

— LAW OFFICES —

# PORTER, BANKS, BALDWIN & SHAW, PLLC

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February 12, 2024

Hon. Russell Coleman,  
Kentucky Attorney General

**Attn: Opinions**

700 Capitol Avenue, Ste. 118  
Frankfort, Kentucky 40601

**RE: Request for Attorney General Opinion as to whether an informal custom and practice of permitting City Officials and employees to play golf on a City operated golf course either at a reduced fee rate or without payment of any fee constitutes a violation of Section 3 of the Kentucky Constitution**

Dear Attorney General Coleman:

In accordance with the recommendation of Mike Harmon, Auditor of Public Accounts (“APA”), as set forth in his December 21, 2023 correspondence to Paintsville Mayor Bill M. Runyon regarding findings and recommendations with respect to the APA’s “limited-scope special examination of the City of Paintsville and its golf course, pertaining to the City’s practice of awarding free and reduced golf course memberships and green fees”, Mayor Runyon has directed me, in my capacity as City Attorney, to request an Opinion from the Kentucky Attorney General’s Office on the issue referenced above.

By way of background, the golf course facility now known and commonly referred to as the “Paintsville Golf Course” (formerly known and referred to as “Paintsville Country Club”), is a public golf course located on land owned by a private entity, The Paul B. Hall Foundation, and operated by the City of Paintsville pursuant to a Lease Agreement entered into by the City of Paintsville and the Paul B. Hall Foundation. (See attached City of Paintsville Golf Board Ordinance, Ordinance 2004-003, passed 05/11/2004, codified at City of Paintsville Code of Ordinances, §36.60 to §36.64).

The City of Paintsville’s Golf Board Ordinance provides, with respect to the duties of the Paintsville Golf Board, as follows: “The Paintsville Golf Board shall be responsible for the daily functions of the Paintsville Country Club pursuant to a Lease Agreement entered into between the City of Paintsville and the Paul B. Hall Foundation” (See §36.61(A)); and “The Paintsville Golf Board will set the fee schedule to be used for the fiscal year” (See §36.61(B)). (See attached City Golf Board Ordinance).

The findings and recommendations report of the Kentucky Auditor of Public Accounts, as referenced above, included the finding that during the examination period from July 1, 2022 to September 5, 2023, the City's Mayor and its Recreation Director were permitted to play golf at the Paintsville Golf Course without paying a membership fee or without paying any green fees, and that City Council Members were offered a 50% discount on membership fees (three of whom were provided the 50% discounted membership), while all City employees were permitted a 50% discount on all golf green fees. The City has confirmed that there has been no written policy, ordinance or regulation identified to have been in place which authorized such free or discounted golf memberships and green fees.

Additionally, the Kentucky APA's report of findings and recommendations, dated 12/21/2023, indicates that permitting City Officials and City employees to play golf on the City operated golf facility free of charge or at reduced rates would be permissible if the City meets the APAs' recommendation of enacting an Ordinance to include such benefits as compensation to its City Officials and City employees, provided that such Ordinance contains a finding that these benefits in the form of compensation are offered in consideration of public services rendered to the City.

**This request for an Opinion from the Kentucky Attorney General is made in order to comply with the Kentucky Auditor of Public Accounts' recommendation that the City seek an opinion from the Kentucky Attorney General on the issue of whether the practice of allowing City officials or City employees to utilize the Paintsville Golf Course facilities at a free or a discounted membership rate, and/or permitting discounted green fee rates to City employees, in the absence of a written policy, regulation or Ordinance expressly permitting such practice, constitutes a violation of Section 3 of the Kentucky Constitution.**

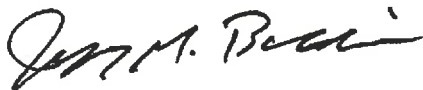
I have found no case law directly on point concerning the issue of whether an informal policy or custom permitting a City's elected officials and/or its employees the privilege of utilizing City operated facilities free of charge or at a discounted rate, with no direct payment of public funds to the City officials and/or City employees, constitutes a violation of Section 3 of the Kentucky Constitution. However, research did reveal a prior Kentucky Attorney General Opinion, OAG 67-376, which found that in a city which would otherwise utilize parking meters to charge for parking on city streets, the city did not violate Section 3 of the Kentucky Constitution in granting county officials parking spaces adjacent to the county courthouse free of charge. (See attached OAD 67-376).

On behalf of the City of Paintsville, I hereby submit to the Attorney General's Office this request for a legal opinion addressing the issue of whether an informal custom and practice of permitting City Officials and employees to play golf on a City operated golf course either at a reduced fee rate or without payment of any fee constitutes a violation of Section 3 of the Kentucky Constitution. Your attention to this matter is greatly appreciated.

Please contact me at your earliest convenience if you have any questions or require additional information in order to issue the legal opinion requested herein.

Very truly yours,

**PORTER, BANKS, BALDWIN & SHAW, PLLC**



**JEFFREY M. BALDWIN**

JMB/ker  
cc:file

Mr. Bill Mike Runyon, Mayor  
City of Paintsville  
P. O. Box 1588  
Paintsville, KY 41240

City Council Members:

Mr. Tim Hall – [tkhall16@outlook.com](mailto:tkhall16@outlook.com)  
Mr. David Vanhose – [david.vanhose@paintsville.kyschools.us](mailto:david.vanhose@paintsville.kyschools.us)  
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Hon. Kim O'Bryan – [kim@bigredattorney.com](mailto:kim@bigredattorney.com)

Enc. (OAD 67-376) & City Golf Board Ordinance

COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL  
FRANKFORT

ROBERT MATTHEWS  
ATTORNEY GENERAL

August 16, 1967

Honorable Hollie Warford  
Judge, Anderson County  
Courthouse  
Lawrenceburg, Kentucky 40342

OAG67 376

(1)

Dear Judge Warford:

In your letter of August 10, 1967, you desire our opinion as to whether or not the fiscal court of Anderson County has the authority to procure a reservation of a parking area on the city street adjacent to the west side of the courthouse for your county officials. Lawrenceburg is a fourth class city.

