Budget and Finance Committee
Kevin Stinnett - Chair
Ed Lane – Vice Chair
Jim Gray
Linda Gorton
Chuck Ellinger
Andrea James
Tom Blues
Julian Beard
George Myers
Peggy Henson

AGENDA

BUDGET AND FINANCE COMMITTEE

March 23rd, 2010

1:00 P. M.

1. Review and Discussion of FY 2010 Financials for February, 2010 (monthly & YTD) – Rumpke
   - Financial Reports for February, 2010 (pg 1-5)
   - PowerPoint Presentation (pg 6-16)

2. Bond Underwriting Strategies - Rumpke

3. Discussion of the Lexington Public Library's FY 2010 Budget – Myers
   - Letter dated 1/15/2010 from Larry Smith Chairman, Lexington Public Library Board of Trustees (pg 17-19)
   - Legal Documents From Law Department Re: Lexington Public Library Funding (pg 20 – 70)

4. Discussion and Adoption of Committee of the Whole Budget Meeting Calendar for FY 2011 Budget Process
   - "Proposed" Committee of the Whole Meeting for FY 2011 (pg 71)

LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT
GENERAL FUND 1101
EIGHT MONTHS ENDED 2-28-2010

	Actual YTD	Budget YTD	Variance $	Variance %	Encumbrances	Annual Budget	Remaining Budget	% Prior YTD to Prior Yr End
REVENUES								
Licenses and Permits:								
Employee Withholdings	100,385,632	105,278,016	4,892,384	95%		156,500,000	56,114,368	64%
Business Returns	11,976,441	12,984,987	1,008,546	92%		31,500,000	19,523,559	38%
Individual Returns	4,522	41,222	36,700	11%		100,000	95,478	5%
Insurance Premiums	16,647,881	16,062,719	(585,162)	104%		21,800,000	5,152,119	76%
Bond Deposits	-	1,333	1,333	0%		2,000	2,000	0%
Regulated License Fee	802,355	756,495	(45,860)	106%		833,900	31,545	96%
Franchise Fee	11,023,939	12,552,492	1,528,553	88%		17,552,000	6,528,061	63%
Bank Franchise Fee	1,253,168	1,270,000	16,832	99%		1,270,000	16,832	99%
Vehicle License	-		-	0%		167,000	167,000	0%
Vacant Building License	-	-	-	0%		-	-	0%
Deed Tax Fee	687,935	864,987	177,052	80%		1,300,000	612,065	53%
Contractor Registration Fee	257,780	256,678	(1,102)	100%		348,000	90,220	74%
Filing Fee - Planning & Zoning	71,962	102,678	30,716	70%		140,000	68,038	51%
Animal License	24,599	35,561	10,962	69%		55,000	30,401	45%
Certificates of Occupancy	1,405	-	(1,405)			-	(1,405)	
Hotel - Motel License Fee	14,632	83,733	69,101	17%		125,600	110,968	12%
Total Licenses and Permits	**143,152,251**	**150,290,901**	**7,138,650**			**231,693,500**	**88,541,249**	
Taxes:								
Realty Taxes	16,857,462	16,497,057	(360,405)	102%		17,476,000	618,538	96%
Personalty Taxes	1,564,223	1,561,315	(2,908)	100%		1,588,000	23,777	99%
PSC Taxes	220,182	430,568	210,386	51%		710,000	489,818	31%
Property Tax Discount	(326,916)	(320,975)	5,941	0%		(324,000)	2,916	0%
Property Tax Commission	(779,849)	(753,033)	26,816	0%		(811,000)	(31,151)	0%
Delinquent - Realty & Personal	12,314	35,333	23,019	35%		53,000	40,686	23%
Motor Vehicle Ad Valorem Tax	777,837	868,017	90,180	90%		1,528,000	750,163	51%
County Clerk Com - Mtr Veh	(27,624)	(12,374)	15,250	0%		(61,000)	(33,376)	0%
Supplementary Tax Bills	7,077	2,823	(4,254)	251%		8,000	923	88%
Omitted Tax	93,764	59,202	(34,562)	158%		77,000	(16,764)	122%
Improvement Assessment Taxes	-	-	-	0%		-	-	0%
Total Taxes	**18,398,470**	**18,367,933**	**(30,537)**			**20,244,000**	**1,845,530**	
Charges for Services:								
Accident Report Sales	3,819	10,510	6,691	36%		15,000	11,181	25%
Administrative Collection Fees	7,875	8,354	479	94%		10,000	2,125	79%
Adult Probation Fees	49,121	55,711	6,590	88%		85,000	35,879	58%
Animal Shelter Collections	17,719	22,102	4,383	80%		35,000	17,281	51%

LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT
GENERAL FUND 1101
EIGHT MONTHS ENDED 2-28-2010

	Actual YTD	Budget YTD	Variance $	Variance %	Encumbrances	Annual Budget	Remaining Budget	% Prior YTD to Prior Yr End
Building Permits	427,847	673,129	245,282	64%		1,000,000	572,153	43%
Computer Services Fees	12,401	48,122	35,721	26%		74,000	61,599	17%
Debt Service Lease Rental	-	-	-	0%		-	-	0%
Detention Center	3,165,210	2,844,000	(321,210)	111%		4,762,000	1,596,790	66%
Developer Landscape Fees	2,270	7,274	5,004	31%		11,000	8,730	21%
District Court Jail Fees	395,386	96,000	(299,386)	412%		144,000	(251,386)	275%
Domestic Relations Collection	5,200	6,418	1,218	81%		15,000	9,800	35%
EMS	3,746,087	2,984,023	(762,064)	126%		5,400,000	1,653,913	69%
Excess Fees And Collections	1,659,596	1,014,531	(645,065)	164%		2,150,000	490,404	77%
Golf Course Collections	1,712,522	2,215,354	502,832	77%		3,825,300	2,112,778	45%
Lexington Store	-	-	-	0%		-	-	0%
Park Land Acquisition	140,599	291,341	150,742	48%		400,000	259,401	35%
Parking	23,685	19,580	(4,105)	121%		35,000	11,315	68%
Parks & Recreation Programs	581,474	668,227	86,753	87%		1,423,500	842,026	41%
Rent Or Lease Income	304,022	122,202	(181,820)	249%		192,470	(11[illegible],552)	158%
Total Charges for Services	**12,254,833**	**11,086,878**	**(1,167,955)**			**19,577,270**	**7,322,437**	
Fines and Forfeitures	**190,135**	**130,712**	**(59,423)**	145%		**192,000**	**1,865**	99%
Intergovernmental	**274,867**	**276,868**	**2,001**	99%		**457,000**	**182,133**	60%
Property Sales	**403,888**	**119,885**	**(284,003)**	337%		**179,550**	**(224,338)**	225%
Investments	**27,465**	**125,445**	**97,980**	22%		**300,000**	**272,535**	9%
Other Income:								
Premiums	-	-	-	0%		-	-	0%
Assistance Repayment	92,830	-	(92,830)			-	(92,830)	
Casualty Loss Recoveries	-	-	-	0%		-	-	0%
Contributions	84,482	662,235	577,753	13%		717,356	632,874	12%
Penalties And Interest	1,186,689	674,330	(512,359)	176%		1,200,000	13,311	99%
School Board Tax Fee	7,000	4,800	(2,200)	146%		12,000	5,000	58%
Tourist Commission Fee	-	-	-	0%		-	-	0%
Payment in Lieu of Taxes	52,768	-	(52,768)			30,000	(22,768)	176%
Miscellaneous	474,528	222,147	(252,381)	214%		222,147	(252,381)	214%
Total Other Income	**1,898,297**	**1,563,512**	**(334,785)**			**2,181,504**	**283,207**	
Total Operating Revenues	**176,600,206**	**181,962,134**	**5,361,928**			**274,824,824**	**98,224,618**	

LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT
GENERAL FUND 1101
EIGHT MONTHS ENDED 2-28-2010

	Actual YTD	Budget YTD	Variance $	Variance %	Encumbrances	Annual Budget	Remaining Budget	% Prior YTD to Prior Yr End
Other Financing Sources								
Transfers In	-	3,262,038	3,262,038	0%		4,989,000	4,989,000	0%
Total Revenues	176,600,206	185,224,172	8,623,966			279,813,824	103,213,618	
EXPENDITURES								
Personnel								
General Government	3,139,425	4,933,573	1,794,148	64%	-	7,809,869	4,670,444	40%
Administrative Services	531,504	677,889	146,385	78%	-	1,109,810	578,306	48%
Chief Information Officer	3,141,615	3,300,938	159,323	95%	-	5,401,830	2,260,215	58%
Finance	4,020,564	4,230,008	209,444	95%	-	6,746,590	2,726,026	60%
Public Works	7,022,465	7,081,214	58,749	99%	5,000	11,509,798	4,487,333	61%
Public Safety	3,057,732	3,089,076	31,344	99%	443	5,127,805	2,070,073	60%
Police	31,758,999	31,783,175	24,176	100%	500,830	52,001,040	20,242,041	61%
Fire and Emergency Services	30,674,998	30,399,972	(275,026)	101%	1,216,420	48,655,640	17,980,642	63%
Community Corrections	13,359,586	14,555,236	1,195,650	92%	-	22,957,430	9,597,844	58%
Social Services	3,336,931	3,730,796	393,865	89%	81,516	6,170,920	2,833,989	54%
Environmental Quality	-	-	-	0%	-	-	-	0%
General Services	5,192,320	5,753,441	561,121	90%	-	9,491,290	4,298,970	55%
Parks and Recreation	6,498,748	7,036,034	537,286	92%	71,290	11,683,201	5,184,453	56%
Law and Risk Management	1,500,542	1,551,685	51,143	97%	1,500	2,456,980	956,438	61%
Outside Agencies	-	-	-	0%	-	-	-	0%
Total Personnel	113,235,429	118,123,037	4,887,608		1,876,999	191,122,203	77,886,774	
Operating								
General Government	(1,720,226)	(997,804)	722,422	0%	461,925	(3,163,645)	(1,443,419)	0%
Administrative Services	115,100	148,883	33,783	77%	34,207	327,617	212,517	35%
Chief Information Officer	1,180,702	1,378,764	198,062	86%	925,049	2,496,946	1,316,244	47%
Finance	797,793	1,009,744	211,951	79%	247,994	2,024,037	1,226,244	39%
Public Works	1,741,966	2,760,413	1,018,447	63%	648,208	4,754,640	3,012,674	37%
Public Safety	2,661,469	2,992,003	330,534	89%	160,548	4,698,296	2,036,827	57%
Police	2,210,349	2,750,658	540,309	80%	321,918	4,591,755	2,381,406	48%
Fire and Emergency Services	3,130,243	3,473,153	342,910	90%	448,868	5,764,814	2,634,571	54%
Community Corrections	4,844,379	4,839,375	(5,004)	100%	1,251,336	7,733,419	2,889,040	63%
Social Services	506,631	1,751,023	1,244,392	29%	39,481	2,686,423	2,179,792	19%
Environmental Quality	600	50,919	50,319	1%	4,750	76,379	75,779	1%
General Services	1,425,741	2,426,123	1,000,382	59%	887,543	3,736,713	2,310,972	38%
Parks and Recreation	2,807,149	3,554,525	747,376	79%	810,228	6,767,430	3,960,281	41%
Law and Risk Management	1,198,337	905,025	(293,312)	132%	116,286	6,381,000	5,182,663	19%

LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT
GENERAL FUND 1101
EIGHT MONTHS ENDED 2-28-2010

