive alternative" means, except for purposes of KRS Chapter 645, that the program developed on the child's behalf is no more harsh, hazardous, or intrusive than necessary; or involves no restrictions on physical movements nor requirements for residential care except as reasonably necessary for the protection of the child from physical injury; or protection of the community, and is conducted at the suitable available facility closest to the child's place of residence;

(36) "Motor vehicle offense" means any violation of the nonfelony provisions of KRS Chapters 186, 189, or 189A, KRS 177.300, 304.39-110, or 304.39-117;

(37) "Near fatality" means an injury that, as certified by a physician, places a child in serious or critical condition;

(38) "Needs of the child" means necessary food, clothing, health, shelter, and education;

(39) "Nonsecure facility" means a facility which provides its residents access to the surrounding community and which does not rely primarily on the use of physically restricting construction and hardware to restrict freedom;

(40) "Nonsecure setting" means a nonsecure facility or a residential home, including a child's own home, where a child may be temporarily placed pending

further court action. Children before the court in a county that is served by a state operated secure detention facility, who are in the detention custody of the Department of Juvenile Justice, and who are placed in a nonsecure alternative by the Department of Juvenile Justice, shall be supervised by the Department of Juvenile Justice;

(41) "Parent" means the biological or adoptive mother or father of a child;

(42) "Person exercising custodial control or supervision" means a person or agency that has assumed the role and responsibility of a parent or guardian for the child, but that does not necessarily have legal custody of the child;

(43) "Petition" means a verified statement, setting forth allegations in regard to the child, which initiates formal court involvement in the child's case;

(44) "Physical injury" means substantial physical pain or any impairment of physical condition;

(45) "Physically secure facility" means a facility that relies primarily on the use of construction and hardware such as locks, bars, and fences to restrict freedom;

(46) "Public offense action" means an action, excluding contempt, brought in the interest of a child who is accused of committing an offense under KRS Chapter 527 or a public offense which, if committed by an adult, would be a crime, whether the same is a felony, misdemeanor, or violation, other than an action alleging that a child sixteen (16) years of age or older has committed a motor vehicle offense;

(47) "Qualified mental health professional" means:

(a) A physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;

(b) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the practice of official duties, and who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;

(c) A psychologist with the health service provider designation, a psychological practitioner, a certified psychologist, or a psychological associate licensed under the provisions of KRS Chapter 319;

(d) A licensed registered nurse with a master's degree in psychiatric nursing from an accredited institution and two (2) years of clinical experience with mentally ill persons, or a licensed registered nurse with a bachelor's degree in nursing from an accredited institution who is certified as a psychiatric and mental health nurse by the American Nurses Association and who has three (3) years of inpatient or outpatient clinical experience in psychiatric nursing and who is currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center;

(e) A licensed clinical social worker licensed under the provisions of KRS 335.100, or a certified social worker licensed under the provisions of KRS 335.080 with three (3) years of inpatient or outpatient clinical experience in psychiatric social work and currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center;

(f) A marriage and family therapist licensed under the provisions of KRS 335.300 to 335.399 with three (3) years of inpatient or outpatient clinical experience in psychiatric mental health practice and currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth, a psychiatric unit of a general hospital, or a regional comprehensive care center; or

(g) A professional counselor credentialed under the provisions of KRS 335.500 to 335.599 with three (3) years of inpatient or outpatient clinical experience in psychiatric mental health practice and currently employed by a hospital or forensic facility licensed by the Commonwealth, a psychiatric unit of a general hospital, or a regional comprehensive care center;

(48) "Residential treatment facility" means a facility or group home with more than eight (8) beds designated by the Department of Juvenile Justice or the cabinet for the treatment of children;

(49) "Retain in custody" means, after a child has been taken into custody, the continued holding of the child by a peace officer for a period of time not to exceed twelve (12) hours when authorized by the court or the court-designated worker for the purpose of making preliminary inquiries;

(50) "School personnel" means those certified persons under the supervision of the local public or private education agency;

(51) "Secretary" means the secretary of the Cabinet for Families and Children;

(52) "Secure juvenile detention facility" means any physically secure facility used for the secure detention of children other than any facility in which adult prisoners are confined;

(53) "Staff secure facility for residential treatment" means any setting which assures that all entrances and exits are under the exclusive control of the facility staff, and in which a child may reside for the purpose of receiving treatment;

(54) "Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily member or organ;

(55) "Sexual abuse" includes, but is not necessarily limited to, any contacts or interactions in which the parent, guardian, or other person having custodial control or supervision of the child or responsibility for his welfare, uses or allows, permits, or encourages the use of the child for the purposes of the sexual stimulation of the perpetrator or another person;

(56) "Sexual exploitation" includes, but is not limited to, a situation in which a parent, guardian, or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits, or encourages the child to engage in an act which constitutes prostitution under Kentucky law; or a parent, guardian, or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits, or encourages the child to engage in an act of obscene or pornographic photographing, filming, or depicting of a child as provided for under Kentucky law;

(57) "Social service worker" means any employee of the cabinet or any private agency designated as such by the secretary of the cabinet or a social worker employed by a county or city who has been approved by the cabinet to provide, under its supervision, services to families and children;

(58) "Status offense action" is any action brought in the interest of a child who is accused of committing acts, which if committed by an adult, would not be a crime. Such behavior shall not be considered criminal or delinquent and such children shall be termed status offenders. Status offenses shall not include violations of state or local ordinances which may apply to children such as a violation of curfew or possession of alcoholic beverages;

(59) "Take into custody" means the procedure by which a peace officer or other authorized person initially assumes custody of a child. A child may be taken into custody for a period of time not to exceed two (2) hours;

(60) "Valid court order" means a court order issued by a judge to a child alleged or found to be a status offender:

(a) Who was brought before the court and made subject to the order;

(b) Whose future conduct was regulated by the order;

(c) Who was given written and verbal warning of the consequences of the violation of the order at the time the order was issued and whose attorney or parent or legal guardian was also provided with a written notice of the consequences of violation of the order, which notification is reflected in the record of the court proceedings; and

(d) Who received, before the issuance of the order, the full due process rights guaranteed by the Constitution of the United States.

(61) "Violation" means any offense, other than a traffic infraction, for which a sentence of a fine only can be imposed;

(62) "Youth alternative center" means a nonsecure facility, approved by the Department of Juvenile Justice, for the detention of juveniles, both prior to adjudication and after adjudication, which meets the criteria specified in KRS 15A.320; and

(63) "Youthful offender" means any person regardless of age, transferred to Circuit Court under the provisions of KRS Chapter 635 or 640 and who is subsequently convicted in Circuit Court.

(Enact. Acts 1986, ch. 423, § 2, effective July 1, 1987; 1988, ch. 350, § 1, effective April 10, 1988; 1994, ch. 30, § 4, effective July 15, 1994; 1994, ch. 368, § 2, effective July 15, 1994; 1994, ch. 498, § 15, effective July 15, 1994; 1996, ch. 358, § 9, effective in part July 1, 1997, and in part July 15, 1997; 1996, ch. 369, § 21, effective July 15, 1996; 1998, ch. 57, § 2, effective March 17, 1998; 1998, ch. 303, § 1, effective July 15, 1998; 1998, ch. 426, § 611, effective July 15, 1998; 1998, ch. 538, § 13, effective April 13, 1998; 2000, ch. 14, § 57, effective July 14, 2000; 2000, ch. 60, § 1, effective July 14, 2000; 2000, ch. 193, § 1, effective July 14, 2000; 2000, ch. 534, § 6, effective July 14, 2000; 2002, ch. 99, § 4, effective March 28, 2002.)

Legislative Research Commission Note. (7/15/98). This section was amended by 1998 Ky. Acts chs. 57, 303, 426, and 538. Where these Acts are not in conflict, they have been codified together. A conflict exists between ch. 538, which is nonrevisory and substantive in nature, and ch. 426, which is a revisory amendment to reflect an agency name change. In codification of this conflict, ch. 538 has been allowed to prevail. Cf. KRS 7.136(3).

Opinions of Attorney General. A married child under the age of 16 has a legal responsibility to attend school, but once a child marries, the parent or guardian no longer has a legal obligation to ensure that the child attends school; however, if the spouse of a minor who is under the age of 16 and who is an habitual truant, is found to be a person exercising custodial control or supervision as defined by subdivision (26) of this section, the spouse may be subject to penalties under the Juvenile Code. OAG 87-40.

It is clear from the language of subsection (24) of this section and KRS 610.010(1)(c) that a student under the age of 18 years who is failing to attend school in violation of KRS 159.010 is subject to a delinquency prosecution in accordance with the Juvenile Code. OAG 90-106.

