


EXHIBIT 1

AOC-105 Rev. 1-07 Page 1 of 1 Commonwealth of Kentucky Court of Justice www.courts.ky.gov CR 4.02; CR Official Form 1	 CIVIL SUMMONS	Case No. <u>12-cv-178</u> Court <input checked="" type="checkbox"/> Circuit <input type="checkbox"/> District County <u>Kenton</u> <u>H</u>
--	---	---

PLAINTIFF

Garth Kuhnhein
 3084 Prestwicke Drive

Edgewood Kentucky 41017

VS.

DEFENDANT

Kenton County Public Library Board of Trustees
 502 Scott Boulevard

Covington Kentucky 41011

Service of Process Agent for Defendant:

Jim Horner President

 502 Scott Boulevard

 Covington Kentucky 41011


THE COMMONWEALTH OF KENTUCKY TO THE ABOVE-NAMED DEFENDANT(S):

You are hereby notified a legal action has been filed against you in this Court demanding relief as shown on the document delivered to you with this Summons. Unless a written defense is made by you or by an attorney on your behalf within 20 days following the day this paper is delivered to you, judgment by default may be taken against you for the relief demanded in the attached Complaint.

The name(s) and address(es) of the party or parties demanding relief against you are shown on the document delivered to you with this Summons.

Date: 1-20, 2012
 By: John Middleton Clerk
G. Casey D.C.

Proof of Service This Summons was served by delivering a true copy and the Complaint (or other initiating document) to: _____ this ____ day of _____, 2____. Served by: _____ _____ Title

AOC-105 Rev. 1-07 Page 1 of 1 Commonwealth of Kentucky Court of Justice www.courts.ky.gov CR 4.02; CR Official Form 1	 CIVIL SUMMONS	Case No. <u>12-CI-178</u> Court <input checked="" type="checkbox"/> Circuit <input type="checkbox"/> District County <u>Kenton</u> <u>4</u>
--	---	---

PLAINTIFF

Garth Kuhnhein
 3084 Prestwicke Drive

Edgewood Kentucky 41017

VS.

DEFENDANT

Kenton County Public Library Board of Trustees
 502 Scott Boulevard

Covington Kentucky 41011

Service of Process Agent for Defendant:

Jim Horner President

 502 Scott Boulevard

 Covington Kentucky 41011

**THE COMMONWEALTH OF KENTUCKY
 TO THE ABOVE-NAMED DEFENDANT(S):**

You are hereby notified a **legal action has been filed against you** in this Court demanding relief as shown on the document delivered to you with this Summons. **Unless a written defense is made by you or by an attorney on your behalf** within **20 days** following the day this paper is delivered to you, judgment by default may be taken against you for the relief demanded in the attached Complaint.

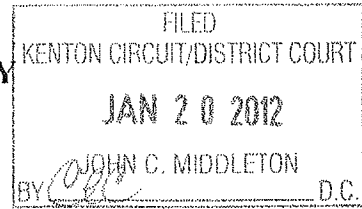
The name(s) and address(es) of the party or parties demanding relief against you are shown on the document delivered to you with this Summons.

Date: 1-20, 2012
 By: John Middleton Clerk
C. Casey D.C.

Proof of Service	
This Summons was served by delivering a true copy and the Complaint (or other initiating document) to:	

this ____ day of _____, 2____.	
Served by: _____	_____ Title

COMMONWEALTH OF KENTCKY
KENTON CIRCUIT COURT
4 DIVISION
CASE NO. 12-CI- 00178



GARTH KUHNHEIN, ON BEHALF OF HIMSELF
AND OTHERS SIMILARLY SITUATED

PLAINTIFFS

V.

KENTON COUNTY PUBLIC LIBRARY
BOARD OF TRUSTEES
Serve: Jim Horner/President
502 Scott Boulevard
Covington, Kentucky 41011

DEFENDANT

By Certified Mail

CLASS ACTION COMPLAINT WITH JURY TRIAL DEMAND AND
DECLARATION OF RIGHTS

Come now the Plaintiff, Garth Kuhnhein, on behalf of himself and others
similarly situated, and for his Class Action Complaint filed herein states:

STATEMENT OF THE CASE

1. Plaintiff is a resident and property owner in the County of Kenton,
Commonwealth of Kentucky and bring this class action against the Kenton County Public
Library, Board of Trustees for the unlawful property tax increases, which per Kentucky
Revised Statutes, required 51% of the number of duly qualified voters voting in the last
general election to submit a petition for an increase in the property tax rate. This action is
brought both for a refund of unlawfully charged and collected ad valorem taxes, as well
as for injunctive relief to prohibit future unlawful tax increases. Finally, this action is
brought as a Declaration of Rights for a determination that the specific provisions of KRS

Chapter 173, pertaining to libraries and the respective manner in which tax rates are set applies, not the general provisions found in KRS Chapter 132. Specifically, for the tax year 2011, the Defendant Library charged a tax of \$1.13 per thousand on \$9,670,692,382, of real estate, equaling \$10,927,882.40. The Defendant Library should have only taxed \$0.60 per thousand on \$9,670,692,282 of real estate, equaling \$5,802,415.43. The Plaintiffs and all other Kenton County taxpayers are owed a refund of \$5,125,466.97 for year 2011 alone. These amounts do not even include the amounts unlawfully charged for tangible tax, which would increase the level of refunds owed.

PARTIES

2. Plaintiff, Garth Kuhnhein, is resident and property owner in Kenton County Kentucky. Furthermore, Plaintiff has paid property taxes to the Library, as set forth on his yearly county tax bill. Plaintiff's property is located at 3084 Prestwicke Drive, Edgewood, Kentucky.

