

COUNTY CLERK OFFICE MODERNIZATION TASK FORCE

Minutes of the 3rd Meeting of the 2021 Interim

August 25, 2021

Call to Order and Roll Call

The 3rd meeting of the County Clerk Office Modernization Task Force was held on Wednesday, August 25, 2021, at 1:00 PM, in Room 149 of the Capitol Annex. Representative Michael Meredith, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Jason Howell, Co-Chair; Representative Michael Meredith, Co-Chair; Senators Robby Mills, Robin L. Webb, and Phillip Wheeler; Representatives Randy Bridges, Patrick Flannery, and Ashley Tackett Laferty.

Guests: Dan Mosley, Harlan County Judge Executive; Todd Ruckel, Executive Director, County Judge Executive Association; David Livingston, Scott County Magistrate; JC Young, Executive Director, County Magistrates & Commissioners Association; Debbie Donnelly, Hardin County Clerk; and Barry Tuemler, Kentucky Land Title Association.

LRC Staff: Roberta Kiser, Randall Roof, and Lisa W. Moore

Approval of Minutes from July 21, 2021 Meeting

Senator Wheeler motioned to approve the July 21, 2021, minutes, seconded by Senator Mills, passed by voice vote.

County Fiscal Courts

County Judge Executive Association

Dan Mosely, Harlan County Judge Executive, said the county judges, commissioners, and magistrates from across the Commonwealth support the modernization of county clerk offices and are committed to working with the county clerks to modernize records. The pandemic exposed many weaknesses for businesses and government, but these are turning into strengths with the implementation of the right leadership teams.

The work to modernize the county clerk offices has been in the pipeline prior to the pandemic and storage fee in many Kentucky counties. The storage fee passed in 2019, and collected by county clerks in 2020, was supported by county governments where funding is always an issue.

County Magistrate & Commissioners Association

David Livingston, Scott County Magistrate, said the association consists of 164 elected county magistrates and county elected commissioners across the Commonwealth. County magistrates and county commissioners collectively serve as the legislative body of the county. Fiscal courts provide the financial oversight of the county government as assigned in statute.

Mr. Livingston said 2020 was an odd year for local governments, and some revenue categories were very difficult to project. He stated Scott County projected 30 percent less revenue because budget planning was so difficult. It is difficult to determine if revenue increased because of the implementation of the document storage fee or because of the sheer volume of all fees collected by the county clerk's office. The county clerks would have a better breakdown of collections per fee. In some counties if the document storage fee increased revenues for a county clerk's office, it does not necessarily mean it was turned over to the fiscal court's office at the end of the year. He did note that not every county saw an increase in excess fees, as some of the funds were utilized by the county clerks with fiscal court approval for normal business upgrades and record retention. Counties that have small offices and were forced to close due to the pandemic may have seen negative impacts. One year of data, especially in a 2020 pandemic year, is hard to judge.

Mr. Livingston said county fiscal courts are committed to working with county clerks on all projects including elections, record retentions, and other services provided by the office. Modernization of records will take time, and fiscal courts may have to find additional pools of resources to fund the remaining cost of the project. Lastly, the county clerk is the caretaker of the records as defined in statute. The county clerk will continue to work closely with the fiscal courts and be an advocate for local government services.

In response to Senator Wheeler, Mr. Mosley said each county breakdown of fees is different as well as fiscal year start-up costs. Some counties report receiving \$0 and some receive thousands back from their county clerks. Mr. Livingston added that a one size fits all approach will not work for counties across Kentucky.

In response to Chairman Meredith, Mr. Mosely said Harlan County generated in excess of \$26,000 that was collected from the document storage fee and turned in to the county clerk. The adjusted costs for employee salaries, and the rising costs of health insurance and pension obligations are issues that need funds.

In response to Senator Howell, Mr. Mosely said the Harlan County clerk estimated that it would cost approximately \$750,000 to bring the county clerk office online, although that figure was not substantiated. This is a cost to digitize the records basically from scratch and there have been no discussions on the cost of electronic filing. The clerks are open to

moving online but are concerned about finding the revenue. The \$26,000 extra being generated through the document storage fee is not going to cover all the costs.

J.C. Young, Executive Director, County Magistrates & Commissioners, said there is no sweeping of funds by counties. He said that is a term used by budget staff and others at the state level. Excess funds are turned over at the end of the year.

Chairman Meredith commented on understanding the importance of excess fees to county budgets. He said any real action will revolve around the permanent storage fee in the near term. There was a bill filed in the 21RS of the General Assembly that established this fee to help cover the costs of county clerk office modernization efforts, and would not be subject to the excess fee rules. Mr. Livingston said the permanent storage fee is not going to cover the cost of digitizing the records and other funds will have to be provided through the fiscal court. If so, they would like oversight on the fees that should be going to the modernization as well. Chairman Meredith also mentioned obtaining grant and pandemic funds through the library and archives and distributing throughout the county clerk offices. He said all options will be considered as part of the process to get modernization efforts underway.

