James
DeCamp
Gray
Blues
Beard
Stinnett
Crosbie
Myers
Blevins
Henson

INTER-GOVERNMENTAL COMMITTEE

October 14, 2008
1:00 P.M.

A G E N D A

1. **Staying Union Free Human Resources Training Class** - Blues (1-25)

2. **Boards/Commissions Reporting** – Myers (26-35)

3. **Boards/Commissions That Adhere to Ethics Act Financial Disclosure Requirements** – Myers (36-43)

4. **Update on Committee Items** (44)

"Inter-Governmental Committee, to which should be referred matters relating to wages and classification, personnel, government organization, employee relations, government buildings and property maintenance."

Council Rules & Procedures, Section 2.102(2)

TEAMSTERS LOCAL UNION NO 651

100 Blue Sky Parkway • Lexington, KY 40509-9418
Tel: (859) 263-5115 • Fax: (859) 263-1134 • Toll Free: (800) 489-5115.

September 10, 2008

Urban County Council
Lexington-Fayette Urban County Government
Government Center
200 East Main Street
Lexington, Kentucky 40507

Dear Council Members:

It has been brought to my attention recently that the Urban County Government has been offering classes to its employees unfavorably regarding unions in the work force. It was explained to me that the human resource department is offering a course entitled "How to keep your workplace union free." As a union official and a taxpaying citizen, I find this distasteful and insulting.

Teamsters Local Union No. 651 has been an established union in Fayette County for over thirty years. We represent over 3500 working men and women in Central and Eastern Kentucky. The majority of our membership works and lives in Fayette County and they are proud Union members. They voted to have a union in their workplace to keep corporations from walking all over them. They work hard and deserve decent wages, affordable health care and safe working conditions and they are fortunate to have strong contracts that provide them job security.

There are so many people in Fayette County that are not as fortunate as union members. They work many hours for below standard wages with no health care or the possibility of retirement. These people are taxpayers and the fact that city government is offering a course to keep them from having a choice is appalling. We do not infiltrate an employer looking for new members; we support people that come to us when they have had enough!

We are suggesting that you stop teaching this course or provide an alternative. We do think that if a government employee wants to take such a class that they should have to pay the out of pocket expense. Taxpaying Union members or any working class citizen should not have to pay that bill. Our tax dollars should be put to better use! If you continue to offer this course then maybe you could also teach a course about the benefits of Labor Organizations as well.

Many of our members supported your campaigns. I believe that they deserve your respect and consideration regarding this course. I trust that attention will be given to the situation.

Thank you for your time.

Sincerely,

John R. Roush, President
and the Local 651 Executive Board

Staying Union Free

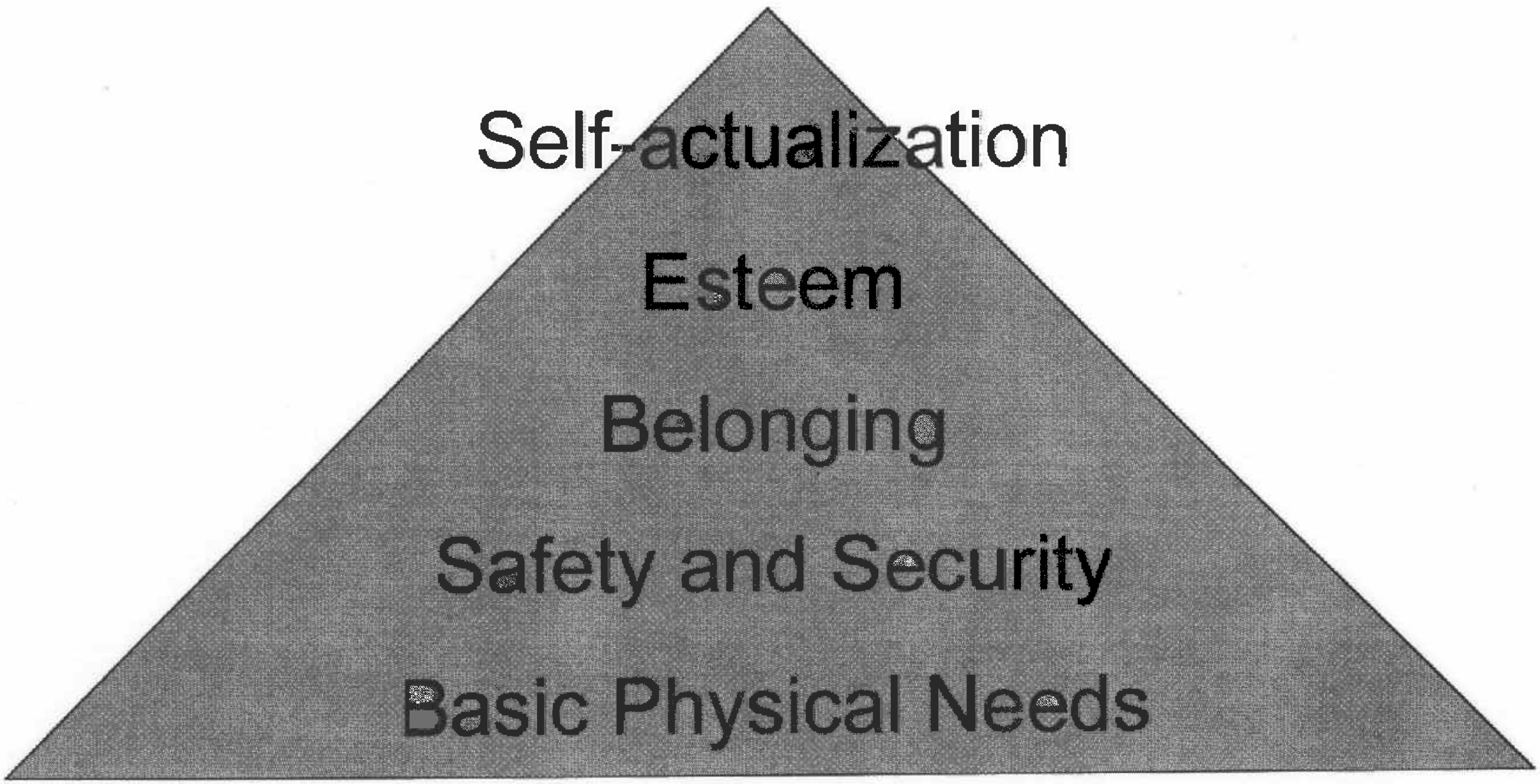
An LFUCG—Division of Human Resources

Management/Supervisory Workshop

Union

A formal association of employees that promotes the interests of it's membership through collective bargaining.

