



OFFICE OF THE MAYOR  
LOUISVILLE, KENTUCKY

GREG FISCHER  
MAYOR

July 13, 2020

Brent Ackerson, Chair  
Government Accountability and Oversight Committee  
City Hall  
Louisville, KY 40202

RE: Bruce Blue

Dear Mr. Ackerson:

Please be advised that the Mayor's Office is withdrawing the appointment of Bruce Blue pursuant to the July 7, 2020 opinion (attached) of the Jefferson County Attorney that stated his appointment would be "functionally incompatible" to the 109 Board given his service on the Windy Hills City Council.

Sincerely,

Althea Jackson  
Director, Boards and Commissions  
Office of the Mayor

Cc: Bruce Blue w/attachment  
Robert Schindler w/attachment



**MIKE O'CONNELL**  
**JEFFERSON COUNTY ATTORNEY**

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Louisville, KY 40202

(502) 574-6333

Eric Graninger  
FIRST ASSISTANT

July 7, 2020

*Sent via e-mail only*

Hon. Brent Ackerson, District 26  
Hon. Anthony Piagentini, District 19  
Louisville/Jefferson County Metro Council  
601 W. Jefferson Street  
Louisville KY 40202

**Re: Bruce Blue reappointment to 109 Board**

Dear Chair Person Ackerson and Vice Chair Piagentini,

At the June 16, 2020 Government Oversight and Accountability Committee meeting, the agenda included Mr. Bruce Blue's reappointment to the Waste Management District 109 Board (generally referred to as the 109 Board). According to materials included with the committee agenda, Mr. Blue was first appointed to the 109 Board in August 2018 and is seeking to be reappointed due to the expiration of his first term on June 22, 2020.

During the reappointment discussion, it emerged that Mr. Blue became a member of the city council for Windy Hills in January of 2019. The JCAO was asked to research whether a reappointment would create an "incompatible office" issue.

The question of whether two offices are incompatible is one that must be answered on a case-by-case basis, considering both the actual offices and the specific duties assigned to them. Based on our research, Mr. Blue's role on the city council is functionally incompatible with service on the 109 Board. We understand that he previously served for many years on the 109 Board Advisory Committee. Service on that body would be permissible if the 109 Board and Mr. Blue both were interested in such a role for him.

**Analysis**

Kentucky law recognizes statutory and constitutional incompatibility between offices. The Kentucky Constitution states: ". . . no person shall, at the same time, fill two municipal offices, either in the same or

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different municipalities, except as may be otherwise provided in this Constitution . . ." *Ky. Const. § 165 Incompatible offices and employments*. The Kentucky Revised Statutes ("KRS") also have an applicable section, which states: "The following offices shall be incompatible with any other public office: (g) . . . member of the legislative body in cities of the home rule class." *KRS § 61.080(7)(g) Incompatible Offices*. What is absent from the Constitution and the statute is whether a membership on a board or commission qualifies as an "office."

Waste management districts in Kentucky, as created under KRS Chapter 109, are intended to serve "with primary emphasis on the regionalization of" waste management. *KRS 109.011(5)(b)*. Although KRS 109.072 recognizes that a single county may be designated by the Energy and Environment Cabinet as a waste management area, the focus of Chapter 109 is on regionalized districts. According to opinions from the Attorney General, statutorily created districts are political subdivisions of the Commonwealth. Their board members are not state, city, or county officers, but rather hybrid officers, and therefore are not subject to the incompatible offices provisions of KRS 61.080 and Kentucky's Constitution. *OAG 84-279, OAG 82-635, OAG 79-610, and OAG 71-462*.

However, the analysis of incompatible office questions does not stop with statutory and constitutional incompatibility of offices. Kentucky law also recognizes the common law doctrine of functional incompatibility.

Under the common law doctrine of functional incompatibility, "The question is whether one office is subordinated to the other, or whether the functions of the two are inherently inconsistent or repugnant, or whether the occupancy of both offices is detrimental to the public interest." *LaGrange City Council v. Hall Bros. Co. of Oldham County, Inc.*, 3 S.W. 3d 765 at 769-770 (Ky. App. 1999); *see also Webb v. Carter County Fiscal Court*, 165 S.W.3d 490 at 492 (Ky. App. 2005). The policy supporting the doctrine is that "it is the duty of a public officer or servant to discharge his or her duties uninfluenced by the duties and obligations of another office or position." *Webb*, 165 S.W.3d at 493.

Analyzing the common law incompatible office doctrine as expressed in *LaGrange City Council v. Hall Bros. Co. of Oldham County, Inc.*, it is likely that a court would find Mr. Blue's simultaneous position on the Windy Hill city council and the 109 Board to be functionally incompatible.

The Kentucky Court of Appeals in *LaGrange City Council* evaluated the common law incompatible office doctrine with facts comparable to those in Mr. Blue's situation. The issue considered on first impression was "whether an individual's membership on both a local legislative body and a county planning commission are incompatible as a matter of law." *LaGrange City Council*, 3 S.W.3d at 768. The court found that the council member's concurrent occupancy of both positions was improper because the positions are functionally incompatible. In analyzing the functions of the two offices, the court found "that fundamental fairness does not permit the same person to exercise decision-making authority in one capacity and then review the same matter in another capacity." *Id.* at 771.

LMCO Chapter 51 recognizes the Waste Management District as the body charged with Louisville Metro's implementation of state law on management districts. LMCO 51.101 gives the 109 Board control of all activities and affairs of the district. Under LMCO 51.107(B):

Duties. It shall be the responsibility of the Waste Management District to:

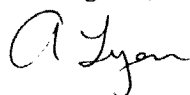
- (1) Supervise the execution of all applicable laws, rules and regulations pertaining to solid waste management.
- (2) Investigate all violations and grievances reported.
- (3) Issue orders for corrections of violations of this chapter.
- (4) Institute necessary proceedings to prosecute violations of this chapter.

According to the “background information” attached to the current 5-year waste management plan on the [louisvillewastedistrict.org](http://louisvillewastedistrict.org) website, the City of Windy Hills is among the cities participating in the plan. Therefore, in his role as a member of 109 Board, Mr. Blue controls the execution of the waste management plan throughout Jefferson County, including in the city of Windy Hills. Investigations, orders, and enforcement related to the plan are the responsibility of the Board, and any potential issues with the implementation of the plan by the city of Windy Hills would come under the 109 Board’s authority.

The issue of common law functional incompatibility is one which only the courts of this state can definitively decide. However, given the analysis above, it is our opinion that in the area of waste management, the city of Windy Hills is subordinate to WMD and Mr. Blue’s positions as both a member of the 109 Board and an elected member of the city council are functionally incompatible.

Regarding the 109 Board advisory committee, both LMCO 51.104 and the WMD bylaws indicate that the purpose of the advisory committee is to secure “regular input” on waste management issues. It is our opinion that service on the advisory committee would not be functionally incompatible with being a member of the Windy Hills city council. The advisory committee does not supervise, create rules, or enforce violations of the waste management plan over the City of Windy Hills, but merely offers recommendations that the 109 Board may or may not incorporate into the plan. In fact, LMCO 51.104(A) urges the Board to gather representation from “incorporated cities within the county.”

Best regards,



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cc: GOAC members  
Council Woman McCraney  
Althea Jackson