County Clerk Fee Polling

Debbie Donnelly, Hardin County Clerk, stated that Hardin County operates on a 75/25 percent budget. The 75 percent is designated for salaries, insurance, and pensions and administered through the Finance and Administration Cabinet, and the 25 percent monies are given to the fiscal courts on a quarterly basis. Any excess funds at the end of the term are turned in to the fiscal courts as well. The county clerks always begin a new term with \$0 and must have their budgets approved through the fiscal courts. In January the clerks often rely on the vehicle registration dollars to make payroll for that month.

In response to Senator Wheeler, Ms. Donnelly said counties that are over 70,000 turn in all excess monies to the fiscal court at the end of the county clerk's elected term. Counties that have populations under 70,000 are required to submit the excess funds at the end of each year.

In response to Senator Wheeler regarding county clerk satisfaction with budgeting issues, Ms. Donnelly said the system in place works very well. The document storage fee needs to stay with the county clerks until the end of their term, regardless of county size, to help maintain and run the office. This includes e-recording, especially since some counties are starting from scratch and others have new hardware and software.

Title Opinions

Barry Tuemler, Kentucky Land Title Association, said the purchase of land or a home is often one of the biggest purchases of a buyer's life and having a clean title is essential. A title insurance policy is the contract of indemnity between the title insurance

company (the underwriter) and the insured owner of real estate or the mortgage, wherein the company insures the good and marketable title to the property. A title opinion is a legal opinion issued by an attorney wherein the attorney sets out the current status of title to real estate and confirms that the owner has good title to the property, subject to certain exceptions.

Mr. Tuemler said in order to facilitate real estate closings here in Kentucky, title insurance policies and title opinions are required by mortgage lenders as well as the buyers of real estate. Most lenders will not enter into a mortgage loan agreement without assurances that their mortgage interest is in “first and best” position in the event of a default by the borrower. The issuance of a title insurance policy and title opinions is based upon the ability to effectively search the land records in the county clerk’s office in the county where the property lies. The search standards for residential property is 30 years, commercial property is 60 years, and a mineral rights search is back to patent.

In order to effectively search the title to real estate, the online records should include copies of the following documents: deeds; mortgages; UCC/fixture filings; plats of subdivided property; all covenants, conditions, and restrictions that related to real property; easements; leases; recorded powers of attorney; land contracts; wills; affidavits that affect/clarify the title to property; and all recorded liens including, judgment liens, state tax liens, federal tax liens, homeowner’s association and condominium liens, recoupment and unemployment liens, lis pendent notices, child support liens, bail bonds, and civil penalty liens. City and county tax records, including records of delinquent taxes, are usually monitored and maintained by the County Sherriff’s office or the specific municipality, as opposed to the Clerk’s office. Chairman Meredith clarified the timeframes for some of the documents including 15 years for lis pendent notices, 5 years for bail bonds, and 10 years for civil penalty liens.

In response to Senator Howell, Mr. Tuemler said title searchers give as much credence to the online records as they do the physical records located in the county clerk’s office. It is his opinion that the online index is just as good as in person with the rare exception of a few county clerks that have issues. He also said filing records online is just as valid as delivering them or mailing to the county clerk’s office. Senator Howell said it could eventually eliminate real time issues and make the process quicker and more reliable by submitting documents online.

In response to Senator Wheeler, Mr. Tuemler said judgment liens cannot be renewed for longer periods over 15 years. He noted the UCC/fixture filing and federal liens can be renewed within a 10-year period.

In response to Representative Bridges, Mr. Tuemler said Kentucky does not have a marketable title act like some other states. In Ohio, they have a marketable title act that says anything before a 40-year period that turns up in a search cannot affect a good title to

a property. In Kentucky, by custom and industry practice, time periods of 30 year searches have been established for residential property, and 60 years for a commercial property. Chairman Meredith said many of the recorded liens have statutes of limitations specifically set in statute.

In response to Senator Mills, Ms. Tabatha Clemons, Grant County Clerk, said Grant County is a non-fee pooling county and she starts at \$0 in January. She pays ad valorem, delinquent, and deed transfer taxes to the fiscal courts on a monthly basis, and gives them excess fees yearly. She said some county clerks have taken out personal loans or written personal checks in order to make payroll. Mr. Denny said he reimburses the Anderson County fiscal court about a month after payroll is paid, and they are fine with that as the working relationship is strong.

With no further business before the committee, the meeting adjourned at 2:15 p.m.