Maslow's Hierarchy of Needs



The Reasons People Seek Unions

- Insecurity
- Policies and Programs
- Physical Working Conditions
- Compensation and Benefits
- Poor Management Practices
- Supervisory Practices
- Failure to Deal with Current Issues

The "Process"

- Statutory Approval – The right to unionize
- A recognized union must agree to represent the employee group as the official bargaining representative.
- A card signing occurs – interest cards
- Employee Free Choice Act

The New Union Battle Cries

- Dignity
- Fairness
- Respect
- A Voice
- A “Seat at the Table”

Disadvantages for Managers

- Flexibility Restricted
- Bargaining Unit
- Dealing with a Third Party
- Second Guessing
- The Squeeze Factor
- Customer Service May Be Hurt

Disadvantages for Employees

- Strikes
- Dues
- Privacy of Personal Work Information
- No Guarantees
- Individual Job Freedom

SCRIPT

- Spying
- Coerce
- Restrain
- Interrogating
- Promises
- Threats

L E A D E R

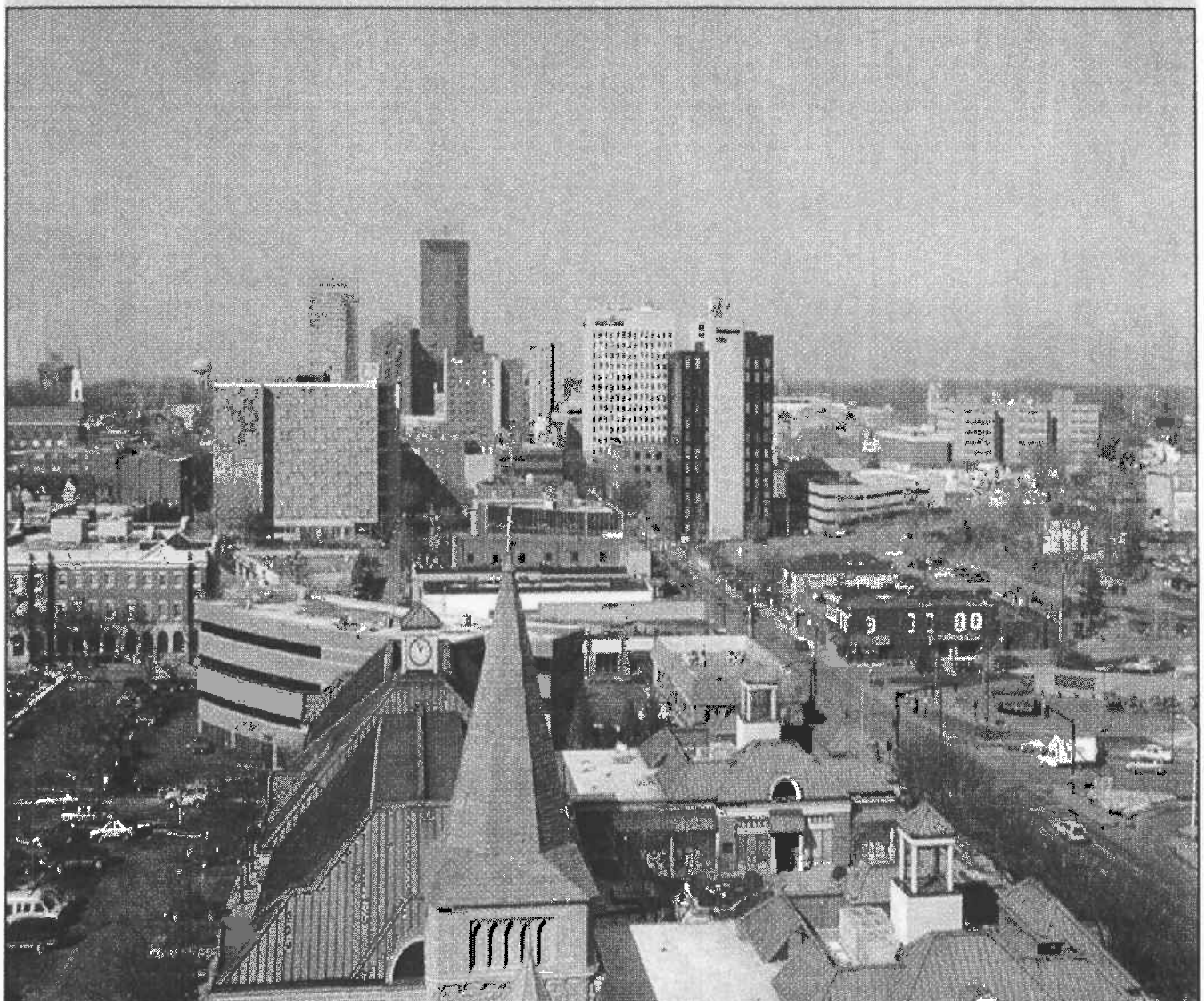
- Listen
- Explain
- Answer
- Distribute
- Express
- Report

Rules of Engagement

WHAT DO YOU SAY?

