

# **INTERIM JOINT COMMITTEE ON STATE GOVERNMENT**

## **Minutes of the 2nd Meeting of the 2018 Interim**

**August 22, 2018**

### **Call to Order and Roll Call**

The second meeting of the Interim Joint Committee on State Government was held on Wednesday, August 22, 2018, at 1:00 PM, in Room 154 of the Capitol Annex. Representative Jerry T. Miller, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Joe Bowen, Co-Chair; and Representatives Jerry T. Miller, Co-Chair; Senators Ralph Alvarado, Denise Harper Angel, Christian McDaniel, Morgan McGarvey, Dorsey Ridley, Albert Robinson, Wil Schroder, and Damon Thayer; Representatives Lynn Bechler, Tom Burch, McKenzie Cantrell, Joseph M. Fischer, Derrick Graham, Mark Hart, Richard Heath, Dennis Horlander, DJ Johnson, Mary Lou Marzian, Reginald Meeks, Phil Moffett, Tim Moore, C. Wesley Morgan, Jason Nemes, Jason Petrie, Rick Rand, Attica Scott, Ken Upchurch, and Jim Wayne.

Guests: William Landrum, Mike Burnside and Pamela Trautner - Finance and Administration Cabinet; John Hodgson and Ellen Adkisson, Office of the Governor; Representative Ken Fleming, Representative Kimberly Poore Moser; and John Schaaf, Laura Hendrix, and Tony Goetz - Legislative Ethics Commission.

LRC Staff: Alisha Miller, Daniel Carter, Kevin Devlin, Michael Callan, Roberta Kiser, Karen Powell, and Peggy Sciantarelli.

### **Approval of Minutes**

A motion to approve the minutes of the June 27, 2018, meeting was seconded and passed without objection.

### **Facilities Management Reform**

William M. Landrum III, Secretary, Finance and Administration Cabinet, discussed facilities management reform in the Commonwealth. He was assisted by Mike Burnside, Commissioner, Department for Facilities and Support Services, and Pamela Trautner, Director of Communications.

Secretary Landrum focused on statutory obligations of the secretary, organizational structure and functions of the cabinet and the Department for Facilities and Support

Services, reducing the footprint of state government, maintenance of infrastructure, deferred maintenance of aging facilities, and developing and maintaining partnerships with local governments and the private sector.

The cabinet is the primary support agency for state government, with 1,595 state employees, 412 contract employees, and a FY 2019 budget of \$925.7 million. The cabinet focuses on the procurement of goods and services, finance and accounting operations, debt management, IT infrastructure, collection of fees and taxes, as well as the daily management of state buildings. The cabinet provides direct support for counties with populations of 70,000 or more. Five percent of the budget is allocated for facilities management; debt service and county costs comprise 55 percent. The secretary approves all contracts and master agreements within the model procurement program, works closely with the Government Contract Review Committee, signs all state property leases, and deals with protests. Secretary Landrum later explained that the protests relate to the Model Procurement Code.

The Department for Facilities and Support Services is organized into the Office of Facility Development and Efficiency, the Division of Real Properties, the Division of Surplus Properties, the Division of Historic Properties, and the Office of Building and Mechanical Services. Included within the department's purview are project management, contracting and procurement, landscape design, the floral clock and other plantings, and special activities such as the Derby breakfast, the Christmas tree lighting, and inaugurations. The number of employees has been reduced from 500 to 256; there are approximately 40 contract employees; a dozen or more prisoners are available to assist in daily duties.

In the Office of Facility Development and Efficiency, the Division of Engineering and Contract Administration oversees all capital construction projects for state agencies, except highway projects and projects for the Administrative Office of the Courts, K-12 schools, and universities that have opted out. The Division of Facility Efficiency tracks energy usage and expenditures through the Commonwealth Energy Management and Control System (CEMCS - see "kyenergydashboard.ky.gov"). The office also manages the Energy Savings Performance Contracting (ESPC) program, which includes more than 1,300 buildings. This program has saved approximately \$25 million since 2009.

The Division of Real Properties is involved in space management for the 385,000 square foot building that will be built in downtown Frankfort to replace the Capital Plaza Tower. Secretary Landrum said he signs more than 1,000 leases for state government every year, and his goal is to reduce the footprint of state government. The number of public service employees located in downtown buildings will increase to about 4,000 when the new building is completed. The consolidation will lead to improved command and control within state government.