	Actual YTD	Budget YTD	Variance $	Variance %	Encumbrances	Annual Budget	Remaining Budget	% Prior YTD to Prior Yr End
Outside Agencies	9,505,692	10,934,876	1,429,184	87%	1,305,936	16,785,324	7,279,632	57%
Total Operating	**30,405,925**	**37,977,680**	**7,571,755**		**7,664,276**	**65,661,145**	**35,255,220**	
Debt Service								
Principal	11,459,000	11,449,010	(9,990)	100%		20,365,571	8,906,571	56%
Interest	7,086,194	7,070,551	(15,643)	100%		8,975,329	1,889,135	79%
Other Debt Service	556,835	507,270	(49,565)	110%		507,270	(49,565)	110%
Capital			-					
Equipment	21,247	121,207	99,960	18%	105,395	181,810	160,563	12%
Acquisitions and Constructions	345,187	394,832	49,645	87%	115,039	592,250	247,063	58%
Total Expenditures	**163,109,817**	**175,643,587**	**12,533,770**		**9,761,709**	**287,405,578**	**124,295,761**	
Excess (Deficiency) of Revenues over (under) Expenditures	**13,490,389**	**9,580,585**	**(3,909,804)**			**(7,591,754)**	**(21,082,143)**	
OTHER FINANCING SOURCES (USES)								
Debt Proceeds (net of bond refunding)	-	-	-	0%		-	-	0%
Issuance of Debt	-	-	-	0%		-	-	0%
Transfer to State	-	-	-	0%		-	-	0%
Transfers Out	818,421	992,067	173,646	82%		2,741,000	1,922,579	30%
Total Other Financing Sources (Uses)	**818,421**	**992,067**	**173,646**			**2,741,000**	**1,922,579**	
Net Change in Fund Balances	**14,308,810**	**10,572,652**	**(3,736,158)**	135%		**(4,850,754)**	**(19,159,564)**	-295%

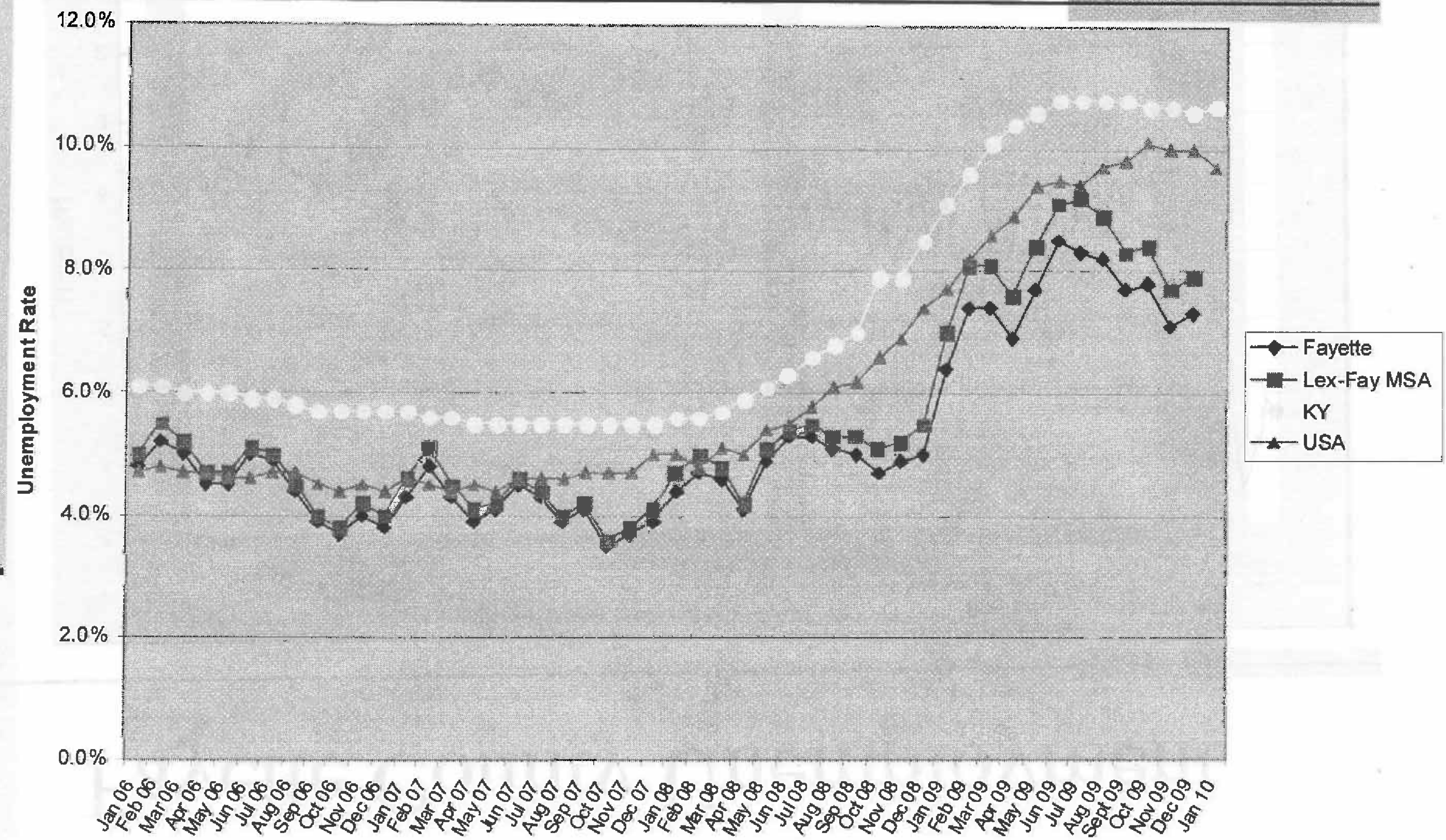
General Fund Eight Months Ended 2-28-2010	Jul-09	Aug-09	Sep-09	Oct-09	Nov-09	Dec-09	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10
Employee Withholdings												
YTD Actual												
License Fees	8,873,135	24,753,536	36,240,130	42,084,577	62,144,147	73,393,561	80,467,304	100,385,632				
YTD Budget	7,663,376	24,665,089	38,112,787	45,890,593	63,709,154	77,230,542	84,167,392	105,278,016	117,541,707	125,170,929	142,379,019	156,500,000
Variance	1,209,759	88,447	(1,872,657)	(3,806,016)	(1,565,007)	(3,836,981)	(3,700,088)	(4,892,384)				
PYTD Actual	7,208,135	24,302,027	36,801,406	43,558,410	62,745,653	74,435,386	79,459,366	102,229,591	112,982,489	119,956,599	135,975,249	148,966,942
Monthly Actual												
License Fees	8,873,135	15,880,401	11,486,594	5,844,447	20,059,570	11,249,414	7,073,743	19,918,328				
Monthly Budget	7,663,376	17,001,713	13,447,698	7,777,806	17,818,561	13,521,388	6,936,850	21,110,624	12,263,691	7,629,222	17,208,090	14,120,981
Variance	1,209,759	(1,121,312)	(1,961,104)	(1,933,359)	2,241,009	(2,271,974)	136,893	(1,192,296)				
Prior Year Monthly Actual	7,208,135	17,093,892	12,499,379	6,757,004	19,187,143	11,689,833	5,023,980	22,770,225	10,752,898	6,974,110	16,018,650	12,993,693
Total Operating Revenues												
YTD Actual	14,598,078	38,044,338	56,039,693	68,976,942	110,362,024	131,032,608	145,185,391	176,600,206				
YTD Budget	13,140,757	39,081,608	58,183,291	79,112,438	108,303,470	135,120,732	151,069,181	181,962,134	199,606,303	225,408,179	252,520,704	274,824,823
Variance	1,457,321	(1,037,270)	(2,143,598)	(10,135,496)	2,058,554	(4,088,124)	(5,883,790)	(5,361,928)				
PYTD Actual	13,680,107	39,051,198	57,735,712	71,594,418	110,290,232	133,989,570	149,413,091	179,823,498	196,661,354	220,896,848	246,342,391	275,942,610
Monthly Actual	14,598,078	23,446,260	17,995,355	12,937,249	41,385,082	20,670,584	14,152,783	31,414,815				
Monthly Budget	13,140,757	25,940,851	19,101,683	20,929,147	29,191,032	26,817,262	15,948,449	30,892,953	17,644,169	25,801,876	27,112,525	22,304,119
Variance	1,457,321	(2,494,591)	(1,106,328)	(7,991,898)	12,194,050	(6,146,678)	(1,795,666)	521,862				
Prior Year Monthly Actual	13,680,107	25,371,091	18,684,514	13,858,706	38,695,814	23,699,338	15,423,521	30,410,407	16,837,856	24,235,494	25,345,543	29,700,219
Personnel Expenses												
YTD Actual	9,332,580	22,986,821	36,244,430	56,162,040	69,551,656	82,948,631	100,658,986	113,235,429				
YTD Budget	10,218,503	24,100,636	37,966,138	57,605,198	72,343,480	86,336,148	104,692,129	118,123,037	131,604,586	145,372,464	165,061,386	191,122,203
Variance	(885,923)	(1,113,815)	(1,721,708)	(1,443,158)	(2,791,824)	(3,387,517)	(4,033,143)	(4,887,608)				
PYTD Actual	9,674,991	23,373,674	37,013,072	56,713,934	70,425,659	84,397,308	102,999,106	115,829,801	128,624,894	141,733,430	160,590,750	186,919,412
Monthly Actual	9,332,580	13,654,241	13,257,809	19,917,610	13,389,616	13,396,975	17,710,355	12,576,443				
Monthly Budget	10,218,503	13,882,133	13,865,502	19,639,060	14,738,282	13,992,668	8,355,981	13,430,908	13,481,549	13,767,878	19,688,922	26,060,817
Variance	(885,923)	(227,892)	(607,693)	278,550	(1,348,666)	(595,693)	(645,626)	(854,465)				
Prior Year Monthly Actual	9,674,991	13,698,683	13,639,398	19,700,862	13,711,725	13,971,649	18,601,798	12,830,695	12,795,093	13,108,536	18,857,320	26,328,662
Operating Expenses												
YTD Actual	4,142,948	7,266,928	13,008,878	17,989,425	22,944,660	27,067,253	29,029,320	30,405,925				
YTD Budget	3,390,931	8,850,461	14,278,095	19,855,829	25,931,704	28,993,595	33,217,034	37,977,680	43,989,160	47,068,433	52,227,880	65,661,146
Variance	752,017	(1,583,533)	(1,269,217)	(1,866,404)	(2,987,044)	(1,926,342)	[illegible]	(7,571,755)				
PYTD Actual	3,577,641	9,994,796	15,408,188	20,734,575	25,849,549	30,682,835	33,165,580	37,318,299	42,596,559	45,773,403	49,335,444	60,634,011
Monthly Actual	4,142,948	3,123,980	5,741,950	4,980,547	4,955,235	4,122,593	1,962,067	1,376,605				
Monthly Budget	3,390,931	5,459,530	5,427,634	5,577,734	6,075,875	3,061,891	4,223,439	4,760,646	6,011,480	3,079,273	5,159,447	13,433,266
Variance	752,017	(2,335,550)	314,316	(597,187)	(1,120,640)	1,060,702	[illegible]	(3,384,041)				
Prior Year Monthly Actual	3,577,641	6,417,155	5,413,392	5,326,387	5,114,974	4,833,286	2,482,745	4,152,719	5,278,260	3,176,844	3,562,041	11,298,567
Net Change in Fund Balance												
YTD Actual	(1,436,161)	5,218,793	4,207,880	(7,780,690)	14,382,060	14,255,216	8,480,886	14,308,810				
YTD Budget	(1,119,551)	4,994,225	6,683,528	1,425,171	8,070,606	14,833,988	7,891,293	10,572,652	7,021,358	16,133,248	11,916,704	(4,850,756)
Variance	(316,610)	224,568	(2,475,648)	(9,205,861)	6,311,454	(578,772)	589,593	3,736,158				
PYTD Actual	247,480	5,408,232	4,871,280	(6,320,939)	2,073,924	14,043,072	8,286,983	19,501,071	17,951,740	25,590,329	19,717,844	6,269,881
Monthly Actual	(1,436,161)	6,654,954	(1,010,913)	(11,988,570)	22,162,750	(126,844)	(5,774,330)	5,827,924				
Monthly Budget	(1,119,551)	6,113,776	1,689,303	(5,258,357)	6,645,435	6,763,382	(6,942,695)	2,681,359	(3,551,294)	9,111,890	(4,216,544)	(15,767,460)
Variance	(316,610)	541,178	(2,700,216)	(6,730,213)	[illegible]	(6,890,226)	1,168,365	3,146,565				
Prior Year Monthly Actual	247,480	5,160,752	(536,952)	(11,192,219)	18,394,863	1,969,148	(5,756,089)	11,214,088	(1,549,331)	7,638,589	(5,872,485)	(11,447,963)

