INTERIM JOINT COMMITTEE ON LOCAL GOVERNMENT

Minutes of the 6th Meeting
of the 2019 Interim

November 21, 2019

Call to Order and Roll Call

The sixth meeting of the Interim Joint Committee on Local Government was held on Thursday, November 21, 2019, at 8:00 AM, in Room 149 of the Capitol Annex. Senator Wil Schroder, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Wil Schroder, Co-Chair; Representative Michael Meredith, Co-Chair; Senators Ralph Alvarado, Denise Harper Angel, Christian McDaniel, Morgan McGarvey, Robby Mills, Albert Robinson, Damon Thayer, and Johnny Ray Turner; Representatives Danny Bentley, George Brown Jr, Jeffery Donohue, Larry Elkins, Joe Graviss, Cluster Howard, Kim King, Adam Koenig, Russ A. Meyer, Jerry T. Miller, Rob Rothenburger, John Sims Jr, and Ashley Tackett Laferty.

Guests: Bill Dieruf, City of Jeffersontown Mayor; Troy Rudder, City of London Mayor; J.D. Chaney, Bert May, Michele Hill, and Bryanna Carroll, Kentucky League of Cities; Gary Moore, Boone County Judge/Executive; Reagan Taylor, Madison County Judge/Executive; Phil Sammons, Boyle County Magistrate; Amy Milliken, Warren County Attorney; Elbert Bennett, Caldwell County Magistrate; Kevin Corman, Jessamine County Sheriff; Jim Henderson and Shellie Hampton, Kentucky Association of Counties; Ron Wolf, Associated General Contractors of Kentucky; and Sara Beth Gregory, Auditor of Public Accounts Office.

LRC Staff: Mark Mitchell, John Ryan, Joe Pinczewski-Lee, and Cheryl Walters.

Approval of Minutes

Upon the motion of Senator McDaniel, seconded by Representative Sims, the minutes of the October 3, 2019 meeting were approved.

Kentucky League of Cities (KLC) Legislative Platform for the Upcoming 2020 Session of the General Assembly

Mayor Bill Dieruf, City of Jeffersontown and KLC President, told the Committee that cities are the economic engines of the state—where the jobs are, where people live and where the state is seeing the most growth. Kentucky cities' growth since 2010 represents 81 percent of the state's entire population growth.

The top focus for cities is separate governance of CERS that is free from political influence. In the past 20 years, employer contribution rates have doubled. Since the CERS contribution phase-in bill of 2008, cities and counties have worked to find the money. That resulted in CERS getting a return of 5.8 percent for FY 19, well below peer groups which had returns of 6.4-6.8 percent. CERS is largest system in KRS, 64 percent of the membership. CERS is growing while membership in KERS shrinks. CERS is also most of the assets KRS manages, which is 73 percent. That is uneven representation for CERS. CERS is only 35 percent of the KRS Board of Trustees, 11 percent of the investment committee and 17 percent of its actuarial subcommittee.

Another top priority is modernization of the road funding formula. The condition of the roads says a lot about the Commonwealth. Cities maintain more than 10,000 miles of public roads. Costs for municipalities have increased 17 percent in the past nine years, while state and federal funding dropped 21 percent. Modernization also includes updating the state's motor fuels tax, which has not changed since 2015. Twenty-two other states have increased the tax since that time, including Indiana, Tennessee and Ohio. The Road Fund is allocated by the "formula of fifths" that was established in 1948. The state's population has shifted. Counties must not be harmed. An agreement to modernize the formula equally splits new revenue above $825 million to ensure counties are held harmless. Cities and counties would each get 13 percent of motor fuels taxes collected above the $825 million mark.

Revenue diversification is also a top priority for cities, equalization and modernization of funding options. That includes opposing any effort to centralize tax collection. Diversifying income options for cities empowers local governments to find the funding sources that best fit their community. Let local elected officials and their constituents decide where money should go. Currently the restaurant tax is only allowed to be collected in former fourth and fifth class cities. Under the proposal, cities that collect the restaurant tax revenue would not collect a net profits or gross receipts tax. Mayor Rudder's City of London collects restaurant taxes.

Mayor Troy Rudder, City of London and KLC First Vice-President, told the Committee that the restaurant tax works well for the City of London and has allowed the city to build parks for the people and invest in the future. It brings in around $3 million. He did not know of any city that would not benefit from a restaurant tax. It changed the whole direction of the city.

Mayor Dieruf stated that as the state looks to move more into consumption-based taxation, KLC is asking the legislature to include the option of a local sales tax in order to allow the citizens of the cities control their destinies. The question is asked: if a particular tax is passed, will another be offset? This is possible in Jeffersontown, but other cities are different. Each needs the tools to provide the services its residents require.