While the two definitions of "habitual truant" in KRS 159.150 and in subdivision (24) of this section cannot be reconciled in terms of their language, it may be possible to reconcile them in their application. KRS 159.140 gives Directors of Pupil Personnel authority to enforce compulsory attendance laws, including KRS 159.150. Penalties are set forth under KRS 159.990 and are enforced by the District Court. Through exclusive jurisdiction over habitual truants the District Court has discretion in enforcement. The court may either rely on a Director of Pupil Personnel to initiate proceedings for violations of KRS 159.150, or the court may order a Director of Pupil Personnel to enforce subdivision (24) of this section, in which case the director would have authority to apply the definition found therein. OAG 91-79.

Subsection (26) of this section controls over KRS 159.150 in ascertaining the number of days a child must have unexcused absences prior to being found habitually truant under the Unified Juvenile Code. OAG 93-37.

600.060. No diminishment of court's inherent contempt power.

Notwithstanding any other provision of KRS Chapter 600 to 645, the inherent contempt power of the court shall not be diminished.

(Enact. Acts 2000, ch. 193, § 18, effective July 14, 2000.)

CHAPTER 605

ADMINISTRATIVE MATTERS

SECTION.

605.110. Medical care and educational programs for committed children — Kentucky Educational Collaborative for State Agency Children — Personnel — Financing.
605.115. Access to Medicaid funding for local school districts providing funding matches for services for eligible children with disabilities.

605.110. Medical care and educational programs for committed children — Kentucky Educational Collaborative for State Agency Children — Personnel — Financing.

(1) Unless provided otherwise, when any child committed to or in the custody of the Department of Juvenile Justice or the cabinet requires medical or surgical care or treatment, the Department of Juvenile Justice or the cabinet may provide the same or arrange for the furnishing thereof by other public or private agencies, and may give consent to the medical or surgical treatment. For this purpose, the services and facilities of local health officers and departments shall be made available, at a cost not to exceed the Medicaid reimbursement rate, to the Department of Juvenile Justice or the cabinet, and as far as practicable, any publicly owned hospital shall provide hospitalization without charge for any such child who is a resident of the political subdivision by which the hospital is owned or operated. This section does not authorize nor shall permission be granted for abortion or sterilization.

(2) Any child placed in a foster home by an agency duly authorized in KRS Chapter 620 to place a child in a foster home shall receive a complete medical, visual, and dental examination by a professional authorized by the Kentucky Revised Statutes to conduct such examinations. Arrangements for a child placed in a foster home to receive such examinations shall be made within two (2) weeks of his placement in a foster home and not less than every twelve (12) months thereafter.

(3) Children maintained in any of the facilities and programs operated or contracted by the Department of Juvenile Justice or the cabinet shall, so far as possible, receive a common school education.

(a) The Kentucky Educational Collaborative for State Agency Children shall be established to serve children in facilities and programs operated or contracted by the Department of Juvenile Justice or the Cabinet for Families and Children, residential, day treatment, clinical, and group home programs. All policies and procedures necessary to educate state agency children shall be approved by the Kentucky Board of Education. All duties, responsibilities, rights, and privileges specifically imposed on or granted to the local education administration units shall be imposed on or granted to the Department of Juvenile Justice or the Cabinet for Families and Children and contracted agencies with regard to educating agency children. Classrooms for the Kentucky Educational Collaborative for State Agency Children shall be within or near the facilities and programs operated or contracted by the Department of Juvenile Justice or the cabinet. The Kentucky Department of Education, the Department of Juvenile Justice, and the Cabinet for Families and Children, Department for Community Based Services, shall develop a biennial plan regarding the educational needs and provisions of educational programs, with emphasis on the coordination of all treatment services and funds available to provide for the education of state agency children. The biennial plan shall include strategies to assure that teacher preparation programs include content related to working with state agency children and that adequate professional development opportunities for better meeting the needs of these students are available for teachers and schools.

(b) Teachers and other staff shall be hired on contract through a local school district or if a local school district is not willing to participate, teachers may be hired by the Kentucky Educational Collaborative for State Agency Children or a contract may be entered into with a private provider of educational services. All certified educational staff hired by the Kentucky Educational Collaborative for State Agency Children shall be members of the Kentucky Teachers' Retirement System.

(c) Beginning July 1, 1993, the Kentucky Education Collaborative for State Agency Children shall be financed through:

1. The amount generated by state agency children under the Support Education Excellence in Kentucky program as provided in KRS 157.360 for the guaranteed base and adjustments for the number of at-risk students, exceptional students, and transportation costs;
2. A per-pupil distribution of professional development funds with the collaborative serving as a consortium for state agency children;
3. A per-pupil distribution of technology funds in accordance with the state education technology plan pursuant to KRS 156.670 and the formula for the distribution of funds to local school districts;
4. A per-pupil distribution of textbook funds pursuant to KRS 157.100 and 157.190;
5. The funding for school services for state agency children authorized by KRS 158.135; and
6. Other grants and entitlements, including federal funds, identified in the implementation plan developed pursuant to paragraph (f) of this subsection for the education of Kentucky's children.

(d) The commissioner of Juvenile Justice and the secretary of the Cabinet for Families and Chil-

dren shall promulgate administrative regulations, pursuant to KRS Chapter 13A, with the assistance of the Kentucky Department of Education and upon recommendation of the Kentucky Board of Education regarding the governance, curriculum, and other topics necessary to educate state agency children. The regulations shall:

1. Provide for the development and implementation of interagency agreements that:
   a. Define the financial responsibility of each state and local agency for providing services to state agency children;
   b. Establish procedures for resolving interagency disputes among agencies that are parties to the agreements; and
2. Provide procedures for the implementation of the Kentucky statutes regarding school-based decision making, student outcomes, accountability, assessment, rewards and sanctions, technology, staff development, salaries, and the development of coordinated individual treatment, education, and transition plans to ensure compliance with present education and treatment laws and regulations specific to the needs of children in the programs of the Cabinet for Families and Children.

(e) When the placement of a state agency child is changed so that the state agency child must transfer from one school or educational facility to a different school or educational facility, the school or educational facility that the state agency child is leaving shall, within two (2) days of the state agency child leaving, prepare an educational passport for the child, which shall be delivered to the cabinet or the Department of Juvenile Justice. The cabinet or the Department of Juvenile Justice shall, within two (2) days of enrolling a state agency child in a new school or educational facility, present the educational passport to the receiving school or educational facility.

(f) The commissioner of Juvenile Justice and the secretary of the Cabinet for Families and Children and the commissioner of the state Department of Education shall initiate development of a plan for implementation of the Kentucky Educational Collaborative for State Agency Children.

(Enact. Acts 1986, ch. 423, § 14, effective July 1, 1987; 1988, ch. 350, § 9, effective April 10, 1988; 1988, ch. 357, § 12, effective July 15, 1988; 1992, ch. 357, § 3, effective July 14, 1992; 1994, ch. 376, § 3, effective July 15, 1994; 1996, ch. 358, § 16, effective July 1, 1997; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 398, § 4, effective July 15, 1998; 1998, ch. 426, § 613, effective July 15, 1998; 1998, ch. 433, § 2, effective July 15, 1998; 1998, ch. 538, § 5, effective April 13, 1998; 1998, ch. 609, § 4, effective July 15, 1998; 2000, ch. 14, § 58, effective July 14, 2000; 2000, ch. 534, § 19, effective July 14, 2000; 2002, ch. 257, § 10, effective July 15, 2002.)

Cross-References. Kentucky Educational Collaborative for State Agency Children, 505 KAR 1:080.

605.115. Access to Medicaid funding for local school districts providing funding matches for services for eligible children with disabilities.

The commissioner of the Department of Juvenile Justice and the secretary of the Cabinet for Families and Children, with the cooperation of the Kentucky Board of Education and the commissioner of education, shall implement policies to assure that local school districts providing a funding match shall have direct access to Medicaid funding as Medicaid providers for the provision of health-related services to eligible children with disabilities under the age of twenty-one (21) years of age. They shall develop policies and procedures so the Department of Education can transfer the local school districts' matching funds to the Department for Medicaid Services. They shall also review state and federal statutes and regulations to determine the eligibility of local school districts to receive Medicaid reimbursement for health-related services identified on a child's individual education plan.

(Enact. Acts 1994, ch. 376, § 1, effective July 15, 1994; 1996, ch. 358, § 17, effective July 1, 1997; 1996, ch. 362, § 6, effective July 15, 1996; 1998, ch. 426, § 614, effective July 15, 1998.)

Legislative Research Commission Note. (7/15/96). Under 1996 Ky. Acts ch. 358, sec. 67(3), the amendment of this statute by Section 17 of the Act becomes effective July 15, 1997, in that it deals with functions of the Department of Juvenile Justice.

Cross-References. School district Medicaid providers, 702 KAR 3:285.