Budget & Finance Committee

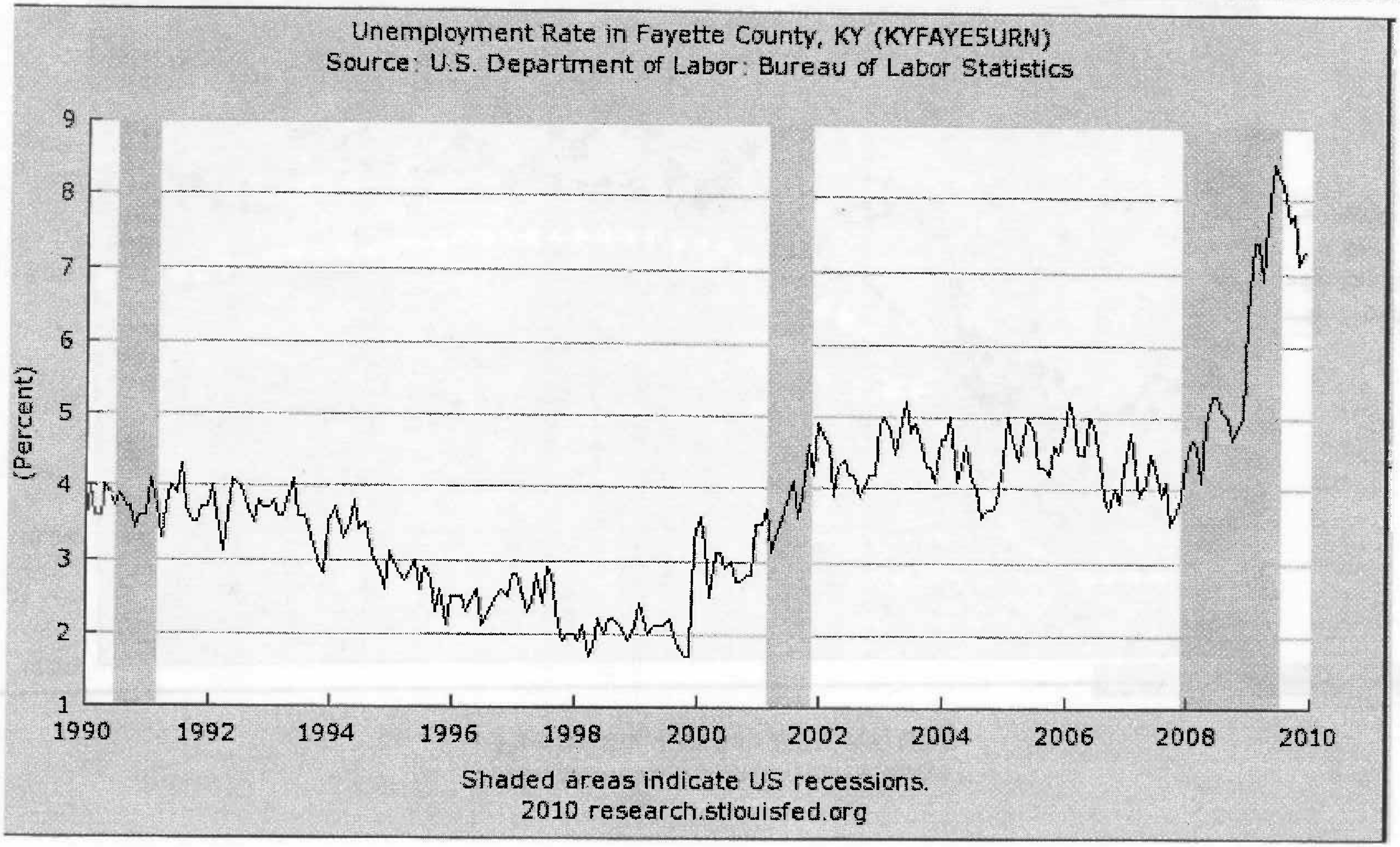
Financial Update

March 23, 2010

Comparative Unemployment Rates
Fayette Co., Lex-Fay MSA, KY, USA



Fayette County Unemployment



Economic Indicators

	Sept	Oct	Nov	Dec	Jan	Feb
Fayette County Employment	139,363	139,454	141,801	139,792	N/A	N/A
Permits Issued	1,115	1,064	1,060	868	874	798
New Business Licenses	220	311	178	163	180	307
Home Sales	711	764	682	599	384	468
Foreclosures	42	59	69	39	25	48

N/A –Data currently not available

February Actual/Approved Budget

February 2010 Actual Compared to Approved Budget

	Actual	Budget	Diff	%
OLT- Employee Withholding	19,918,328	21,110,624	(1,192,296)	-5.6%
OLT - Net Profit	609,802	575,410	34,392	6.0%
Insurance	4,233,306	3,375,426	857,880	25.4%
Franchise Fees	3,046,556	3,394,644	(348,088)	-10.3%
TOTALS	27,807,992	28,456,104	(648,112)	-2.3%

February YTD Actual/Approved YTD Budget

	February YTD Actual Compared to Approved YTD Budget			
	Actual	**Budget**	**Diff**	**%**
OLT- Employee Withholding	100,385,632	105,278,016	(4,892,384)	-4.6%
OLT - Net Profit	11,976,441	12,984,987	(1,008,546)	-7.8%
Insurance	16,647,881	16,062,719	585,162	3.6%
Franchise Fees	11,023,939	12,556,806	(1,532,867)	-12.2%
TOTALS	140,033,893	146,882,528	(6,848,635)	-4.7%

OLT – Withholding
October - February

	Actual FY 2010	Actual FY 2009	% Change
October	5,844,448	6,757,005	-13.5%
November	20,059,570	19,187,143	4.5%
December	11,249,413	11,689,833	-3.8%
January	7,073,744	5,023,980	40.8%
February	19,918,328	22,770,225	-12.5%
October - February	64,145,503	65,428,186	-2.0%

OLT – Net Profit
October - February

	Actual FY 2010	Actual FY 2009	% Change
October	995,445	1,557,513	-36.1%
November	544,651	354,153	53.8%
December	3,769,253	4,444,086	-15.2%
January	1,086,387	1,268,551	-14.4%
February	609,802	545,777	11.7%
October-February	7,005,538	8,170,079	-14.3%

Revenue Review
February FY 2010

	YTD Actual	Projected Annual*	Remaining Needed	Projected Mar-Jun 10	Assumption	Variance Fav/(Unfav)
Withholdings	100.4	148.0	(47.6)	46.7	(flat)	(0.9)
Net Profit	12.0	28.0	(16.0)	15.7	(down 7%)	(0.3)
Insurance	16.6	20.5	(3.9)	5.0	(up 1%)	1.1
Franchise	11.0	17.6	(6.6)	5.4	(flat)	(1.2)
Other License	3.2	4.4	(1.2)	1.2	(budget)	0.0
Taxes	18.4	20.2	(1.8)	1.8	(budget)	0.0
Services/Other	15.0	22.9	(7.9)	8.9	(up $1 mil)	1.0

* Reflects projected $12.5 million revenue shortfall

Financial Highlights February YTD for FY 2010

	Actual	Budget	Fav/(Unfav) Variance
Total Revenue	176.600	181.962	(5.362)
Personnel Expense	113.235	118.123	4.888
Operating Expense	30.406	37.978	7.572
Other Categories	18.650	15.288	(3.362)
Net Change	14.309	10.573	3.736

Note: Budgeted Other Categories is net of Transfers In/Out

Revenue Update

- Questions ?

Lexington Public Library
140 E. Main Street • Lexington • KY • 40507-1376
(859) 231-5500 • FAX (859) 231-5598

January 15, 2010

The Hon. Jim Newberry
Mayor of Lexington
Government Center
200 East Main Street
Lexington, Kentucky 40507

Dear Mayor Newberry:

On behalf of the Lexington Public Library's Board of Trustees and Advisory Board, I would like to thank you again for taking time to address us Wednesday at our board meeting. Your attendance was greatly appreciated, and I hope you know that you are always welcome.

As you requested, the Board discussed your proposal that the Library give a portion of its funds to the Lexington-Fayette Urban County Government's general fund. However, the board voted unanimously to respectfully decline your proposal.

Of particular concern to board members was the fact that allowing library revenue to be used for non-library purposes would constitute a possible violation of state law.

Board members expressed other concerns as well. With the library already dealing with budget reductions due to the decrease in the property tax assessment, the board feels that the library is, in effect, being asked to take the reduction twice. As board members appointed to be fiscally responsible for an organization, we would be remiss in our fiduciary responsibility if we agreed to do that. And as expressed by both a board member and a Lexington resident who asked to speak, public libraries become more essential, and busier, during difficult economic times.

Please see the attached document which addresses your earlier question about growth in library services. We feel this is a good sign that we are meeting an essential need in the community.

The Library Board recognizes the enormous task LFUCG has before it, and we applaud the leadership you have shown in dealing with the challenge. As Lexingtonians, we have a vested interest in the decisions that lay before you and the Council, and we wish you the best in making those decisions.

Sincerely,

Larry

Larry Smith
Chairman, Lexington Public Library Board of Trustees

Lexington Public Library Use: A 25-Year Comparison

Think the library is no longer relevant in a "Google" world?

	FY 1984	FY 2009	% Increase
Population of Fayette Co.	204,165	279,044	37%
No. of registered borrowers	61,000 (30% of the pop.)	128,835 (46% of the pop.)	111%
Total Circulation	891,309 (4 items per resident per year)	2,747,161 (10 items per resident per year)	208%
No. of Internet access computers	-0-	237	NA
No. of reference questions asked	121,561 (60% of pop. asked)	171,264 (61% of the pop. is still asking)	41%
No. of meetings held @ the library	655	2,404	267%
No. of public hours of operation	14,040	20,826	48%

In 1984, registered borrowers were 30% of Lexington's total population. In 2009 registered borrowers were 46% of Lexington's total population.

What does this mean?

A significantly larger portion of our population are active library users and are borrowing more than twice as many materials per person now as borrowed in 1984 (4 items per person in 1984 - 10 items per person in 2009).

The Lexington Public Library...

