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Re: FOP letter regarding LMCO 35.057 and KRS 67C.414

Dear Deputy Mayor Hesens and President James,

Louisville Metro has received a letter from the Fraternal Order of Police (FOP) regarding the newly-negotiated Collective Bargaining Agreement (CBA) between itself and Louisville Metro Government (Metro). The FOP contends that the CBA became a valid, enforceable contract upon signature by both the Mayor and the FOP because the parties have followed the process set forth in KRS 67C.414, and that the approval required by the Metro Council pursuant to LMCO 35.057 "is not necessary, or even appropriate". The Jefferson County Attorney's Office (JCAO) has been asked by the Mayor's office and by Metro Council to review this letter and advise on the validity this argument.

The FOP's letter raises the following legal questions:

Does state law (KRS 67C.414 (2)) preempt LMCO 35.057 regarding the approval of an agreement between Louisville Metro Government and the FOP?

Is a CBA between Metro and the FOP valid and enforceable when signed by the Union and the Mayor despite not being approved by resolution as required by LMCO 35.057?

These are complex legal questions involving the respective powers of the two branches of Metro Government. We conclude that a court would probably find that LMCO 35.057 is not preempted or invalidated by KRS 67C.414(2) and therefore Council approval of the newly-negotiated FOP contract is required.

Considering both principles of statutory construction and the separation of powers outlined in KRS 67C, a court would likely find that the CBA is not effectuated until approved by resolution as required in LMCO 35.057.

## ANALYSIS

Our analysis begins with the applicable statutory authority that governs Louisville Metro Government.

KRS 67C.103(13)(b) grants the Metro Council the exclusive power to appropriate money to Metro. Louisville Metro has no power to expend funds without an appropriation from the Council. The statute provides, in pertinent part:

... The term "legislative power" is to be construed broadly and shall include the power to:

... (b) Review the budgets of and appropriate money to the consolidated local government;

Similarly, the Mayor is vested with all “executive and administrative power”, a phrase that likewise “shall be construed broadly.” KRS 67C.105(1). KRS 67C.105(5)(h) vests the mayor with the power to “[e]xecute written contracts, subscriptions, agreements, or obligations of the consolidated local government....”.

KRS 67C.101 lists powers granted to Metro Government by the General Assembly, Section (3)(n) provides in pertinent part as follows:

(3) A consolidated local government shall have power and authority to:...

(n) Adopt procedures for collective bargaining with its employees and for the certification of exclusive bargaining agents for groups of employees in accordance with the Constitution and general laws of the Commonwealth of Kentucky and its ordinances;”

Metro Government has adopted procedures for collective bargaining contained in LMCO Sections 35.050 to 35.059. LMCO 35.057 provides that CBAs between Metro and representatives of Metro’s bargaining units “shall” be presented to the Metro Council for approval by resolution and “shall” become final, binding, valid and enforceable upon approval of the resolution by the Council. Metro Council reaffirmed this requirement after the enactment of KRS 67C.414, when Council amended the ordinance outlining collective bargaining procedures and left LMCO 35.057 intact.

In our opinion, LMCO 35.07 is consistent with the statutory scheme established in KRS Chapter 67C. So, unless LMCO 35.057 “is in conflict with” KRS 67C.414, the ordinance is valid.

As the Kentucky Supreme Court recently explained:

The law on this issue is clear. A local government’s “power or function is in conflict with a statute if it is expressly prohibited by a statute or there is a comprehensive scheme of legislation on the same general subject embodied in the Kentucky Revised Statutes.

*Kentucky Restaurant Association v. Louisville/Jefferson County Metro Government*, 501 S.W.3d 425, 428 (Ky. 2016).

The FOP argues that KRS 67C.414 eliminates the need for Council to approve its CBA with the Mayor. KRS 67C.414 provides in pertinent part:

(2) An agreement between the consolidated local government and a labor organization shall be valid and enforced under its terms when entered into in accordance with the provisions of this section and signed by the mayor of the consolidated local government or the mayor's representative. No publication thereof shall be required to make it effective. The procedure for the making of an agreement between a consolidated local government and a labor organization provided by this section shall be the exclusive method of making a valid agreement for police officers represented by a labor organization.

Applying the Supreme Court’s test in *Kentucky Restaurant Association*, Council approval, as a prerequisite for a valid, enforceable agreement, is not expressly prohibited in KRS 67C.414. Therefore, the remaining question is whether KRS 67C.414 constitutes a comprehensive scheme implicitly prohibiting the Council from requiring its approval before a CBA is valid?

The cardinal rule of statutory construction is to ascertain and give effect to the intent of the General Assembly. *Jefferson County Bd, of Educ. v. Fell*, 391 S.W.3d 713, 718 (Ky. 2012). When the plain language of the enactments cannot provide the answer to legislative intent, courts must turn to other guideposts to divine the legislative intent:

We presume that the General Assembly intended for the statute to be construed as a whole, for all of its parts to have meaning, and **for it to harmonize with related statutes**.... We also presume that the General Assembly did not intend an absurd statute or an unconstitutional one.

*Id.* (emphasis added). When statutes appear to be in conflict, “it is the Court's duty to harmonize the law so as to give effect to both statutes” [and to construe them] “in such a way that they do not become meaningless or ineffectual.” *Commonwealth v. Phon*, 17 S.W.3d 106, 107-08 (Ky. 2000).

