

# TASK FORCE ON LOCAL GOVERNMENT ANNEXATION

## Minutes of the Third Meeting of the 2023 Interim

September 29, 2023

### Call to Order and Roll Call

The third meeting of the Task Force on Local Government Annexation was held on September 29, 2023, at 1:00 PM in Room 169 of the Capitol Annex. Representative Jonathan Dixon, Chair, called the meeting to order, and the secretary called the roll.

### Present were:

Members: Senator Robby Mills Co-Chair; Representative Jonathan Dixon Co-Chair; Senators Michael J. Nemes, Robert Stivers, and David Yates; Representatives Randy Bridges, Beverly Chester-Burton, Michael Meredith, and Michael Sarge Pollock.

Guests: Jim Henderson and Shellie Hampton, Kentucky Association of Counties; J.D. Chaney and Bryanna Carroll, Kentucky League of Cities; Richard Tanner, Franklin County Magistrate; Ron Wolf, Middletown City Council; Bullitt County Judge/Executive Jerry Summers; Whitley County Judge/Executive Pat White; J.C. Young, Kentucky Magistrates and Commissioners Association; Mike Clark, University of Kentucky Gatton College of Business and Economics; Madison County Judge/Executive Reagan Taylor; Pulaski County Judge/Executive Steve Kelley; and Corbin City Mayor Suzie Rasmus.

LRC Staff: Christopher Jacovitch, Mark Mitchell, and Cheryl Walters.

### Approval of Minutes

Upon the motion of Representative Pollack, seconded by Representative Bridges, the minutes from the August 25, 2023, were approved.

### Kentucky Association of Counties' Perspective on Annexation

Jim Henderson, Executive Director of the Kentucky Association of Counties, told the task force that KACo's perspective regarding a solution to the issues related to annexation involve leveling the playing field for counties, encouraging emphasis on interlocal agreements, and making the annexation process more thoughtful and deliberate. Counties are in favor of cities flourishing and growing, but are opposed to the process that takes away revenue from counties. No proposal made by KACo would take money from cities' budgets.

Shellie Hampton, Director of Government Affairs of the Kentucky Association of Counties, discussed the occupational license fee that is taken by cities when they annex territory in counties. This is due to a 1986 law that created what is known as "crediting." This creates a natural conflict and tension between cities and counties. Current state law does not treat all counties equally, there is an arbitrary threshold of 30,000 population, and exceptions in place for nine counties. County inequities include 34 counties that have a population over 30,000 (excluding Fayette and Jefferson Counties); 25 of those counties are adversely affected by annexation with regards to occupational license fee revenue; and nine counties are treated

differently due to grandfathering in state law: Boone, Boyle, Campbell, Clark, Jessamine, Kenton, Marshall, Nelson, and Scott. If Scott County was not grandfathered in and was subject to crediting, it would cost them on average \$7 million annually from their city budget. Some counties are treated differently from others in an arbitrary way. Conflict will continue until these laws are changed. KACo believes that the 25 counties which are subjected to crediting under current law, should be treated the same as those counties which are not.

Ms. Hampton stated that interlocal agreements are part of the path forward, but that there must be leverage from both sides to allow these agreements to work. In counties where crediting occurs and for all counties that issue an insurance premium tax, annexation is zero sum for the counties and they lack leverage in creating interlocal agreements. Agreements can be subject to the personalities in office, and can be threatened when office holders change. KACo believes that a solution could involve a requirement that an interlocal agreement be entered into when annexation occurs and restrictions on changing the terms of an interlocal agreement. Cities have the only real leverage in amending or withdrawing from revenue based interlocal agreements, and there should be a more equal involvement. The specifics of an interlocal agreement should be left to the local decision makers, but the playing field should be leveled so that each has negotiating power.

KACo proposes that where a county is collecting insurance premium tax, there should be a required sharing of revenue when a city annexes territory where the tax is collected. Interlocal agreements could be a tool to negotiate these agreements. Current agreements should be solidified and protected to reduce uncertainty and prevent unilateral cancellation by cities.

Mr. Henderson stated that annexation should make sense and be thoughtful. Mr. Henderson referenced maps in a booklet and slideshow provided by KACo, which show that shoestring annexations are out of control. Even counties not affected by revenue loss may face challenges as a result of these types of annexations. KACo recognizes cities may organically grow in strange ways, but that many annexations do not reflect the spirit of the contiguous and adjacent requirement of the law. Cities will annex over the tops of mountains and miles down shorelines of rivers, which are not natural outgrowths of a cities' boundaries. Cities should be required to provide a plan for services in the area to be annexed. Five of Kentucky's neighboring states require that this information be provided by a city prior to annexation. A statement could be provided by the city that lays out a plan and timetable for service provision in the annexed territory.