Secretary Landrum said the Division of Surplus Properties administers the Federal Surplus Personal Property Program. Just before Christmas 2017, the division provided excess FEMA meal kits valued at \$2.7 million to Kentucky food banks by paying only \$95,000 in shipping costs. The division is taking advantage of the international website “GovDeals.com” to dispose of surplus property. Surplus property sales grossed \$5.5 million in FY 2018, with \$3.8 million returned to state agencies. Cleanup of the Capital Plaza Tower involved three sales and removal of 48 tons of scrap metal. More than 971 filing cabinets, 337 desks, 260 bookcases, shelving, telephones, couches, and 1,200 chairs were sold.

The Division of Historic Properties is charged with preservation and maintenance of state-owned historic buildings and sites, managing and advising on preservation of all Finance-owned structures over 50 years old, and inventory and maintenance of state-owned furnishings, artifacts, and objects of art. Preservation of state-owned properties is important and a primary focus. When the Capitol exterior was cleaned recently, the state saved \$400,000 and was able to clean the east, west, and south sides for less than it cost to clean the front—as a result of repealing prevailing wage. The goal is to clean the dome if funding is available.

The Office of Building and Mechanical Services manages more than 4 million square feet of office space and 497 acres, including 76 state-owned buildings and 341 acres in Franklin County. There are 18 other state-owned buildings across the Commonwealth and the Division of Mechanical Services and the Division of Building Services. The latter is responsible for janitorial services, construction projects under \$250,000, and landscaping and grounds maintenance for all Finance-owned buildings. The division maintains seven greenhouses, plants 18,000 bulbs every year on the Capitol grounds, and spends approximately \$40,000 each year for labor and plants.

Secretary Landrum said the primary focus of facilities management reform is to reduce the footprint of state government, take care of property, and develop and maintain partnerships. He is trying to return property to the tax rolls. He has been able to eliminate three pedways and one parking garage in Lexington and 12 buildings throughout the state, with about \$8.2 million in appraised value returned to the state. He likes to convey property to local governments, giving them direct control and the opportunity to maintain the property. Examples include the Morehead Youth Development Center in Rowan County, the city of Harlan’s workforce development office, and the Stephen Foster Story production in Bardstown’s My Old Kentucky Home State Park. In addition to the cleaning of the Capitol façade, other maintenance projects have included the Capitol Annex terrace brick replacement, Annex parking garage ramp repair and resurfacing, and L&N Building renovations. The state has \$194 million in deferred maintenance in Frankfort. The cabinet is working with LRC to upgrade and soundproof the Annex Speaker’s Office and to upgrade the HVAC system on the Capitol fourth floor. Both projects are expected to be complete before start of the 2019 legislative session.

Secretary Landrum emphasized the importance of developing and maintaining partnerships with the private sector and local governments. The cabinet is working with Frankfort Mayor Bill May and Franklin County Judge/Executive Huston Wells on redevelopment of the land where the Frankfort Convention Center and Fountain Place Shops once stood. He discussed current public/private partnerships (P3s), which included the health clinic opened by the Personnel Cabinet outside Frankfort, the \$207 million Kentucky International Convention Center, renovation at Beaver Dam State Park, and the Department for the Blind's provision of food service in the Capitol Annex, Transportation Building, Health and Family Services Building, and 300 Building. The new office building to be constructed in the Capital Plaza area will not have a cafeteria.

Representative Meeks asked whether there has been a policy change regarding access to the Capitol. He said that several times this summer groups of citizens were denied access to the building. Secretary Landrum said he is reviewing the policy relating to access to all state buildings in the interest of best serving all citizens. The review will involve a partnership with 8-10 different organizations, including LRC. Representative Meeks requested that Secretary Landrum provide documentation of the policy, and he agreed to do so. Answering other questions from Representative Meeks, the secretary and Mr. Burnside said they were not aware that people had been forced to stand in the rain when trying to enter a government building in Louisville (6<sup>th</sup> and Cedar Streets) but would look into it. They also had not heard of any problems regarding handicapped access to the Capitol.