QUESTIONS and ANSWERS

Staying Union Free



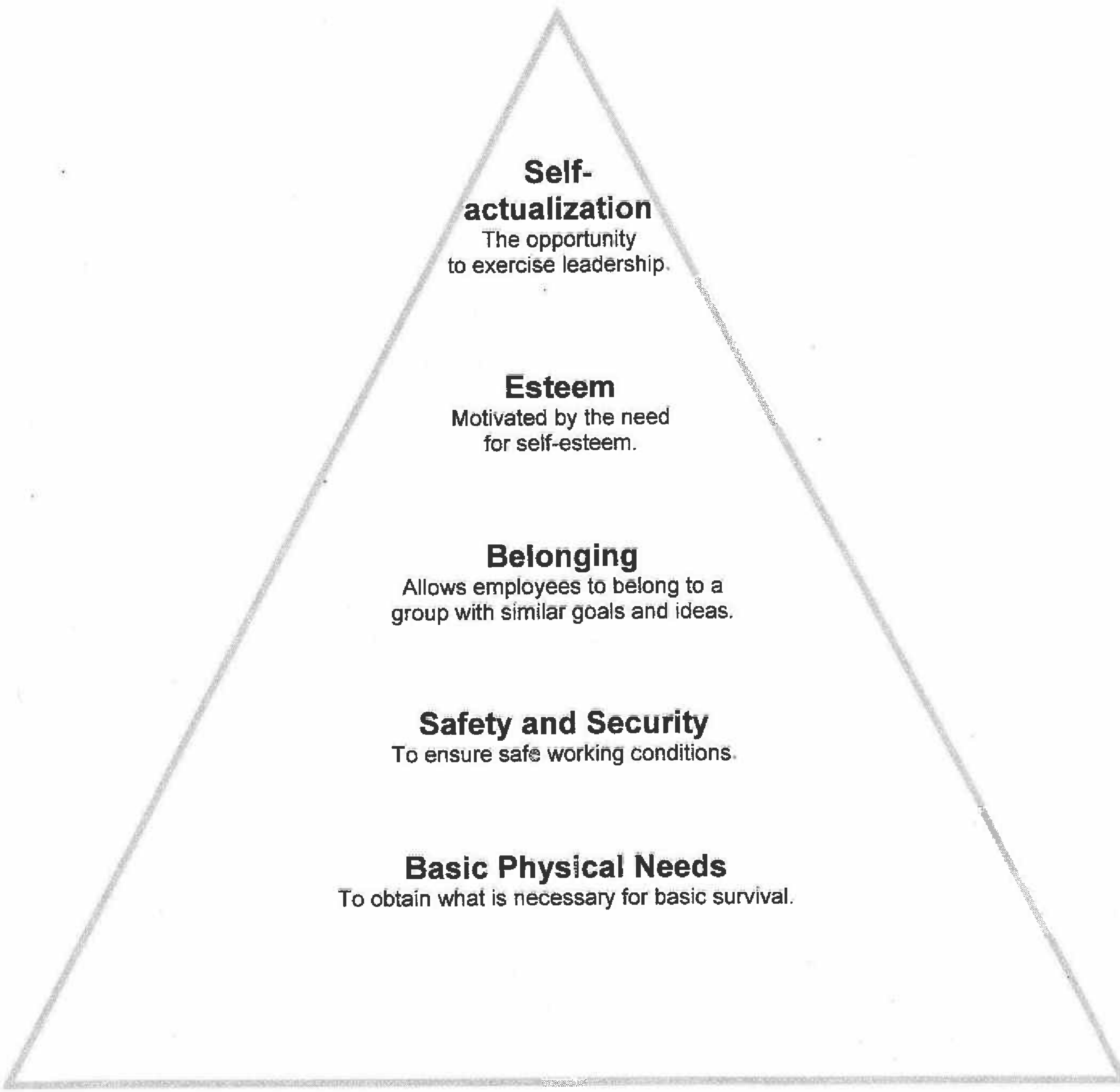
An LFUCG—Division of Human Resources
Management and Supervisory Workshop
2008

WHY DO PEOPLE JOIN UNIONS?

A ***union*** is a formal association of employees that promotes the interests of its membership through collective action.

2005 SHRM

Maslow's Hierarchy of Needs Theory



RULES OF ENGAGEMENT: The Employer's Campaign

A Supervisor Cannot:

1. Promise employees a pay increase, promotion, betterment, benefit or special favor if they stay out of the union or vote against it.
2. Threaten loss of jobs, reduction of income, discontinuance of any privileges or benefits presently enjoyed, or use any intimidating language, which may be designed to influence an employee in the exercise of his or her right to belong or refrain from belonging to a union.
3. Threaten or actually discharge, discipline, or lay off an employee because of his activities on behalf of the union.
4. Spy on union meetings. Parking across the street from a meeting location to see which employees enter the building.
5. Discriminate against employees actively supporting the union by intentionally assigning undesirable work to the union employee.
6. Ask an employee for an expression of their thoughts about a union or its officers.
7. Ask employees about the internal affairs of unions such as meetings, etc. (Some employees may, of their own accord walk up and tell such matters. It is not an unfair labor practice to listen, but you must not ask questions to obtain additional information.)
8. Make statements to the employees to the effect that they will be discharged or disciplined if they are active on behalf of the union.
9. Urge employees to try to persuade others to oppose the union or stay out of it.
10. Visit the homes of employees for the purpose of urging them to reject the union.

A Supervisor Can:

1. Tell the employees that you and the division prefer to deal with them directly, rather than through an organization.
2. Tell them that you or a member of management are always willing to discuss with them any subject of interest.
3. Tell the employees about the benefits they presently enjoy. (Avoid veiled threats or promises.)
4. Tell employees how their wages, benefits and working conditions compare with other companies, whether union or not.
5. Tell employees that no union can make the government agree to anything it does not wish to, or pay any more than it is willing or able to do.
6. Tell employees your opinion about union policies and union leaders, even though in uncomplimentary terms.
7. Tell employees that they are free to join or not join any organization without prejudice to their status with the company.
8. Tell employees that merely signing a union authorization card or application for membership does not mean that they must vote for the union in the election.
9. Layoff, discipline or discharge for cause so long as such action follows customary practice and is done without regard to union membership or non union membership.
10. Enforce company rules impartially and in accordance with customary action.

WHAT DO YOU SAY?

Which of the following statements are legally permissible in a union organizing campaign?

I L 1. In my opinion, if the union gets in the government will privatize this division. That's just my opinion.

I L 2. The Teamsters are a lying, violent, bunch of crooks. But we can be just as tough as they are.

I L 3. Come into my office. I want to talk to you about the union.

I L 4. How do the people in your section feel about the union? Why would the people in this division want a union?

I L 5. If a union gets in, you can kiss all of your benefits good-bye.

I L 6. A local government in Tennessee had this same union and they had all kinds of problems. I'd hate to see that happen here.

I L 7. Don't let them kid you about union authorization cards being confidential.

I L 8. I thought I saw Jane's car outside the Holiday Inn last night. Wasn't the union having a meeting there?