3. Defendant, Kenton County Public Library, Board of Trustees (hereinafter "Library") is a district duly organized under the laws of the Commonwealth of Kentucky, which was organized prior to July 13, 1984.

FACTS

4. The Plaintiff and the class he seeks to represent are residents and property owners who have paid Library taxes, which were increased in the years

5. The Library was organized prior to July 13, 1984, pursuant to KRS Chapter 173.

6. Pursuant to KRS 173.720 the Library was established on or about July 6, 1967, having been formed by Petition.

7. KRS 173.790 governs the increase or decrease in any tax levy. Specifically, that the ad valorem tax rate “shall not be increased or decreased unless a duly certified petition requesting an increase or decrease in the tax rate of a specifically stated amount is signed by fifty one (51%) of the number of duly qualified voters voting in the last general election...”

8. Attached as Exhibit A , is the resolution passed by the Kenton County Fiscal Court, acknowledging the requisite signatures on petitions presented for the establishment of the library and setting an ad valorem tax rate as \$0.06 per \$100 of property value. This equates to \$0.60 per \$1,000 dollars of value, i.e. \$60 of tax on a \$100,000 home.

9. Based on records obtained from the state Department of Revenue website, the Library has set the following rates per \$1,000 dollars of value.

2011	\$0.113
2010	\$0.113
2009	\$0.104
2008	\$0.93
2007	\$0.820

10. Said rates are in well excess of the authorized \$0.60 per \$1,000 resulting in many years with the rates being well in excess of the petitioned/agreed upon rate as submitted to the Kenton County Fiscal Court by the electorate. As set forth above, Plaintiff and the Class of Taxpayers are owed a refund of \$5,125,466.97 for the year 2011, as well as all other years. Also tangible taxes paid in excess are owed refunds.

11. The Defendant Library has unilaterally chosen to not comply with applicable law, with wanton/reckless disregard to the rights of the Plaintiffs and the property owners of Kenton County.

12. The Defendant Library has not complied with the provisions of KRS 173.790 for said increases.

13. The Defendant Library asserts that the commonly referred to House Bill 44, authorizes the library to increase taxes.

14. House Bill 44 does not specifically address the Defendant Library. House Bill 44 is codified in KRS Chapter 132.

15. More importantly, KRS 173.790 is specific and unambiguous, requiring a specific statutorily created mechanism for the Defendant Library to increase tax rates.

16. Kentucky Supreme Court has repeatedly been asked to interpret statutes that present a conflict and apply a rule of statutory construction that the more specific statute controls over the more general statute. *Light v. City of Louisville*, 248 S.W.3d 559, 563 (Ky.2008).

17. This action does not involve a conflict, but rather a complete disregard of a specific statute, KRS 173.790, by the Defendant Library. Said conduct amounts to an unlawful taking.

18. The Defendant Library in increasing taxes, without following specific statutory framework for said increase, blatantly refused to comply with state law.

CLASS ACTION ALLEGATIONS

19. The Plaintiff brings this action as a class action against the Defendant pursuant to Rule 23 of the Kentucky Rules of Civil Procedure. Plaintiffs seek certification of the following class:

All property owners/or taxpayers, who have paid Kenton County Library taxes in excess of the last lawfully set rate set by certified petition.

20. The class definition encompasses in excess of Ten Thousand (10,000) residents/taxpayers who were charged, by Defendant Library, a tax increase never properly enacted. To Plaintiffs' knowledge the number of residents/taxpayers victimized is equal to all properties and tangible property within the County of Kenton.

21. Despite the size of the class, the identities of the class members can be ascertained from the records and files of the Kenton County PVA/Kenton County Fiscal Court. Plaintiffs and their counsel do not anticipate any difficulties in the management of this action as a class action.

22. The interests of the Plaintiff are coincident with and not antagonistic to those of the other members of the class.

23. The named Plaintiff is a member of the class and will fairly and adequately assert and protect the interests of the class. Plaintiff has retained counsel with extensive experience in class action litigation.

24. Common questions of law and fact predominate over any questions affecting only individual members of the class. Common questions include but are not limited to the following:

- a. Did the Library violated KRS 173.790?
- b. Did the Library have the authority to raise the ad valorem rate pursuant to KRS Chapter 132, or does the specific KRS 173.790 apply?
- c. Should the Library be enjoined from further violations?
- d. May the Library increase the ad valorem rate without complying with KRS 173.790?
- e. Is Plaintiff and the class of persons they seeks to represent entitled to a refund of all property taxes paid in excess of the rate

established by resolution \$0.60 per thousand of value and if so for what period of time?

25. Defendants have acted or refuse to act on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

26. A class action is superior to other available methods for the fair and efficient prosecution of this action.

27. The certification of a class would allow litigation of claims that, in view of the expense of litigation, may be insufficient in amount to support separate actions.

**FIRST CAUSE OF ACTION
DECLARATORY JUDGMENT AGAINST DEFENDANTS CONCERNING THE
ASSESSMENT AND COLLECTION OF AD VALOREM TAXES IN EXCESS OF
THE RATE ESTBLISHED BY KRS 173.710-800**

28. The Plaintiff incorporates all allegations in the Complaint.

29. As set forth above, the Library was established pursuant to KRS 173.720, with a petition being presented to the Kenton County Fiscal Court and a resolution adopted establishing the Library and adopting a tax rate of \$0.60 per thousand dollars of value.

30. KRS 173.790 governs any increases or decreases to said rate. Since adoption, the rate has increased, without following the petition requirements set forth by law.

31. The actions of the Defendant Library in assessing and collecting an ad valorem tax in excess of \$0.60 per \$1,000 of value in violation of KRS 173.790.