Representative Wayne asked whether there has been an analysis of deferred maintenance and upgrade needs for the state parks. Secretary Landrum said that he is working with Donnie Holland, Commissioner of Parks, and Don Parkinson, Secretary of the Tourism, Arts and Heritage Cabinet. He has met with all of the marina owners. Commissioner Holland is identifying deferred maintenance priorities, with safety as a primary focus. When Representative Wayne asked whether the analysis would be available for consideration in the 2020 budget, Secretary Landrum said he believes it is on track to ensure that whatever needs to be done can be included in budget requests. Available funds are being used to address safety hazards. In the future, some park operations might be leased or deeded to local governments, with the stipulation that the park would have to be maintained as it currently exists; if not, it would revert to the state. Representative Wayne said the parks have been shepherded and guided centrally in Frankfort in a very effective way for decades and that leasing of parks would be a major change. He asked whether the secretary could return to another interim committee meeting to discuss this. Secretary Landrum said he would be happy to, along with officials of the Tourism Cabinet. He is looking at opportunities for local governments, in conjunction with the state, to help support and maintain the parks. He cited the new Stephen Foster stage in Bardstown as an example of a lease partnership with a local community. He emphasized that the goal is to develop partnerships, not to dismantle the state parks system. Representative Miller said

he believes similar arrangements had been established for Ben Hawes State Park and Fishtrap Lake State Park during Governor Beshear's administration. He said the committee would look forward to hearing more about the proposal.

Representative Graham thanked the secretary for working with Frankfort and Franklin County officials and asked him to clarify the state's plans for the area where the convention center once stood. Secretary Landrum said his objective from the beginning was to turn that property over to a private developer, who would remove it from state and local government tax rolls and place it in the private sector as a taxable mixed-use state property. He has signed a Memorandum of Agreement with the local government to help them determine what they want on that property. City and county officials are in control of the property now. They will oversee the procurement process and select the developer. The state will not dictate what goes on the property.

Representative Graham said that SB 223 and SB 125 were introduced in the 2018 Regular Session to authorize use of eminent domain in connection with KCNA (Kentucky Communications Network Authority). He asked whether eminent domain had been exercised and said he would like to know why the legislation was not pursued. Secretary Landrum said that KCNA had been moving forward independently with the contractor, Macquarie Capital, and Black & Veatch, the subcontractor. He said he does not plan to exercise his power of eminent domain and would use it only as a last resort. He said he is not familiar with the Senate bills but would be glad to relay that question to KCNA Executive Director Phillip Brown.

Senator Bowen said that the condition of Kentucky state parks is not unique. Parks in other states are also challenged and that changing the model or business plan for the parks would not be unique. The state deeded Ben Hawes State Park to Owensboro. When Senator Bowen asked about the state's involvement in Frankfort's Friday evening concerts, Secretary Landrum said the state's role was to assist in setup for the performances. Representative Graham said that the Friday night concerts in Frankfort are only one example of city and county and state governments working together. He would like to make it clear that the city of Frankfort is not just taking from the state but is also giving back.

Representative Scott asked whether the secretary's statutory obligation relating to protest applied to the protests by persons who were denied access to the Capitol building. Secretary Landrum said it relates only to Chapter 45A, the Model Procurement Code, and his role in handling protests by bidders participating in the procurement process.

Senator Thayer said that alternatives such as privatization and deeding to local governments should be considered. He does not believe a park has to be profitable but should at least meet a certain level of usage and should favorably impact the local economy. He asked what metrics are considered when the Department of Parks decides where to allocate money for maintenance and repairs. Secretary Landrum said that some parks are

in poor condition. Commissioner Holland and Secretary Parkinson are the primary decision makers and have visited all of the parks. They look at usage trends and the ability of a park to self-sustain. Feasibility studies play a significant role, and safety is a primary focus. Secretary Landrum said funds are limited and that he is trying to help the parks self-sustain by developing partnerships with local governments and local businesses—with golf courses and marinas, for example.

Responding to Representative Cantrell, Secretary Landrum said that security personnel recommended soundproofing the speaker's office and replacing a glass door with a solid door. Conversation in the office can be heard in adjoining areas. Representative Cantrell said these changes raise questions for her regarding public access. The West Virginia Supreme Court was recently impeached for lavish spending on office accommodations.