Kentucky is one of only 12 states that does not allow one or more local governments to collect that funding. It is also important that the legislature protect the ability of taxpayers to credit occupational taxes owed to a city against any county tax owed. This ensures taxes are not stacked on citizens and that they do not pay for duplicate services. Removing the credit would result in millions of dollars of higher taxes for a quarter million Kentuckians.

Mayor Rudder told the Committee that one of the top issues on KLC's agenda this year is reflective of a growing problem in cities of all sizes, which is the increased number of blighted, deteriorated and vacant properties. Dealing with these eyesores is often a challenging and an expensive endeavor. Cities need new tools to deal with enforcement and rehabilitation. Not dealing with the problem brings down property values in the community, decreases quality of life for neighbors, and poses a safety and crime risk.

One solution KLC is proposing requires the legislature's help--legislation that allows for a conservatorship to rehabilitate these types of areas. The court-appointed conservator would be required to have experience in the rehabilitation of buildings and would have to be able to provide financing for the project. This solution would apply to properties that had been vacant for at least a year with no pending foreclosure and no effort to market it within the previous 60 days. Properties would have to be out of compliance with local codes and be unfit for occupancy. These are structures that are a danger to the community's health, safety, and economic welfare. London has dealt with 120 of those types of properties in the past five years.

Also on KLC's agenda is a proposal to modernize communication and save taxpayer money. Kentucky cities spend an estimated $1.4 million a year on state-mandated publication costs. A Pew study found only 20 percent of adults report going to their local newspaper for information, compared to 90 percent who use the internet. Putting notices, bid solicitations and other important documents on a website makes them free for people to access, instead of requiring them to buy a newspaper. It also makes the documents available for a longer time. This issue was addressed in temporary legislation passed in 2018, but only impacted 135 cities. It expires next year. KLC is asking the legislature to allow cities to use technology to better communicate with their constituents.

KLC is looking to expand upon the passage of 2019 SB 29. SB 29 allowed cities with a population of less than 20,000 to impose a regulatory license fee to help offset the cost of additional policing and regulation that comes with alcohol sales. Cities are asking the legislature to even the playing field and make that option available to all municipalities.

Cities are seeing some unintended consequences with changes made to the open records law in the 2019 Regular Session. 2019 SB 230 allowed requests to be emailed, but cities have found that is creating a problem for clerks who are overwhelmed with inquiries. Kentucky cities receive around 4,500 open records requests a year and spend more than 750,000 hours of city staff time each year trying to answer them. An amendment to last year’s law can address the numerous out-of-state requests and correct attempts to circumvent the discovery process in civil litigations. Additionally, an amendment to the open meetings law can help cities protect sensitive information and protect public finances, especially when dealing with the purchase and sale of property and job evaluations.

KLC continues to support legislation that enhances economic development in Kentucky’s cities, and is ready to work with the legislature on measures that combat the state’s substance abuse epidemic.

Additionally, cities are asking for the same option given to private employers to prohibit an employee from carrying a weapon during his or her official duties.

The League seeks to limit the policing powers of untrained constables for citizens’ safety, and is looking for help in cleaning up legacy police and fire pension plans.

KLC is seeking legislation that allows municipalities to enter into contracts with private ambulance services for periods longer than a year, and is looking for changes to the way the state certifies paramedics and EMTs to improve the hiring of qualified candidates to ensure that public safety services are available when needed.

Most local officials serve in a part-time capacity. They serve out of sense of duty to the community, often while also working in a full-time job. If that career happens to be with an employer who is also in one of the state's pension systems, an elected city leader cannot retire from that career without also leaving their elected office. KLC is seeking legislation to fix this issue.

City leaders are seeking a change in how annexation filings are made with the Secretary of State, which is to allow electronic filings which will improve efficiency.

KLC is also seeking legislation to streamline the Interlocal Cooperation Act, so the process is easier to execute in order to encourage cooperation among local governments.

Cities are facing new challenges with defunct homeowner associations and planned-unit documents that do not cover maintenance of common areas. The League is seeing issues with splash parks and pads that have pointed out the need to define laws and regulations that cover these locations.

KLC is looking forward to working with the legislature on these top issues.

In response to a question from Representative Miller, Mr. J.D. Chaney, Deputy Executive Director of KLC, stated that Senator Mills has filed a bill that would allow for a conservatorship. The court would appoint someone to rehabilitate the property, bring it up to code, and then sell the property and recover the costs for rehabilitation.

Representative Miller commented that it was ridiculous to require publication of notices in the newspaper, and it is time to let cities publish on the internet.

In response to a question from Representative Graviss, Mr. Chaney replied that the conservatorship would apply to counties as well as cities. The local government would file a petition in the courts for the conservatorship or to contract with someone to act as conservator and the courts would appoint someone to conserve it.