CHAPTER 610

PROCEDURAL MATTERS

SECTION.

610.010. District Court jurisdiction of juvenile matters.
610.100. Investigation — Informal adjustment.
610.220. Permitted purposes for holding child in custody — Time limitation — Extension separation from adult prisoners.
610.265. Detention of children in specified facilities — Time frame for holding detention hearing.
610.280. Considerations for and findings from detention hearing.
610.290. Rights of juvenile.
610.295. Detention costs — Assessment against parent after hearing — Payments when adjudication based on status offense or public offense — Payment schedule and discharge.

610.010. District Court jurisdiction of juvenile matters.

(1) Unless otherwise exempted by KRS Chapters 600 to 645, the juvenile session of the District Court of each county shall have exclusive jurisdiction in proceedings concerning any child living or found within the county who has not reached his or her

eighteenth birthday or of any person who at the time of committing a public offense was under the age of eighteen (18) years, who allegedly:

(a) Has committed a public offense prior to his or her eighteenth birthday, except a motor vehicle offense involving a child sixteen (16) years of age or older. A child sixteen (16) years of age or older taken into custody upon the allegation that the child has committed a motor vehicle offense shall be treated as an adult and shall have the same conditions of release applied to him or her as an adult. A child taken into custody upon the allegation that he or she has committed a motor vehicle offense who is not released under conditions of release applicable to adults shall be held, pending his or her appearance before the District Court, in a facility as defined in KR 15A.067. Children sixteen (16) years of age or older who are convicted of, or plead guilty to, a motor vehicle offense shall, if sentenced to a term of confinement, be placed in a facility for that period of confinement preceding their eighteenth birthday and an adult detention facility for that period of confinement subsequent to their eighteenth birthday. The term "motor vehicle offense" shall not be deemed to include the offense of stealing or converting a motor vehicle nor operating the same without the owner's consent nor any offense which constitutes a felony;

(b) Is beyond the control of the school or beyond the control of parents as defined in KRS 600.020;

(c) Is an habitual truant from school;

(d) Is an habitual runaway from his or her parent or other person exercising custodial control or supervision of the child;

(e) Is dependent, neglected, or abused; or

(f) Is mentally ill.

(2) Actions brought under subsection (1)(a) of this section shall be considered to be public offense actions.

(3) Actions brought under subsection (1)(b), (c), and (d) of this section shall be considered to be status offense actions.

(4) Actions brought under subsection (1)(e) of this section shall be considered to be dependency actions.

(5) Actions brought under subsection (1)(f) of this section shall be considered to be mental health actions.

(6) Nothing in this chapter shall deprive other courts of the jurisdiction to determine the custody or guardianship of children upon writs of habeas corpus or to determine the custody or guardianship of children when such custody or guardianship is incidental to the determination of other causes pending in such other courts; nor shall anything in this chapter affect the jurisdiction of Circuit Courts over adoptions and proceedings for termination of parental rights.

(7) The court shall have no jurisdiction to make permanent awards of custody of a child except as provided by KRS 620.027.

(8) If the court finds an emergency to exist affecting the welfare of a child, or if the child is eligible for kinship care as established in KRS 605.120, it may make temporary orders for the child's custody; however, if the case involves allegations of dependency, neglect, or abuse, no emergency removal or temporary custody orders shall be effective unless the provisions of KRS Chapter 620 are followed. Such orders shall be entirely without prejudice to the proceedings for permanent custody of the child and shall remain in effect until modified or set aside by the court. Upon the entry of a temporary or final judgment in the Circuit Court awarding custody of such child, all prior orders of the juvenile session of the District Court in conflict therewith shall be deemed canceled. This section shall not work to deprive the Circuit Court of jurisdiction over cases filed in Circuit Court.

(9) The court of each county wherein a public offense, as defined in paragraph (a) of subsection (1) of this section, is committed by a child who is a resident of another county of this state shall have concurrent jurisdiction over such child with the court of the county wherein the child resides or the court of the county where the child is found. Whichever court first acquires jurisdiction of such child may proceed to final disposition of the case, or in its discretion may make an order transferring the case to the court of the county of the child's residence or the county wherein the offense was committed, as the case may be.

(10) Nothing in this chapter shall prevent the District Court from holding a child in contempt of court to enforce valid court orders previously issued by the court.

(11) Except as provided in KRS 635.060(3), nothing in this chapter shall confer upon the District Court jurisdiction over the actions of the Department of Juvenile Justice or the cabinet in the placement, care, or treatment of a child committed to the Department of Juvenile Justice or the cabinet; or to require the department or the cabinet to perform, or to refrain from performing, any specific act in the placement, care, or treatment of any child committed to the department or the cabinet.

(12) Unless precluded by KRS Chapter 635 or 640, in addition to informal adjustment, the court shall have the discretion to amend the petition to reflect jurisdiction pursuant to the proper chapter of the Kentucky Unified Juvenile Code.

(13) The court shall have continuing jurisdiction over a child pursuant to subsection (1) of this section, to review dispositional orders, and to conduct permanency hearings under 42 U.S.C. sec. 675(5)(c) until the child is placed for adoption, returned home to his or her parents with all the court imposed conditions terminated, or reaches the age of eighteen (18) years.

(Enact. Acts 1986, ch. 423, § 20, effective July 1, 1987; 1988, ch. 350, § 14, effective April 10, 1988; 1994, ch. 226, § 2, effective July 15, 1994; 1994, ch. 318, § 1, effective July 15, 1994; 1994, ch. 489, § 1, effective July 15, 1994; 1996, ch. 358, § 18, effective July 15, 1997; 1998, ch. 443, § 13, effective July 15, 1998; 2000, ch.

60, § 2, effective July 14, 2000; 2000, ch. 193, § 2, effective July 14, 2000; 2000, ch. 306, § 2, effective July 14, 2000; 2002, ch. 257, § 12, effective July 15, 2002.)

Opinions of Attorney General. It is clear from the language of KRS 600.020(24) and subdivision (1)(c) of this section that a student under the age of 18 years who is failing to attend school in violation of KRS 159.010 is subject to a delinquency prosecution in accordance with the Juvenile Code. OAG 90-106.

610.100. Investigation — Informal adjustment.

(1) Unless there is a suitable prior disposition investigation report or unless waived by the child who is represented by counsel, before making disposition of the case of a child brought before the court under the provisions of KRS Chapters 630 or 635, whether by complaint pursuant to KRS 610.020, or by reason of having been taken into custody pursuant to KRS 610.190, the judge shall cause an investigation to be made concerning the nature of the specific act complained of and any surrounding circumstances which suggest the future care and guidance which should be given the child. The investigation shall include an inquiry into the child's age, habits, school record, general reputation, and everything that may pertain to his life, and character. The investigation shall also include an inquiry into the home conditions, life, and character of the person having custody of the child. The investigation shall also include an assessment of the parent or guardian's ability to pay all or part of the cost of the child's care and treatment should the child be ordered into a treatment program or placed on supervised probation. The result of the investigation shall be reported in writing to the court and to counsel for the parties three (3) days prior to the child's dispositional hearing and shall become a part of the record of the proceedings. The child may waive the three (3) day requirement. Objections by counsel at the dispositional hearing to portions of the dispositional report shall be noted in the record.

(2) The investigation shall be conducted by a suitable public or private agency. The cabinet and the Department of Juvenile Justice may furnish investigation services under agreements with the individual juvenile courts. For this purpose, any county judge/executive or chief executive officer of an urban-county government may enter into a contract on behalf of his county with the Department of Juvenile Justice or the cabinet for the furnishings of such services.

(3) Upon the court's motion or the motion of any party, an informal adjustment may be made at any time during the proceedings and with the victim and with those persons specified in KRS 610.070 having prior notification of the motion.

(Enact. Acts 1986, ch. 423, § 29, effective July 1, 1987; 1988, ch. 350, § 21, effective April 10, 1988; 1996, ch. 358, § 23, effective in part July 1, 1997, and in part July 15, 1997; 1998, ch. 443, § 16, effective July 15, 1998; 2000, ch. 193, § 3, effective July 14, 2000.)

610.220. Permitted purposes for holding child in custody — Time limitation — Extension separation from adult prisoners.

(1) Except as otherwise provided by statute, if an officer takes or receives a child into custody, the child may be held at a police station, secure juvenile detention facility, juvenile holding facility, intermittent holding facility, youth alternative center, a nonsecure facility, or, as necessary, in a hospital or clinic for the following purposes:
   (a) Identification and booking;
   (b) Attempting to notify the parents or person exercising custodial control or supervision of the child, a relative, guardian, or other responsible person;
   (c) Photographing;
   (d) Fingerprinting;
   (e) Physical examinations, including examinations for evidence;
   (f) Evidence collection, including scientific tests;
   (g) Records checks;
   (h) Determining whether the child is subject to trial as an adult; and
   (i) Other inquiries of a preliminary nature.