**SECOND CAUSE OF ACTION
CONVERSION AGAINST THE DEFENDANTS**

32. The Plaintiff incorporates all allegations in the Complaint.

33. The Plaintiff and all members of the class were assessed and forced to pay taxes in excess of the approved rate. In the event of non-payment, Plaintiff was threatened with interest at the rate of 12%, numerous fees to the County Attorney, Sheriff and Clerk and foreclosure.

34. The Defendant Library lacked the authority to issue a bill in excess of the approved rate, but nonetheless did so under the aforementioned threats of collection.

35. The Defendant Library converted Plaintiff and all other taxpayers' monies under the guise of lawful property tax. Defendant Library has exercised and continues to exercise dominion and control over Plaintiff and all other taxpayers' money.

36. Defendants actions constitute common law conversion.

37. As a direct and proximate cause of the Defendants' conversion, the Plaintiff and all members of the class have been injured. The injuries include loss of personal funds billed unlawfully by the Defendants.

**THIRD CAUSE OF ACTION
UNLAWFUL TAKING PER 42 U.S.C. SECTION 1983**

38. The Plaintiff incorporates all allegations in the Complaint.

39. Defendants acted under color of law in issuing tax bills and forcing payment by the Plaintiffs for taxes not authorized by law.

40. The Plaintiff and other members of the class under the 5th and 14th Amendments to the United States Constitution are protected from unlawful takings by the government.

41. Defendant Library acted under color of law, in issuing tax bills and forcing payment, under threat for non-payment, to unlawfully take property belonging to the Plaintiff and other members of the class.

42. Defendants actions complained of herein violated the 5th and 14th amendments of the United States Constitution, as well as 42 U.S.C. Section 1983, entitling Plaintiff and other members of the class to attorneys' fees and costs, in addition to the damages complained of herein.

**FOURTH CAUSE OF ACTION
UNJUST ENRICHMENT/RIGHT TO REFUNDS**

43. The Plaintiff incorporates all allegations in the Complaint.

44. The Plaintiff and the members of the Class have paid taxes to the Defendant Library, well in excess of those allowed by law.

45. The Defendant Library has been unjustly enriched by said excess tax collection.

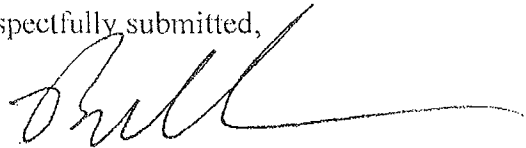
46. The Plaintiff and the Class of Taxpayers are owed a refund for all taxes paid in excess of the statutorily authorized amount provided for in KRS 173.790.

WHEREFORE, Plaintiff, on his behalf and on behalf of all others similarly situated, demand judgment against the Defendant Library and specifically request:

1. Mandatory injunctive relief requiring Defendants issue refunds for taxes billed and collected in excess of the statutorily approved rate of \$0.60 per thousand;
2. Mandatory injunctive relief preventing the Defendant Library from increasing its tax rate unless the provisions of KRS 173.790 are complied with;
3. Judgment and award of compensatory damages, in the form of refunds, with interest, against the Defendant Library in an amount to be determined by the finder;

4. For a declaratory judgment that KRS 173.790 governs the tax rate and ability to increase and/or decrease said rate;
5. Prejudgment interest, court costs and attorneys fees, per 42 U.S.C. Section 1983;
6. That the Court certify this action to proceed as a Class Action;
7. All other relief to which the Plaintiffs and members of the class are properly entitled to receive at law or in equity.

Respectfully submitted,



Brandon N. Voelker
The Voelker Firm, PLLC
4135 Alexandria Pike, Suite 109
Cold Spring, Kentucky 41076
(859) 781-9100
bnvoelker@msn.com

JURY DEMAND

Now come Plaintiffs, by and through their attorneys, and demand a trial by jury on all causes of action.



Brandon N. Voelker

RESOLUTION

It was moved by Commissioner *W. H. ...* and seconded by Commissioner *W. H. ...* that the following Resolution be adopted:

"BE IT RESOLVED that a duly certified Petition containing more than fifty-one (51%) per cent of the number of duly qualified voters who voted in the last General Election on November 3, 1966, having been filed petitioning the Fiscal Court of Kenton County, Kentucky, to establish a Public Library District for Kenton County, Kentucky, and,

It appearing that the provision of the act relating to public library districts being KRS 173.710, et seq., provides that the Fiscal Court of the County shall adopt a resolution ordering the levy of a tax as required in the petitions filed in the sum of six cents (.06) on each one hundred dollars worth of property assessed for local taxation, and,

It appearing that said Petition filed with the Fiscal Court was so filed within less than ninety (90) days after the date of the first signature on such petition, and,

It further appearing that the requirements of Chapter 173 of Kentucky Revised Statutes having been fully complied with,

NOW, THEREFORE, IT IS HEREBY ORDERED AND DIRECTED, that a Kenton County Public Library District be and the same is hereby established and that a levy of a tax for said Kenton County Library District in the sum of six cents (.06) be and the same is hereby made on each One Hundred Dollars worth of property assessed for taxation within Kenton County, Kentucky, for the purpose of establishing, constructing, equipping, maintaining, administering or contracting for such library service for the Kenton County Public Library District embracing the entire County and a certified copy of this Order shall be filed with the County Clerk of Kenton County, Kentucky, within thirty (30) days from the date hereof who will add

the levy to the next annual tax bill or bills of Kenton County, Kentucky."

It is further ordered and directed that the County Clerk in behalf of the Kenton Fiscal Court in accordance with KRS 173.725 shall at once notify the Kentucky Department of Libraries of the establishment of said Library District by forwarding a certified copy of this resolution to said Department.