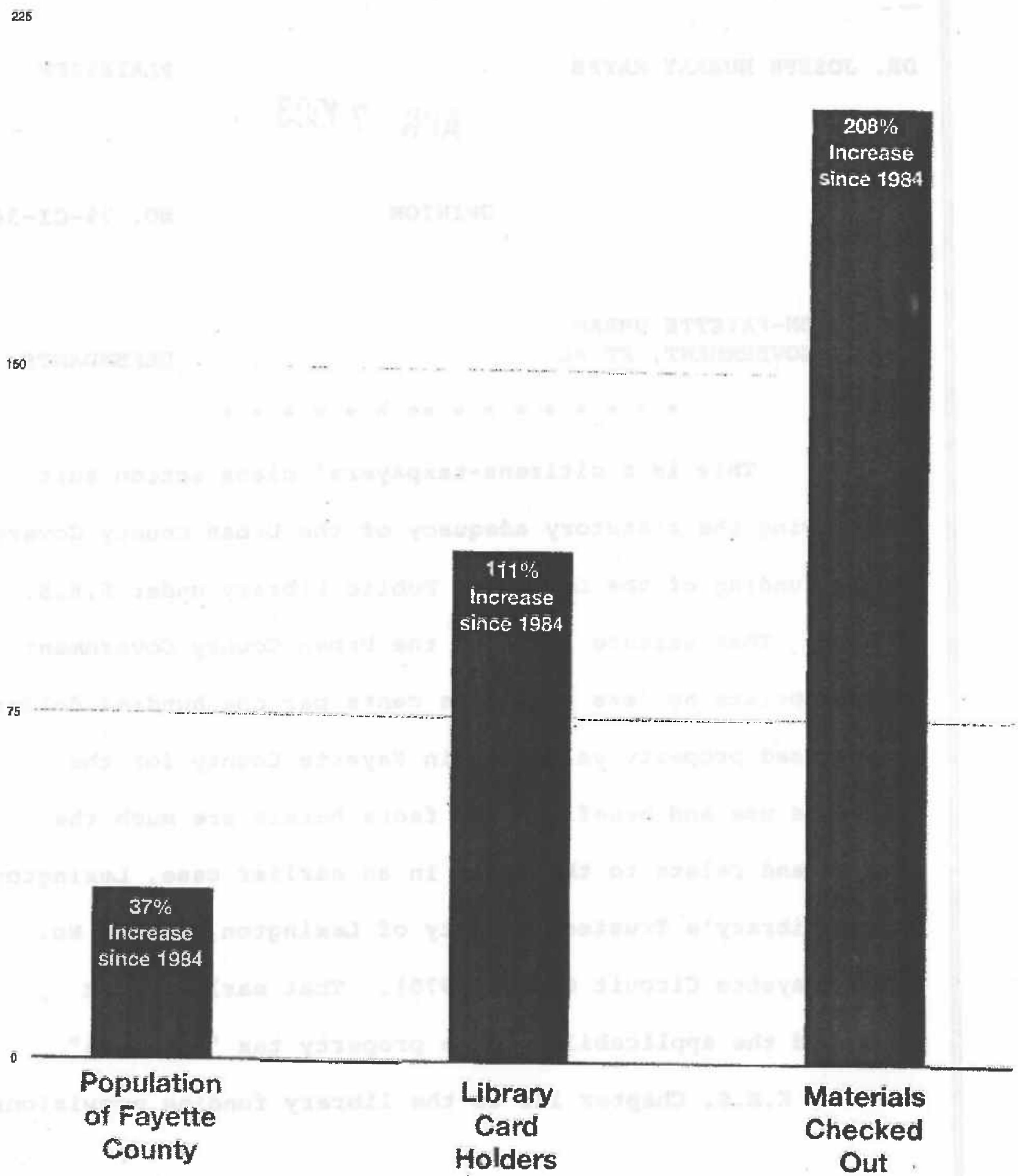
- Bridges the digital divide by giving computer access to those who have none
- Is the one-stop source for free lifelong learning - cradle to rocker
- Builds a literate community by teaching basic pre-reading, science, and math skills in all story times
- Serves as a community gathering place and information center
- Is the community's resource for free information, education, and popular materials
- Teaches job-hunting skills and updates computer skills through courses and materials found at the library
- Reaches out to under-served and at-risk populations through the Outreach Department and a bilingual branch in Cardinal Valley – the Village Branch

This year we have significantly reduced our budget to respond to a reduction in property tax allocation of $630,000 and State Aid of $20,000 Examples of some reductions made:

Salaries	-$250,000 (representing 19 vacancies that are not being filled)
Operating Expenses	-$206,860
Special Projects/Facilities	-$264,832
Books and Materials	-$137,090

The Library also has supported the Carnegie Center by contributing $55,000 this year and the city's Gainesway Empowerment Center by staffing it with a computer instructor at a cost of $16,000.

A reading community is more civically engaged, more employable, and more physically active.*



*See "To Read or Not to Read: A Question of National Consequence" (www.nea.gov/news/news07/TRNR.html)

-20

FAYETTE CIRCUIT COURT
CIVIL BRANCH
THIRD DIVISION

DR. JOSEPH MURRAY HAYSE PLAINTIFF

APR 7 1983

VS. OPINION NO. 79-CI-3430

LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT, ET AL DEFENDANTS

* * * * * * * * * * * * * * * *

This is a citizens-taxpayers' class action suit challenging the statutory adequacy of the Urban County Government's funding of the Lexington Public Library under K.R.S. 173.360. That statute requires the Urban County Government to appropriate no less than five cents per one hundred dollars of assessed property valuation in Fayette County for the library's use and benefit. The facts herein are much the same as and relate to the facts in an earlier case, Lexington Public Library's Trustees v. City of Lexington, Action No. 23673,(Fayette Circuit Court, 1970). That earlier suit concerned the applicability of a property tax "rollback" statute, K.R.S. Chapter 132 to the library funding provisions found in K.R.S. 173.360. The rollback statute limited the property tax rate to that rate which would yield the same amount of revenue collected in 1965. The rollback statute was enacted in response to the 1965 decision of the Court of Appeals in Russman v. Luckett, 391 S.W.2d 694, which held that the Kentucky Constitution required that property be assessed at its full fair cash value. Because the rollback statute applied to "levies," but not appropriations, the crucial issue in Lexington Public Library was whether the funding statute called for a "levy" or an "appropriation." The Court found that the funding statute called for an appropriation rather than a levy and, therefore, its five cents per one hundred dollar rate could not be "rolledback" to levels appropriate for previous years. The Court reaffirms that holding and refers to that opinion for its reasoning.

Subsequent to the delivery of the Court's opinion in Lexington Public Library, the defendant City appealed. However, before the appeal was heard, the parties submitted an agreed order to the Circuit Court which dismissed the suit. That agreed order required the City to fund the library at the rate of three cents per one hundred dollars of assessed property value instead of the five cents per one hundred dollars mandated by statute. That agreement is the main subject of the suit at hand.

Other factors have also contributed to the situation currently before the Court. The City of Lexington became the merged Urban County Government in 1974. It thereby enlarged its tax base and assumed the liabilities of the City of Lexington. Also, in the face of a newly enacted rollback statute, the Urban County Government has rolled back the appropriation to the library again, although it has, due to alternate funding, actually given the library close to three cents per one hundred dollars level of funding required by the agreed order.

In the case at hand, plaintiff asserts that the defendant is required to fund the library at the statutory rate of five cents per one hundred dollars despite the agreed order's specification of a lower amount. As in the prior suit, plaintiff challenges the application of a rollback statute to the appropriations made for the benefit of the library. Plaintiff seeks a mandatory injunction compelling defendant to fund the library at the statutory level and payment by the defendant to the library of all amounts not paid in years from 1974 to the present which would have been paid had defendants complied with the funding statute.

This case is currently before the Court on plaintiff's motion for summary judgment. Only issues related to the liability of the defendant are presented. Damage issues have been reserved for a later time. Initially, the Court must address the threshold issues of the plaintiff's standing and his ability to bring a class action pursuant to Civil Rule 23.

The Court finds that the plaintiff, a resident and taxpayer of Fayette County, has standing to bring this action. A citizen and resident has sufficient interest in execution of the law to compel the government to do its public duty. Kentucky Utilities Co. v. Ginsberg, 72 S.W.2d 738 (1934). Defendant assets that, a taxpayer may bring an action such as this only after a public body has been requested to bring the suit and has refused to do so. Here, the plaintiff did not make such a request. Although defendant is correct in its assertion, there is an exception to the rule: a plaintiff is excused from making such a request when it would be futile to do so. Stinson v. Meadors, 121 S.W.2d 929 (1938). The Court finds that a request would have been futile here, noting that the library has lived happily with the agreed order for several years and has, as an additional defendant to this action, made no attempt to discredit that agreed order.

The Court also rules that plaintiff may maintain this suit as a class action under Civil Rule 23, despite defendant's assertion that plaintiff is not a fit class representative. The basis for defendant's assertion is the fact that Fayette County residents recently voted down a referendum calling for increased library funding. That vote supposedly shows that plaintiff's efforts to compel payments to the library at the full statutory rate are not "in the public interest." The Court finds, however, that compelling compliance with a statutory mandate serves the public interest by insuring responsible local government, regardless of its particular effect.

The next issue before the Court is whether K.R.S. 173.360, the library funding statute, applies to Urban County Governments. The portion of that statute in controversy applies to "governmental units." "Governmental units" is in turn defined by K.R.S. 173.300(1) as "any county or city." Defendant asserts that K.R.S. 173.360 is inapplicable as an Urban County Government and is neither a city nor a county. The Court finds this argument specious. An urban <u>county</u> is still a county, and Fayette County has not ceased to exist. Furthermore, the statutory responsibilities of urban county governments are measured by those of the county or city of the highest class at the time of re-organization. <u>Thomas v. Lyons</u>, 586 S.W.2d 711 (1970).

Next, the defendant attacks the constitutionality of K.R.S. 173.360 on three grounds. First, the statute's distinction between funding requirements of first class cities and other counties and municipalities allegedly violates the guarantee of equal protection of the laws found in the 14th amendment to the United States Constitution. This assertion may be easily dismissed as the 14th Amendment applies to "persons" and not governments. Secondly, defendant asserts that the statute violates Kentucky Constitution Section 59's prohibition of "special legislation" and Section 171's requirement that tax laws in the Commonwealth be "uniform." Statutes violate Section 59 when they create an unreasonable classification. "Unreasonable" means that the distinction between classes is arbitrary and unjustified. Here, the distinction between first class cities and other municipalities is not arbitrary. The statute requires an appropriation based on assessed property value. It is reasonable to distinguish first class cities because they have a larger tax base from which to draw. Therefore, a lower rate of assessment may be adequate to fund a good library program. Defendant's contention concerning Kentucky Constitution Section 171 may be easily resolved. This Court's previous decision in <u>Lexington Public Library</u> determined that the statute called for an "appropriation" rather than a tax. Therefore, a Constitutional requirement for uniformity in taxation is not applicable.

Since the Court had determined that K.R.S. 173.360 does apply to the defendant, the operative question in this case becomes whether the agreed order entered in the Lexington Public Librabry case, between the Library's Trustees and the City of Lexington, effectively reduces the Urban County Government's obligation to the library to three cents per one hundred dollars as opposed to the statutory requirement of five cents per one hundred dollars. Plaintiff sets forth a multitutde of reasons why it believes the agreed order should be held void. Many of these arguments are inapplicable for they assume that the agreed order is to be treated as a common contract rather than a judicial decree. However, there is no need for the Court to address most of these arguments, for the Court finds that the agreement is of no force and effect for two reasons. First, the agreement has expired by its own terms. It was entered into by the City of Lexington, rather than the Lexington-Fayette Urban County Government. Although the Urban County Government's charter states that it assumes all of the obligations of the City of Lexington, Section 15.10 of that charter states that those obligations continue in effect "according to the terms thereof." The agreed order states that it shall remain in effect "so long as the city remains a city of the second class and shall further be in lieu of the amounts provided by K.R.S. 173.020 when and if the City of Lexington is re-classified by the General Assembly to the status of a city of the first class." Since Lexington is currently neither a city of the first or second class, the agreement has expired by its own terms. Furthermore, there is nothing in the agreement which would suggest that the parties had contemplated Lexington's merger into an urban county government with its increased tax base with yet similar statutory treatment to cities of the second class.

An even more compelling reason to hold the agreed order void is that its enforcement would be against public policy. The agreement is in direct conflict with the unambiguous terms of a state statute. Public policy will not allow this Court to give effect to an agreement designed to circumvent a legislative mandate, especially since the statute was designed to benefit the general public, rather than merely the parties to the agreement. Public entities may not conspire to take away the rights of the people. Furthermore the nature of the agreement raises grave doubts about its validity under Kentucky Constitution Section 52. For these reasons the Court finds that the agreed order of July 2, 1970 is null, void, and of no force and effect.