The Court of Appeals has approved the installation of parking meters in fourth class cities. See *Graves County v. City of Mayfield*, 305 Ky. 374, 204 S.W.2d 369 (1947). Although there is no statute expressly dealing with parking meters for fourth class cities, the Court, in *Graves County*, above, held that parking meters may be installed in cities of that class as a proper control of the public ways of the city, and that the city may lawfully place them on the streets and sidewalks around the courthouse square. The decision was based upon KRS 94.360, which provides in part that a city of the fourth class shall have exclusive control over public ways of the city, "public ways" being defined under KRS 94.010 as "public streets, sidewalks, alleys, avenues, roads, lanes, highways and thoroughfares."

As stated in *City of Falmouth v. Pendleton County Court*, 308 Ky. 526, 215 S.W.2d 101 (1948), "The city authorities have

67-376

(2)

Honorable Hollie Warford  
August 16, 1967  
Page two

"control over the streets of the city, and neither the state nor county authorities can interfere with the city government in the management of its streets." This is modified to the extent that the Commissioner of Highways may, by official order, assume the responsibility for regulating traffic and parking on streets accepted as a part of the state highway system. The street in question is not a part of the state highway system.

It was pointed out in OAG 41,029, copy enclosed, that it is common practice for a city to provide parking space for certain county and state officials near a courthouse or other public building wherein they perform public duties. Although there is no law requiring it, it is our opinion that the city of Lawrenceburg, through its council, may provide such free parking space for designated county officials having offices in the courthouse, provided that any parking meters presently in such spaces are removed. For, although the installation of parking meters arises out of the necessity for traffic regulation and control, *Skidmore v. City of Elizabethtown, Ky.*, 291 S.W.2d 3 (1956), there can be no discrimination in the use of a parking meter and its space. As pointed out in *City of Louisville v. Louisville Automobile Club*, 290 Ky. 241, 160 S.W.2d 663 (1942), "Municipal regulations to be valid do not necessarily have to operate on all alike, provided they operate equally on all of a class embraced within their provisions."

We do not believe that the granting of such free space to the county officials would violate § 3 of the Kentucky Constitution, which prohibits the granting of special privileges, since the consideration is public services and the public interest.

Sincerely yours,  
ROBERT MATTHEWS  
ATTORNEY GENERAL

By: Charles W. Bunyan  
Assistant Attorney General

CWR:gm  
Enclosure

**§ 36.53 DUTIES.**

The Commission shall review all policies and procedures of the city Police Department and make recommendations to the Mayor regarding the management of the city Police Department and shall serve in this capacity only. No decision of the Commission will be binding upon the Mayor or the city Police Department.

(Ord. 2003-001, passed 1-30-03)

***GOLF BOARD*****§ 36.60 MEMBERSHIP.**

(A) The Paintsville Golf Board shall consist of seven members, including one member to be designated by the Paul B. Hall Foundation. Three of the members shall be members in good standing of the Paintsville Country Club. The members shall be appointed by the Mayor and approved by the City Council.

(B) The members will be appointed for terms of four years. Initially the members' terms will be staggered in the following manner: three members will be appointed for terms of four years, two members will be appointed for a term of three years, and two members will be appointed for a term of two years. After the initial terms expire, all further appointments shall be for a term of four years.

(Ord. 2004-003, passed 5-11-04)

**§ 36.61 DUTIES.**

(A) The Paintsville Golf Board shall be responsible for the daily functions of the Paintsville Country Club pursuant to a lease agreement entered into between the City of Paintsville and the Paul B. Hall Foundation.

(B) The Paintsville Golf Board will set the fee schedule to be used for the fiscal year. This fee schedule must be approved by the City Council.

(C) The Paintsville Golf Board shall prepare a proposed yearly budget of the Paintsville Country Club to be presented to the Paintsville City Council 60 days prior to the beginning of each fiscal year.

(D) The Paintsville Golf Board shall recommend an individual to be hired as General Manager for the Paintsville Country Club. The General Manager shall be hired by the Mayor, with approval of City Council. The General Manager can be dismissed by the City Council upon the recommendation of the Board.

(Ord. 2004-003, passed 5-11-04)

**§ 36.62 GENERAL MANAGER.**

(A) The General Manager shall be responsible for the maintenance, operation, and upkeep of all Paintsville Country Club facilities.

(B) The General Manager shall make a monthly report to the City Council concerning the income and operating expenses of the Paintsville Country Club and recommend to the Council for approval all works of improvement or repair involving the expenditure of \$1,000 or more.

(C) The General Manager shall interview and recommend to the Mayor individuals for all employment vacancies of the Paintsville Country Club.  
(Ord. 2004-003, passed 5-11-04)

**§ 36.63 EMPLOYEES.**

All employees of the Paintsville Country Club, including the General Manager, are employees of the City of Paintsville, Kentucky, and are eligible for all available benefits.  
(Ord. 2004-003, passed 5-11-04)

**§ 36.64 FINANCES.**

(A) All bills, paychecks and other expenses incurred by the Paintsville Country Club are to be paid by the Chief Financial Officer of the City of Paintsville, Kentucky, who will monitor the inflows and outflows of finances regarding the Paintsville Country Club.

(B) All purchases made by the Paintsville Country Club shall be made by way of obtaining a purchase order from the City of Paintsville, Kentucky purchasing agent.  
(Ord. 2004-003, passed 5-11-04)