Attest: W. W. Cook, Clerk *James W. Braxton*
County Clerk *Kenton Co. Judge*
+ _____

July 6, 1967
Covington, Kentucky

The Kenton County Fiscal Court met in regular session in Covington, Kentucky on July 6, 1967, with County Judge James A. Dressman Jr. presiding. County Commissioners Robert Aldemeyer, Charles Summe, and George Steinford, County Attorney John Elfers, and County Engineer John D. Fielding being present.

The Court was opened with a prayer by Mr. Summe.

Motion made by Mr. Steinford, seconded by Mr. Aldemeyer, to accept the minutes of the previous meeting with additions and corrections. Motion carried.

Bids were submitted from T. & W. Printing, St. Regis Paper Co, The Fred Procter Co, and F. A. Klenk & Associates for tax bill envelopes.

Motion made by Mr. Summe, seconded by Mr. Aldemeyer, to refer the bids to the Kenton County Sheriff's Office. Motion carried.

Letter received and filed from the Kenton County Clerk's Office regarding their acceptance of Standard Office and Supply Company for the binding of the 1967 tax bills, and The Howard Shaw Company for the supplying of books and binders for records.

Motion made by Mr. Aldemeyer, seconded by Mr. Summe, to accept these bids upon recommendation of the County Clerk's Office. Motion carried.

The Kenton County Patrol Reports, and the Kenton County Building Inspector's Report was submitted to the Fiscal Court. Motion made by Mr. Steinford, seconded by Mr. Summe, to accept these reports. Motion carried.

A resolution assessing and levying a one-point seven cent (1.7c) tax on all real and personal property in Campbell and Kenton Counties upon each one hundred dollars valuation as of January 1, 1967 was submitted and filed.

Three resolutions were submitted to the Fiscal Court of Kenton County authorizing the County Judge to borrow from the County Depository, the First National Bank and Trust Company the sums of

Nine Thousand Dollars (\$9,000.00) for the Health Fund

Fifty Thousand Dollars (\$50,000.00) for the General Fund

Fifty Thousand Dollars (\$50,000.00) for the Road and Bridge Fund.

wherewith to pay claims against said funds of the County of Kenton, Kentucky. Motion made by Mr. Summe, seconded by Mr. Aldemeyer, to adopt, accept, and approve these resolutions. Motion carried.

The following resolution was submitted to the Kenton County Fiscal Court, and the Kenton-Boone Board of Realators appeared before the Fiscal Court voicing their opposition to this resolution.

Motion made by Mr. Summe, seconded by Mr. Steinford, to adopt, accept, and approve this resolution. Upon roll call, the following vote was recorded: Aye: Mr. Summe, Mr. Steinford, Mr. Aldemeyer, and Judge Dressman. Nay: None. Motion carried.

A bid was submitted to the Fiscal Court from J. G. Exterkamp Sons & Company, general Contractors, for the construction of an addition to the Kenton County Garage. Motion made by Mr. Steinford, seconded by Mr. Aldemeyer, to accept and approve this bid. Motion carried.

The Kenton County Library Petition was submitted to the Fiscal Court consisting of 16,513 signatures, duly attested by the County Clerk as being more than 51% of the number of duly registered voters who voted in the last general election of November 8, 1966. The following resolution was submitted accompanying the signatures:

R E S O L U T I O N

It was moved by Commissioner Aldemeyer, and seconded by Commissioner Steinford that the following Resolution be adopted:

"BE IT RESOLVED that a duly certified Petition containing more than fifty-one (51%) per cent of the number of duly qualified voters who voted in the last General Election on November 8, 1966, having been filed petitioned the Fiscal Court of Kenton County, Kentucky to establish a Public Library District for Kenton County, Kentucky, and,

It appearing that the provision of the act relating to public library districts being KRS 173-710 et seq., provides that the Fiscal Court of the County shall adopt a resolution ordering the levy of a tax as required in the petitions filed in the sum of six cents on each one hundred dollars worth of property assessed for local taxation, and,

It appearing that said petition filed with the Fiscal Court was so filed within less than ninety (90) days after the date of the first signature of on such petition, and,

It further appearing that the requirements of Chapter 173 of Kentucky Revised Statutes having been fully complied with,

NOW, THEREFORE, IT IS HEREBY ORDERED AND DIRECTED, that a Kenton County Public Library District be and the same is hereby established and that a levy of a tax for said Kenton County Library District in the sum of six cents (006) be and the same is hereby made on each One Hundred Dollars worth of property assessed for taxation within Kenton County, Kentucky for the purpose of establishing, constructing, equipping, maintaining administering or contracting for such library service for the Kenton County Public Library District embracing the entire County and a certified copy of this Order shall be filed with the County Clerk of Kenton County, Kentucky, within thirty (30) days from the date hereof who will add the levy to the next annual tax bill or bills of Kenton County, Kentucky."

It is further ordered and directed that the County Clerk in behalf of the Kenton Fiscal Court in accordance with KRS 173.725 shall at once notify the Kentucky Department of Libraries of the establishment of said Library District by forwarding a certified copy of this resolution to said Department.

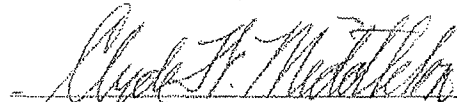
LIBRARY PETITION

The following duly qualified voters of Kenton County hereby petition the Fiscal Court of Kenton County to establish a public library district for Kenton County which shall have the authority to impose a special ad valorem tax of six cents (.06) on each one hundred dollars worth of property assessed for local taxation in the district for the maintenance and operation of the Kenton County public library district.

CERTIFICATION BY LIBRARY COMMITTEE

The undersigned, Clyde W. Middleton and Laurence W. Grause, as Co-Chairman of the Kenton County Library Committee hereby certify that the Petition herein containing 16,503 signatures, addresses and dates consists of more than 51% of the number of duly qualified voters who cast 29,147 votes in the last General Election on November 8, 1966, in Kenton County, Kentucky, as required and provided in KRS 173.720.