KRS 67C.414 authorizes a contract to be valid upon the signature of the mayor and provides that the procedure provided by the chapter shall be the exclusive method for making an agreement. KRS 67C.101(3)(n) empowers and authorizes Metro to adopt procedures for collective bargaining; it creates authority for additional procedures beyond the “exclusive” one in KRS 67C.414. LMCO 35.057 is one of the ordinances enacted in accordance with KRS 67C.101(3)(n). The question, then, is whether KRS 67C.414 invalidates LMCO 35.057.

In our opinion, the courts would probably hold that KRS 67C.101(3)(n) permits an ordinance similar to LMCO 35.057 as a lawfully adopted procedure for collective bargaining. This conclusion is reinforced by the well-established principle that “statutes are to be harmonized with related statutes.” *Shawnee Telecom Resources, Inc v Brown*, 354 SW3d 542, 551 (Ky. 2011).

The FOP’s position is that KRS 67C.414, by its exclusivity language, purports to take the Council out of the approval process. However, KRS 67C.101(3)(n) envisions that both the legislative branch and the executive branch may have a role in the collective bargaining process because it is the “consolidated local government” that can adopt procedures for collective bargaining.

We think that a court would likely look to harmonize the two statutes, per Kentucky’s rules of statutory construction, and it would hold that the fact that the mayor must sign the CBA to effectively bind the government does not mean that the Metro Council can be eliminated from the process. To harmonize the statutes, and to give them both effect, a court would likely rule that the Council’s authority under the ordinance is a valid exercise of its power.

There is an important, additional reason for our conclusion: the power to control the purse strings and make appropriations subject to conditions. KRS 67C.103 unequivocally places the appropriations power of Metro Government in the hands of Metro Council. Any interpretation of KRS 67C.414 to exclude Council from the approval process for CBAs would arguably run afoul of KRS 67C.103. An interpretation of KRS 67C.414 that would bind Metro Government to any CBA agreed to by the executive branch – regardless of the cost – arguably would divest the Metro Council of its power to control appropriations and expenditures in the context of CBAs purely by implication. Repeal by implication is strongly disfavored by Kentucky courts. *See, e.g., Lewis v. Jackson Energy Co-op Corp.*, 189 S.W.3d 87, 94 (Ky. 2005). *See also, Commonwealth v. Hallahan*, 378 S.W.2d 379 (Ky. App. 1965) “Before a statute shall be considered amended by implication by a later statute, the two statutes must be repugnant to each other and be irreconcilable, or the later act must cover the whole subject of the earlier act.” (Citation omitted.) KRS 67C.414 does not “cover the whole subject” of either 67C.103 or 67C.101(3)(n).

The crux of the question posed by the FOP is whether Metro must begin to implement the terms of the CBA as of the date it’s signed even though it has not yet been approved by the Metro Council.

Even if the funding for this contract was appropriated in the Fiscal Year 2021 Budget, the Council has acted within the scope of its power in requiring all such collective bargaining agreements to be brought before it for approval. Since merger, the Metro Council has appropriated funding for procurement contracts, but has required certain types of agreements to be brought back before the body for approval before contract execution.<sup>1</sup> In each year’s budget ordinance, the Council has required non-competitively negotiated procurement contracts like sole sources and PSCs to be brought before the Council for review and approval – so, the Council has appropriated the money for each of those contracts in the budget, but has conditioned the appropriations for noncompetitive contracts upon later review and approval of the contracts themselves. Nothing we are aware of prohibits the Council from having done the same for collective bargaining agreements

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<sup>1</sup> The State Legislature codified this requirement in 2017 and it appears at KRS 67C.105(5)(j).

since, as we have concluded, we believe a court would likely rule that LMCO 35.057 and KRS 67C.414 can coexist.

Finally, it should be noted that the CBA under review has explicit language in its Article 41 requiring compliance with LMCO 35.057:

Section 1. This Agreement shall become effective upon approval by the parties and shall remain in effect up to and including June 30, 2021 and shall be presented to the Metro Council pursuant to LMCO Section 35.057.

Since the parties have explicitly incorporated LMCO 35.057 into their agreement, the Mayor and the union have acknowledged an obligation to send the CBA to the Council for review and approval.

Even without this specific provision, the parties' most recent agreement (and the previously adopted CBA) reflect the parties' intent that LMCO 35.057 applies to the FOP contract. In their "Scope" provisions, both this agreement and the CBA currently in effect acknowledge that they are "pursuant to the Collective Bargaining Ordinance, codified in the Louisville Metro Code of Ordinances, LMCO Section 35.050-35.058 and KRS 67C.107...." Similarly, both agreements contain a Subordination provision that expressly makes the CBA "subject and subordinate to" all laws including "all applicable Metro Government ordinances and resolutions." LMCO 35.057 is unquestionably an "applicable Metro Government ordinance." The parties have adhered to these terms in their course of dealing, thus providing additional evidence that the parties acknowledge the ordinance's application to the CBA.

## CONCLUSION

For the reasons outlined above, it is our opinion that a court likely would find LMCO 35.057 to be a valid ordinance and not inconsistent with KRS 67C.414. In our opinion, neither the plain language of KRS 67C.414 nor the rules of statutory construction offer a basis for concluding that with its enactment, the General Assembly intended to remove the Metro Council from its longstanding role in approving collective bargaining agreements. Accordingly, we believe a court would find that any collective bargaining agreement becomes valid and enforceable only upon approval by the Metro Council.

Sincerely,



Sarah J. Martin  
Civil Division Director

Cc: Metro Council Members