I L 9. Your union buddies are outside the front gate handing out literature again.

I L 10. One thing for sure. Where there are unions there are strikes. I'd hate to see everybody here lose their job because of a strike.

I L 11. I know you're not in the voting unit, but everyone needs to understand that if the union gets in, this division goes away.

I L 12. Bargaining starts with a blank sheet of paper.

I L 13. A union will usually trade away lots of things that are promised so the government will agree to take union dues out of your check.

I L 14. We can match whatever the union is promising you.

I L 15. Don't sign a union card. Try to get it back before it's too late.

I L 16. If the union gets in, we would bargain with them as required by law. But the law doesn't require that we agree with their demands. We would have just as much right to ask for decreases as they would for increases.

I L 17. The sign posted reads "No Soliciting" and the employee openly solicits another to sign a card.

I L 18. An employee wears a T-Shirt which reads: "Sign a Card—Ask Me How".

QUESTIONS AND ANSWERS ABOUT UNIONS

1. **Q.** If the union gets in what exactly does that mean?
   A. *The only right a union could have is to do your talking for you on all job related matters.*

2. **Q.** You mean I lose the right to speak for myself to management?
   A. *That's right. Union representation means only the union can talk to management about your wages, benefits, grievances, etc.*

3. **Q.** Can the union legally require the LFUCG to sign its standard contract?
   A. *There is no such thing as a "standard" union contract. And the union has no legal authority to require the LFUCG to sign it.*

4. **Q.** But would the LFUCG sign a contract if the union came in?
   A. *The LFUCG would bargain with the union if legally required to do so. But bargaining means the company can ask for a decrease just like the union can ask for an increase.*

5. **Q.** How long does the bargaining process take?
   A. *It can take a long time to bargain a first contract.*

6. **Q.** What happens if the union and LFUCG can't agree after bargaining for a long time?
   A. *The union would have three choices:(1) accept the company's offer; (2) walk away and forget the whole thing or (3) strike.*

7. **Q.** If the union strikes can I lose my job?
   A. *Possibly. The LFUCG could have the legal right to replace strikers.*

8. **Q.** Why shouldn't I sign a union card?
   A. *Because it may authorize union dues to be taken out of your paycheck. Also, sometimes these cards are used to bring a union in even if most people don't want it.*

9. **Q.** What is a management rights clause?
   A. *This clause means that management can manage the business, including work assignments, scheduling, hours, shifts, etc., without union interference. The union may agree to this in exchange for automatic deduction of dues money from paychecks.*

10. **Q.** Can a union have a member of management removed because they disapprove of his actions or think the manager is unfair?
    A. *No. The LFUCG will have the right to decide who its management would be.*

11. **Q.** Do I have any obligation to talk to a union organizer?
    A. *No.*

12. **Q.** Can we try a union and then quit if we don't like it?
    A. *No. Once a union comes in, the legal procedures for removing it are complex.*

THE REAL REASONS EMPLOYEES SEEK UNIONS

1. Insecurity

2. Polices and Programs

3. Physical Working Conditions

4. Compensation and Benefits

5. Poor Management Practices

6. Supervisory Practices

7. Failure to Deal with Current Issues

The New Union Battle Cries

- Dignity
- Fairness
- Respect
- A Voice
- A "Seat at the Table"

ORGANIZATION & MANAGEMENT CONSIDERATIONS

Disadvantages of Unions for Managers

Managers and supervisors must understand how life in the division, department, or government would be changed should a union be selected.

1. Flexibility Restricted
2. Bargaining Unit
3. Dealing with a Third Party
4. Second Guessing
5. The Squeeze Factor
6. Customer Service May Be Hurt

Disadvantages of Unions for Employees

Many employees have no knowledge of the disadvantages associated with joining a union. Managers and supervisors should be ready to discuss disadvantages.

1. Strikes
2. Dues
3. Privacy of Personal Work Information
4. No Guarantees
5. Individual Job Freedom

THE ROLE OF SUPERVISOR

The following conduct is considered impermissible by the National Labor Relations Board (NLRB).

S C R I P T

S pying on or surveillance of employees to determine their sympathies for the union is not allowed.

C oerce is to physically or psychologically force employees toward a position on union issues.

R estrain would be exemplified by an action which would obstruct an employee from exercising their NLRB rights.

I nterrogating employees as to their union opinions, how they would vote, whether they signed cards—all are examples of impermissible conduct.

P romises of something favorable happening as an inducement to destroy support for the union **cannot** be made.

T hreats by a supervisor or manager against an employee because of their union sentiments are **not** permitted.

THE ROLE OF SUPERVISOR

During an organizing attempt, manage your area as close to normal as possible by following your division or department's policies and practices.

LEADER

L isten to the issues, concerns and needs of your employees. Take action whenever possible.

E xplain the campaign process and what the union can and cannot do.

A nswer questions freely, openly and honestly.

D istribute information in order for employees to make an informed decision.

E xpress factual information, your opinions, and any experience you may have had with unions.

R eport feedback in order to clear up any misconceptions employees may have about unionization.

Evaluation Summary

Staying Union Free
September 16, 2008

There were 21 participants in this course. All 21 participants completed evaluations.

The evaluated areas summarized are as follows, with the number of answers represented as a percentage of participants:

Factors	Strongly Agree or Agree	No Opinion	Strongly Disagree or Disagree
Class Content/Delivery Factors			
The program met my expectations.	90%	10%	0%
The class materials were of good quality.	95%	5%	0%
The learning methods used were effective.	86%	10%	0%
The class length was sufficient to cover all material and adequately meet all objectives.	81%	0%	19%
The class was organized and flowed smoothly.	95%	5%	0%
The Trainer			
Demonstrated a thorough knowledge of the subject.	95%	5%	0%
Asked and answered questions appropriately.	90%	10%	0%
Communicated explanations and instructions clearly.	95%	5%	0%
Adequately covered the materials and made efficient use of time.	95%	5%	0%
Had a good rapport with the attendees.	95%	5%	0%
Attempted to make the content and subject matter relevant to my job.	90%	10%	0%

Therefore, in most of the evaluated areas over 90% of the participants either agreed or strongly agreed with the statements on the evaluation.

Ten percent or fewer participants had no opinion in all areas.