### **Governor's Red Tape Reduction Initiative**

John Hodgson, Operations Director in the Governor's Office, and Ellen Adkisson, Legislative Liaison, testified about the Red Tape Reduction Initiative (RTR), launched by Governor Bevin in July 2016.

Mr. Hodgson focused on growth in the number of administrative regulations from 1975 to 2015, the goals and status of red tape reduction, success stories, pro-business regulation changes, and next steps in the process. The number of administrative regulations has grown steadily in the past 40 years and by 2015 occupied 14 full volumes. Some regulations were dated. In 2016, Kentucky still had a regulation to require that alcohol transported by a retailer from a railroad depot be pulled by a horse and cart. The goals of red tape reduction are to repeal obsolete regulations and amend overly restrictive ones, create the least restrictive regulatory environment without compromising public health or safety, align with federal requirements, avoid inconsistencies and unnecessary duplication, and make regulations easier to consistently update by modernizing and digitizing the regulatory code and process.

There are more than 4,700 regulations. So far, 2,208, or 47 percent, have been reviewed, with 395 repealed and 787 amended. Of those reviewed, 54 percent required repeal or amending. The goal is to eliminate or revise one-third of all regulations by the end of 2019.

Mr. Hodgson discussed RTR success stories, examples of improved service and pro-business regulation changes. Elimination of the "cut rule" reintroduced pro wrestling to Kentucky. The Transportation Cabinet's online system streamlines submission of documents by Kentucky's approximately 140,000 CDL holders and makes it easier for small businesses to operate. A new metal commodities over-weight hauling permit enhances the competitive landscape by enabling aluminum and other metal industries to receive the same benefits extended to the steel industry. The Department of Housing,

Buildings and Construction (HBC) has reduced review time of construction plans by 90 percent. In 2018, HBC's Plumbing Division is beginning live skype inspections, which saves time and travel costs and speeds up construction. The Kentucky Claims Commission was reorganized and streamlined, saving over \$300,000 annually, and clearing a six-year backlog of payments to crime victims. The Kentucky Real Estate Authority was reorganized and streamlined, with a reduction in staffing, costs and office space. Online licensing was implemented and has improved service time significantly. The requirement for cast iron piping in buildings over 45 feet tall was eliminated, saving the industry millions without compromising safety. The Department of Professional Licensing in the Public Protection Cabinet streamlined occupational licensing, using an online licensing application for 23 boards and registries. The Department of Insurance eliminated a regulation requiring privacy notices to be mailed annually. Instead, they are mailed only if there is a change, thereby saving insurance companies millions of dollars with no negative effect on consumers. The Energy and Environment Cabinet successfully petitioned the federal Environmental Protection Agency to drop the reformulated gasoline requirement for northern Kentucky, saving citizens 18 cents per gallon starting July 1, 2018.

Mr. Hodgson said that next steps in the RTR program include continuing toward updating, digitization and modernization of regulatory promulgation, synchronization of state and federal requirements, and reduction in institutional hesitation.

Representative Fischer expressed appreciation for the change in the reformulated gasoline requirement for northern Kentucky and said it is saving money. He has long favored passing a Kentucky Regulations from the Executive in Need of Scrutiny (REINS) Act, which would make a regulation subject to review and approval by the legislature if compliance costs exceeded \$500,000. He asked how the Governor would view passage of a REINS Act. Mr. Hodgson said the Governor was in favor of the spirit of 2017 HB 50, and that a REINS Act would appear to be in the same spirit.

Representative Cantrell said she had been reviewing regulations relating to the Medicaid program and the proposed waiver and that rollback of expanded Medicaid would deny coverage to more than 95,000 people who work in low-wage jobs and cannot afford to pay for health care. She questioned how this would be in accord with the goal of RTR to create the least restrictive regulatory environment without compromising public health or safety. Mr. Hodgson said RTR is intended to improve overall efficiency of state government. The Medicaid waiver process is outside his area of expertise, but he understands that it has had extensive review by the Cabinet for Health and Family Services (CHFS) and the federal government. Ms. Adkisson said she would defer questions about the Medicaid waiver to CHFS.