Defendant asserts several defenses based on the equities of this case. These include laches, waiver, estoppel, et cetera. However, the Court finds no factual justification for these argument, with one exception. Defendant requests that any ruling of this Court which requires appropriations to the library at a greater level than previously given should be only prospective in nature. An award of all deficiencies for previous years would, according to defendant, place an unbearable strain upon the public fisc. The money due the library in previous years which it did not receive was spent, in different ways, to benefit the same citizens that would have been benefitted from its appropriation to the library. Any present award would be at the expense of necessary municipal services. Because of the hardship which payment of previous deficiences in funding would cause defendant and because the Urban County Government relied in good faith on an agreement which its counsel presumed valid, this Court declines to issue an order which would require payment of such deficiences. Buchignani v. Lexington Urban County Government, 632 S.W.2d 465, (Ky. App. 1982).

In summary the Court finds that the defendant is required to fund the Lexington Public Library according to the dictates of K.R.S. 173.360, at an amount no less than five cents per one hundred dollars of assessed property value in the county, but the Court declines to issue an order requiring the payment of amounts due the library under the statute in previous years.

A TRUE COPY
ATTEST: ROBERT M. TRUE, CLERK
FAYETTE CIRCUIT COURT
BY: Edna H. Reed DEPUTY

Armand Angelucci
JUDGE ARMAND ANGELUCCI

I hereby certify that a true copy of the foregoing opinion has been mailed to Hon. William C. Jacobs, 173 North Limestone Street, Lexington, Kentucky 40507; Hon. J. David Porter, 200 North Upper Street, Lexington, Kentucky 40507; and Hon. Barbara B. Edelman, Law Department, 200 East Main Street, Lexington, Kentucky 40507 on this the 7 day of April, 1983.

ROBERT M. TRUE, CLERK
FAYETTE CIRCUIT COURT

BY [illegible], Deputy

FAYETTE CIRCUIT COURT
CIVIL BRANCH
THIRD DIVISION

JUL 11 1983

DR. JOSEPH MURRAY HAYSE PLAINTIFF

VS. FINAL JUDGMENT NO. 79-CI-3430

LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT, ET AL DEFENDANTS

* * * * * * * * * * * * * * * * *

It appearing that the parties hereto have submitted to the Court their respective memoranda of law concerning the matters raised by the pleadings, and the Court having considered the same, including the entire record herein, and the Court having rendered its opinion on April 7, 1983, the same having been made a part of the record herein, and by reason of the foregoing, IT IS HEREBY ORDERED AND ADJUDGED:

1. That the Court has jurisdiction of the subject matter and of the parties.

2. That the opinion of this Court rendered April 7, 1983 be, and it is hereby incorporated into this final judgment by reference.

Exhibit 'C'

3. That this action is maintainable as a class action under CR 23.02(b).

4. That the defendant Board of Trustees of the Lexington Public Library are entitled from the date of the entry of this judgment to have appropriated out of the General Fund of the defendant, Lexington-Fayette Urban County Government, a sum which shall not be less than five cents (5¢) nor more than fifteen cents (15¢) on each one hundred dollars ($100) worth of property assessed for local taxation pursuant to K.R.S. 173.360(1), such funds to be deposited monthly to the credit of the defendant Board of Trustees of the Lexington Public Libruary, pursuant to K.R.S. 173.360(2).

5. That the Lexington-Fayette Urban County Government in its official capacity is directed from the date of the entry hereof to cause to be appropriated out of its General Fund said sum as above indicated.

6. That more than one claim for relief is presented in this action, and that this final judgment is upon one or more, but less than all of the claims herein presented, but the Court hereby determines that there is no just reason for delay in granting a final judgment as herein done.

7. This is a final judgment.

A TRUE COPY
ATTEST: [illegible], CLERK
FAYETTE CIRCUIT COURT
BY [signature]

[signature]
JUDGE ARMAND ANGELUCCI

I hereby certify that a true copy of the foregoing final judgment has been mailed to Hon. Barbara B. Edleman, Director of Litigation, Department of Law, 200 East Main Street, Lexington, Kentucky 40507; Hon. William Jacobs, 173 North Limestone, Lexington, Kentucky 40507 and Hon. David Porter, 200 North Upper Street, Lexington, Kentucky 40507 on this the 11 day of July, 1983.

ROBERT M. TRUE, CLERK
FAYETTE CIRCUIT COURT

BY [signature] DEPUTY

OPINION RENDERED: September 28, 1984; 3:00 p.m.
TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 84-CA-164-MR

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT and ROBERT G. FINN, JOE E. JASPER, MRS. ELEANOR LEONARD, CHARLES H. LIVISAY, DR. WILLIAM E. LYONS, DAVID W. MOSSBROOK, HARRY K. REAMS, SR., WILLIAM K. RICE, PAUL M. ROSE, JAMES M. TODD, ANNE V. GABBARD, DONALD W. BLEVINS, ANN E. ROSS, DR. JAMES G. WILHITE, MARY M. MANGIONE, EDGAR WALLACE, JOHN WIGGINTON, MARY C. McNEESE, J.H. COMBS, FRED V. BROWN, LYMAN GINGER and CAROL JACKSON, in their official capacities as Councilmembers of the Lexington-Fayette Urban County Government — APPELLANTS

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE ARMAND ANGELUCCI, JUDGE
ACTION NO. 79-CI-3439

DR. JOSEPH MURRAY HAYSE and THE BOARD OF TRUSTEES OF THE LEXINGTON PUBLIC LIBRARY — APPELLEES

AND NO. 84-CA-390-MR

DR. JOSEPH MURRAY HAYSE — CROSS-APPELLANT

v. CROSS-APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE ARMAND ANGELUCCI, JUDGE
ACTION NO. 79-CI-3439

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT and ROBERT G. FINN, JOE E. JASPER, MRS. ELEANOR LEONARD, CHARLES H. LIVISAY, DR. WILLIAM E. LYONS, DAVID W. MOSSBROOK, HARRY K. REAMS, SR., WILLIAM K. RICE, PAUL M. ROSE, JAMES M. TODD, ANNE V. GABBARD, DONALD W. BLEVINS, ANN E. ROSS, DR. JAMES G. WILHITE, MARY M. MANGIONE, EDGAR WALLACE, JOHN WIGGINTON, MARY C. McNEESE, J.H. COMBS, FRED V. BROWN, LYMAN GINGER and CAROL JACKSON, in their official capacities as Councilmembers of the Lexington-Fayette Urban County Government CROSS-APPELLEES

AND NO. 84-CA-391-MR

BOARD OF TRUSTEES OF THE LEXINGTON PUBLIC LIBRARY CROSS-APPELLANT

v. CROSS-APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE ARMAND ANGELUCCI, JUDGE
ACTION NO. 79-CI-3439

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT and ROBERT G. FINN, JOE E. JASPER, MRS. ELEANOR LEONARD, CHARLES H. LIVISAY, DR. WILLIAM E. LYONS, DAVID W. MOSSBROOK, HARRY K. REAMS, SR., WILLIAM K. RICE, PAUL M. ROSE, JAMES M. TODD, ANNE V. GABBARD, DONALD W. BLEVINS, ANN E. ROSS, DR. JAMES G. WILHITE, MARY M. MANGIONE, EDGAR WALLACE, JOHN WIGGINTON, MARY C. McNEESE, J.H. COMBS, FRED V. BROWN, LYMAN GINGER and CAROL JACKSON, in their official capacities as Councilmembers of the Lexington-Fayette Urban County Government CROSS-APPELLEES

AFFIRMING

* * * * * * * *

BEFORE: COMBS, DUNN and WHITE, Judges.

COMBS, JUDGE. The trial court granted summary judgment requiring the Lexington-Fayette Urban County Government to appropriate out of its general funds to the Lexington Public Library an amount consistent with KRS 173.360(1).

The government argues on appeal that "roll-back" provisions of KRS ch. 132 apply to KRS 173.360, and the suit was improperly designated as a class action. The library and the library patron argue on cross-appeal that the trial court improperly denied retrospective relief.

In 1968, the library filed suit against the City of Lexington for the minimum funding under KRS 173.360 of five cents per $100 worth of property assessed for local taxation. This suit was settled and an agreed order was entered.

In 1979, this action was commenced as a class action by a library patron. He sought a class action to hold the agreed order null and void, for additional funding from 1974, and a finding by the court that the KRS ch. 132 "roll-back" provisions are inapplicable to KRS 173.360. The trial court's judgment was favorable to the library patron and the library, except that the additional funding was granted only prospectively.

The roll-back provisions of KRS ch. 132 would apply to tax levies to maintain public libraries. Under KRS ch. 132

a taxing district's revenue from ad valorem taxes is limited. This chapter has the effect of rolling back the tax rate to maintain a constant revenue. Taxes levied to support a library created under KRS 173.310 or KRS 173.450 would have to comply with KRS ch. 132.

The Lexington Public Library is not maintained by a tax levy, but by appropriation of funds from the local government. KRS 173.310 does not mandate a levy to maintain libraries created under that section. The last paragraph of that statute reads as follows:

> When any one (1) of the above methods has been complied with, the legislative bodies of the governing units shall at once make the necessary appropriation or levy to establish and maintain such library service annually and perpetually. (Emphasis added).

The statute does not mandate a levy, but gives the government the option of funding by levy.

It is also noted that when a KRS 173.310 library is merged with a public library district that ". . . any tax levied under KRS 173.310 . . ." is removed. KRS 173.395. The use of the word "any" as opposed to a word such as "the" would indicate the optional nature of the levy.

The government argues that to appropriate funding required by KRS 173.360 when its ad valorem taxes are restricted by the roll-back provisions would lead to the absurd result that the library would be funded a greater percentage of the general fund with the passage of time. The General Assembly has provided a solution to this problem. KRS 173.360(1) reads, in part, as follows:

> ". . .In those instances where county library service has been established on the initiative of the fiscal court and when an appropriation of less than the minimum amount required by this subsection is proposed, the minimum amount of support for county library service may be determined annually through a mutual agreement of the county library board, the county fiscal court, and the department of library and archives. This agreement shall be reflected in the records of the legislative body of the governmental unit making the appropriation."

We find that the General Assembly enacted this provision for the parties named in the statute to enter into good faith negotiations to solve the problem pointed out by the government.

The trial court has not erred in allowing the library patron to maintain this suit as a class action. Notice to members of the class is not required in an action under CR 23.02(b). It would not be necessary to maintain this action as a class action, but it is allowable.

The trial court properly denied retrospective relief. Buchignani v. Lexington-Fayette Urban County Government, Ky. App., 632 S.W. 2d 465 (1982).

The filing of additional brief as requested by the library patron is unnecessary.

The judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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Martin, Ockerman & Brabant
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Lexington, KY 40507

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FAYETTE CIRCUIT COURT
CIVIL BRANCH
THIRD DIVISION

JAN 4 1988

DR. JOSEPH MURRAY HAYSE PLAINTIFF

VS. OPINION NO.79-CI-3439

LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT, ET AL DEFENDANTS

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This matter comes before the Court on an agreed order of submission. The Court, having carefully examined the record, including its various pleadings, memoranda, and exhibits, makes the following findings of fact and conclusions of law:

On December 19, 1979 Plaintiff Hayse filed an action seeking a mandatory injunction directing the Lexington-Fayette Urban County Government and the Urban County Council to appropriate, pursuant to K.R.S. 173.360(1), a sum of not less that Five Cents ($.05) nor more than Fifteen Cents ($.15) on each One Hundred Dollars ($100.00) worth of property assessed for local taxation to the library, such sums to be deposited monthly, plus reasonable attorney fees and costs.

The Court entered judgment for the plaintiff on July 11, 1983; the Court of Appeals affirmed the trial court's decision in September 1984; and, in February 1985 the Kentucky Supreme Court denied the Government's motion for discretionary review and for a lump sum amount.