This 5th day of July, 1967.


Clyde W. Middleton, Co-Chairman
Kenton County Library Committee


Laurence W. Grause, Co-Chairman
Kenton County Library Committee

Subscribed and sworn to before me by Clyde W. Middleton and Laurence W. Grause, Co-Chairman of the Kenton County Library Committee, on this the 5th day of July, 1967.

My Commission expires July 20, 1968


Notary Public

CERTIFICATION BY KENTON COUNTY CLERK

I, A.T. Wood, Clerk of the Kenton County Court, do hereby certify that the Petition herein duly certified containing 16,503 signatures, addresses and dates consists of more than 51% of the number of duly qualified voters who cast 29,147 votes in the last General Election on November 8, 1966 in Kenton County, Kentucky, as required and provided in KRS 173.720.

This 5th day of July, 1967.

A.T. Wood, Clerk

By: _____ D.C.

**COMMONWEALTH OF KENTUCKY
KENTON CIRCUIT COURT
FOURTH DIVISION
CASE NO. 12-CI-178**

**GARTH KUHNHEIN, ON BEHALF OF HIMSELF
AND OTHERS SIMILARLY SITUATED**

PLAINTIFFS

V.

**KENTON COUNTY PUBLIC LIBRARY
BOARD OF TRUSTEES**

DEFENDANT

**PLAINTIFFS' MOTION FOR AN ORDER TO REQUIRING THE KENTON COUNTY
LIBRARY BOARD OF TRUSTEES TO ESCROW ALL TAX PAYMENTS RECEIVED
IN EXCESS OF \$0.60 PER THOUSAND OF ASSESSED VALUE**

Comes now the Plaintiffs, by and through counsel, and moves this Court for an Order requiring the Defendant Library to escrow all taxes collected in excess of \$0.60 per thousand of value. In support, an Affidavit, Verifying the allegations of the Complaint filed herein is incorporated by reference herein. The issue is straightforward, KRS 173.790 requires a petition to increase and/or decrease the Defendant's tax rate. Nonetheless, the Defendant has refused to follow the applicable law. The Plaintiffs are able to show a likelihood of success on the merits and will suffer irreparable harm in that tax money unlawfully collected will be paid out with the possibility it is unable to be returned, especially since the Defendant Library's own budget shows expenditures in well excess of the taxes authorized by KRS 173.790.

In further support, attached is a recent news article, outlining statements from both the Kenton and Campbell Library Executive Directors advising that the suit is without merit (Shroeder, Kenton) and "baffled" by the suit (Morgan, Campbell). Specifically, the Kenton Chair stated that the "suits are without merit" and "We're following the law and have been for many years." Dave Shroeder, Kenton Executive Director. JC Morgan, Campbell Executive

Director stated, that the Campbell Board is in “full compliance with the spirit, intent and letter” of the KRS statutes governing Campbell County Public Library Operations.

The news story illustrates the need for immediate action by this Court. The Executive Directors of each Board refuse to acknowledge the existence of a statute directly on point. Furthermore, prior Attorney General Opinions, issued by then Attorney General and current governor, Steve Beshear advised that KRS 173.790 “governs the method of dissolution and tax rate change.” *OAG 81-527*.

Ironically, and still in further support of the respective Executive Director’s misunderstanding of law, Kenton Director Schroeder advised in a press release that House Bill 44 enacted in 1979, allows the increases in conflict with KRS 173.790. Executive Director Schroeder’s press statement references a statute already in existence when then Attorney General Steve Beshear’s office authored the aforementioned statute.

Attorney General Beshear advised in other opinions the application of KRS 173.790. A district created by petition “can only procure a change in tax rate by the petition method (KRS 173.790); thus, the method of creation of a library district governs the method of dissolution and tax rate change; such methods must be the same.” *OAG 80-570*. Kentucky Governor Steve Beshear has already issued opinions on the matter, which are as straightforward as the plain text of KRS 173.790. The Kenton and Campbell Executive Director’s seek to vilify and claim public harm for the respective blatant refusal to comply with black letter law and prior Attorney General Opinions.

Subsequent Attorney General, David Armstrong, in 1984 also advised consistent with AG Beshear’s office. While not addressing the specific point, because of its obvious clear language, AG Armstrong rendered an opinion as to how signatures should be examined in

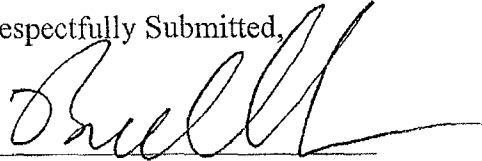
connection with “petitions being circulated requesting raising the tax rate to a specific figure.” Obviously, if a petition was not needed, the Attorney General’s office would have advised as such.’ *OAG 84-141*. Copies of the News Article and respective Attorney General’s Opinions are attached hereto and incorporated by reference herein.

Finally, KRS 173.790 is also attached in its entirety. Plaintiffs’ will not labor the clear language, but would ask the Court to examine the reference to Board’s created “before July 13, 1984.” The Kenton County Library was created in 1967 and any reliance on a 1979 House Bill 44 is clearly misplaced, since the legislature clearly took action to set a date of July 13, 1984.

While the respective Executive Directors desire to vilify Plaintiff and Counsel, they have either not sought or presumably disregarded legal and/or bond counsel opinions in connection with their respective revenue source. The Plaintiff has brought a claim that is not asking for an extension of law, but rather just the application of existing, as set forth by the clear intent of the legislature, in utilizing a specific date and prior Attorney General Opinions. Plaintiff can show a likelihood of success and the failure of this Court to act immediately, will allow the Kenton Library Executive Director to continue to spend monies unlawfully obtained and in violation of clear law and AG opinion, with the Plaintiff and the taxpayers of Kenton County forced to try and recover monies already spent. The irreparable harm is clear and absent an order from this Court, said monies belonging to the Plaintiffs and Kenton County Taxpayers, will be spent and impossible to recover.