In response to another question from Representative Graviss, Mr. Chaney said the conservatorship would not affect planning and zoning.

In response to a final question from Representative Graviss, Mayor Dieruf said that regarding the CERS separation proposal, both the money in the system and the decision-making by the board would be separated from the other systems.

In response to a question from Representative Donohue, Mayor Dieruf stated that the difference between the League's proposal for the option of a local sales tax and LIFT is that KLC is simplifying it to have the ability to put it on the ballot to change the Kentucky Constitution to allow a local government to pass a local sales tax.

In response to a question from Senator Mills, Mr. Chaney stated that the current regulations relating to swimming pools apply to splash parks and pads and those regulations are not conducive to operating splash parks and pads.

In response to a question from Representative Howard, Mr. Chaney stated that cities and counties are working together on the issue of consumer-based restaurant revenue. It is not a formal ad hoc group, but it is better than one.

In response to a question from Representative Meyer, Mr. Chaney said it is the League's proposal to allow all cities to collect a restaurant tax, and if so, that tax would be lieu of net profits and gross receipts taxes on the restaurants.

In response to a question from Representative Sims, Mr. Chaney said that the law does not allow county governments to collect restaurant taxes. The League would not be for stacking the restaurant taxes if counties were allowed to do so.

Senator Schroder commented that it makes sense to have regulations in place for splash parks and pads.

Regarding open records, Senator Schroder stated that it might be helpful to see what other states are doing on how to address the request numbers, especially out of state requests.

Representative Meredith commented that Kentucky is one of only 17 states that allows occupational taxes to be collected. Kentucky is one of the five states that are most reliant on occupational taxes. In moving forward, cities need to mirror what is being done at the state level.

Kentucky Association of Counties (KACo) Legislative Platform for the Upcoming 2020 Session of the General Assembly

Boone County Judge/Executive Gary Moore, and KACo President, noted the constituency of KACo's membership and told the Committee that KACo's members were engaged in all 15 area development districts by KACo representatives, and were polled during KACo's annual conference last month, where more than two-thirds of attendees representing 106 counties provided responses. Counties feel that their hands are tied when it comes to generating the revenue needed to perform all the statutory and constitutional duties required of them.

Based on that feedback, KACo identified its top three priorities for 2020. The top priority was transportation funding, which is one of the state's priorities as well. Counties have made great strides in its economic development efforts and know how vital good roads are to job creation.

In KACo's 2019 poll, a majority of the members stated that more than 40 percent of county roads are in need of moderate to significant repair and a quarter of the members said that more than 60 percent of their roads need repair.

Counties own half of all the roads and 34 percent of all the bridges in the state. Many fiscal courts have had to extend the time between road and bridge maintenance due to increased costs and decreased County Road Aid. In 2018, counties, excluding Jefferson and Fayette counties, spent almost $60 million out of their general fund dollars on roads and bridges. This is over and above what counties received from their portion of the motor fuels tax, which has decreased or remained flat in recent years. Some roads in Crittenden County have had to be graveled because of falling road money aid allocations where they had been chipped and sealed earlier.

More revenue is needed to improve state roads which in turn helps both cities and counties.

Representative Sal Santoro has filed legislation for the last two sessions that would address critically needed revenues for state projects and maintenance, as well as county roads and bridges. KACo supported both of those bills. KACo was a founding member of the Kentucky Infrastructure Coalition (KIC), a broad group of stakeholders who have pledged their support for the measure, and which is prepared to do it again.

An overwhelming majority, 93 percent, of those polled support a gas tax increase, with nearly half supporting at least a 10-cent increase. KACo members have the legislature's back.

KACo’s next priority is jails. In the poll, more than half said that jail costs are putting the most pressure on county budgets.

Madison County Judge/Executive Reagan Taylor and KACo President-Elect, told the Committee that Kentucky has an incarceration problem being driven by addiction and a mental health crisis. In the 1950’s there were 330 mental health beds per 100,000 population in America. By the early 2000’s, it had dropped to only 29 beds per 100,000 population. Counties are not equipped to handle this. County jails were intended to be temporary holding facilities but have evolved into mini state penitentiaries without the resources to provide comprehensive rehabilitation of inmates.

The jail crisis across Kentucky is no secret. It is something every county faces whether it operates its own jail or partners with neighboring counties to house its inmates. Each county is financially responsible for its own incarcerated population. The state also faces corrections-related challenges.

In researching Madison County’s jail crisis, it has been found that arresting and incarcerating are not working. In Madison County, 85 percent of the individuals are arrested on drug-related crimes at an 80 percent recidivism rate. This is consistent across the Commonwealth.