On April 5, 1985 the Government made a lump sum payment of One Million Nine Hundred Forty-one Thousand Seventy Dollars ($1,941,070.00). The plaintiff contends that this sum was insufficient to satisfy the principal amount of arrearage, that it did not include any accrued interest, and that it did not include an attorney fee. The plaintiff's objections raise specific issues.

I

SHALL TOBACCO IN STORAGE, BANK SHARES, AND INSURANCE COMPANIES' CAPITAL BE A COMPONENT OF THE "WORTH OF PROPERTY ASSESSED FOR LOCAL TAXATION" WHEN CALCULATING THE APPROPRIATION REQUIRED BY K.R.S. 173.360:

The 1983 court order required assignment to the library of a portion of all "property assessed for local taxation" in its Final Judgment of July 11, 1983. In calculating the assessed property's value, Mr. Cooper excluded the assessed value of tobacco in storage, bank shares, and insurance companies' capital.

Because sections 147-83 and 155-84 of the Local Code of Ordinances of the Lexington-Fayette Urban County

Government list tobacco in storage, bank shares, and insurance companies' capital as being subject to taxation by local government for the support of general services, the plaintiff and the Board of Trustees of the Lexington Public Library argue that it was error not to include these items in assessing property values for the ad valorem library tax.

The defendant argues that K.R.S. 132.200(6), 136.270, and 136.320 limit the maximum taxation rates cities may impose upon tobacco in storage, bank shares, and insurance companies' capital, respectively, and that because the taxation rate for these items is thus fixed by state government, they cannot rightfully be deemed a component of items assessed by local government for local taxation. The defendant also notes that library board appropriations historically excluded said items.

The Court has examined the statutes and evidence relevant to this issue carefully. In general, all property subject to taxation for state purposes is also subject to taxation in the situs in which it sits for local, school, or county purposes.

K.R.S. 132.200, entitled "Property Subject to State Tax Only," enumerates specific classes of property which shall be subject to taxation for state purposes only. Paragraph six of this statute deals, in part, with tobacco in storage. It imposes a local taxation limit upon unmanufactured tobacco products of One and One Half Cents ($.015) one each One Hundred Dollars ($100.00) of assessed cash value. As Boyle v. Campbell, 450 S.E.2d 265 (Ky. 1970) has clearly established, a municipal ordinance is invalid if it conflicts with a state statute. When state statutes conflict, it is the duty of the Court to try to harmonize the interpretation so that both sections are given effect. Ledford v. Faulkner, 661 S.W.2d 475 (Ky. 1983). When this is not possible, it is the Court's duty "to give effect to that provision containing express and positive language relating to the particular subject dealt with rather than to the provision dealing with the matter in general terms." Morgan County Board of Education v. Elliott, 86 S.W.2d 670, 671 (Ky. Ct. App. 1935).

In the instant case, K.R.S. 173.360 states that, "In all governmental units, it [the library ad valorem tax] shall be not less than Five Cents ($.05) nor more than Fifteen Cents ($.15) on each One Hundred Dollars ($100.00) worth of property assessed for local taxation." K.R.S. 132.200(6), however, states that "cities and counties may each impose an ad valorem tax not exceeding One and One Half Cents ($.015) on each One Hundred Dollars ($100.00) of the fair cash value of all unmanufactured tobacco." [Emphasis added.] Clearly the latter statute is the most specific. The Court thus finds that tobacco in storage shall be included in the property assessed for the ad valorem library tax but that the library tax on this item shall not exceed One and One Half Cents ($.015) on each One Hundred Dollars ($100.00) of the fair cash value of all tobacco in storage.

The local taxation of bank shares and insurance companies' capital is addressed by paragraph seven of K.R.S. 132.200:

> Money in hand, notes, bonds, accounts, and other credits, whether secured by mortgage, pledge or otherwise, or unsecured, and shares of stock, except that nothing in this section shall forbid local taxation of franchises of corporations of shares of banks, trust companies or combined banks and trust companies doing business in this state, or domestic life insurance companies. (Emphasis added.)

Since the maximum taxation rates set by statute are well below the library appropriation specified by K.R.S. 173.360 [pursuant to K.R.S. 136.270(3), the maximum rate on bank shares is $.19/$100; pursuant to K.R.S. 136.320(6), the maximum rate on insurance companies' capital is $.15/$100; pursuant to K.R.S. 173.360, the maximum rate for library ad valorem tax is not less than $.05 nor more than $.15/$100 of property assessed for valuation], the library statute is compatible with the specific statutory limits on bank shares and insurance companies' capital. This Court thus finds that bank shares and insurance companies' capital shall be subject to the ad valorem library tax and should thus be included in the property assessed for value in the calculation of the tax.

II

SHALL THE DEFENDANT PAY JUDGMENT INTEREST ON THE UNDERPAYMENT OF EACH MONTHLY INSTALLMENT FROM THE DATE DUE UNTIL PAID:

The plaintiff argues that, pursuant to Civil Rule 81A, the government should not be exempted from Twelve Percent (12%) interest on the underpayment of the monthly installments.

The defendant contends that judgment interest should not be paid because the monies not expended for the library were nonetheless managed for the benefit of Fayette County taxpayers. If interest is ordered, however, the defendant contends that it should not exceed actual earnings on the underpayment amounts, so that the Library Board benefits are not greater than the Urban County Government's benefits.

Civil Rule 81A states that although governmental entities are exempted from posting bonds in certain situations, such entities are nonetheless "obligated to the same extent as if it had given the bond required." The Court finds that the rule intends that the ultimate consequences of a judgment or order should thus be borne equally by losing parties, without regard to their status.

The Court also finds that interest clearly falls within the obligation contemplated by this rule.

The Court is aware that it has the discretion, following a hearing, to order interest of a lesser rate pursuant to K.R.S. 360.040, which states in part:

> Provided, that when a claim for unliquidated damages is reduced to judgment, such judgment may bear less interest than twelve percent (12%) if the court rendering such judgment, after a hearing on that question, is satisfied that the rate of interest should be less than twelve percent (12%).

Moreover, the August 28, 1985 hearing encompassed the question of the payment of interest.

This Court has examined the relevant evidence and pleadings on this issue carefully and is not persuaded that it would be inequitable to require that interest at the rate of Twelve Percent (12%) be paid in the instant situation. While it can be argued that requiring the government to pay more interest than the unpaid principal earned is like robbing Peter to pay Paul, the government has not presented any valid reason not to observe the statutory limits. The government voluntarily chose to disregard K.R.S. 173.360, and after judgment was entered, it again elected to pay less than the amount ordered by the Court. The government must honor court orders like any other losing party, pursuant to Civil Rule 81A, and the Court finds that in this instance, it should be likewise subject to the statutory penalties like any other losing party.

Since interest is in the nature of a penalty for overdue payments, it should run from the first day the payment actually became delinquent; i.e., the first day of the following month.

III

IS PLAINTIFF ENTITLED TO AN AWARD OF ATTORNEY FEES, AND IF SO, ON WHAT BASIS SHOULD THEY BE CALCULATED AND AGAINST WHICH OF THE DEFENDANTS SHOULD THEY BE ASSESSED:

The defendant Library Board, while conceding that the plaintiff is entitled to attorney fees, takes issue with the amount. The Government disputes both entitlement and the amount. Both defendants argue for a calculation of fees based upon time expended. The Library Board, moreover, argues that a contigency award would not be equitable since the action did not create a new fund but merely involved shifting preexisting taxpayer funds to a specific public agency.

The plaintiff argues that, pursuant to the contract between the plaintiff and his attorney, fees were contingent upon recovery. Plaintiff further claims that, since no specific percentage was contractually agreed upon due to the substantial sum involved, it should be left to the discretion of the Court to determine the amount of recovery.

The Court has discretion to award equitable attorney fees depending upon the circumstances of the case. Kentucky State Bank v. AG Services, Inc., 663 S.W.2d 754 (Ky. Ct. App. 1984). In Boyd County v. Cisco, 35 S.W.2d 849 (Ky. Ct. App. 1931), the court upheld a trial court's award of attorney fees to the taxpayer's attorney, holding that "it was proper for the court to allow a fee to the attorney for services rendered payable out of the amount recovered." Id. at 850. The Cisco court went on to state that the nature of the litigation, the time invested, the probability of recovery, the actual amount recovered, and the skills required to the attorney were factors to be considered by the court in setting the fee. Id. In Fox v. Lantrip, 185 S.W.2d 136, 139 (Ky. 1916), moreover, the Court, upholding an award to an attorney in a taxpayer's action, stated:

> It is very commendable that public-spirited citizens should endeavor to protect the taxpayers of a county from the efforts of an accommodating fiscal court to make unauthorized and unlawful appropriations of the public funds. . . . And when, as in this action, the public authorities, whose duty it is to bring a suit to recover public funds wrongfully paid out refuse to do so, and the duty is thus imposed upon a citizen in his private capacity, he should be allowed his attorney fees if successful. Citizens should be encouraged to bring suits like this. . . . If attorney's fees could not be allowed in cases like this, and a citizen were required to pay out of his own means attorney's fees expended in collecting, for the benefit of the public, a public fund, there are not many citizens who would care to voluntarily incur this expense.

The Court notes further that there is no requirement of notice if the Court chooses to exercise its discretion in awarding fees.

Although K.R.S. 376.460 allows an attorney's lien, this statute exempts claims "of the state." Case law, moreover, supports this exemption. See Marion County v. Rives and McChord, 118 S.W. 309 (Ky. 1909). [An attorney suing on behalf of the taxpayers of a county cannot assert a lien on monies recovered.]

Affidavits in the evidence address the question of attorney's fees also. The affidavit of Leslie Morris, II, a practising attorney and former member of the Library Board, states that after considering the complexity of the issues and the effort involved, Twelve Percent (12%) to Fifteen Percent (15%) would be a reasonable fee. The affidavit of William Jacob, attorney for the plaintiff, while acknowledging that the standard Thirty-three and One Third Percent (33 1/3%) contingency fee usually allowed at the trial level or the Forty Percent (40%) contingency fee usually allowed at the appellate level would be both unreasonable and excessive, nevertheless maintains that a fee in the range of Thirteen Percent (13%) to Fifteen Percent (15%) would be reasonable.

The Court, after carefully studying all relevant evidence and pleadings, finds that the plaintiff is entitled to attorney's fees for the time expended and for the expenses incurred in bringing this suit. In determining an appropriate fee in this case, it is the opinion of this Court that several factors make this case inappropriate for a contingent fee award.

First, the Court agrees with the defendants that this case, unlike the typical damage recovery case, did not involve an award of "new" money based upon some injury. Instead, this case involved a shifting of funds already in existence as required by state law. Second, while not intending to disparage fee agreements between a party and his counsel, in this case it is not the plaintiff who is paying this fee out of his recovery, as is normally the case in contingent fee agreements. On the contrary, plaintiff's counsel's fee is an additional burden which must be bourne by the defendants. The plaintiff and plaintiff's counsel could have agreed to virtually any fee arrangement, which this Court would be bound to honor as between those parties. But here the plaintiff has been awarded its attorney's fee in addition to its success on the merits. This Court is not bound by the fee agreement between plaintiff and plaintiff's counsel because it is the defendants who must bear this expense.

A more equitable and accurate method of

determining the appropriate fee is for the plaintiff's counsel to submit, to the extent possible, his hourly timeexpended in prosecuting this case. These hours will then be multiplied by the average hourly rate of plaintiff's counsel. In the event plaintiff's counsel cannot accurately reconstruct his hours expended based on his office records, plaintiff's counsel is to use his best efforts in estimating, in good faith, his time expended.

Because the Court has determined that attorney's fees should be awarded based on equitable principles, it is not necessary to confront K.R.S. 412.070, a statute which also provides grounds for the award of attorney's fees in this case.