Participants only disagreed or strongly disagreed in one area of the evaluation. For the 19% of participants who disagreed with the length of the class being sufficient, the assumption is that most participants wanted a longer class (as noted in one of the comments).

Comments

Staying Union Free
September 16, 2008

Handwritten comments from the evaluations are as follows:

Comment 1
May I suggest sending an electronic version of the "Staying Union Free" handout to all employees, specifically Commissioners, Directors, Supervisors; those who were not represented in the classroom.

I feel that, or would like to see more Management attend this class.

Felt that the class was successful, it was not one-sided and fielded good discussion from attendees.

The "What Do You Say?" section of the handout, I believe was the best portion of the training. I would like to see this expanded – with more group interaction.

Comment 2
I enjoyed the class.

There were some things that I didn't understand before I took the class.

Comment 3
What is LFUCG doing (as in the case of Toyota) to cause employer to stay union free.

Comment 4
This class was informative, not leading, and was fairly covered.

The Rules of Engagement should be sent out to all employees thru e-mail.

Comment 5
This was very helpful and informative. As you have said Supervisors & Commissioners can not be made to attend and we know some may not be as well informed.

I do think this is an avenue to open eyes to some things individuals need to be aware of. It has given me support and options.

Comment 6
This class generated a lot of interesting discussion, so therefore, more time (perhaps 4 hours) should be given to this class.

Comment 7
The process info was not in the handout.

Comment 8
The class was informative of the LFUCG views and standings.

Comment 9
Very interesting & informative. Glad I came!

Comment 10
Thanks, Leslie.

Comment 11
Very good class – Valuable information – Learned a lot. Informative-

TO: George Myers, Councilmember

FROM: Department of Law

DATE: October 9, 2008

RE: Purchase of Service Form Agreement 2008
Log No. 08-CC1601

Pursuant to your request, we have reviewed the Purchase of Service Agreement ("PSA") form to include the matters you requested. A copy of the revised form is attached.

The PSA form was initially approved by Council in the late 1970s, and has been modified from time to time as the need arose. Since LFUCG, like any other local government, may not make donations, the PSA is used in order to reflect that taxpayer dollars are being used to purchase a service.

Given the great variety of services reflected in the PSAs, it is difficult to have one form which works in every circumstance. As you will note, the basic provisions are reflected in the form, but the critical part of every PSA is the addendum which outlines the scope of services to be provided by each group.

The requested revisions include:

1. Quarterly reporting to the Council. The prior PSA form required monthly reporting with payment to follow the report. The requested revision is to require quarterly reporting. It appears that some agencies need funding more frequently than quarterly. I think the reporting period can be negotiated. The primary purpose is to require reporting which reflects services provided prior to payment.

2. Right of Internal Audit to investigate. The prior PSA form provided that LFUCG, through auditors, accountants or attorneys, could examine books and records at any time. To provide more flexibility, we have continued

with the general language, rather than specifically requiring that the audit be completed by the Division of Internal Audit.

3. Reimbursement in the event of default. This provision is unnecessary since there is no periodic payment unless the agency documents the work done.

4. Uniform process for accounting of expenditures. The prior PSA form provides that the periodic report shall be on a form provided by the responsible department of the LFUCG. We are available to assist in the development of a form that would include information on expenditures. The form would be required by, but not be an attachment to, the PSA The department responsible for reviewing the agency's periodic reports, and making that information available to the Council, may wish to have the information presented in a certain fashion.

5. Standard budget request form. Each year, the Division of Budgeting handles requests from outside agencies for funding. The standard submission form/process may be further refined so that all information required by the Council is made available. This does not have to be a part of the agreement as it precedes the execution the PSA. However, we may wish to incorporate the information into the PSA by reference.

In this fiscal year, the Council has approved the following PSAs:

Baby Health Services
Big Brothers Big Sisters of the Bluegrass, Inc.
Bluegrass Community Action Agency
Bluegrass Comprehensive Care Center
Bluegrass Domestic Violence Program
Bluegrass Rape Crisis Center
Bluegrass Technology Center
Center for Women, Children and Families
Chrysalis House, Inc.
Community Action Council
Hope Center, Inc.
M.A.S.H. Services of the Bluegrass (Metro Group Homes)
Moveable Feast Lexington, Inc.
Nursing Home Ombudsman Agency of the Bluegrass
Salvation Army
Sunflower Kids, Inc.
YMCA of Central Kentucky
Human Rights Commission
Road to Homeownership Urban League of Lexington-Fayette County, Inc.

No PSAs have been approved for the following:

Environmental Commission
Bluegrass Area Development District
Commerce Lexington
LexArts-management of Downtown Arts Center
Downtown Development Authority
Downtown Lexington Corporation
Environmental Commission
Explorium (draft completed)
Lexington Public Library (draft completed)
SCORE
Kentucky World Trade Center (bluesheeted)

Please advise if you have questions or comments.

Logan B. Askew, Commissioner

Cc; Jim Newberry, Mayor
Joe Kelly, Sr. Advisor for Management
Andrea James, Chair, Intergovernmental Committee
Paul Schoninger, Council Office
Rebecca Langston, Council Office

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DRAFT FORM 10-9-08

PURCHASE OF SERVICE AGREEMENT

THIS PURCHASE OF SERVICE AGREEMENT, made and entered into on the ________ day of ___________, 2008, by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the COMMONWEALTH OF KENTUCKY created pursuant to KRS Chapter 67A ("Government"), 200 East Main Street, Lexington, Kentucky 40507, on behalf of its Department of ______________________________, (hereinafter Department) and ____________ __________________________________, a Kentucky ________, _________ organization,("Organization") with offices located at_____________________________, Lexington, Kentucky ______.

WITNESSETH

That for and in consideration of the mutual promises and covenants herein expressed, the Government and the Organization agree as follows:

1. Government hereby retains Organization for the period beginning on July 1, 200_, and continuing for a period of twelve (12) months from that date unless within that period Government gives the Organization thirty (30) days written notice of termination of this Agreement in which case this Agreement shall terminate thirty (30) days from the date notice is given to the Organization.