Representative Morgan said that the Department of Alcoholic Beverage Control (ABC) has been requiring a 3-year waiting period for transfer of certain alcohol licenses. The chief counsel of ABC informed him that there is no regulation or statute that prohibits

transfer of a license for three years. He has inquired about this restriction multiple times but been unable to get a satisfactory answer. He questioned why this is being done if state government is really interested in creating a less restrictive regulatory environment and streamlining procedures. Mr. Hodgson said his presentation was geared toward the red tape reduction process and overall results and that he is not prepared to address the content of any regulation. RTR's website (redtapereduction.com) offers the opportunity to submit questions, comments, and suggestions relating to regulations. Representative Morgan said he appreciates Mr. Hodgson's answer. He said it would behoove everyone to learn the reason for the license transfer restriction.

Representative Miller said he would be interested in knowing the current number of regulation volumes, compared to 2015's total of 14 volumes.

### **Proposed Changes to the Legislative Branch Ethics Code**

Representative Ken Fleming, Representative Kimberly Poore Moser, John Schaaf, Executive Director, Kentucky Legislative Ethics Commission, Laura Hendrix, Counsel for the Commission, and Tony Goetz, commission member, testified.

Representative Fleming discussed 2018 HB 9, which he and Representative Moser sponsored, relating to legislative ethics. The bill passed overwhelmingly in the House but the Senate did not have time to properly vet it. They plan to file similar legislation in 2019. One provision would require the Legislative Ethics Commission to create a 24-hour telephone tip line to allow employees of the legislative branch to report complaints of fraud, theft, ethical or official misconduct, discrimination, harassment, or sexual harassment allegedly committed by legislators, legislative agents, or other persons who interact with legislators or employees of the legislative branch. The intent of the tip line is to provide an improved and comfortable work environment and should not result in the commission being inundated with calls. Review of an audit of the Louisville Metro Council indicated that approximately one percent to two percent of its employees filed complaints from 2010 to 2016. Representative Moser said that HB 9 involved a lot of research by a bicameral, bipartisan task force. The group worked with the private sector and received input from human resource experts. The goal is to provide an efficient reporting mechanism for employees and allow them the comfort of feeling protected in their workplace.

Mr. Schaaf said that the commission unanimously approved recommended changes to the Code of Legislative Ethics in August 2018. The commission worked closely with Representative Fleming on HB 9 and is optimistic that legislation can be developed that everyone will be able to support in the next legislative session.

Mr. Schaaf presented the recommended changes:

1. *Create a comprehensive ethical prohibition against discrimination and harassment by legislators and legislative agents against legislative employees, legislators,*

or legislative agents. This would include provisions similar to 2018 HB 9 and includes the following: It would specifically define “discrimination,” “workplace harassment,” and “sexual harassment” as actions that violate either Kentucky or federal statutes, regulations, or case law relating to protected classifications; prohibit legislators, legislative agents, and the LRC director from intentionally engaging in discrimination or workplace harassment against an employee of the legislative branch, legislator, or legislative agent, and provide that a violation is ethical misconduct; permit a legislative employee, legislator, or legislative agent to file a legislative workplace complaint with the Ethics Commission and authorize the commission to investigate and proceed upon receipt of a complaint; specify that the workplace complaint process is voluntary, confidential, and is an option separate from any other reporting process or provision of law that a complainant may choose; provide an expedited process in which the commission will determine facts and attempt to bring an immediate end to inappropriate activity; and if the legislative workplace complaint is not resolved within 30 days, allow the enforcement counsel to file a formal complaint for investigation under the current practices of the commission. Mr. Schaaf said that formal complaints necessitate a comprehensive investigation. An important aspect of this recommendation is the creation of a separate optional confidential and expedited process. It would give employees an opportunity to come to the commission in a less formal manner but would not foreclose the ability to use LRC’s established complaint process, to go to an outside agency with a complaint, or to submit a formal complaint.

2. *Authorize the commission to dismiss a complaint without prejudice via teleconference call, if the complaint or preliminary inquiry is publicly disclosed by the complainant, or the complainant comments publicly about the complaint.* Mr. Schaaf said that preliminary inquiry relating to an ethics complaint is confidential, but the complainant or the respondent (the person against whom the complaint is filed) has the ability to make it public. This recommendation would authorize the commission to meet via teleconference, with the requisite public notice and opportunity for the public to be involved in the teleconference, and to dismiss a complaint if the commission believes it is being used for a political purpose, even though it may have merit.