Wherefore, Plaintiff would ask that this Motion be granted.

Respectfully Submitted,



Brandon N. Voelker
The Voelker Firm, PLLC
4135 Alexandria Pike, Suite 109
Cold Spring, Kentucky 41076
(859) 781-9100
bnvoelker@msn.com

NOTICE

The foregoing Motion shall come for a hearing before the Kenton Circuit Court on the 27th day of February 2012 at 9:00 am or as soon thereafter as Counsel may be heard.

CERTIFICATION

I hereby certify that true accurate copy of the foregoing has been sent by first class mail, postage prepaid to the following:

Jim Horner/President
502 Scott Boulevard
Covington, Kentucky 41011

Mary Ann Stewart
40 West Pike Street
P.O. Box 861
Covington, Kentucky 41012-861

On this 27th day of January 2012.



Brandon N. Voelker

AFFIDAVIT

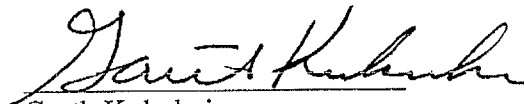
Comes now the Affiant, Garth Kuhnhein, and after being duly sworn states as follows:

1. The Affiant is a resident and property owner in Kenton County and has paid ad valorem tax to the Kenton County Public Library.

2. That the Affiant has reviewed the allegations and attachments to the Complaint filed on his behalf in the Kenton Circuit Court, Case No. 12-CI-178 and the said allegations and attachments are true to the best of his knowledge and belief.

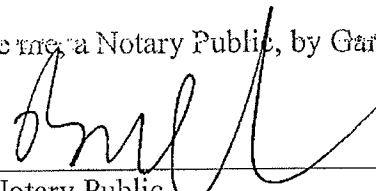
3. That the Affiant has reviewed the allegations and attachments of the Motion to Escrow being filed on his behalf in the Kenton Circuit Court, Case No. 12-CI-178 and the allegations and attachments are true to the best of his knowledge and belief.

Further Affiant Sayeth Naught.

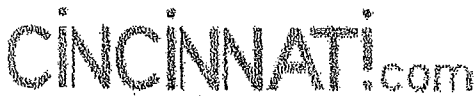

Garth Kuhnhein

COMMONWEALTH OF KENTUCKY]
COUNTY OF KENTON] Sect.

Subscribed and Sworn to before me, a Notary Public, by Garth Kuhnhein, on this 27th day of January 2012.


Notary Public 452469
State at Large

My Commission Expires: October 8, 2015



Northern Kentucky's libraries target of lawsuits

Written by
Chris Mayhew

Class action lawsuits have been filed against the public library systems of both Kenton and Campbell counties, and the attorney filing the suits has promised to add Boone County's libraries to the list.

Cold Spring-based attorney Brandon Voelker filed a class action suit against the Kenton County Public Library Friday, Jan. 20, in Kenton Circuit Court seeking to invalidate previous library property tax rate increases and a refund. On the previous day, Jan. 19, Voelker filed a similar suit against the Campbell County Public Library. The suits allege the library's boards have not properly followed Kentucky law governing library districts in the past when increasing property tax rates.

Kenton County Public Library Executive Director Dave Schroeder said the suits are without any merit.

"We're following the law and have been for many years," Schroeder said.

Schroeder said he thinks it is important for people to know if the lawsuits were to prevail it would have a "huge impact" on library services to the point where it could shut down both systems.

According to a statement released by Kenton County, the library is complying with the law under the provisions of House Bill 44 enacted in 1979 by the Kentucky General Assembly to govern special taxing districts like libraries.

A total of 77 libraries across Kentucky use the tax methods outlined in HB 44, according to the statement.

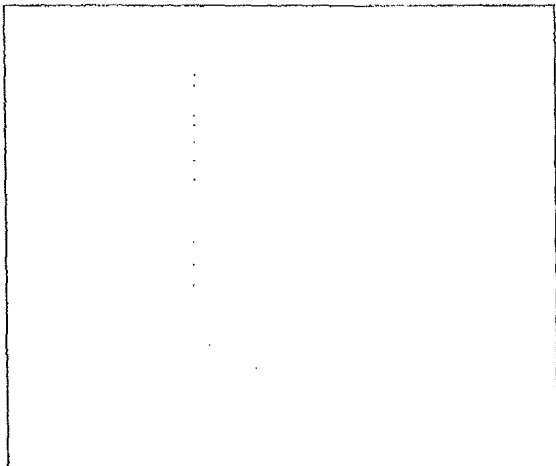
The filers of the lawsuit allege it's not HB 44, but Chapter 173 of the Kentucky Revised Statutes that govern library tax districts, Voelker said.

Voelker said the library districts overspend on things like salaries for unnecessary personnel.

"Our legislature, no one is solving the problem of these unelected taxing boards," Voelker said. "The laws were written to be followed and the state's not holding them accountable."

Voelker said he plans to file suit against

Advertisement



Print Powered By Format Dynamics

CINCINNATI.com

Boone County as soon as the week of Jan. 23-27.

"I was initially asked to look into the legalities of the public library systems on behalf of the the members of the Northern Kentucky Tea Party," he said.

If both the Kenton and Campbell counties suits were entirely successful for the plaintiffs, the damages recoverable for a refund to residents will be in excess of \$30 million, Voelker said.

The Kenton County suit was filed in Kenton Circuit Court by Garth Kuhnhein, of Edgewood, who is president of the Northern Kentucky Tea Party.