(2) A child may be held in custody pursuant to this section for a period of time not to exceed two (2) hours, unless an extension of time is granted. Permission for an extension of time may be granted by the court, trial commissioner, or court-designated worker pursuant to KRS 610.200(5)(d) and the child may be retained in custody for up to an additional ten (10) hours at a facility of the type listed in subsection (1) of this section except for an intermittent holding facility for the period of retention.

(3) Any child held in custody pursuant to this section shall be sight and sound separated from any adult prisoners held in secure custody at the same location.

(Enact. Acts 1986, ch. 423, § 41, effective July 1, 1987; 1988, ch. 350, § 29, effective April 10, 1988; 1996, ch. 358, § 31, effective July 15, 1997; 2000, ch. 193, § 4, effective July 14, 2000; 2000, ch. 534, § 9, effective July 14, 2000.)

Legislative Research Commission Note. (7/14/2000). This section was amended by 2000 Ky. Acts, ch. 193 and 534, which do not appear to be in conflict and have been codified together.

610.265. Detention of children in specified facilities — Time frame for holding detention hearing.

(1) Any child who is alleged to be a status offender or who is accused of being in contempt of court on an underlying finding that the child is a status offender may be detained in a nonsecure facility, a secure juvenile detention facility, or a juvenile holding facility for a period of time not to exceed twenty-four (24) hours, exclusive of weekends and holidays, pending a detention hearing. Any child who is accused of committing a public offense or of being in contempt of court on an underlying public

offense may be detained in a secure juvenile detention facility or juvenile holding facility for a period of time not to exceed forty-eight (48) hours, exclusive of weekends and holidays or, if neither is reasonably available, an intermittent holding facility, for a period of time not to exceed twenty-four (24) hours, exclusive of weekends and holidays pending a detention hearing.

(2) (a) Within the period of detention described in subsection (1) of this section, exclusive of weekends and holidays, a detention hearing shall be held by the judge or trial commissioner of the court for the purpose of determining whether the child shall be further detained. At the hearing held pursuant to this subsection, the court shall consider the nature of the offense, the child's background and history, and other information relevant to the child's conduct or condition.

(b) If the court orders a child detained further after the detention hearing, that detention shall be served as follows:

1. If the child is charged with a capital offense, Class A felony, or Class B felony, detention shall occur in either a secure juvenile detention facility or a juvenile holding facility pending the child's next court appearance subject to the court's review of the detention order prior to that court appearance.
2. If it is alleged that the child is a status offender, detention shall occur in a nonsecure setting approved by the Department of Juvenile Justice pending the child's next court appearance subject to the court's review of the detention order prior to the next court appearance.
3. If a status offender is charged with violating a valid court order, and the court orders the child to serve detention, that detention shall be served in a nonsecure setting approved by the Department of Juvenile Justice unless the court issues an order in accordance with the requirements of subparagraph 4. of this paragraph.
4. Prior to ordering a status offender who is subject to a valid court order securely detained because the child violated the valid court order, the court shall:
   a. Affirm that the requirements for a valid court order were met at the time the original order finding the child to be a status offender was issued;
   b. Make a determination during the detention hearing that there is probable cause to believe that the child violated the valid court order; and
   c. Within seventy-two (72) hours of the initial detention of the child, exclusive of weekends and holidays, receive an oral report in court and on the record delivered by an appropriate public agency other than the court or a law enforcement agency, or receive and review a written report prepared by an appropriate public agency other than the court or a law enforcement agency that reviews the behavior of the child and the circumstances under which the child was brought before the court, determines the reasons for the child's behavior, and determines whether all dispositions other than secure detention have been exhausted or are inappropriate. If a sufficient prior written report is included in the child's file, that report may be used to satisfy this requirement. The child may be securely detained for a period not to exceed seventy-two (72) hours pending receipt and review of the report by the court. The court shall conduct a violation hearing within twenty-four (24) hours of the receipt of the report. If the report is available at the time of the detention hearing, the violation hearing may be conducted at the same time as the detention hearing. The hearing shall be conducted in accordance with the provisions of KRS 610.060. The findings required by this subsection shall be included in any order issued by the court which results in the secure detention of a status offender.
5. If the child is charged with a public offense, or contempt of court on an underlying public offense, and the county in which the case is before the court is not served by a state operated secure detention facility under the statewide detention plan, detention may occur in a secure juvenile detention facility, juvenile holding facility, or a nonsecure setting approved by the Department of Juvenile Justice pending the child's next court appearance, subject to the court's review of the detention order prior to that court appearance.
6. If the child is charged with a public offense, or contempt on a public offense, and the county in which the case is before the court is served by a state operated secure detention facility under the statewide detention plan, the child shall be referred to the Department of Juvenile Justice for a security assessment and placement in an approved detention facility or program pending the child's next court appearance.

(c) If the child is not released, the court-designated worker shall notify the parent, person exercising custodial control or supervision, a relative, guardian, or other responsible adult.

(Enact. Acts 1988, ch. 350, § 32, effective April 10, 1988; 1998, ch. 606, § 4, effective July 15, 1998; 2000, ch. 193, § 5, effective July 14, 2000.)

610.280. Considerations for and findings from detention hearing.

(1) At the detention hearing held pursuant to KRS 610.265, the court shall make separate findings as follows:

(a) If there is probable cause to believe that an offense has been committed and that the accused child committed that offense. Probable cause may be established in the same manner as in a preliminary hearing in cases involving adults accused of felonies. The child shall be afforded the right to confront and cross-examine witnesses. The Commonwealth shall bear the burden of proof, and if it should fail to establish probable cause, the child shall be released and the complaint or petition dismissed unless the court determines further detention is necessary to assure the appearance of the child in court on another pending case;

(b) In determining whether a child should be further detained, the court shall consider the seriousness of the alleged offense, the possibility that the child would commit an offense dangerous to himself or the community pending disposition of the alleged offense, the child's prior record, if any, and whether there are other charges pending against the child.

(2) If, after completion of the detention hearing, the court is of the opinion that detention is necessary, the order shall state on the record the specific reasons for detention.

(Enact. Acts 1986, ch. 423, § 47, effective July 1, 1987; 1988, ch. 350, § 33, effective April 10, 1988; 1994, ch. 489, § 5, effective July 15, 1994; 1998, ch. 606, § 5, effective July 15, 1998; 2000, ch. 193, § 6, effective July 14, 2000; 2002, ch. 257, § 14, effective July 15, 2002.)

610.290. Rights of juvenile.

(1) Unless a hearing is held within the time frame established by KRS 610.265, and the necessity for detention properly established, the child shall be released to the custody of his parents, person exercising custodial control or supervision or other responsible adult pending further disposition of the case. A child shall have a right to counsel at his detention hearing determining his right to freedom pending the disposition of his case, and his parents, person exercising custodial control or supervision or other responsible adult shall have a right to attend the hearing if such attendance will not unnecessarily delay the hearing. Any person aggrieved by a proceeding under this subsection may proceed by habeas corpus to the Circuit Court.

(2) Whether the child is released before or after a hearing, or is detained as a result of such hearing, the child and his parents, person exercising custodial control or supervision or other responsible adult shall be given written notice of the time and place of the adjudicatory hearing concerning the child and an account of the specific charges against the child, including the specific statute alleged to have been violated. Such notice shall be given at least seventy-two (72) hours prior to the initial hearing on the case.

(Enact. Acts 1986, ch. 423, § 48, effective July 1, 1987; 1988, ch. 350, § 34, effective April 10, 1988; 2000, ch. 193, § 7, effective July 14, 2000.)

610.295. Detention costs — Assessment against parent after hearing — Payments when adjudication based on status offense or public offense — Payment schedule and discharge.

(1) Any statute to the contrary notwithstanding, detention costs shall not be assessed by a court against a parent unless the court has conducted a hearing and has determined:

(a) That the child has previously been adjudicated as a habitual truant under KRS Chapter 630, a public offender under KRS Chapter 635, or a youthful offender under KRS Chapter 640, and now stands adjudicated guilty of a subsequent habitual truancy or public offense, or is now being considered for transfer to the Circuit Court for trial as a youthful offender; and

(b) That the failure or neglect of the parent to properly supervise or control the child is a substantial contributing factor of the act or acts of the child upon which the proceeding is based; and

(c) That the parent has the financial ability to pay any fees ordered.

(2) Any orders for payment shall direct that payments be made to the fiscal court or legislative body of a consolidated local government, urban-county government, or charter government if detention is based upon adjudication related to a status offense and to the Department of Juvenile Justice if the adjudication is based upon a public offense or transfer as a youthful offender.