Since the Library Board and the Government are both defendants, there remains the question of which defendant should bear the expense of attorney's fees or whether the fee should be apportioned between the two defendants. The Court finds that the attorney fee should be apportioned equally between the Library Board and the Government.

Based on the foregoing findings of fact, the Court makes the following conclusions of law:

1. Tobacco in storage shall be included in the property assessed for the ad valorem library tax in an amount not to exceed One and One Half Cents ($.015) on each

One Hundred Dollars ($100.00) of the fair cash value of all tobacco in storage.

2. Bank shares and insurance companies' capital shall be included in the property subject to the ad valorem library tax.

3. The Government shall be subject to Twelve Percent (12%) statutory interest penalties.

4. The plaintiff's counsel shall submit his hours expended based on his office records or, in the alternative, use his best efforts in a good faith estimate of his time expended.

5. The defendant library shall be liable for payment of plaintiff's attorney's fee.

The Clerk of the Court is directed to make this opinion a part of the record, and it shall be considered the Court's findings of fact and conclusions of law, and the attorneys shall prepare a proper order in conformity herewith.

A T[illegible]

BY: [signature]

[signature]
JUDGE ARMAND ANGELUCCI

I hereby certify that a true copy of the foregoing Opinion has been mailed to:

Hon. William C. Jacobs
Attorney at Law
173 North Limestone Street
Lexington, Kentucky 40507

Hon. J. David Porter
Stites & Harbison
400 Citizens Fidelity Bank Bldg.
101 East Vine Street
Lexington, Kentucky 40507

Hon. Terry Sellars
Law Department
200 East Main Street
Lexington, Kentucky 40507

on this the 4 day of January, 1987.

ROBERT M. TRUE, CLERK
FAYETTE CIRCUIT COURT

BY________________________, DEPUTY

FAYETTE CIRCUIT COURT
CIVIL BRANCH
THIRD DIVISION

JUN 30 1988

DR. JOSEPH MURRAY HAYSE — PLAINTIFF

VS. — FINAL JUDGMENT UNDER CR 54.02 — NO. 79CI-3439

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, ET.AL. — DEFENDANTS

* * * * * * * *

The parties having submitted their respective memoranda pursuant to the order of Court at the evidentiary hearing conducted by the Court on August 28, 1985, with respect to the issue set out in the Order of Submission entered herein, and the Court having considered same and rendered its Opinion thereon on January 4, 1988, and the Court being sufficiently advised,

IT IS HEREBY ORDERED AND ADJUDGED:

1. That the Court's Opinion of January 4, 1988, be, and it hereby is incorporated herein by reference;

2. That the April 5, 1985 lump sum payment from the Defendant, Lexington-Fayette Urban County Government (Government) to the Defendant-Library Board in the amount of One Million Nine Hundred Forty-One Thousand Seventy ($1,941,070.00) Dollars was insufficient to satisfy the principal amount of the arrearage payable to the Library

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Dollars worth of tobacco in storage, as assessed by the Property Valuation Administrator for the Government (as certified by the Revenue Cabinet of the Commonwealth of Kentucky) as of January 1, 1983, 1984, 1985, 1986, 1987, 1988 for each of such respective tax years, and each year hereafter;

6. That with respect to the sum directed to be appropriated and paid to the Library Board in the preceding paragraph, such appropriation and payment shall bear interest at the rate of Twelve (12%) Percent per annum [One (1%) Percent per month] until paid from and after the first day of the month following the month when One-Twelfth (1/12) of such payment should have been made to the Library Board under the earlier Judgment and KRS 173.360(2) (requiring monthly deposits to the credit of the Library Board);

7. That nothing herein shall be construed as enjoining the Defendant-Government from appropriating and paying to the Defendant-Library Board, or an successor thereof, for any year from and after 1983, any sum or sums in excess of the minimum appropriation and payment required by this Order;

8. That the Plaintiff shall recover of the Defendant-Library Board his attorney fee, such attorney's fee to be in the amount of hours expended by Plaintiff's counsel in prosecuting this case multiplied by the average

Board under the Judgment entered herein on July 11, 1983;

3. That the Government be, and it hereby is, directed to appropriate and pay to the Library Board, at a minimum, a sum equal to, but not less than, five ($.05) Cents on each One Hundred ($100.00) Dollars worth of property assessed for local taxation, including, but not limited to bank shares and insurance companies' capital, but excluding tobacco in storage, as assessed by the Property Valuation Administrator for the Government (as certified by the Revenue Cabinet of the Commonwealth of Kentucky) as of January 1, 1983, 1984, 1985, 1986, 1987, 1988 for each of such respective tax years, and each year hereafter, less sums actually paid by the Government to the Library Board under the earlier Judgment and KRS 173.360 for each of such years;

4. That with respect to the sum directed to be appropriated and paid to the Library Board in the preceding paragraph, such appropriation and payment shall bear interest at the rate of Twelve (12%) percent per annum [One (1%) Percent per month] until paid from and after the first day of the month following the month when such payment should have been made to the Library Board under the earlier Judgment and KRS 173.360;

5. That in addition, the Government be, and it hereby is, directed to appropriate and pay to the Library Board, at a ($.015) Cents on each One Hundred ($100.00)

hourly rate of Plaintiff's counsel;

9. That this is a Final Judgement and there is no just reason for delay.

Don C. Paris

DON C. PARIS, JUDGE
FAYETTE CIRCUIT COURT

This is to certify that an attested copy hereof was mailed to:

Hon. William C. Jacobs
173 North Limestone Street
Lexington, Kentucky 40507

Hon. Edward Gardner
Department of Law
Lexington-Fayette Urban County
Government
~~200~~ 50 East Main Street
Lexington, Kentucky 40507

Hon. J. David Porter
~~Stites and Harbison~~ 400 Citizens Fidelity
~~2300 Lexington Financial Center~~ 101 First City
Lexington, Kentucky 40507

on this the 30 day of June, 1988

[illegible signature]
FAYETTE CIRCUIT COURT CLERK

FAYETTE CIRCUIT COURT
CIVIL BRANCH
THIRD DIVISION

DR. JOSEPH MURRAY HAYSE APR 11 1989 PLAINTIFF

VS **OPINION AND ORDER** NO. 79CI3439

LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT, et al DEFENDANTS

* * * *

This matter is before the Court on the Defendant's Motion to Alter and Amend Judgment and the Plaintiff's Motion for Entry of Final Judgment. The parties have filed memoranda in support of their positions and the case stands properly submitted. The Court having reviewed the record and being otherwise sufficiently advised, finds as follows:

The Defendant, Lexington-Fayette Urban County Government, moves this Court to amend its judgment of June 30, 1988. Specifically, Defendant objects to: 1) the imposition of retrospective payments to the Library Board based upon the value of bank shares, insurance company's capital, and tobacco in storage; 2) the imposition of interest on deficiences from the date of the original opinion until final resolution of its appeal; 3) and this Court's award of Plaintiff's attorneys' fees.

The Plaintiff, in turn, moves the Court for entry of the Final Judgment of June 30, 1988 and, in addition, asks that the Court impose payment of damages of 10% on the sums Defendant, Lexington-Fayette Urban County Government was directed to pay pursuant to KRS 26A.300.

The Defendant's first argument that the imposition of retrospective payments on bank shares, insurance company's stock, and tobacco in storage is based on general equity concepts. Defendant relies on the fact that this Court imposed payment of deficiencies based on the value of the property in question prospectively from the date of the original judgment. Hayse v. Lexington-Fayette Urban County Government, No. 79CI-3430, Slip Op. at 9 (Ky. Cir. Ct., Apr. 7, 1983). From this, Defendant argues that the Court should once again make increased payments prospective in nature.

In the original Hayse judgment this Court reasoned that payment of prior deficiencies would cause hardship on Defendant and that the defendant had relied in good faith on advice of counsel in excluding the value of the bank shares, insurance capital, and tobacco in computing deficiencies. The Court made it clear, however, that the disputed items were to be included prospectively from the date of the original judgment and Defendant has no reason to expect that these deficiencies would be excused a second time. Defendant's second 'equity' argument is without merit.

The Defendant next argues that if deficiency payments on the value of the bank shares, insurance capital, and tobacco are to be retrospective to the original judgment, that the government should be excused from paying interest on such deficiencies or that such interest be limited. Defendant bases its argument on a discretionary provision of KRS 360.040 which states in part "that judgments may bear less interest than 12% if the court rendering such judgment, after a hearing on that question, is satisfied that the rate of interest should be less than 12%." As Plaintiff points out in his memorandum, however, this Court has generously excused the Government from compensating the Library Board for money lost to the Library Board during the ten years of under-appropriation prior to the original judgment. Defendant has shown no reason that the 12% called for in the June 30, 1988 judgment should be excused or limited.

The Defendant's third contention that the judgment should be altered to exclude interest on accrued deficiencies from the date of the original opinion until its final resolution on appeal is without merit. The fact that such interest payments made by the government would come directly from other programs supported by the government has no legal significance and is also without merit. As the Plaintiff argues, KRS 173.360(1) and this Court's original Judgment are clearly in accord. The Defendant, Lexington-Fayette Urban County Government, therefore, had no reasonable expectation that its appeal would succeed and admits that it did not proceed as a prudent appallant. It is well recognized that judgments bear interest at 12% per annum until paid and the fact that the government failed to provide for the consequences of its unsuccessful appeal is not grounds for excusing it from payment of interest.

Finally, Defendant would like the Court to excuse the portion of the judgment requiring it to pay Plaintiff's attorneys' fees. Defendant again advances the argument that, because there was no fund created from which Plaintiff's attorney could easily be paid, such payment of attorney's fees would constitute an additional burden on the Fayette County taxpayers. Defendant gives no legal basis to alter the judgment regarding the award of Plaintiff's attorneys' fees and this Corut will therefore not alter the previous judgment.

Plaintiff moves the Court to Overrule Defendants Motion to Alter and Amend the June 1988 Judgment and, in addition, to award damages to the Library Board pursuant to KRS 26A.300, in the amount of 10% on payments stayed during the pendency of the former appeal. Plaintiff relies on Fred Clements Heating and Air Conditioning Company v. James, Ky. App., 576 S.W. 2d 280 (1979), which states that damages of 10% are to be awarded where, as here: 1) a judgment for the payment of money has been stayed pending appeal; 2) the Judgment was thereafter affirmed, and 3) a Motion for Discretionary review by Appellant (Defendant, Lexington-Fayette Urban County Government) was denied. Defendant's response to Plaintiff's Motion is that such penalty is inappropirate where there is no sum certain.

Further, Defendant argues that such monies have been spent for other governmental services and imposition of a penalty would be inequitable.

Defendant cites Ford v. Ford 623 S.W. 2d 903 (Ky. 1981) in support of its argument that a penalty award is inappropriate where a sum to base such penalty on is unable to be calculated. The sums, referred in Ford, were amounts which had been unascertained by the trial court for net proceeds of livestock, crops, and dividends constituting marital property. Here, on the contrary, there is no reason why a sum based upon property specifically determined to be assessable for certain periods can not be calculated. The original Opinion clearly sets forth the formula for calculating the total sum due thereby reducing the judgment to a liquidated amount.

It Is THEREFORE ORDERED AND ADJUDGED that Defendant's Motion to Alter and Amend the Final Judgment of June 30, 1988 be DENIED and Plaintiff's Motions for entry of the Final Judgment and the imposition of a mandatory 10% penalty for delay during the appeal be GRANTED.

Dated this 11th day of April, 1989.

JUDGE, FAYETTE CIRCUIT COURT
THIRD DIVISION

This is to certify that a copy of the foregoing Opinion and Order was mailed to the following this 11 day of April, 1989.