Incarcerated population growth has far outpaced Kentucky’s actual population growth. As counties’ incarcerated population continues to rise, so does the financial obligation of counties. Prior to sentencing, the cost to house and care for inmates can be as high as $75 a day.

Once that individual is sentenced and has become a state inmate, the state only reimburses the county $31.34 a day per inmate. It has become a financial burden. And when the jail is overcrowded, as is the case in Madison County, overflow inmates are forced to be housed in other counties’ jails, sometimes at a cost more than double the state reimbursement rate.

The per diem rate has not been adjusted for 13 years and is paid to the county only after an inmate has been sentenced in a felony case which is often two years or longer. Counties bear the entire cost for housing misdemeanants.

As inmates await trial, the county pays every penny of that person’s stay, regardless of whether they are arrested for a felony or misdemeanor. But they are not arrested because they broke a county law. They are there because they broke a state or federal law. Counties should be reimbursed for those costs. Counties have no control over this process, but just bear the financial burden. This is not a desirable model from a business perspective.

KACo supports the following solutions: increase the state per diem rate; pursue criminal justice reform, including pre-trial release; broaden and fund substance abuse treatment; and reimburse credit for time served.

Judge Moore noted that incarcerated individuals lose Medicaid and Medicare and other federal benefits during incarceration and noted that there could be constitutional issues associated with that suspension during incarceration prior to conviction. The National Association of Counties and the National Association of Sheriffs are working together to address this issue in Congress.

Judge Moore stated that KACo's final priority is tax reform. The tax system at the state level is antiquated and makes Kentucky less competitive with surrounding states. Each time revenue options for local governments are explored, counties are told to wait for comprehensive tax reform. If that happens, counties ask for a seat at the table.

Eighty of the counties depend on income or occupational taxes for the majority of their revenues. KACo supports local sales tax authority and understands that it would replace other revenues presently available to counties. KACo believes that this could take some of the burden off of residents and access moneys from outside their jurisdictions. KACo's members also support the restaurant tax being offered to counties as well as cities.

Unfunded mandates are never a good thing. One example is what occurred with the 2018 revenue bill, when a county's portion of audit costs were increased from fifty to seventy-five percent, shifting costs from the executive branch budget to counties. If counties were consulted, they would have recommended the use of state authorized private auditors as they can perform the audits in an economical and efficient manner. The audits would have remained subject to State Auditor review under that recommendation. Additionally, counties could have still used the State Auditor to perform their audits if they preferred.

Control over Special Purpose Governmental Entities' (SPGEs) tax rates by elected officials has been a concern for some legislators, so KACo polled its members. KACo's members' opinions have shifted from opposition to being more supportive of that option for counties. Counties are willing to partner and work with the legislature.

In response to a question from Senator Schroder, Judge Moore replied that KIC stands for Kentucky Infrastructure Coalition, which is made up of 40 member groups.

In response to another question from Senator Schroder, Judge Moore stated that Amazon is building many roads on airport property themselves. The area is looking at tens of millions of dollars of needs for roads which was discussed between local and state government to provide the infrastructure to bring the jobs into the Commonwealth. There have been positive discussions with the Transportation Cabinet.

Representative Sims commented that as a former county magistrate he appreciates KLC and KACo supporting a gas tax.

Senator McDaniel commented that the gas tax is not the only way Kentucky finds revenue for its road fund. Examining expenditures would be better accomplished by viewing expenditures by lane mile or by population. It is important to remember that the road fund is the highest level it has ever been.

In response to a question from Senator McDaniel, Judge Moore stated that KACo was not prepared at this time to say whether or not it supports counties taking over the libraries and absorbing the revenues into the county budget, but some counties do want to do that or something similar.

Senator McDaniel noted that regarding the requirements of housing of prisoners in consideration of limited county resources, that there are three options: counties continuing to house prisoners in the same manner as is presently done; delegate the law making ability relative to misdemeanor crimes to county control; or shut down county jails.

In response to a question from Representative Graviss, Judge Moore stated that he individually recommends expanding consumption based taxes rather than using income taxes at the state level as a form of revenue.

Senator Alvardo commented that he was glad to hear that KACo is supporting county control of SPGEs, and looking forward to working with them.

Regarding the road formula, Senator Thayer commented that KACo should be careful with the urban-rural divide.

In response to a question from Senator Thayer, Judge Moore stated that KACo agrees with KLC regarding the $825 million cap and subsequent redistribution of funds to cities and counties in the road formula.

Senator Thayer commented that he was glad that KACo changed its position regarding SPGE taxation issues.

Representative Meredith thanked KLC and KACo for working together on the road formula. He liked that the two groups are working together and being proactive.

Representative Meredith commented that there needs to be cooperation from the Judicial Branch regarding the jail issue.

There being no further business, the meeting was adjourned at 9:40 a.m.