

INTERIM JOINT COMMITTEE ON VETERANS, MILITARY AFFAIRS, AND PUBLIC PROTECTION

Minutes of the 1st Meeting of the 2020 Interim

June 30, 2020

Call to Order and Roll Call

The 1st meeting of the Interim Joint Committee on Veterans, Military Affairs, and Public Protection was held on Tuesday, June 30, 2020, at 1:00 PM, in Room 171 of the Capitol Annex. Representative Walker Thomas, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Walker Thomas, Co-Chair; Senators C.B. Embry Jr., Denise Harper Angel, Jimmy Higdon, Stan Humphries, Dennis Parrett, Wil Schroder, Brandon Smith, Whitney Westerfield, Mike Wilson, and Max Wise; Representatives John Blanton, Myron Dossett, Jim DuPlessis, Chris Fugate, Al Gentry, Mark Hart, Samara Heavrin, Kathy Hinkle, Matthew Koch, Scott Lewis, C. Ed Massey, Patti Minter, Rob Rothenburger, Dean Schamore, Attica Scott, Buddy Wheatley, and Lisa Willner.

Guests: Bobby Rogers, Bath County Judge Executive, Jason York, Bath County Emergency Management Director; Richard Nelson, Executive Director, Commonwealth Policy Center, Dr. Hershael York, Pastor, Buck Run Baptist Church; Scott Bauries, Law Professor, UK Rosenberg College of Law; Rodney Brewer, Commissioner, Kentucky State Police

LRC Staff: Jessica Zeh and Elizabeth Hardy

Distinguished Guests

Bath County Judge Executive Bobby Rogers and Emergency Management Director Jason York, spoke about a tragedy that occurred in Bath County on April 29, 2020. They detailed a search and rescue operation of an Amish family whose horse and carriage were swept off a bridge during a rainstorm and five children were missing. After an exhaustive search spanning several days, each of the five children were recovered deceased. Jason York went on to discuss how important emergency response teams are and how grateful he was that his first responders, the Kentucky National Guard, and members of the community that came together to search for the children.

Commonwealth Policy Center

Richard Nelson, Executive Director of the Commonwealth Policy Center, described how the policies put in place because of COVID-19 affected churches in Kentucky. Early on, churches were directed to listen to government policy and as a result most closed in-person services. Throughout the quarantine period, he felt that churches were disregarded as they were not deemed an essential service while businesses like grocery stores, liquor stores, and abortion clinics were considered essential services.

Director Nelson noted that in the United States Constitution and the Constitution of the Commonwealth of Kentucky, religious freedom is guaranteed. For many, attending in-person services is a vital part of their Christian faith. Examples of government overreach include April 9, 2020, the mayor of Louisville, Greg Fischer, announced that churches were not allowed to have drive-in services while at the same time drive thrus at restaurants and liquor stores remained open. On April 10, 2020 Governor Beshear directed Kentucky State Police take down license plates of citizens who attended an in-person service at a Bullitt County church, who were then given notices to self-quarantine by the Health Department.* According to a Pew Forum, Kentucky was one of 10 states that banned in-person church services. Many Christians believe that the church provides spiritual care in a time need, which deems them essential. In 2013, Kentucky passed the Religious Freedom Restoration Act stating that the government shall not burden a person's freedom of religion, and Director Nelson feels that this Act was violated amidst the pandemic.

Dr. Hershael York, Pastor of Buck Run Baptist Church, testified that most churches have been compliant and go the extra step to protect church members. Churches were not included in the discussion when policies were put into place. Dr. York also stated that they would like to see the same rules apply to everyone including churches, grocery stores, and restaurants.

Representative Blanton commented on the subject stating that church goers were more afraid of being ostracized and criticized by the media and Governor Beshear than COVID-19. He went on to say that the media has inconsistent reporting of COVID-19 cases when it comes to church members versus protesters.

In response to Representative Wheatley's question, Richard Nelson stated that he did not have a hard copy of the notice that was left on cars. He repeated that the court reported that "attendance is criminal."

Senator Westerfield agreed with Pastor York in that there are many inconsistencies in policies placed during the COVID-19 pandemic. He went on to say that whether it was on purpose or not, religious freedom was being targeted.

In response to Representative Dossett's question, Pastor York commented that the vast majority of churches are communicating guidelines with their congregations, having online seminars, and putting social distancing in place during church services.

Representative Hart commented that he was sympathetic with the Kentucky State Police because Governor Beshear had put them in the middle of enforcing social distancing guidelines. He stated that troopers should not have been put in the position to violate constitutional rights.

