

RESOLUTION NO. 190, SERIES 2013

A RESOLUTION REQUESTING THE KENTUCKY GENERAL ASSEMBLY TO ENACT LEGISLATION GRANTING THE LOUISVILLE METRO ETHICS COMMISSION THE AUTHORITY TO ISSUE ADMINISTRATIVE SUBPOENAS IN RELATION TO ETHICS COMPLAINTS AND HEARINGS AND REQUIRE MANDATORY REMOVAL OF AN ELECTED OFFICIAL UPON A FINDING OF FRAUD, THEFT, EMBEZZLEMENT OR MISAPPROPRIATION OF PUBLIC FUNDS (AS AMENDED).

Sponsored By: Council Members David Yates, Jerry T. Miller, President Jim King, Robin Engel

WHEREAS, the Louisville Metro Ethics Commission (“the Commission”) is charged with enforcing the Metro Code of Ethics governing the standards of conduct for government workers and all elected officials; and

WHEREAS, the Louisville Metro Ethics Commission currently lacks the subpoena power necessary to compel individuals to testify before the Commission during the investigation of an ethics complaint or an ethics hearing; and

WHEREAS, the lack of subpoena power remains a serious challenge to the Louisville Metro Ethics Commission’s ability to enforce the law and is ultimately a question of state law that the General Assembly must address; and

WHEREAS, Kentucky Revised Statute (“KRS”) 67C.143(1) states that “any elected officer of a consolidated local government may be removed from office in case of misconduct, incapacity, or willful neglect in the performance of the duties of his or her office by the legislative council, sitting as a court, under oath, upon charges preferred by the mayor or by any five (5) members of the legislative council...”; and

WHEREAS, “misconduct”, “incapacity” or “willful neglect” are not defined by the KRS; and

WHEREAS, the Louisville Metro Ethics Commission needs the ability to issue administrative subpoenas for the attendance and testimony of witnesses and the production of documents relevant to possible violations of the Code of Ethics; and

WHEREAS, Louisville Metro finds it imperative that “misconduct”, “incapacity” and “willful neglect” be defined under the KRS and also that upon a finding of fraud, theft, embezzlement or misappropriation of public funds committed by an elected officer by the legislative council sitting as a court, an elected official shall be removed; and

NOW THEREFORE, BE IT RESOLVED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL) AS FOLLOWS:

SECTION I: The Louisville Metro Council, by this Resolution, requests the Kentucky General Assembly enact legislation granting the Louisville Metro Ethics Commission the authority to issue administrative subpoenas designed to compel individuals to testify before the Commission and require those individuals to produce documents relevant to possible violations of the Code of Ethics.

SECTION II: The Louisville Metro Council, by this Resolution, requests the Kentucky General Assembly enact legislation that would amend KRS 67C.143(1) to require that upon a finding of fraud, theft, embezzlement, misappropriation of public funds or official misconduct as defined under Kentucky Revised Statute (“KRS”) 522.020 committed by an elected officer by the legislative council sitting as a court, an elected official *shall* be removed from office, instead of *may be* removed from office.

SECTION III: The Louisville Metro Council, by this Resolution, requests the Kentucky General Assembly enact legislation that would amend KRS 67C.143(1) to require

“misconduct”, “incapacity” and “willful neglect” be defined under the KRS, and recommends that following definitions be adopted:

“Misconduct”-Misconduct is defined as a transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior; its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness.

“Official Misconduct”- you must knowingly, with the intent to obtain or confer a benefit or to injure another person:

- a) Commit an act relating to his/her office which constitutes an unauthorized exercise of his/her official functions; or
- b) Refrain from performing a duty imposed upon him/her by law or clearly inherent in the nature of his/her office; or
- c) Violate any statute or lawfully adopted rule or regulation relating to his/her office.

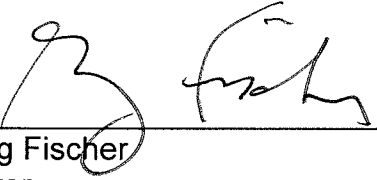
“Incapacity”-The physical or mental inability for an individual to perform the functions of their elected office, or a condition of impairment that substantially limits an individual’s ability to perform the functions of their elected office.

“Willful Neglect”- the intentional disregard of a plain or manifest duty, in the performance of which the public or the person injured has an interest. Willful neglect suggests intentional, conscious, or known negligence – a knowing or intentional mistake.

SECTION IV: This Resolution shall take effect upon its passage and approval.


H. Stephen Ott
Metro Council Clerk


Jim King
President of the Council


Greg Fischer
Mayor

12/17/13
Approval Date

APPROVED AS TO FORM AND LEGALITY: *KBB*

Michael J. O'Connell
Jefferson County Attorney

**LOUISVILLE METRO COUNCIL
ADOPTED**
December 12, 2013

BY: 

SubpoenaPowertoMetroEthicsCommandAmendingKRS67C143byKYGen.Assem.Res.ROC kbb Amended Draft 3.doc 12.03.13
SubpoenaPowertoMetroEthicsCommandAmendingKRS67C143byKYGen.Assem.Res.CCO hso Amended Draft 2.doc 11.20.13
SubpoenaPowertoMetroEthicsCommandAmendingKRS67C143byKYGen.Assem.Res.ROC kbb Amended Draft 1.doc 11.04.13
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