(3) The fiscal court or legislative body of a consolidated local government, urban-county government, or charter government or the Department of Juvenile Justice, as appropriate, shall establish a payment schedule for parents against whom detention costs have been assessed, and may discharge any remaining portion of the debt upon proof of substantial change in circumstances of the parent.

(4) The authority granted under subsection (3) of this section may be applied to all pre-existing court orders assessing detention costs in effect on July 15, 2002.

(Enact. Acts 2002, ch. 263, § 5, effective July 15, 2002.)

CHAPTER 620

DEPENDENCY, NEGLECT, AND ABUSE

SECTION.

620.030. Duty to report dependency, neglect or abuse.
620.040. Duties of prosecutor, police, and cabinet — Prohibition as to school personnel — Multidisciplinary teams.

SECTION.
620.050. Immunity for good faith actions or reports — Investigations — Confidentiality of reports — Exceptions — Parent's access to records — Sharing of information by children's advocacy centers — Confidentiality of interview with child — Exceptions.

PENALTY

620.990. Penalty.

620.030. Duty to report dependency, neglect or abuse.

(1) Any person who knows or has reasonable cause to believe that a child is dependent, neglected or abused shall immediately cause an oral or written report to be made to a local law enforcement agency or the Kentucky state police; the cabinet or its designated representative; the commonwealth's attorney or the county attorney; by telephone or otherwise. Any supervisor who receives from an employe a report of suspected dependency, neglect or abuse shall promptly make a report to the proper authorities for investigation. If the cabinet receives a report of abuse or neglect allegedly committed by a person other than a parent, guardian or person exercising custodial control or supervision, the cabinet shall refer the matter to the commonwealth's attorney or the county attorney and the local law enforcement agency or the Kentucky state police. Nothing in this section shall relieve individuals of their obligations to report.

(2) Any person, including but not limited to a physician, osteopathic physician, nurse, teacher, school personnel, social worker, coroner, medical examiner, child-caring personnel, resident, intern, chiropractor, dentist, optometrist, emergency medical technician, paramedic, health professional, mental health professional, peace officer or any organization or agency for any of the above, who knows or has reasonable cause to believe that a child is dependent, neglected or abused, regardless of whether the person believed to have caused the dependency, neglect or abuse is a parent, guardian, person exercising custodial control or supervision or another person, or who has attended such child as a part of his professional duties shall, if requested, in addition to the report required in subsection (1) of this section, file with the local law enforcement agency or the Kentucky state police or the commonwealth's or county attorney, the cabinet or its designated representative within forty-eight (48) hours of the original report a written report containing:
   (a) The names and addresses of the child and his parents or other persons exercising custodial control or supervision;
   (b) The child's age;
   (c) The nature and extent of the child's alleged dependency, neglect or abuse (including any previous charges of dependency, neglect or abuse) to this child or his siblings;
   (d) The name and address of the person allegedly responsible for the abuse or neglect; and
   (e) Any other information that the person making the report believes may be helpful in the furtherance of the purpose of this section.

(3) The cabinet upon request shall receive from any agency of the state or any other agency, institution or facility providing services to the child or his family, such cooperation, assistance and information as will enable the cabinet to fulfill its responsibilities under KRS 620.030, 620.040, and 620.050.

(Enact. Acts 1986, ch. 423, § 64, effective July 1, 1987; 1988, ch. 258, § 2, effective July 15, 1988; 1988, ch. 350, § 43, effective April 10, 1988.)

Legislative Research Commission Note. This section was amended by two 1988 Acts which do not appear to be in conflict and have been compiled together.

The 1988 amendments to this section are effective April 10, 1988, except for the last sentence of (1), which is effective July 15, 1988.

Opinions of Attorney General. Although subsection (3) of this section provides that agencies providing services to children, such as schools, must cooperate with the Cabinet for Human Resources (CHR) and provide assistance and information, such interviews should be conducted in a manner that causes the least disruption to the students' school schedule and the procedures vary if the allegations of student abuse are against school personnel. OAG 92-138.

If the police desire to talk with a student who is a victim of a crime, then the school authorities should use their best judgment in determining whether the parents should be contacted. In the event that the officer is investigating allegations of dependency, neglect or abuse, the school should allow the interview to occur at school. The school should consult with the officer before the school officials inform the parents that an interview has taken place. OAG 92-138.

School officials should use their discretion and confer with the police officer in deciding whether to be present when the court designated worker or the police questions a student. If the child is a victim of abuse, then the child should have input on choosing a trusted adult to sit in during the interview. OAG 92-138.

Since the school is not required to notify the parents before the Cabinet for Human Resources talks with the students, the fact that the parents cannot be reached is immaterial. OAG 92-138.

The school system is required pursuant to this section to permit social workers from the Cabinet for Human Resources (CHR) to come into the school and talk with students regarding investigations of dependency, neglect or abuse. OAG 92-138.

Whether school personnel should be present when the social workers question the students is a decision that is best left to the discretion of the Cabinet for Human Resources' social worker conducting the interview. OAG 92-138.

NOTES TO DECISIONS

ANALYSIS

4. Affirmative duty.
5. Sufficiency of report.

4. Affirmative Duty.

Under former KRS 199.335, diocese had duty to take action when it discovered that a teacher in its employ was sexually abusing students; failure to do so was a violation of the aforementioned section, and constituted concealment and obstruction under KRS 413.090, so as to toll the applicable statute of limitations for an action based on negligence on the part of the Diocese. Roman Catholic Diocese v. Secter, 966 S.W.2d 286 (Ky. Ct. App. 1998).

5. Sufficiency of Report.

A report by a teacher or counselor to his or her supervisor does not satisfy the statutory duty to report. Commonwealth v. Allen, 980 S.W.2d 278 (Ky. 1998).

620.040. Duties of prosecutor, police, and cabinet — Prohibition as to school personnel — Multidisciplinary teams.

(1) (a) Upon receipt of a report alleging abuse or neglect by a parent, guardian, or person exercising custodial control or supervision, pursuant to KRS 620.030(1) or (2), the recipient of the report shall immediately notify the cabinet or its designated representative, the local law enforcement agency or Kentucky State Police, and the Commonwealth's or county attorney of the receipt of the report unless they are the reporting source.

(b) Based upon the allegation in the report, the cabinet shall immediately make an initial determination as to the risk of harm and immediate safety of the child. Based upon the level of risk determined, the cabinet shall investigate the allegation or accept the report for an assessment of family needs and, if appropriate, may provide or make referral to any community-based services necessary to reduce risk to the child and to provide family support. A report of sexual abuse shall be considered high risk and shall not be referred to any other community agency.

(c) The cabinet shall, within seventy-two (72) hours, exclusive of weekends and holidays, make a written report to the Commonwealth's or county attorney and the local enforcement agency or Kentucky State Police concerning the action that has been taken on the investigation.

(d) If the report alleges abuse or neglect by someone other than a parent, guardian, or person exercising custodial control or supervision, the cabinet shall immediately notify the Commonwealth's or county attorney and the local law enforcement agency or Kentucky State Police.

(2) (a) Upon receipt of a report alleging dependency pursuant to KRS 620.030(1) and (2), the recipient shall immediately notify the cabinet or its designated representative.

(b) Based upon the allegation in the report, the cabinet shall immediately make an initial determination as to the risk of harm and immediate safety of the child. Based upon the level of risk, the cabinet shall investigate the allegation or accept the report for an assessment of family needs and, if appropriate, may provide or make referral to any community-based services necessary to reduce risk to the child and to provide family support. A report of sexual abuse shall be considered high risk and shall not be referred to any other community agency.

(c) The cabinet need not notify the local law enforcement agency or Kentucky State Police or county attorney or Commonwealth's attorney of reports made under this subsection.

(3) If the cabinet or its designated representative receives a report of abuse by a person other than a parent, guardian, or other person exercising custodial control or supervision of a child, it shall immediately notify the local law enforcement agency or Kentucky State Police and the Commonwealth's or county attorney of the receipt of the report and its contents and they shall investigate the matter. The cabinet or its designated representative shall participate in an investigation of noncustodial physical abuse or neglect at the request of the local law enforcement agency or the Kentucky State Police. The cabinet shall participate in all investigations of reported or suspected sexual abuse of a child.

(4) School personnel or other persons listed in KRS 620.030(2) do not have the authority to conduct internal investigations in lieu of the official investigations outlined in this section.

(5) (a) If, after receiving the report, the law enforcement officer, the cabinet, or its designated representative cannot gain admission to the location of the child, a search warrant shall be requested from, and may be issued by, the judge to the appropriate law enforcement official upon probable cause that the child is dependent, neglected, or abused. If, pursuant to a search under a warrant a child is discovered and appears to be in imminent danger, the child may be removed by the law enforcement officer.