3. *Clarify that KLEC has authority to adjudicate a complaint filed against a legislator, even if the legislator leaves office after the complaint is filed, as long as the complaint is based upon action that occurred not more than a year prior to the separation from office. Clarify that the commission may adjudicate a complaint filed against a legislative agent up to a year after the agent is no longer a registered legislative agent.* Mr. Schaaf said that two years ago complaints were filed against a legislator who then resigned. During the inquiry process, his attorney argued that he should be immune from answering the complaints. The commission retained jurisdiction over that case and found the legislator in violation of the ethics code. The case was appealed, and the appeal was settled, but the court never ruled that the commission’s pursuit of the complaint was out of bounds. The commission feels that the law is solid in its favor, but this recommendation

would clarify that it would retain jurisdiction when a complaint is based on action that occurred within the year prior to leaving office.

4. *Amend the financial disclosure requirements to include a listing of all out-of-state travel associated with the performance of a legislator's duties.* Mr. Schaaf said the commission believes this type of information should be available to the public. One aspect of lobbying that has increased significantly in recent years is the creation of groups that are largely or partly funded by lobbying businesses and organizations. When these groups invite legislators to their meetings, with all expenses paid, the commission views this as another aspect of lobbying. The commission is not trying to regulate this other than to require the travel be reported and made public.

5. *Add a requirement for ethics training for legislative staff and change the commission's Current Issues seminar to two hours. Require that the seminar qualify for continuing legal education credit.* Mr. Schaaf said that staff play an important and helpful role in activities of legislators. Requiring the staff training, which has been done informally in the past, will help staff to stay informed on the issues. The commission also feels that the Current Issues seminar for legislators can be effectively done in a two-hour session rather than three hours.

6. *Restrict the political activity of KLEC staff in the same way as commission members are restricted.* Mr. Schaaf said this is a "housekeeping" recommendation to correct an omission from the original 1993 legislation that occurred due to a technical error in drafting an amendment.

Mr. Schaaf said that the General Assembly has complied with the legislative ethics law in an outstanding fashion. The law is a model in the United States. In the 25 years since the ethics code was adopted and the commission was created, with no legislators as members, no legislator has been convicted or indicted for misuse of office. The guidelines established by the law have helped in that regard. He commended the members of the General Assembly their example. The commission wants to help and is always available.

Answering questions from Representative Wayne, Mr. Schaaf said that anyone may file a complaint against a legislator, a legislative candidate, a lobbyist, or an employer of a lobbyist. When a complaint is based on secondhand knowledge, the commission has sometimes pursued it if there is other supporting evidence; in other cases, it has dismissed the complaint.

Representative Wayne said he believes the commission is inconsistent in its rulings, is not reflective of the Commonwealth because its membership is dominated by white males and includes no person of color, operates under no rules, does not require minutes of proceedings or follow Roberts Rules of Order; and does not publicly record votes. It is also unclear whether complainants have standing and whether evidence is admissible in

court. He said there is a need for transparency and that recommendation #2, which would authorize dismissal of a complaint via teleconference, is a bad idea. It would deny people access to hearings, and it implies political motivation if it is brought during a political year. He complimented Mr. Schaaf for his part in drafting the good 1993 legislation but said he does not think it is functioning correctly.

Mr. Schaaf said the General Assembly establishes the rules by which the commission operates, and he believes that current procedures strike an appropriate balance. The commission often gets complaints close to election time that have no merit, but a politically motivated complaint would not be automatically dismissed if it has merit. The initial investigation is confidential until the commission determines there is probable cause, at which time everything is made public.

Representative Burch commended the recommended changes. He expressed concern about sexual harassment by legislators and said that those found guilty of harassment should not be allowed to serve. He said he worries that the commission could be pressured to not follow through on reports of sexual harassment.

When asked by Representative Cantrell, Representative Fleming said he intends to incorporate the commission's recommended changes in the bill that he and Representative Moser plan to file for the 2019 Regular Session.

Representative Graham applauded the commission for its recommendation to disclose out-of-state travel. He said the public should know where legislators travel in connection with their duties as legislators and who is paying their expenses. He thanked Representatives Fleming and Moser for sponsoring ethics legislation.

