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March 17, 2016

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Kellie Watson  
General Counsel  
OFFICE OF THE MAYOR  
527 West Jefferson Street  
Louisville, Kentucky 40202

RE: Municipal Boards and Appointments, AUTHORITY

Dear Kellie:

Thank you for your inquiries. As you know, we recently answered the very narrow question of who had the appointment authority of the Louisville Metro Planning Commissioners at the expiration of their term. This question was governed by KRS § 100.147. You had two follow up questions: 1) Is the current Planning Commission legally constituted; and 2) Are the Planning Commissioners legally authorized to act *after* their term's expiration? In short, you wish to verify that the composition of this Commission is legal. KRS § 100.157 clearly and absolutely answers this question in the affirmative.

The Planning Commission is lawfully formed and authorized to act. This statute provides, in pertinent part, "the terms of the appointed citizen members of the planning commission shall be for three (3) years and until their successors are appointed and qualified." KRS § 100.157(3)[emphasis added]. The clear language of this statute provides that those commissioners presently serving shall each serve until the appropriate appointing authority selects a new member. In Kentucky, Planning Commissioners appointed under a consolidated local government are empowered with explicit statutory authority to act after the expiration of their term and any action they take is proper, appropriate and legal. Considering applicable law, there is no question the legal composition of the Commission is sound.

You next ask whether, "[i]n the event Planning Commission has not taken action to fill vacancy or expired term of a Planning Commissioner, can the appointing authority and/or Metro Council take action? KRS § 100.147 provides:

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Vacancies on the planning commission, shall be filled within sixty (60) days by the appropriate appointing authority. If the authority fails to act within that time, the planning commission shall fill the vacancy. When a vacancy occurs other than through expiration of the term of office, it shall be filled for the remainder of that term.

KRS § 100.147.

The sixty (60) day time limitation only applies to the appointing authority, not to the successor authority under KRS § 100.147. KRS 100.147 provides neither a time limit for the Commission to fill the vacancy nor a consequence if the Commission fails to fill the vacancy. Moreover, the authority does not revert to the original appointing authority for another three years. We believe the opinion in Ratliff v. Phillips, 746 S.W. 2d. 405 (Ky. 1988) is instructive, however. The opinion provides that the Planning Commission can be advised to render a decision, through a variety of processes, to exercise its authority under KRS Chapter 100.

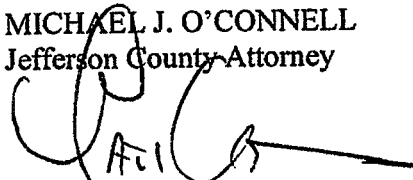
The JCAO recommends that, in this instance, the original appointing authority advise the Planning Commission that it appoint for the remainder of the unexpired terms. The appointing authority can suggest a candidate or slate of candidates for appointment. Again, the right of appointment rests with the Planning Commission on any term that expired more than 60 days ago. However, we see no impediment to original appointing authority acting in such an advisory role and the Planning Commission would likely welcome such advice.

So, to marry the issues, a commissioner's term is three years. KRS § 100.157. At the end of term, the appointing authority has the right to appoint. If there is no appointment made within the 60 days of the vacancy, KRS 100.147 shifts the appointment power to the Commission. Even if no appointment is made after the 60 days has run, the Commissioners are still validly exercising authority under KRS § 100.157(3). In short, the Commissioners and their acts are, and will be, "legal" as a matter of law.

If you have any questions or concerns, please do not hesitate to call me.

Sincerely,

MICHAEL J. O'CONNELL  
Jefferson County Attorney

A handwritten signature in black ink, appearing to read "Matthew J. Golden", is written over the typed name below.

Matthew J. Golden  
Director, Civil Division