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February 26, 2019

Councilman Brent Ackerson  
Louisville Metro Council, District 26  
601 W. Jefferson Street  
Louisville, KY 40202

*Sent via email only*

Dear Councilman Ackerson:

Background

In an email dated January 24, 2019, Jeff T. Noble, your legislative aide, noted a new process you would be requiring as chair of Louisville Metro Council's Government Oversight and Appointments Committee (the GO&A Committee). The email stated, "Councilman Ackerson will be requiring the presence of any appointee to appear at the committee at which their appointment is to be heard. The appointments of persons not present will be passed to the next meeting date."

In a letter dated February 7, 2019, Ellen Heslen, Deputy Mayor and Chief of Staff, asked the Jefferson County Attorney's Office to review the above proposal set out in the January 24 email and inform the Mayor's Office as to the legal issues related to that proposal.

By letter of February 11, 2019, the County Attorney's Office responded to Ms. Heslen that KRS §67C.139(2)(c) would require that the January 24 proposal be adopted by the full Metro Council via an ordinance rather than a committee chairman acting alone. As you know, a copy of that February 11 opinion letter was provided to your office on February 11. At the February 12, 2019 GO&A Committee meeting, a copy of that letter was provided to other Metro Council members present at that meeting.

At the February 12 GO&A meeting, a number of matters were discussed. Coming out of that meeting, a central question posed was one of process: If the Metro Council wants to require all of the Mayor's appointees to appear in person at the GO&A Committee, can that be accomplished via one ordinance or must each of the individual ordinances (one per each agency, board, and commission) be amended to set out the new requirement?

#### Question Presented

This letter focuses upon that central question: If the Metro Council wants to require all of the Mayor's appointees to appear in person at the GO&A Committee, can that be accomplished via one ordinance or must each of the individual ordinances (one per each agency, board, and commission) be amended to set out the new requirement?

#### Analysis

At the outset, a few overarching comments about KRS § 67C.139 are helpful to bear in mind. First, the title of this statute is "Authority over appointments upon establishment of consolidated local government." This is important to note because the General Assembly considered this topic important enough that it set out an independent statutory section devoted solely to appointments to agencies, boards, and commissions. Second, this section vests "all appointment authority" in the Mayor. KRS § 67C.139(1)(a). As to which agencies, boards, and commissions require the approval of the Metro Council, that is a shared process between the Mayor and the Metro Council. *See* KRS §§ 67C.139(2)(a); 67C.139(3). This is accomplished by ordinance. Third, in some respects, KRS § 67C.139 appears to have been written to establish how matters would be determined at the beginning of Louisville Metro Government in 2003.

Recall that the title refers to “upon establishment of consolidated local government.” Louisville Metro Government is now about 16 years after various matters were established and have evolved. Fourth, this section, KRS § 67C.139, was amended by the General Assembly in 2017 to resolve earlier disagreements between the Office of the Mayor and the Metro Council. Those amendments focused upon a shift in the appointment authority if the Mayor fails to make an appointment within 90 days. *See* KRS § 67C.139(1)(b). Fifth, KRS § 67C.139 is not a model of clarity. It is challenging to interpret and apply a number of its provisions. This challenge extends to KRS § 67C.139(2)(c) which is one of the key provisions presented here.

The statute provides,

The legislative council shall enact an ordinance setting out the role of the legislative council, if any, in the appointment process for each individual agency, board, and commission created by statute. Only one (1) agency, board, or commission shall be addressed per ordinance. Such ordinance shall require a vote of the majority of the entire membership of the legislative council for approval and shall be subject to mayoral veto and legislative override pursuant to KRS 67C.103(13)(a) and 67C.105(5)(i); ....

KRS § 67C.139(2)(c)

The County Attorney’s Office answers the question noted above that the Metro Council can adopt one ordinance to require all appointees of the Mayor to appear in person at the GO&A Committee. The first sentence of the above-quoted provision notes “The legislative council shall enact an ordinance setting out the role of the legislative council, if any, in the appointment process for each individual agency, board, and commission created by statute.” In fact, in 2015, Metro Council adopted a general ordinance related to the appointment process. This ordinance was codified in Louisville Metro Code of Ordinances § 32.003, which is titled “Procedures for Appointments to Louisville Metro Boards and Commissions.” LMCO § 32.003 states as follows:

(A) Where the Mayor has power to make appointments to a board or commission, and the appointment is subject to Metro Council approval, the appointment terms must be maintained electronically in a designated database system with access provided to Metro Council. The Office of the Mayor must update the electronic

database system upon notification of a vacancy in an existing appointment and after the establishment of any new board or commission position subject to shifting appointment authority contained in KRS 67C.139.

(B) The Office of the Mayor shall provide Metro Council with access to the designated database system containing all documentation and information submitted to the Office of the Mayor by all applicants for appointments to boards and commissions that require the approval of Metro Council. Metro Council shall not take action on any proposed appointment until and unless said access has been provided to the Council. Metro Council, Council staff, and Metro Council Clerk's Office shall keep applicant information and documentation confidential and allow inspection or dissemination of such information and documentation only to the extent required by Kentucky open records law.

(C) Metro Government shall post all board and commission vacancies on the Metro Government website and advertise board and commission vacancies on Metro TV or other public access media outlet.

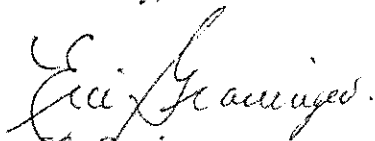
(D) As custodian of the records for Metro Council, the Metro Council Clerk's Office shall be responsible for compiling and disseminating information relating to boards and commissions.

These detailed procedures set out in LMCO § 32.003 relate to the appointment process between the Office of the Mayor and the Louisville Metro Council. KRS § 67C.139 is cited in the ordinance. These procedures were adopted by one ordinance.

While the above analysis answers the question about whether one ordinance or several ordinances are necessary to mandate the new proposed process, we note the following caution: The second sentence of KRS § 67C.139(2)(c) provides, "Only one (1) agency, board, or commission shall be addressed per ordinance." Under the current facts, including the existence of LMCO § 32.003, our office opines that only one ordinance (subject to mayoral veto and legislative override) is necessary to establish the new proposed process. The second sentence, quoted just above, however, could be read as mandating the proposed process in all of the

ordinances.<sup>1</sup> Because of that potential challenge, the safest approach would be for Metro Council to amend all of the several ordinances. But, in light of the current facts, it is our opinion one ordinance establishing this new process is a reasonable interpretation of this statute.

Sincerely,



Eric Graninger  
Assistant Jefferson County Attorney  
Assistant Director of the Civil Division

Copies to:

Matt Golden  
Sarah Martin  
Sean Dennis

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<sup>1</sup> See *Active Care Chiropractic, Inc. v. Rudd*, 556 S.W.3d 561, 564 (Ky. 2018) (“General principles of statutory construction hold that a court must not be guided by a single sentence of a statute but must look to the provisions of the whole statute and its object and policy.” (citation omitted)).