

LOUISVILLE / METRO
COUNCIL COURT

COMMONWEALTH OF KENTUCKY
LOUISVILLE/METRO GOVERNMENT
JEFFERSON COUNTY



**IN THE MATTER OF THE REMOVAL CHARGES AGAINST DISTRICT TWENTY-
ONE COUNCILMAN DAN JOHNSON**

**METRO COUNCIL COURT OPINION AND ORDER DENYING RESPONDENT'S
MOTION FOR DISQUALIFICATION OF PRESIDENT DAVID YATES**

This matter having come before the Council Court on Respondent, Dan Johnson's, Motion to Disqualify David Yates as the Chair of the Council Court, and the Charging Committee having filed a Response thereto, and the Chair of the Council Court having considered the same, the Chair of the Council Court finds that he is empowered to rule on all Motions brought before him, other than summary or dispositive Motions, pursuant to Louisville Metro Council Hearing Rules and Procedures adopted July 14, 2011 (the "Removal Rules") Rule 4, and finds:

OPINION

Respondent requests President Yates to recuse himself from the role he presently holds as the Chair of the Council Court in Respondent's Removal Proceedings. Respondent argues President Yates is a material witness and principal party to at least three of the charges alleged against the Respondent and is therefore disqualified from presiding over the Removal

Proceedings against Respondent. For the reasons that follow, the Chair of the Council Court denies Respondent's motion to disqualify President Yates from acting as Chair of the Council Court. Respondent has cited no law in support of this disqualification and has not provided any affidavit in support of same.

Removal Rule 16 provides that the procedural and evidentiary rules to be applied are those generally accepted in Kentucky for administrative proceedings. KRS § 13B.040 provides the grounds for disqualification of a hearing officer. Any party may request the disqualification of a hearing officer "by filing an affidavit, upon discovery of facts establishing grounds for a disqualification, stating the particular grounds upon which he claims that a fair and impartial hearing cannot be accorded." KRS § 13B.040(2)(a). Subsection (b) provides the following non-exhaustive grounds for disqualification:

1. Serving as an investigator or prosecutor in the proceeding or the pre-adjudicative stages of the proceeding;
2. Participating in an ex parte communication which would prejudice the proceedings;
3. Having a pecuniary interest in the outcome of the proceeding; or
4. Having a personal bias toward any part to a proceeding which would cause a prejudgment on the outcome of the proceeding.

As established by KRS § 13B.040(2)(a), an affidavit establishing the grounds for disqualification is required. No such affidavit has been provided and therefore, Respondent's motion is denied. Assuming, *in arguendo*, Respondent's motion would constructively qualify as an affidavit, the grounds set forth are still insufficient to warrant disqualification.

In a court of law, "the standard for determining whether a motion to recuse is legally sufficient is whether the facts alleged would place a reasonably prudent person in fear of not

receiving a fair and impartial trial.” *Taylor v. Carter*, 333 S.W.3d 437, 445 (Ky. App. 2010). This Chair of the Council Court recognizes that the Council Court is *not* a court of law but is a legislative function. Further, the Chair of the Council Court has a limited role concerning the proceedings and is not a sole fact finder or decision maker. In accord with the procedural and evidentiary rules applied in administrative proceedings, the Chair takes note that “the concept of impartiality is, by necessity and by function, more relaxed and informal” in the context of administrative or legislative proceedings. *Hilltop Basic Resources, Inc. v. Cnty. of Boone*, 180 S.W.3d 464, 468 (Ky. 2005). Furthermore, it is incorrect to believe “that procedural due process by an administrative or legislative body includes a broad and general right to an impartial tribunal.” *Id.*

The due process that is afforded in the administrative arena is “the opportunity to be heard at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (internal citation and quotation omitted). The procedure is quite simply “a hearing, the taking and weighing of evidence if such is offered, a finding of fact based upon a consideration of the evidence, the making of an order supported by substantial evidence, and, where the party’s constitutional rights are involved, a judicial review of the administrative action.” *Morris v. City of Catlettsburg*, 437 S.W.2d 753, 755 (Ky. 1969), *see also Kaelin v. City of Louisville*, 643 S.W.2d 590, 591 (Ky. 1982); *Wyatt v. Transportation Cabinet*, 796 S.W. 2d 872, 873-74 (Ky. App. 1990).

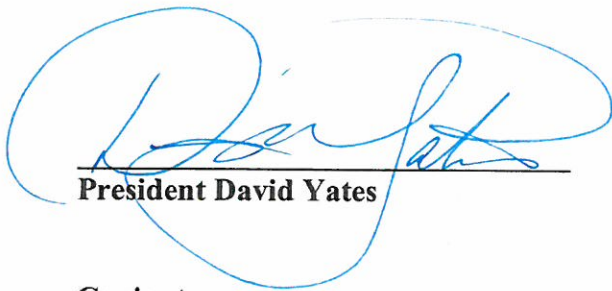
A decision maker may only be removed if they have engaged in biased or prejudicial conduct demonstrating malice, fraud, or corruption. *Hilltop*, 180 S.W.3d at 469. “A legislative decision-maker will not be disqualified simply because he or she has taken a public position on a policy issue related to the dispute, or demonstrated a bias or pre-disposition toward a certain

result.” *Warren County Citizens for Managed Growth, Inc. v. Bd. of Com'rs of City of Bowling Green*, 207 S.W.3d 7, 17 (Ky. App. 2006). “[A] local legislator is not disqualified unless there is a showing that the legislator is not capable of judging a particular controversy fairly on the basis of its own circumstances.” *Id.*

Respondent has failed to allege or provide any facts that President Yates has engaged in biased or prejudicial conduct demonstrating malice, fraud, or corruption. Additionally, Respondent has failed to allege or provide any facts that President Yates is incapable of fairly presiding over the procedural aspects of the upcoming hearing.

For these reasons, Respondents motion requesting President Yates is disqualified from acting as the Chair of the Council Court is **DENIED**.

IT SO ORDERED.



President David Yates

10/24/2017
DATE

Copies to:
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Members, Council Court
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Sarah Martin, Assistant Jefferson County Attorney
Jamie McKiernan, Assistant Jefferson County Attorney
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