Just for the year 2011, the Kenton County suit asks for \$5.125 million in damages as part of a larger refund being sought, Voelker said.

The class action lawsuit filed against the Campbell County Public Library seeking to invalidate and roll back the library's tax rate back to 1978 levels.

Voelker filed a class action lawsuit in Campbell Circuit Court Thursday, Jan. 19, against the library on behalf of Charlie Coleman of Alexandria, and Cold Spring area residents John P. Roth Jr. and Erik Hermes.

The suit alleges the library's Board of Trustees has failed follow Kentucky law pertaining to library districts by not obtaining petitions from 51 percent of the

voters from the last general election granting permission to increase the property tax rate.

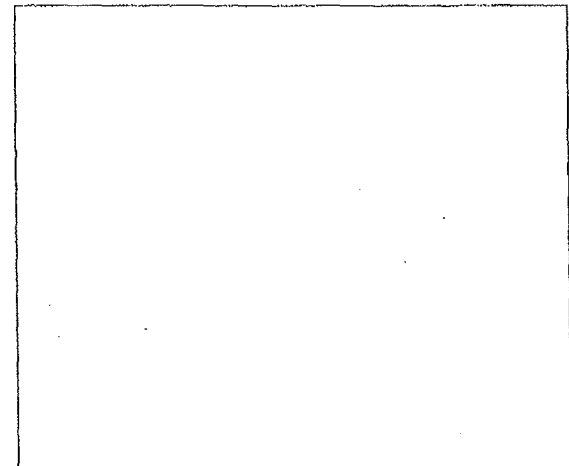
The suits is requesting a "refund of unlawfully charged and collected ad valorem taxes," and for a court injunction to prohibit future any future "unlawful tax increases." The suit seeks to invalidate all library property tax increases beyond the amount of 30 cents per \$1,000 of assessed property value authorized by a petition approved by voters in the 1978.


According to the suit, Campbell County property taxpayers are owed a refund of about \$2.218 million "for the year 2010 alone."

The suit alleges the library's tax rate of 72 cents per \$1,000 of assessed property value is illegal, and that the library should only have taxed property owners at the rate of 30 cents per \$1,000 of assessed property value.

Campbell County's library Board of

Advertisement



Print Powered By  Format Dynamics

CINCINNATI.com

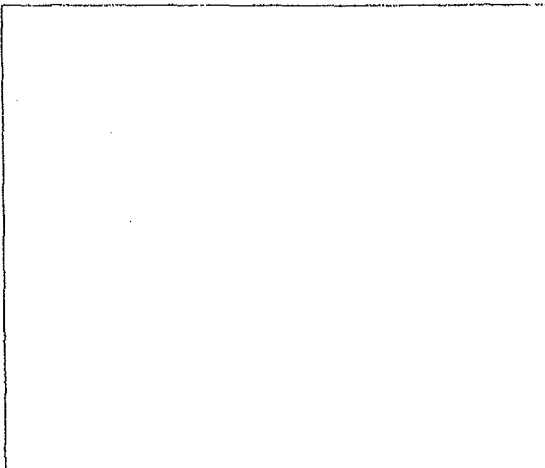
Trustees issued a statement expressing they were "deeply disappointed that this suit had been filed."


"The potential impact could mean the drastic loss of library services in this county," continued the library board's statement. "We are appalled that anyone could fail to understand the devastating ramifications of that loss on the people who depend on the Library each and every day. The Library has acted legally and in the best interest of all taxpayers who entrust us with their tax dollars."

Campbell County library director JC Morgan, ended the library's statement reiterating the library is in "full compliance with the spirit, intent and letter" of the KRS statutes governing Campbell County Public Library operations.

"Honestly, I am baffled that, knowing the facts and knowing the integrity of the Library and its Board of Trustees in providing needed services to our communities, a lawsuit has been filed that could unravel and undermine the work that helps so many," he said.

Advertisement



Print Powered By  OmniDynamics

Westlaw

1980-1981 Ky. Op. Atty. Gen. 2-798, Ky. OAG 81-257, 1981 WL 142068
(Ky.A.G.)

Page 1

1980-1981 Ky. Op. Atty. Gen. 2-798, Ky. OAG 81-257, 1981 WL 142068 (Ky.A.G.)

*1 Office of the Attorney General
Commonwealth of Kentucky

OAG 81-257

July 2, 1981

Mr. Sam W. Arnold, III
Harrison County Attorney
16 East Pike Street
Cynthiana, Kentucky 41031

Dear Mr. Arnold:

Thank you for your letter of June 9, 1981 in which you ask several questions regarding the library tax within a library district formed by petition (KRS 173.720).

Your letter first asks if the tax rate can be suspended or amended by the fiscal court and/or county library board without a petition. It is the opinion of this office that under KRS 173.790(1) a library tax rate established by the petition method may be decreased only by the petition method. As said in OAG 67-263, a library district created under KRS 173.720 (petition method) can only be dissolved by petition method (KRS 173.800) and such district can only procure a change in the library tax rate by the petition method (KRS 173.790); thus, the method of creation of a library district (whether petition or vote) governs the method of dissolution and tax rate change; such methods must be the same. It is felt that nothing said in OAG 80-570 would lead to a contrary result.

You next ask if there would be any individual liability to members of the fiscal court when they do not decide in what manner the funds are expended. Under KRS 173.720(4) all library taxes are to be turned over to the library board of the library district. The library board and its treasurer, and not the members of the fiscal court, are responsible for the expenditure of funds in accordance with KRS 173.745 and 173.755. Therefore there would be no liability for members of the fiscal court for nonexpenditure of library funds.