(b) If a child who is in a hospital or under the immediate care of a physician appears to be in imminent danger if he is returned to the persons having custody of him, the physician or hospital administrator may hold the child without court order, provided that a request is made to the court for an emergency custody order at the earliest practicable time, not to exceed seventy-two (72) hours.

(c) Any appropriate law enforcement officer may take a child into protective custody and may hold that child in protective custody without the consent of the parent or other person exercising custodial control or supervision if there exist reasonable grounds for the officer to believe that the child is in danger of imminent death or serious physical injury or is being sexually abused and that the parents or other person exercising custodial control or supervision are unable or unwilling to protect the child. The officer or the person to whom the officer entrusts the child shall, within twelve (12) hours of taking the child into protective custody, request the court to issue an emergency custody order.

(d) When a law enforcement officer, hospital administrator, or physician takes a child into custody without the consent of the parent or other person exercising custodial control or supervision, he or she shall provide written notice to the parent or other person stating the

reasons for removal of the child. Failure of the parent or other person to receive notice shall not, by itself, be cause for civil or criminal liability.

(6) To the extent practicable and when in the best interest of a child alleged to have been abused, interviews with the child shall be conducted at a children's advocacy center.

(7) (a) One (1) or more multidisciplinary teams may be established in every county or group of contiguous counties.

(b) Membership of the multidisciplinary team shall include, but shall not be limited to, social service workers employed by the Cabinet for Families and Children and law enforcement officers. Additional team members may include Commonwealth's and county attorneys, children's advocacy center staff, mental health professionals, medical professionals, victim advocates, educators, and other related professionals, as deemed appropriate.

(c) The multidisciplinary team may review child sexual abuse cases referred by participating professionals, including those in which the alleged perpetrator does not have custodial control or supervision of the child, or is not responsible for the child's welfare. The purpose of the multidisciplinary team shall be to review investigations, assess service delivery, and to facilitate efficient and appropriate disposition of cases through the criminal justice system.

(d) The team shall hold regularly scheduled meetings if new reports of sexual abuse are received or if active cases exist. At each meeting, each active case shall be presented and the agencies' responses assessed.

(e) The multidisciplinary team shall provide an annual report to the public of nonidentifying case information to allow assessment of the processing and disposition of child sexual abuse cases.

(f) Multidisciplinary team members and anyone invited by the multidisciplinary team to participate in a meeting shall not divulge case information, including information regarding the identity of the victim or source of the report. Team members and others attending meetings shall sign a confidentiality statement that is consistent with statutory prohibitions on disclosure of this information.

(g) The multidisciplinary team shall, pursuant to KRS 431.600 and 431.660, develop a local protocol consistent with the model protocol issued by the Kentucky Multidisciplinary Commission on Child Sexual Abuse. The local team shall submit the protocol to the commission for review and approval.

(h) The multidisciplinary team review of a case may include information from reports generated by agencies, organizations, or individuals that are responsible for investigation, prosecution, or treatment in the case, KRS 610.320 to KRS 610.340 notwithstanding.

(i) To the extent practicable, multidisciplinary teams shall be staffed by the local children's advocacy center.

(Enact. Acts 1986, ch. 423, § 65, effective July 1, 1987; 1988, ch. 258, § 3, effective July 15, 1988; 1988, ch. 350, § 44, effective April 10, 1988; 1990, ch. 39, § 1, effective July 13, 1990; 1992, ch. 434, § 2, effective July 14, 1992; 1994, ch. 217, § 1, effective July 15, 1994; 1996, ch. 18, § 5, effective July 15, 1996; 1998, ch. 426, § 617, effective July 15, 1998; 2000, ch. 14, § 63, effective July 14, 2000; 2000, ch. 144, § 6, effective July 14, 2000; 2000, ch. 164, § 1, effective July 14, 2000.)

Legislative Research Commission Note. (7/14/2000). This section was amended by 2000 Ky. Acts chs. 14, 144, and 164, which do not appear to be in conflict and have been codified together.

620.050. Immunity for good faith actions or reports — Investigations — Confidentiality of reports — Exceptions — Parent's access to records — Sharing of information by children's advocacy centers — Confidentiality of interview with child — Exceptions.

(1) Anyone acting upon reasonable cause in the making of a report or acting under KRS 620.030 to 620.050 in good faith shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report or action. However, any person who knowingly makes a false report and does so with malice shall be guilty of a Class A misdemeanor.

(2) Any employee or designated agent of a children's advocacy center shall be immune from any civil liability arising from performance within the scope of the person's duties as provided in KRS 620.030 to 620.050. Any such person shall have the same immunity with respect to participation in any judicial proceeding. Nothing in this subsection shall limit liability for negligence. Upon the request of an employee or designated agent of a children's advocacy center, the Attorney General shall provide for the defense of any civil action brought against the employee or designated agent as provided under KRS 12.211 to 12.215.

(3) Neither the husband-wife nor any professional-client/patient privilege, except the attorney-client and clergy-penitent privilege, shall be a ground for refusing to report under this section or for excluding evidence regarding a dependent, neglected, or abused child or the cause thereof, in any judicial proceedings resulting from a report pursuant to this section. This subsection shall also apply in any criminal proceeding in District or Circuit Court regarding a dependent, neglected, or abused child.

(4) Upon receipt of a report of an abused, neglected, or dependent child pursuant to this chapter, the cabinet as the designated agency or its delegated representative shall initiate a prompt investigation or assessment of family needs, take necessary

action, and shall offer protective services toward safeguarding the welfare of the child. The cabinet shall work toward preventing further dependency, neglect, or abuse of the child or any other child under the same care, and preserve and strengthen family life, where possible, by enhancing parental capacity for adequate child care.

(5) The report of suspected child abuse, neglect, or dependency and all information obtained by the cabinet or its delegated representative, as a result of an investigation or assessment made pursuant to this chapter, except for those records provided for in subsection (6) of this section, shall not be divulged to anyone except:

(a) Persons suspected of causing dependency, neglect, or abuse;

(b) The custodial parent or legal guardian of the child alleged to be dependent, neglected, or abused;

(c) Persons within the cabinet with a legitimate interest or responsibility related to the case;

(d) Other medical, psychological, educational, or social service agencies, child care administrators, corrections personnel, or law enforcement agencies, including the county attorney's office, the coroner, and the local child fatality response team, that have a legitimate interest in the case;

(e) A noncustodial parent when the dependency, neglect, or abuse is substantiated;

(f) Members of multidisciplinary teams as defined by KRS 620.020 and which operate pursuant to KRS 431.600.

(g) Employees or designated agents of a children's advocacy center; or

(h) Those persons so authorized by court order.

(6) (a) Files, reports, notes, photographs, records, electronic and other communications, and working papers used or developed by a children's advocacy center in providing services under this chapter are confidential and shall not be disclosed except to the following persons:

1. Staff employed by the cabinet, law enforcement officers, and Commonwealth's and county attorneys who are directly involved in the investigation or prosecution of the case;

2. Medical and mental health professionals listed by name in a release of information signed by the guardian of the child, provided that the information shared is limited to that necessary to promote the physical or psychological health of the child or to treat the child for abuse-related symptoms; and

3. The court and those persons so authorized by a court order.

(b) The provisions of this subsection shall not be construed as to contravene the Rules of Criminal Procedure relating to discovery.

(7) Nothing in this section shall prohibit a parent or guardian from accessing records for his or her child providing that the parent or guardian is not currently under investigation by a law enforcement agency or the cabinet relating to the abuse of a child.

(8) Nothing in this section shall prohibit employees or designated agents of a children's advocacy center from disclosing information during a multidisciplinary team review of a child sexual abuse case as set forth under KRS 620.040. Persons receiving this information shall sign a confidentiality statement consistent with statutory prohibitions on disclosure of this information.

(9) Employees or designated agents of a children's advocacy center may confirm to another children's advocacy center that a child has been seen for services. If an information release has been signed by the guardian of the child, a children's advocacy center may disclose relevant information to another children's advocacy center.

(10) (a) An interview of a child recorded at a children's advocacy center shall not be duplicated, except that the Commonwealth's or county attorney prosecuting the case may:

1. Make and retain one (1) copy of the interview; and

2. Make one (1) copy for the defendant's counsel that the defendant's counsel shall not duplicate.

(b) The defendant's counsel shall file the copy with the court clerk at the close of the case.

(c) Unless objected to by the victim or victims, the court, on its own motion, or on motion of the attorney for the Commonwealth shall order all recorded interviews that are introduced into evidence or are in the possession of the children's advocacy center, law enforcement, the prosecution, or the court to be sealed.

(d) The provisions of this subsection shall not be construed as to contravene the Rules of Criminal Procedure relating to discovery.