There are also situations where property owners are coerced to have their territory annexed in exchange for services, and this may even happen in situations where those services have been previously provided. For example, to continue receiving water or sewage, a property owner may be required to sign a consent to annexation even though they previously were a customer of the utility. This goes against the spirit of voluntary annexation.

Currently only residents are allowed to object to annexation, but this should be extended to property owners as well. Additionally, school boards, the county itself, and large employers should be able to object when a city attempts to annex property those entities own, especially in situations where no defined benefit is proposed to be provided by the annexation.

In response to a question from Senator Stivers, Ms. Hampton replied that counties were going through a process regarding the arbitrariness of the 30,000- population threshold, but were not yet at the point where challenging it in court was desired by members and that they were focused on the task force currently.

In response to another question from Senator Stivers, J.D. Chaney, Executive Director and CEO of the Kentucky League of Cities, stated that the League had no reason to doubt that the map provided by KACo, regarding occupational taxes, are accurate. Mr. Henderson noted that the information was pulled from the Secretary of State's Office.

Senator Stivers commented that the annexation issue is not just a city versus county issue, but can involve conflicts between cities as well. A structure of what annexation looks like concerning city infrastructure needs to be developed.

In response to a question from Representative Meredith, Ms. Hampton said that grandfathering took different forms due to the 1986 annexation law. Some counties that were over 30,000 population and already imposed an occupational tax were not required to credit, others used ballot questions to avoid crediting, and some counties imposed an occupational tax prior to reaching the 30,000 population and were thus not required to credit. The rates for occupational taxes in those counties are now frozen due to the grandfathering, and even desired changes would result in revenue reduction.

Representative Meredith commented that the shapes of cities may appear strange on a map or satellite image, but there may be legitimate geographic reasons for the city to annex in those ways. For example, certain land may be unsuitable for development and thus annexation must move around those areas. In some instances, were an annexation not to have occurred due to additional restrictions, a new small city may have been created in those areas. Having many more cities in small areas may not be in the states interest.

In response to a question from Representative Meredith, Mr. Henderson stated that he was not aware of an ability for property owners to get an annexation on the ballot. After consideration, Mr. Henderson stated that the property owner would not be able to vote on a ballot referendum in opposition to an annexation.

In response to a question from Representative Pollock, Ms. Hampton said of the 93 counties where annexation was not an issue, 85 or 86 were below the 30,000-population threshold and the balance of others were grandfathered in and were thus able to collect occupational license fees without crediting.

In looking at the map of counties from KACo's slideshow, Representative Bridges pointed out that there seems to be a lot of holes in the unincorporated areas. He noted that he has received calls where counties can no longer provide services in those areas because they are so embedded within cities.

In response, Mr. Henderson stated that the county must still provide services in those areas, they are still part of the county. Holes in annexed territory are not ideal. Ms. Hampton stated that this can create confusion regarding who provides services in an area.

Representative Bridges stated that counties and cities should look at how they can adequately offer services that property owners deserve in situations on the borders of annexed territories.

In response to a question from Representative Dixon, Mr. Henderson stated that counties have never advocated for a population threshold for occupational licensing tax crediting. All counties, regardless of size, have the same legal responsibilities. Any threshold would be arbitrary and create inequitable treatment between counties. Ms. Hampton stated that no county can survive only on property taxes, and that there needs to be other sources of revenue. Annexation can frustrate plans made by small counties that then go over population thresholds.

Senator Stivers commented that smaller counties, those under 30,000, place a higher tax burden on their citizens than the larger counties where both a city and county impose an occupational tax. Larger counties typically have a bigger tax base, and the smaller counties, which are typically poorer, have a higher potential tax burden.

In response to a question from Representative Meredith, Richard Tanner, Franklin County Magistrate, stated he was a magistrate in Christian County in 1986 when the threshold of 30,000 became policy. Christian County did not impose the occupational license tax then and does not now, and he does not know why the threshold exists.

In response to another question from Representative Meredith, Whitley County Judge/Executive Pat White said the 30,000-population threshold was a benefit to larger counties but it later became a hinderance due to changes made to the law which allowed smaller counties to impose the occupational tax while leaving restrictions on the larger.

In response to a question from Representative Meredith, Mr. Henderson said he did not know if counties can currently have a referendum for an occupational license tax or if it was only permitted for a short time, but would find out and get back with him.

Representative Dixon announced that the next meeting of the task force would be on October 27, 2023. There being no further business, the meeting was adjourned at 2:00 p.m.