2. Government shall pay the Organization the sum of __________________ Thousand Dollars ($__________) for services required by this Agreement, said services being more particularly described in the Addendum attached hereto and incorporated

herein by reference, one fourth (1/4th) of which shall be payable each quarter, within 10 days after receipt of the report required in Paragraph 6 herein, July to June, inclusive.

3. In the event of termination of this Agreement by Government as provided for in Paragraph 1 above, Organization shall be entitled to that portion of total compensation due under this Agreement, as the service rendered bears to the total service required hereunder.

4. Organization shall perform all duties and services included in the Addendum attached hereto faithfully and satisfactorily at the time, place, and for the duration prescribed herein. Organization shall keep itself fully informed of all national and state laws and all municipal ordinances and regulations in any manner affecting the work or performance of this Agreement, and shall at all times observe and comply with such laws, ordinances and regulations, whether or not such laws, ordinances or regulations are mentioned herein and shall indemnify Government, its officers, agents and employees against any claim or liability arising from and based on Organization's violation of any such laws, ordinances or regulations.

5. Organization represents that it has filed any federal, state or local income tax returns required by law in the legally prescribed time and manner. This Agreement shall not become effective unless and until copies of all of the executed originals of the aforementioned tax returns filed for the Organization's most recent or current tax year are registered by the Organization in the office of the Commissioner of the Department, and the Organization shall not be compensated unless and until such registration has taken place.

6. The Organization shall, at the end of each quarter and by no later that the 10th working day of the succeeding quarter, on such forms as the Department shall provide, submit to Department: a report containing, for each of the services enumerated in the Addendum attached hereto which were provided in the preceding quarter (a) a description of the service provided, including the quantity and quality of the service provided, and (b) the personnel costs, administrative costs, fixed costs, and any other direct or indirect costs in providing the service; and an invoice requesting compensation for the services provided during the preceding quarter. Any and all provisions of this Agreement to the contrary notwithstanding, the compensation of Organization for each quarter of the Agreement shall not be paid unless and until Organization submits the quarterly report and invoice required hereunder.

7. Books of accounts shall be kept by the Organization and entries shall be made therein of all money, goods, effects, debts, sales, purchases, receipts, payments and any other transactions of the Organization. The books of accounts, together with all bonds, notes, bills, letters and other writings belonging to the Organization, shall be maintained at the principal place of business of the Organization as set forth in this Agreement. Government shall have free and complete access to the books, papers and affairs of the Organization at all reasonable times, and if it desires, it may have the books and papers of the Organization audited and examined by auditors, accountants or attorneys. Any examination shall be at the expense of the Government.

8. Government may designate such persons as may be necessary to monitor and evaluate the services rendered by the Organization. The Government, its agents and

employees, shall, at all times, have unrestricted access to all places where or in which the services required hereunder are being carried on and conducted. Inspection and monitoring of the work by these authorities shall in no manner be presumed to relieve in any degree the responsibility or obligations of Organization, or to constitute Organization an agent of the Government.

9. Organization shall provide equal opportunity in employment for all qualified persons, shall prohibit discrimination in employment because of race, color, creed, national origin, sex, age, sexual orientation or gender identity, or handicap, shall promote equal employment through a positive, continuing program of equal employment, and shall cause each of its subcontracting agencies to do so. This program of equal employment opportunity shall apply to every aspect of its employment policies and practices.

10. Organization shall adopt a written sexual harassment policy, which shall, at a minimum, contain a statement of current law; a list of prohibited behaviors; a complaint process; and a procedure which provides for a confidential investigation of all complaints. The policy shall be given to all employees and clients and shall be posted at all locations where Organization conducts business. The policy shall be submitted to the Department for review within thirty (30) days of the execution of this Agreement.

11. The Organization agrees that all revenue and expenditures shall be audited at least annually by independent certified public accountants who shall express an opinion as to whether or not revenue and expenditures during the year audited have conformed to state and local law and regulation. A copy of this audit shall be submitted to the Government within 10 days of completion.

12. Organization agrees that it shall apply all funds received by it from the Urban County Government in accordance with the following investment policy guidelines:

A. Objectives--Capital preservation with surety of income. Reasonable competitive income consistent with high investment quality and purpose of funds. All investments shall conform with state and local law and regulations and these Policies.

B. Investment Funds Management--The governing board may elect to either:

(1) manage its investments through its executive director where the size or complexity of funds to be managed is deemed by the board to be within the training, expertise and/or available time capacity of the executive director and the operating staff;

-or-

(2) utilize the professional investment management facilities of a local bank trust department acting in a fiduciary capacity within the same approved investment policies and federal, state, local and trust laws and regulations. The trust department may utilize its regular short-term 100% U.S. Treasury Fund for daily funds investment. The election of option 1 or 2 should be made consistent with the relative cost incurred and in the case of option 2 the cost shall be competitive among local trust departments.

C. Investment Policies--Safety and Prudence.

(1) Short-term liquidity funds shall be invested in "riskless" investments, i.e., deposits in Kentucky commercial banks or savings and loan associations that are fully federally insured or deposits collateralized by U.S. Treasury securities with a current market value of at least 100%, or in direct obligations of U.S. Treasury securities.

Investments shall be diversified according to maturity in order to meet projected cash flow needs.

Collateral pledged to secure uninsured deposits shall be held at a federal reserve bank with the receipt providing absolute control by the agency.

(2) Retirement funds, endowment funds, long-term capital reserve funds and any other special funds may be held and invested by a local bank trust department under investment objectives and diversification in accordance with the individual nature of the funds and pursuant to the "prudent man" investment rule as well as general trust law.

(3) All investments shall be reviewed monthly by a finance or investment committee of the agency.

(4) Local brokerage firms may hold and invest funds provided that investments are located within Kentucky and are fully insured.

D. Audit--All investments shall be audited at least annually by independent certified public accountants who shall express an opinion as to whether or not investments during the year audited have conformed with state and local law and regulation and with the approved investment policies.

13. This instrument, and the Addendum incorporated herein, contains the entire agreement between the parties, and no statement, promises or inducements made by either party or agent of either party that is not contained in this written Agreement shall be valid and binding; and this Agreement may not be enlarged, modified or altered except in writing signed by the parties and endorsed hereon.