(11) Identifying information concerning the individual initiating the report under KRS 620.030 shall not be disclosed except:

(a) To law enforcement officials that have a legitimate interest in the case;

(b) To the agency designated by the cabinet to investigate or assess the report;

(c) To members of multidisciplinary teams as defined by KRS 620.020 that operated under KRS 431.600; or

(d) Under a court order, after the court has conducted an in camera review of the record of the state related to the report and has found reasonable cause to believe that the reporter knowingly made a false report.

(12) Information may be publicly disclosed by the cabinet in a case where child abuse or neglect has resulted in a child fatality or near fatality.

(13) When an adult who is the subject of information made confidential by subsection (5) of this section publicly reveals or causes to be revealed any significant part of the confidential matter or information, the confidentiality afforded by subsection (5) of this section is presumed voluntarily waived, and confidential information and records about the

person making or causing the public disclosure, not already disclosed but related to the information made public, may be disclosed if disclosure is in the best interest of the child or is necessary for the administration of the cabinet's duties under this chapter.

(14) As a result of any report of suspected child abuse or neglect, photographs and X-rays or other appropriate medical diagnostic procedures may be taken or caused to be taken, without the consent of the parent or other person exercising custodial control or supervision of the child, as a part of the medical evaluation or investigation of these reports. These photographs and X-rays or results of other medical diagnostic procedures may be introduced into evidence in any subsequent judicial proceedings. The person performing the diagnostic procedures or taking photographs or X-rays shall be immune from criminal or civil liability for having performed the act. Nothing herein shall limit liability for negligence.

(Enact. Acts 1986, ch. 423, § 66, effective July 1, 1987; 1988, ch. 350, § 45, effective April 10, 1988; 1996, ch. 18, § 6, effective July 15, 1996; 1996, ch. 347, § 7, effective July 15, 1996; 1998, ch. 57, § 19, effective March 17, 1998; 1998, ch. 303, § 2, effective July 15, 1998; 2000, ch. 144, § 7, effective July 14, 2000; 2000, ch. 164, § 2, effective July 14, 2000; 2002, ch. 87, § 2, effective July 15, 2002.)

Opinions of Attorney General. This section requires schools to continue to allow the Cabinet for Human Resources (CHR) to interview children on school premises without consent of parents in the course of an abuse investigation if that is the course of action determined appropriate by the CHR. OAG 87-33.

Where person requesting documents regarding detention of student at a school and the report and findings of an investigation conducted by the Department for Social Services did not demonstrate that he fell under any of the statutorily recognized classifications of this section or KRS 61.878 or that his particular situation warranted the release of the requested material, his request was properly denied. OAG 91-93.

NOTES TO DECISIONS

1. In General.

A report by a teacher or counselor to his or her supervisor does not entitle him or her to immunity from prosecution since such a report is not a report within the meaning of KRS 620.030. Commonwealth v. Allen, 980 S.W.2d 278 (Ky. 1998).

PENALTY

620.990. Penalty.

(1) Any person intentionally violating the provisions of this chapter shall be guilty of a Class B misdemeanor.

(2) The use of information by public officers and by defense counsel for purposes of investigation and trial of cases or other proceedings under the provisions of KRS Chapters 600 to 645 or in any criminal prosecution or appeal shall not constitute a violation of this chapter.

(Enact. Acts 1986, ch. 423, § 96, effective July 1, 1987; 1988, ch. 350, § 62, effective April 10, 1988.)

Cited: Hazlett v. Evans, 943 F. Supp. 785 (E.D. Ky. 1996).

Research References. Petrilli, Kentucky Family Law, Juvenile Court, §§ 32.3, 32.5.

Petrilli, Kentucky Family Law, Minors, § 30.34.

CHAPTER 630

STATUS OFFENDERS

SECTION.

630.010. Purposes of chapter regarding status offenders.
630.020. Jurisdiction of court.
630.040. Duties of person taking child into custody.
630.070. Violated court order — Placement in secure facility.
630.080. Detention in secure juvenile detention facility or juvenile holding facility — Limitation on detention of child.
630.100. Detention of adjudicated status offender.
630.120. Conduct of dispositional hearings.
630.160. Escape charge not to be filed in certain circumstances.

630.010. Purposes of chapter regarding status offenders.

In addition to those purposes set forth in KRS 600.010, this chapter shall be interpreted and construed to effectuate the following purposes regarding status offenders:

(1) The Commonwealth's courts shall utilize a separate and distinct set of guidelines for status offenders which reflect their individual needs;

(2) It shall be declared to be the policy of this Commonwealth that all its efforts and resources be directed at involving the child and the family in remedying the problem for which they have been referred;

(3) Status offenders shall not be detained in secure juvenile detention facilities or juvenile holding facilities after the initial detention hearing unless the child is accused of, or has an adjudication that the child has violated a valid court order, in which case the child may be securely detained for up to seventy-two (72) hours, exclusive of weekends and holidays, pending receipt of the report required under KRS 630.080(3). Any period of secure detention prior to the detention hearing shall not exceed twenty-four (24) hours, exclusive of weekends and holidays;

(4) Status offenders accused of violating a valid court order shall not be securely detained in intermittent holding facilities; and

(5) Status offenders accused of or found guilty of violating a valid court order shall not be converted into public offenders by virtue of this conduct.

(Enact. Acts 1986, ch. 423, § 109, effective July 1, 1987; 1988, ch. 350, § 80, effective April 10, 1988; 1998, ch. 538, § 9, effective April 13, 1998; 2000, ch. 193, § 8, effective July 14, 2000.)

Legislative Research Commission Note. Acts 1986, ch. 423, § 199 read: "KRS 446.250 to 446.320 to the contrary notwithstanding, Acts 1986, ch. 423 shall prevail in the event of a conflict between Acts 1986, ch. 423 and other Acts passed by the 1986 regular session of the General Assembly."

630.020. Jurisdiction of court.

The court shall have exclusive jurisdiction in proceedings concerning any child living, or found within the district, who allegedly:

(1) Has been an habitual runaway from his parent or person exercising custodial control or supervision of the child;

(2) Is beyond the control of the school or beyond the control of parents as defined in KRS 600.020; or

(3) Has been an habitual truant from school.

(Enact. Acts 1986, ch. 423, § 110, effective July 1, 1987; 1988, ch. 350, § 81, effective April 10, 1988; 2000, ch. 193, § 9, effective July 14, 2000.)

Opinions of Attorney General. KRS 600.020(24) controls over KRS 159.150 in ascertaining the number of days a child must have unexcused absences prior to being found habitually truant under the Unified Juvenile Code. OAG 93-37.

Collateral References. Truancy as indicative of delinquency or incorrigibility, justifying commitment of infant or juvenile. 5 A.L.R. 4th 1211.

Conditions at school as excusing or justifying nonattendance. 9 A.L.R. 4th 122.

630.040. Duties of person taking child into custody.

Any person taking a child into custody, with all reasonable speed, shall in this sequence:

(1) Deliver the child suffering from a physical condition or illness which requires prompt medical treatment to a medical facility or physician. Children suspected of having a mental or emotional illness shall be evaluated in accordance with the provisions of KRS Chapter 645;

(2) Contact a court designated worker who shall have the responsibility for determining appropriate placement pursuant to KRS 610.200(5);

(3) If the court designated worker determines that the placements designated in KRS 610.200(5) and subsection (1) of this section have been exhausted or are not appropriate, a child may be delivered to a secure juvenile detention facility, a juvenile holding facility, or a nonsecure setting approved by the Department of Juvenile Justice pending the detention hearing;

(4) When the child has not been released to his parents or person exercising custodial control or supervision, the person taking the child into custody shall make a reasonable effort promptly to give oral notice to the parent or person exercising custodial control or supervision of the child;

(5) In all instances the peace officer taking a child into custody shall provide a written statement to the court designated worker of the reasons for taking the child into custody;

(6) If the child is placed in an emergency shelter or medical facility, during the adjudication and disposition of his case, the court may order his parents to be responsible for the expense of his care; and

(7) The peace officer taking the child into custody shall within three (3) hours of taking a child into custody file a complaint with the court, stating the basis for taking the child into custody and the reason why the child was not released to the parent or other adult exercising custodial control or supervision of the child, relative or other responsible adult, a court designated agency, an emergency shelter or medical facility. Pending further disposition of the case, the court or the court designated worker may release the child to the custody of any responsible adult who can provide adequate care and supervision.

(Enact. Acts 1986, ch. 423, § 112, effective July 1, 1987; 1988, ch. 350, § 82, effective April 10, 1988; 2000, ch. 193, § 10, effective July 14, 2000.)

630.070. Violated court order — Placement in secure facility.

No status offender shall be placed in a secure juvenile detention facility or juvenile holding facility as a means or form of punishment except following a finding that the child has violated a valid court order.