Honorable Edward Gardner
Department of Law
200 E. Main Street
Lexington, Kentucky 40507

Honorable William Jacobs
173 North Limestone Street
Lexington, Kentucky 40507

Honorable David Porter
2300 Lexington Financial Center
Lexington, Kentucky 40507

ROBERT M. TRUE, CFCC

By: ______________________
Deputy Clerk

Attachment 5

AGREEMENT

THIS AGREEMENT Made and entered into this 9 day of March, 1990 by and between the BOARD OF TRUSTEES OF THE LEXINGTON PUBLIC LIBRARY ("Library") and the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT ("Government").

WHEREAS, the amount the Government shall appropriate annually for Library services in Fayette County has been at issue for ten (10) years in Fayette Circuit Court, Third Division, Civil Action No.79CI-3439 (hereinafter "Civil Action"); and

WHEREAS, the Fayette Circuit Court in the above Civil Action entered a Final Judgment June 30, 1988 (hereinafter "Judgment'); and

WHEREAS, all parties have appealed the Fayette Circuit Court Final Judgment to the Commonwealth of Kentucky Court of Appeals; and

WHEREAS, the Library and the Government expect continued, lengthy litigation before any final judgment resolution of the above-mentioned Civil Action; and

WHEREAS, the Library and the Government agree that lengthy litigation is disruptive and injurious to both the Library's and the Government's ability to make decisions concerning proper appropriations for Library service and to the Library's and the Government's ability to make plans for providing future Library service in Fayette County; and

WHEREAS, the Library and the Government agree that the aforesaid Judgment accurately construes the law governing the

Government's responsibility to appropriate funds for Library service in Fayette County; and

WHEREAS, the Library and the Government wish to finally resolve all issues related to Government appropriations for Library service in Fayette County in a manner consistent with any final resolution in the aforesaid Civil Action.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the Library and the Government agree as follows:

1. The Government agrees to pay to the Library One Million Nine Hundred Thousand Dollars ($1,900,000.00) and in addition to also agrees to pay twenty-five percent (25%) of any attorneys' fees awarded to the attorney or attorneys for the plaintiff, Dr. Joseph Murray Hayse, in the aforesaid Civil Action, in full satisfaction of all sums owed by the Government to the Library through June 30, 1989, under the aforesaid Judgment.

(a) The above sum shall be paid as follows: One Million Dollars ($1,000,000.00) upon execution of this Agreement plus additional funding due under numerical paragraph 2. hereinafter through the date of execution of this Agreement and an additional installment of such one-twelfth (1/12) of the annual appropriation based on bank shares, insurance companies' capital and tobacco in storage as set out in numerical paragraph 2 hereinafter each month thereafter.

(b) The Government shall pay twenty-five percent (25%) of the plaintiff's attorneys' fees upon the date of any agreement by all parties to the above-referenced legal action or upon a final determination of the amount of attorneys' fees by a court of competent jurisdiction.

(c) The Government shall pay the balance of the sum due the Library on or before July 16, 1990;

2. In fiscal year 1990, which runs from July 1, 1989 through June 30, 1990, and in all future fiscal years, the Government agrees to pay to the Library five cents (5¢) on each One Hundred Dollars ($100.00) worth of bank shares and insurance companies capital assessed for taxation in Fayette County, Kentucky, and one and one-half cents (1 1/2¢) on each One Hundred Dollars ($100.00) worth of tobacco in storage assessed for taxation in Fayette County, Kentucky;

3. The Government agrees to pay the Library the sums provided in numbered paragraphs 1 and 2 above, even if a lesser appropriation is determined to be required as a result of any final Judgment in the aforesaid Civil Action;

4. The Library and the Government agree that establishing a Literacy Center at the Carnegie Library Building, located in Gratz Park, which previously housed the Main Library of the Lexington Public Library, is a "library service" within the meaning of KRS 173.360, if the Literacy Center provides services similar to or consistent with those described in "Plans for the Carnegie Literacy Center" prepared by the Carnegie Center Planning Committee dated April 12, 1989, and attached hereto as Exhibit "A" and incorporated by reference;

5. The Library agrees to pay Nine Hundred Thousand Dollars ($900,000.00) to the Government on July 16, 1990 toward the renovation, reconstruction and equipping of the aforementioned Carnegie Library as a Literacy Center consistent with those services and improvements described in "Plans for the Carnegie Literacy Center" prepared by the Carnegie Center Planning Committee dated April 12, 1989 and attached hereto as Exhibits "A", "B", "C", "D" and "E" and incorporated by reference.

(a) The Government intends to solicit private donations for the renovation and equipping of a Literacy Center, as described in the attached Exhibits "B", "C", "D" and "E". If private donations and the Library's Nine Hundred Thousand Dollar ($900,000.00) contribution exceed the actual cost of renovating and equipping a Literacy Center, as described in the attached Exhibits "B", "C", "D" and "E", then the excess funds over actual costs shall be repaid by the Government to the Library; and

(b) If a Literacy Center, as described above and in the attached Exhibits, is operated in the Carnegie Library Building for less than ten (10) years, then for each year (or partial year) less than ten (10) years, the Library shall be repaid ten percent (10%) of the total sum the Library has contributed and such repayment shall be paid by the Government to the Library within sixty (60) days of discontinuation of the operation of the Literacy Center.

6. The Library agrees that twenty-four percent (24%) of all sums paid to it by the Government pursuant to numbered paragraph 2

above shall be expended for the maintenance and operation of a Literacy Center and branch library at the Carnegie Library in Gratz Park so long as the Literacy Center is operated. If the operation of the Literacy Center ceases, the Library's obligation to contribute twenty-four percent (24%) of all sums paid by the Government pursuant to numbered paragraph 2 above shall cease.

7. The Government agrees that except to the extent set forth in the preceding paragraphs of this Agreement, the Library shall have no obligation to expend any funds for the renovation, operation or maintenance of the aforesaid Literacy Center.

8. The Library agrees that all sums contributed by the Government, from whatever source, for the renovation, maintenance and operation of the Literacy Center, Literacy Center grounds and services provided for the Literacy Center, including, but not limited to parking, as consistent with the services and operations described in the aforementioned "Plans for the Carnegie Literacy Center" and incorporated as Exhibit "A" herein, shall be accepted by the Library as appropriations in addition to those otherwise required by this Agreement or the aforesaid Judgment regardless of whether such sums are paid directly to the Library.

9. The Library and Government further agree that if the Government is required to appropriate greater sums to the Library than required by the aforesaid Judgment as a result of further litigation in Fayette Circuit Court Civil Action No. 79-CI-3439, or as a result of any litigation arising out of this Agreement:

(a) All sums expended by the Government from whatever source under numerical paragraph 8 hereinabove shall be credited against and satisfy any additional sums which the Government is required to pay; and

(b) If the sums referred to in numbered paragraph 8 are insufficient to fully offset such additional sums which the Government is required to pay, or if a court of competent jurisdiction determines that such additional sums which the Government is required to pay cannot be offset by the expenditures set forth in numerical paragraph 8, then the Library and the Government agree to enter into a mutual agreement with the State Department for Libraries and Archives pursuant to KRS 173.360 agreeing for the year any additional sum is paid to the Library by the Government under the pending legal action now in the Kentucky Court of Appeals that the Library appropriation for such year shall be reduced by an amount equivalent to any additional amount the Government is required to pay to the Library over and above those amounts required by this Agreement and the aforesaid Judgment. It is understood and agreed that any agreement for annual funding less than the statutory minimum pursuant to this paragraph 9 shall in no respect be considered a precedent for reduced funding for the Library for any subsequent year.

10. It is understood and agreed between the Government and the Library that this Agreement does not amend or otherwise modify any of the prior agreements or obligations of the Government and Library in existence as of the date of this Agreement, but

however, this Agreement is a supplement to all prior agreements between the Government and the Library relating to appropriations and funding for Library services.

11. In the event statutory provisions and ordinances should become effective in the future increasing the Government's minimum required appropriation to the Library any of the tax rates on bank shares, insurance companies capital or tobacco in storage, then in that event all additional revenue resulting from the increase shall be paid to the Library.

12. It is agreed that when the legal entity for operation of the Literacy Center is established that the Library shall be entitled to have Board representation equivalent to twenty-five percent (25%) of the total membership of the voting Board.

13. The Government shall defend, indemnify and hold harmless the Library and its officers, members of the Board of Trustees, and advisory members of the Board of Trustees, personally and in their official capacities for any claims, courses of action or judgment entered against any such person individually or in his or her capacity as officer, board member or advisory board member relating to the acceptance, approval and execution of this Agreement and related to the settlement of the existing litigation now pending in the Court of Appeals of the Commonwealth of Kentucky relating to these parties and the funding of the Lexington Public Library.

14. This Agreement is contingent on the Government's obtaining written consent from Transylvania University agreeing to

the use of the Carnegie Library as a Literacy Center and an acknowledgment by Transylvania University that such use constitutes proper utilization of the building for Library purposes under the tenor and meaning of the deed reciting a reversionary interest in said property for the benefit of Transylvania University.

15. The Government and the Library agree to formalize a lease agreement transferring a leasehold interest in the Carnegie Library Building to the Government including terms and conditions consistent with this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement at Lexington, Kentucky the day and year first above written.

BOARD OF TRUSTEES OF THE
LEXINGTON PUBLIC LIBRARY

By: ______________________
JOSEPH H. MILLER

Its: Chairman

LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT

By: ______________________
SCOTTY BAESLER

Its: Mayor

ATTEST:

____
CLERK OF URBAN COUNTY COUNCIL

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"PROPOSED" COMMITTEE OF THE WHOLE BUDGET MEETINGS FY 2011

MTG NO.	MEETING DESCRIPTION	DATE	DAY	TIME	LOCATION
1	Mayor's Budget Address	4/13/2010	Tuesday	3:00 PM	Council Chambers
2	Presentation on the Mayor's Proposed Budget by Senior Policy & Budgeting Advisor	4/15/2010	Thursday	4:00 PM	Council Chambers
3	Council Links should begin discussions with their assigned divisions.	4/16/2010	Friday		
4	Discussion relating to Debt and Capital Projects **(Scheduled B&F Meeting)**	4/27/2010	Tuesday	1:00 PM	Council Chambers
5	Quarterly COW Meeting (Budget Planning Meeting)	5/4/2010	Tuesday	11:00 AM	5th Floor or Council Chambers
6	Discussion on Revenue Projections	5/6/2010	Thursday	4:00 PM	Council Chambers
7	Council Link Report Outs and Recommendations - General Services and Public Safety	5/20/2010	Thursday	5:00 PM	Council Chambers
8	Public Hearing Regarding Mayor's Proposed Budget	5/20/2010	Thursday	7:00 PM	Council Chambers
9	Council Link Report Outs and Recommendations - Public Works, General Government and Finance, Social Services & Outside Agencies **(Scheduled B&F Meeting)**	5/25/2010	Tuesday	1:00 PM	Council Chambers
10	All Council Link and Individual Council Recommendations to be Submitted to Council Administrator/Budget Analyst	5/31/2010	Monday	5:00 PM	Submissions via electronic/hard copy
11	Review & Discussion of Council Links and Individual Council Member Recommendations for Changes to MPB	6/1/2010	Tuesday	9:00 AM	Council Chambers
12	Review & Discussion of Council Links and Individual Council Member Recommendations for Changes to MPB	6/8/2010	Tuesday	11:00AM	Council Chambers
13	Discussion on Proposed Amendments to Mayor's Budget	6/10/2010	Thursday	5:00 PM	5th Floor Conf Room
14	Discussion on Proposed Amendments to Mayor's Budget	6/15/2010	Tuesday	8:00 AM	5th Floor Conf Room
15	Ratify Budget & Motion to Place on Docket	6/15/2010	Tuesday	3:00 PM	Council Chambers
16	Special Council Meeting to Give First Reading on Council Approved Budget **(Approved Date on Council Calendar)**	6/22/2010	Tuesday	3:00 PM	Council Chambers
17	Council Meeting to Give Second Reading on Council Approved Budget **(Approved Date on Council Calendar)**	6/24/2010	Thursday	7:00 PM	Council Chambers

3/18/2010