Senator Thayer said he disagrees with Representative Wayne. He thinks the commission continues to do a good job establishing guidelines for the Kentucky General Assembly and that they provide solid guidance. He likes recommendation #2, relating to dismissal of a complaint via teleconference. However, if a complaint lacks merit and credibility and is clearly politically motivated, he questioned why it could only be dismissed via teleconference if it is publicly disclosed by the complainant. Mr. Schaaf said he sees Representative Thayer's point and that a decision regarding that would be up to the legislature. Senator Thayer said he supports the recommendation but believes it should go farther and give the commission the opportunity to use teleconference to dismiss a complaint immediately if it is completely without merit and politically motivated. He suggested that recommendation #2 be filed as a stand-alone bill and that an omnibus approach not be used when the recommendations are drafted into legislation. Mr. Goetz spoke in favor of recommendation #2.

Representative Moser said another reason for maintaining confidentiality is to avoid a chilling effect on the reporting of complaints. Transparency is important, but there should

be assurance that complaints will be handled in a confidential manner. Any wrongdoing will eventually be made public.

Representative Fischer asked whether some members of the legislature had been correct in their assessment that the commission lacked sufficient authority to investigate and issue recommendations last January when allegations of sexual harassment arose in the legislature. At the time, though, they were convinced of the authority that Section 39 of the Kentucky Constitution gives to each house of the General Assembly. Ms. Hendrix said there was not a provision in the ethics code that specifically defined sexual harassment as an ethical violation, but there is a provision that references seeking special advantage or special treatment as a legislator. The proposed recommendations address the need for a better definition of that type of conduct. She said other state legislatures are looking at creating a better definition. Mr. Schaaf said that the recommendations would not impact the legislature's constitutional authority. Attorneys for respondents in the aforementioned cases that were characterized as sexual harassment have argued that the commission does not have specific authority. The commission proceeded under the statute that relates to misuse of office but believes that specific authorizing language should be added to the ethics code.

When asked by Representative Bechler, Mr. Schaaf reviewed the complaint notification process. He said that the respondent against whom a complaint is filed learns about it immediately.

Referring to an earlier discussion, Representative Bechler said that he is against quota systems for any individual, race, creed, or color, and that he would object to race being used as a standard for membership on the commission.

Representative Miller thanked the speakers for attending and for their presentation. He said he looks forward to seeing the legislation that will be forthcoming.

### **19 RS BR 164 – An Act relating to the naming of state properties, highways, bridges, and programs**

Senator Stephen West discussed 19 RS BR 164, which he plans to prefile for the 2019 Regular Session. It is identical to SB 72, which filed in the 2018 Regular Session and which passed the Senate. BR 164 prohibits naming a state building or property for any living current or former statewide constitutional officer, member of the General Assembly, justice or judge of the Court of Justice, state employee, or employee of the postsecondary education system as defined in KRS 164.001. As requested by state university officials, the legislation would not prevent an institution in the postsecondary education system from enforcing or carrying out the bona fide terms of any gift, grant conveyance, devise, or bequest from any private person, corporation, foundation, estate, or other entity contributing funds or any other thing of value to the institution as permitted by KRS 164A.615.

Senator West said that similar bills were filed in the House during the last session. He has spoken to some of those sponsors and intends to work with them and other House members to improve his bill as it moves forward. He is sponsoring the legislation because it would take the politics out of naming decisions. It would prevent the unfortunate situation that could occur if the named person's future behavior causes them to no longer deserve recognition. The bill would also eliminate a moral hazard. It is natural to desire recognition, but when it relates to such things as infrastructure, buildings, or roads, it may involve moving taxpayer money into that endeavor. Personal legacy should not be a factor.

Senator Thayer said that BR 164 is a great bill, but he would like it to include a process to review structures that are already named and establish a standard for "unnaming" them in the event circumstances change. Senator West said he would be open to conversations about that.

Representative Wayne thanked Senator West for proposing the legislation. He suggested that the bill be amended to consider exceptions in situations similar to that of Kenny Rapiere, who was a former state representative from Nelson County who worked hard to develop a golf course. When he became ill with cancer, the golf course was named after him before he died.

Responding to Representative Meeks, Senator West said that he was happy to include the provision requested by university officials. It was not his intent to prevent recognition for large donations to the universities. Those donations usually come from private funds rather than taxpayer dollars.

Representative Miller thanked Senator West. There were no additional questions, and the meeting was adjourned at 3:22 p.m.