(Enact. Acts 1986, ch. 423, § 115, effective July 1, 1987; 1988, ch. 350, § 85, effective April 10, 1988; 2000, ch. 193, § 11, effective July 14, 2000.)

630.080. Detention in secure juvenile detention facility or juvenile holding facility — Limitation on detention of child.

(1) In order for the court to detain a child after the detention hearing, the Commonwealth shall establish probable cause at the detention hearing that the child is a status offender and that further detention of the child is necessary for the protection of the child or the community. If the Commonwealth fails to establish probable cause that the child is a status offender, the complaint shall be dismissed and the child shall be released. If the Commonwealth establishes probable cause that the child is a status offender, but that further detention of the child is not necessary for the protection of the child or the community, the child shall be released to the parent or person exercising custodial control or supervision of the child. If grounds are established that the child is a status offender, and that further detention is necessary, the child may be placed in a nonsecure setting approved by the Department of Juvenile Justice;

(2) A status offender may be securely detained if the cabinet has initiated or intends to initiate transfer of the youth by competent document under the provisions of the interstate compact pursuant to KRS Chapter 615;

(3) A status offender who is subject to a valid court order may be securely detained upon a finding that the child violated the valid court order if the court does the following prior to ordering that detention:

(a) Affirms that the requirements for a valid court order were met at the time the original order finding the child to be a status offender was issued;

(b) Makes a determination during the detention hearing that there is probable cause that the child violated the valid court order; and

(c) Within seventy-two (72) hours of the initial detention of the child, exclusive of weekends and holidays, receives an oral report in court and on the record delivered by an appropriate

public agency other than the court or a law enforcement agency, or receives and reviews a written report prepared by an appropriate public agency other than the court or a law enforcement agency that reviews the behavior of the child and the circumstances under which the child was brought before the court, determines the reasons for the child's behavior, and determines whether all dispositions other than secure detention have been exhausted or are inappropriate. If a sufficient prior written report is included in the child's file, that report may be used to satisfy this requirement. The child may be securely detained for a period not to exceed seventy-two (72) hours pending receipt and review of the report by the court. The court shall conduct a violation hearing within twenty-four (24) hours of the receipt of the report, exclusive of weekends and holidays. If the report is available at the time of the detention hearing, the violation hearing may be conducted at the same time as the detention hearing. The hearing shall be conducted in accordance with the provisions of KRS 610.060. The findings required by this subsection shall be included in any order issued by the court which results in the secure detention of a status offender.

(Enact. Acts 1986, ch. 423, § 116, effective July 1, 1987; 1988, ch. 350, § 86, effective April 10, 1988; 2000, ch. 193, § 12, effective July 14, 2000.)

630.100. Detention of adjudicated status offender.

Except as otherwise provided in this chapter, no adjudicated status offender shall be securely detained.

(Enact. Acts 1986, ch. 423, § 118, effective July 1, 1987; 1988, ch. 350, § 88, effective April 10, 1988; 2000, ch. 193, § 13, effective July 14, 2000.)

630.120. Conduct of dispositional hearings.

(1) All dispositional hearings conducted under this chapter shall be conducted in accordance with the provisions of KRS 610.060 and 610.070. In addition, the court shall, at the time the dispositional order is issued:
   (a) Give the child adequate and fair warning of the consequences of the violation of the order; and
   (b) Provide the child and the child's attorney, parent, or legal guardian a written statement setting forth the conditions of the order and the consequences for violating the order.

   An order issued pursuant to this section is a valid court order and any child violating that order may be subject to the provisions of KRS 630.080(3).

(2) The court shall consider all appropriate local remedies to aid the child and the child's family subject to the following conditions:
   (a) Residential and nonresidential treatment programs for status offenders shall be community-based and nonsecure; and
   (b) With the approval of the education agency, the court may place the child in a nonsecure public or private education agency accredited by the Department of Education.

(3) At the disposition of a child adjudicated on a petition brought pursuant to this chapter, all information helpful in making a proper disposition, including oral and written reports, may be received by the court provided that the child, the child's parents, their counsel, the prosecuting attorney, the child's counsel, or other interested parties as determined by the judge shall be afforded an opportunity to examine and controvert the reports. For good cause, the court may allow the admission of hearsay evidence.

(4) The court shall affirmatively determine that all appropriate remedies have been considered and exhausted to assure that the least restrictive alternative method of treatment is utilized.

(5) The court may order the child and the child's family to participate in any programs which are necessary to effectuate a change in the child and the family.

(6) When all appropriate resources have been reviewed and considered insufficient to adequately address the needs of the child and the child's family, the court may commit the child to the cabinet for such services as may be necessary. The cabinet shall consider all appropriate local remedies to aid the child and the child's family subject to the following conditions:
   (a) Treatment programs for status offenders shall be, unless excepted by federal law, community-based and nonsecure;
   (b) The cabinet may place the child in a nonsecure public or private education agency accredited by the department of education;
   (c) The cabinet may initiate proceedings pursuant to KRS 610.160 when the parents fail to participate in the cabinet's treatment programs; and
   (d) The cabinet may discharge the child from commitment after providing ten (10) days' prior written notice to the committing court which may object to such discharge by holding court review of the commitment under KRS 610.120.

(Enact. Acts 1986, ch. 423, § 120, effective July 1, 1987; 1988, ch. 350, § 90, effective April 10, 1988; 2000, ch. 193, § 14, effective July 14, 2000.)

630.160. Escape charge not to be filed in certain circumstances.

Notwithstanding any provision of KRS Chapter 520 to the contrary, no child accused of being or who has been adjudicated as a status offender or who has been accused of or held in contempt of court based upon an underlying finding that the child is a status offender who is absent without leave from a nonsecure detention option or home detention, or who fails to comply with the conditions of supervised placement, shall be charged with escape for being absent without leave or failing to comply with the conditions of supervised placement.

(Enact. Acts 2000, ch. 193, § 16, effective July 14, 2000.)

CHAPTER 635

PUBLIC OFFENDERS

SECTION.

635.055. Detention of child found in contempt of court.

635.055. Detention of child found in contempt of court.

No child who is found to be in contempt of court shall be committed as a public offender as a result of such finding, nor detained because of such finding in a facility other than a secure juvenile detention facility, juvenile holding facility, youth alternative center, or an alternative to detention program approved by the Department of Juvenile Justice, or a nonsecure detention alternative.

(Enact. Acts 1988, ch. 350, § 97, effective April 10, 1988; 1998, ch. 538, § 10, effective April 13, 1998; 2000, ch. 193, § 15, effective July 14, 2000; 2000, ch. 534, § 13, effective July 14, 2000.)

Legislative Research Commission Note. (7/14/2000). This section was amended by 2000 Ky. Acts chs. 193 and 534, which do not appear to be in conflict and have been codified together.

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Motor carriers.
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Intentionally.
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Intervention services.
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May.
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Mayor.
School buildings.
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Media.
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Member.
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Mentor.
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Moving motor vehicle offense.
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Physically disabled or orthopedically impaired.
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Product.
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Professional engineers, §322.010.
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Interest rates on public bonds, §58.410.
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Public service.
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Teachers' retirement, §161.220.
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Resolution.
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Responsible charge of engineering.
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Retain in custody.
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Savings plan trust.
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School bus.
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Health services, §156.502.
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Secondary school.
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Secondary vocational study.
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Section 504 plan.
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Secure juvenile detention facility, §600.020.
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Semester.
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Seniority.
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Serious physical injury.
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Service.
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Sexual abuse.
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Sexual exploitation.
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Specific learning disability.
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Staff secure facility for residential treatment.
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Standard certificate.
Teachers' tenure, §161.720.
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State.
Interstate agreement on qualification of educational personnel, §161.124.
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State agency.
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Public employees' social security, §61.420.
State agency child.
Child placement, §158.137.
State agency children.
Education, §158.135.
State colleges and universities.
Educational television, §168.020.
State employee.
Health insurance coverage, §18A.225.
State local finance officer.
Governmental leasing, §65.940.
Local government borrowing, §65.7701.
Statement of consideration.
Administrative regulations, §13A.010.
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Status offense action.
Juvenile code, §600.020.
Student.
School prayer and other religious activities, §158.182.
Student athlete.
Athlete agents, §164.680.
Student teacher, §161.010.
Subcontractor.
Wage and hour, §337.010.
Subsequent service.
Teachers' retirement, §161.220.
Substantial sexual conduct.
Persons prohibited from probation, parole or conditional release, §532.045.
Summary order.
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Summer term.
District teacher certification loan fund, §164.757.
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Superintendent.
Teachers' tenure, §161.720.
Supervisor.
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Supplemental agreement.
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Supplemental award.
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