Senator Wilson stated that he spoke to several medical professionals that said there is a primary cause of death, and then there are contributing factors that are listed on a death certificate. He went on to say that he would like to know how many people have died from COVID-19 as the primary cause of death versus the amount of people died with COVID-19 listed as a contributing factor.

*A copy of the notice placed on vehicles by Kentucky State Police and a letter of response from Governor Beshear's office can be found in the meeting materials online.

UK Rosenberg College of Law

Scott Bauries, Law Professor at UK Rosenberg College of Law, stated that the first amendment is broken into two sections: the establishment clause which forbids government from passing a law that has the purpose of favoring or disfavoring a religion and the free exercise clause which allows individuals and churches to worship as they please. The Kentucky Freedom Restoration Act was passed in 2013 which also prohibits the government from interfering with religious practices. Some claims, such as notices on vehicles of people that attended in-person and police cars parked at church entrances could be seen as a conflict with the Freedom Restoration Act. Professor Bauries went on to say that there are conditions under the Kentucky Freedom Restoration Act that allows government interference if there was a substantial interest in placing restrictions, but they must prove that the restriction put in place is the least restrictive as possible.

Professor Bauries described a Supreme Court case, *Employment Division vs. Smith*, in which two Native Americans were fired from a job and could not receive unemployment benefits, because they ingested peyote as part of a religious ceremony, an illegal substance in the US. The court rejected the claim stating that as long as a religion is not being targeted specifically, there can be no claim exemption from the neutral law. However in another Supreme Court case, *Church of the Lukumi Babalu Aye vs City of Haileah*, the court ruled in favor of the church sacrificing animals, because the law was determined to be directly interfering with that religion by prohibiting ritualistic animal sacrifices. Animals were still allowed to be euthanized in animal shelters or hunted for sport. Many of the religious interference cases that have been heard in the Kentucky courts so far have determined that some of the restrictions in place directly interfere with religious freedoms. For example while churches are not allowed to congregate, gathering in places like home improvement stores and grocery stores were still allowed.

In response to Representative Gentry, Professor Bauries stated that in an application for injunctive relief in the South Bay United Pentecostal Church vs Governor Gavin Newsom case was denied because Chief Justice Roberts stated that the Governor's orders were not specifically targeted at churches but other places of business also had to limit the amount of people or close entirely.

Representative Minter commented on Chief Justice Roberts decision in the South Bay United Pentecostal Church vs Governor Gavin Newsom injunction and stated that it seems that his opinion is that the free exercise clause would not apply in this particular situation because many places are being restricted, not just places of worship. Professor Bauries responded by saying that while Chief Justice Robert's comment should not be ignored, there is a possibility that not all facts are present since it is not a fully developed case.

In response to Senator Higdon, Professor Bauries said that he was not exactly sure if there was a pattern when it comes to states declaring churches essential or nonessential but said that most states in the northeast determined that churches were a nonessential service.

Kentucky State Police

Commissioner Rodney Brewer of the Kentucky State Police (KSP) wanted to explain misconceptions about KSP and churches during the pandemic. No churches were closed at any time and there was no enforcement action taken at any church. Handouts were only given out at two churches that he was aware of, and the notice included the dangers of COVID-19 and why social distancing is important. The only mention of criminal violation on the handouts states that a violation of Chapter 39 could be considered as a class A misdemeanor. Commissioner Brewer also explained that along with churches, over 800 retail sites were visited by KSP for not following health guidelines. From the beginning of the pandemic, troopers were not there in an enforcement capacity but in an informational capacity.

Representative Fugate commented that he felt that churches were under attack by Governor Beshear and his leadership, because they were not considered essential. He went on to say that churches continue to uphold guidelines put in place and should not be discriminated against.

In response to Representative Gentry, Commissioner Brewer stated that as for as he is aware the phrase "Attendance is criminal" was not on handouts that were placed on vehicles.

In response to Senator Westerfield's question, Commissioner Brewer stated there were other non-religious gatherings that KSP were called to investigate for not following social distancing guidelines. In response to another question, he stated that during

demonstrations there is no sniper on top of the capitol or annex building, but a trooper is placed at higher elevations during such events to ensure the safety of protesters and others.

In response to Senator Harper Angel's question, Commissioner Brewer explained that Kentucky State Police Crime Lab does not handle COVID-19 testing and has had no effect on how rape kits are processed. KSP did stop intake of rape kits from local police for several weeks but did accept mail-in kits.

In response to Representative Hart, the Commissioner explained that all counties should be open for driver's license testing, but there are limited hours depending on the clerk's office.

In response to Senator Higdon's question, he explained that trooper numbers are still low by about 240 people.

The meeting was adjourned.