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

LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT

BY: ____________________________
Jim Newberry, Mayor

ATTEST:

____
Susan Lamb
Clerk of the Urban County Council

____

BY: __________________________

ITS: _________________________

ATTEST:

____

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Mayor Jim Newberry

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

Department of Law

TO: George Myers, Councilmember

FROM: Department of Law

DATE: October 9, 2008

RE: Ethics Act Revisions – Boards and Commissions
Log. No. 07-CC1819

In 1994, the General Assembly adopted KRS 65.003 which required that all local governments adopt ethics codes. The language set foth in this statute states as follows:

> The governing body of each . . . urban-county. . . shall adopt, by ordinance, a code of ethics which shall apply to all elected officials of the urban-county. . . and to appointed officials and employees of the . . .urban-county. . . or agencies created jointly, as specified in the code of ethics.

KRS 65.003(1). Based on this, local ethics codes apply to the following:

- Elected Officials
- Appointed Officials
- Employees
- Agencies created jointly with another governmental entity

Additionally, the statute requires that each code of ethics have at least four provisions which address the following matters:

(a) Standards of conduct for elected and appointed officials and employees;

(b) Requirements for creation of financial disclosure statements, which shall be filed annually by all candidates for . . . elective offices . . . elected officials . . . and other officials or employees . . . as specified in the code of ethics, and which

**P.O. Box 34028 Lexington, KY 40588 (859) 258-3500 Fax:(859) 258-3538 www.lfucg.com

Please note new mailing address

> shall be filed with the person or group responsible for enforcement of the code of ethics, provided that nonpaid members of jointly created agencies may be exempted from filing financial disclosure statements;
>
> (c) A policy on the employment of members of the families of officials or employees . . . as specified in the code of ethics;
>
> (d) The designation of a person or group who shall be responsible for enforcement of the code of ethics, including maintenance of financial disclosure statements, all of which shall be available for public inspection, receipt of complaints alleging possible violations of the code of ethics, issuance of opinions in response to inquiries relating to the code of ethics, investigation of possible violations of the code of ethics, and imposition of penalties provided in the code of ethics.

KRS 65.003(3).

As you know, the Council spent much time debating which boards and commissions should be included under our code of ethics which is commonly referred to as the "Ethics Act". In reviewing the old files, there is an editorial which you might find interesting concerning this matter. A copy of the editorial is attached.

The ordinance revisions that will be discussed at the next Services Committee are attached. Additionally, please note that our further review of this matter indicates that independent boards and commissions are not subject to local ethics codes. This was the subject of a case decided in July of this year. In Louisville/Jefferson County Metro. Ethics Commission v. Schadein, 259 S.W. 3d 510 (Ky. App. 2008), the court held that the Louisville/Jefferson County Metro Ethics Code does not apply to the Louisville/Jefferson County Metropolitan Sewer District because under its enabling statute it is a "independent body politic charged with the administration of designated affairs" and was created "by the sovereign power of the state as 'a public body corporate, and political subdivision'. " Id. at 512.

Accordingly, the following are not subject to a local ethics code:

Agricultural Extension District Board	Airport Board
Board of Health	Human Rights Commission
Parking Authority Board	Transit Authority Board
Housing Authority Board	Library Board of Trustees

In each of these cases, there is a state enabling statute which proves that each is an "independent body politic" as defined in the case.

Prior to the Schadein decision, the Attorney General had considered whether city and county ethics codes may be applied to boards and commissions whose members are appointed by urban county officials and are considered to be "special districts". In Attorney General Opinion 94-71, the Attorney General opined that the enabling statute, KRS 65.003, does not subject "special districts" to local ethics codes. KRS 65.005 defines a "special district" to include "all political subdivisions of the state except a city, a county, or a school district" giving further support to our position that the above referenced boards and commissions are not subject to ethics codes.

Interestingly, the Interim Committee on Local Government considered in 1995 amending KRS 65.003 to include coverage of special districts within local ethics codes; however, no amendments have been made to the enabling statute relating to special districts.

Further, based on the above authorities, it is also the opinion of this Department that KRS 65.003 does not provide that a local ethics code applies to private non-profits in which some or all of the board members are appointed by the mayor subject to confirmation by the council as members of these entities would not be considered as appointed officials of the urban county government.

In the Schadein case, the court held that boards and commissions over which the Government has no operational control, are financially independent, or for which the Government is not liable for its debts, are not considered agencies of the Government. Id. at 515. If these entities are not considered as board, commissions or agencies of the Government, then members of these groups are not considered to be appointed officials within the meaning of KRS 65.003. Each of these groups is created pursuant to Articles of Incorporation and has its own corporate structure. In our case, these agencies include:

Bluegrass Crimestoppers, Inc.	Lexington DDA, Inc.
Community Action Council	Explorium of Lexington
Henry Clay Memorial Foundation	Public Library Corporation
Hope Center, Inc.	Lexington Center Corporation
Lexington History Museum Inc.	One Parent Family Facility Corp.

As I understand it, the proposed Ordinance changes are designed to address certain categories of agencies without specifically naming them. As we have previously indicated to you, we strongly encourage the Council to name the specific agencies to eliminate any confusion about which are covered. In the absence of this specificity, the enclosed should cover all agencies that exercise any land use authority, which are: Board of Architectural Review, Courthouse Area Design Review Board, Historic Preservation Commission and the Rural Land Management Board. The Planning Commission and Board of Adjustment are specifically listed already.

If you have any questions or need additional assistance, please do not hesitate to contact me.

Glenda Humphrey George, Attorney Sr.

cc; Jim Newberry, Mayor
Joe Kelly, Sr. Advisor for Management
Andrea James, Chair, Intergovernmental Committee
Paul Schoninger, Council Office
Rebecca Langston, Council Office

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DRAFT
10/9/08

ORDINANCE NO_______

AN ORDINANCE

BE IT ORDAINED BY THE LEXINGTON-FAYETTE URBAN COUNTY COUNCIL:

Section 1 – That Section 25-4 of the Code of Ordinances be and hereby is amended to read as follows:

As used in this chapter, unless the context clearly requires a different meaning:

(1) Agency means ~~the Lexington-Fayette Urban County Government Board of Adjustment, Comprehensive Plan Update Committee, Ethics Commission, and Planning Commission~~ **any board or commission created by the urban county government in which the members are appointed by the mayor subject to confirmation by the council.**

(2) Business means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, professional service corporation, or any legal entity through which business is conducted for profit.

(3) Candidate means any individual who seeks nomination or election to an "office" listed in subsection (9)(a) of this section. An individual is a candidate when the individual files a notification and declaration for nomination for office with the county clerk or secretary of state, or is nominated for office by a political party, or files a declaration of intent to be a write-in candidate with the county clerk or secretary of state.

(4) Constitutional officer means any person who is one of the following: County judge/executive, county clerk, county attorney, sheriff, coroner, surveyor or constable.

(5) Employee means any person, whether full-time or part-time, and whether paid or unpaid, who is employed by or provides service to the urban county government or to any "constitutional officer", as

the terms are defined in this section. The term "employee" shall include, but not be limited to, those employees occupying the classified civil service positions established at Code section 21-5, the unclassified civil service positions established at Code section 22-5, and the police and fire positions established at Code section 23-5. The term "employee" shall not include any contractor or subcontractor or any of their employees.

(6) Ethics commission means the Lexington-Fayette Urban County Government Ethics Commission which is created and vested by this chapter with the responsibility for enforcing the requirements of the Lexington-Fayette Urban County Government Ethics Act.

(7) Family member means a spouse, parent, child, brother, sister, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent or grandchild.

(8) Immediate family member means a spouse, an unemancipated child residing in the officer's or employee's household, or a person claimed by the officer or employee, or the officer's or employee's spouse, as a dependent for tax purposes.

(9) Officer means any person, whether full-time or part-time, and whether paid or unpaid, who is one of the following:

(a) The mayor, county judge/executive, members of the urban county council, county clerk, county attorney, sheriff, coroner, surveyor or constable; or

(b) An appointee or a member of the governing body and chief executive officers, if any, of ~~the~~ urban county government ~~board of adjustment, comprehensive plan update committee, ethics commission, or planning commission.~~ **agencies.**

Section 2 – That Section 25-13 of the Code of Ordinances be and hereby is amended to read as follows:

The following persons shall file an annual statement of financial interests with the ethics commission established at section 25-20:

(1) The mayor, county judge/executive, members of the urban county council, county clerk, county attorney, sheriff, coroner, surveyor and constables;

(2) Candidates for the offices enumerated in subsection (1) of this section;

(3) Members and chief executive officers, if any, of urban county government board of adjustment, ~~comprehensive plan update committee,~~ ethics commission, planning commission, **or any agency whose primary mission involves land use or which has land use regulatory authority.**

(4) Commissioners, **senior advisors to the mayor,** division directors, **or comparable positions with similar responsibilities and authority** and employees holding the positions of buyer and buyer senior of the urban county government; and

(5) All persons formerly occupying the positions identified in subsections (1-4) of this section for the first full calendar year following the end of their term of office or employment.

Section 3 – That the Clerk of the Urban County Council be and hereby is authorized and directed to deliver a copy of this ordinance and proof of publication to the Department of Local Government within twenty-one (21) after the effective date of this ordinance.

Section 4 – That this ordinance shall be effective upon date of passage.

PASSED URBAN COUNTY COUNCIL:

____

MAYOR

ATTEST:

____

CLERK OF URBAN COUNTY COUNCIL

PUBLISHED:

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EDITORIALS

No exemption

Include boards, commissions in ethics code

One by one, they stood to address last week's final meeting of the advisory committee drafting an ethics ordinance for Fayette County. They were lawyers and one board chairman, representing the Library Board, the Airport Board, the Board of Health, the Housing Authority, the Human Rights Commission. Each one's spiel seemed like an echo of the preceding speaker.

The (fill in the blank) board was created by state statute. The mayor appoints its members, but the board is independent. It has no affiliation with any local government. It's beyond the jurisdiction of the Urban County Council.

Imposing an ethics ordinance on the (fill in the blank) board will invite legal challenges of the ordinance, and might leave the Urban County Government open to liability in suits against the (fill in the blank) board.

The (fill in the blank) board will lose good members if it is subject to financial disclosure requirements. Financial disclosure is an invasion of their privacy.

We're for ethics, but include us out.

At times, the comments were overtly elitist. Ben Cowgill, chairman of the Library Board, noted that "the qualified people we want on boards and commissions" tend to be successful people with significant investments and estates. Privacy is a legitimate issue to these people, he said, even though they have nothing to hide.

In other words, those Fayette Countians without significant investments and estates aren't qualified to make decisions about libraries, airports and the like. And if they were qualified, privacy wouldn't be important to them.

Distinctions need to be drawn, Cowgill argued. The balance between the need for public disclosure and ethics is not the same in Fayette County as it is in some rural counties, he told the board.

Hmmm. It's nice to know that the residents of Fayette County never have to worry about members of these boards and commissions acting out of vested interest, because being from this county automatically invests these folks with an angelic level of purity unavailable to their counterparts elsewhere in the commonwealth.

In the end, the ethics advisory committee caved in to the pressure from the boards. By a 7-4 vote, the committee removed the financial disclosure requirement for most of these agencies. The Urban County Council ought to demonstrate more toughness.

After all, these boards and commissions spend millions of public dollars. They hire and fire people. They buy and/or lease property. They make critical decisions about the quality of life in Fayette County. Some of them have enormous powers. The Board of Health, for instance, can close down businesses. The Airport Board has its own police force with countywide arrest powers.

But to hear them tell it, these boards and commissions don't answer to anyone in Fayette County — not to elected officials, not to the voters. It's time to change that. There's no better way to start than by the Urban County Council requiring financial disclosure for board members and top executives of these agencies.

Intergovernmental Committee Items-Pending

10/06/2008

Item	Referred By	Date Referred
Staying Union Free	**Blues**	**9-16-08**
Grievance Procedures	James	4-8-08
Citizens' Advocate Office Draft Policy & Procedures Manual	Ellinger	2-5-08
Boards & Commissions That Adhere to Ethics Act Financial Disclosure	**Myers**	**8-14-07**
Review Current Boards & Commissions	Myers	6-12-07
Boards/Commissions Reporting	**Myers**	**8-14-07**
Council Standing Committees	Myers	1/16/07
High Risk Pay Supplement	Gorton	2/14/06
Proposed New Compensation System	Gorton	1/15/05 Next Update 11/11/08