Your final question asks whether another district can be established prior to the dissolution by petition of the present county wide district. It is the opinion of this office that the establishment of a second library district within a county, while another library district is still in existence, would be contrary to the provisions of KRS 173.715. KRS 173.715 speaks in terms of authorization to organize all of the territory in a county into a library district and makes no provisions for there being more than one library district in the same county. As the Harrison County Library District is already in existence, another library district in Harrison County would not be authorized until the disestablishment of the Harrison County Library District in accordance with KRS 173.800.

It is hoped that this letter has adequately answered your questions. If not, please feel free to ask for further explanation.

Sincerely,
Steven L. Beshear

1980-1981 Ky. Op. Atty. Gen. 2-798, Ky. OAG 81-257, 1981 WL 142068
(Ky.A.G.)

Page 2

Attorney General

Hohn H. Gray
Assistant Attorney General

1980-1981 Ky. Op. Atty. Gen. 2-798, Ky. OAG 81-257, 1981 WL 142068 (Ky.A.G.)

END OF DOCUMENT

Ky. OAG 80-570, 1980 WL 103219 (Ky.A.G.)

*1 Office of the Attorney General
Commonwealth of Kentucky

OAG 80-570

October 20, 1980

Honorable Lloyd E. Rogers
Acting Attorney
Harrison County Library Board of Trustees
P. O. Box 444
Cynthiana, Kentucky 41031

Dear Mr. Rogers:

Thank you for your letter concerning the situation between the Harrison County Library Board and the City of Cynthiana.

The following answers are provided to your questions:

(1) Can the Harrison County Board keep all library tax money received within 30 days prior to November 22, 1980, date of termination of its contract with the City of Cynthiana Library?

No. According to the law of contracts both sides are obligated to perform their part of the bargain until such time as the contract has terminated.

By the terms of the contract any library tax money received by the treasurer of the Harrison County Library Tax Board prior to the termination of the contract should be delivered to the treasurer of the Cynthiana Library Board within 30 days. This would include any library tax money received within 30 days prior to the termination date of the contract.

On their part the City of Cynthiana is obligated to provide library service to the residents of Harrison County during the last 30-day period prior to the termination of the contract.

(2) Is the Harrison County Library Board vulnerable to a taxpayer's suit?

Yes. OAG 74-95 establishes that public library districts created under KRS 173.450 come within the term "other municipality" of § 165 of the Kentucky Constitution and that members of the Board of Trustees are considered to be municipal officers. Since the Harrison County Library District was created by petition under KRS 173.720 the Board of Trustees could be subject to a taxpayer's suit. To successfully maintain an action the taxpayer(s) would have to show standing to bring such a suit, as well as special or peculiar injury. Also, under KRS 173.745(2)(a) the district, as a corporate body, could be sued through the Board.

(3) What procedure would the people of Harrison County have to pursue to have the library tax repealed?

As set forth in OAG 67-263 a library district created under KRS 173.720 (petition method) can only be dissolved by petition method (KRS 173.800) and such a district can only procure a change in tax rate by the petition method (KRS 173.790); thus, the method of creation of a library district governs the method of dissolution and tax rate change; such methods must be the same.

KRS 173.790 provides a procedure for decreasing but not repealing a tax levy. Therefore, it may be that the people of Harrison County would have to dissolve the library district by petition in accordance with KRS 173.800. The county clerk would thereupon remove the library tax levy from the tax bills of the property owners of the district. [KRS 173.800(4)].

(4) Could the sheriff be enjoined from paying over the library tax collected to the Harrison County Library Board of Trustees until it is repealed?

*2 Yes. If the Harrison County Library District is no longer providing library services to the people of Harrison County, the sheriff could be enjoined from paying over the library tax collected pending repeal of that tax. Further, deposit with the Board under these circumstances would be unauthorized and illegal. See Padgett v. Sensing, Ky., 438 S.W.2d 501 (1969).

In order to enjoin the sheriff on this matter, those seeking enjoinder would have to show standing to bring such an action, as well as special or peculiar injury.

(5) Could the City of Cynthiana Library become a Library District under KRS 173.310 as long as the Harrison County Library District is in existence?

No. The establishment of two library districts in the same county would be contrary to the provisions of KRS 173.715. KRS 173.715 speaks in terms of authorization to organize all of the territory in a county into a library district and makes no provisions for more than one library district in the same county. As the Harrison County Library District is already in existence, a second library district in Harrison County would not be authorized. Therefore, the City of Cynthiana Library can only become a District Library upon the disestablishment of the Harrison County Library District in accordance with KRS 173.800.

(6) Under KRS 173.310(1) could we have a joint board with a member appointed from the City for one (1) year and then alternate with a member appointed from the County for one (1) year for the sole purpose of breaking tie votes?

Yes. A joint board could be appointed, but one (1) year terms of office would not be authorized.

By referencing KRS 173.310(1) it is assumed that your question envisions the creation of an independent county library following the expiration of your present service contract with the City of Cynthiana's Library.

Under KRS 173.340(2), the members of a board of trustees of a county library are appointed by the county judge/executive. The only qualification for the job is "fitness of office." [FN1] A county judge therefore could conceivably appoint a joint board with representation from both the county and the city. KRS 173.340(1) sets the membership of a county board at five (5).

KRS 173.340(2) sets forth the term of office for board members as follows: "two (2) members for two (2) years, one (1) member for three (3) years, and two (2) members for four (4) years. Thereafter trustees of the board are appointed to serve four (4) years." As can be seen no provision is made for one (1) year terms.

(7) Are we obligated to furnish library service to the County if we keep the tax money?

Yes. It is assumed that this question envisions a continuation of the library tax, rather than the repeal of that tax as suggested by questions (3) and (4).

Implicit in the continuation of the library levy is the obligation to provide service. Under KRS 173.715, the only reason the levy of the library tax is allowed in the first place is to provide or contract for library service. As these funds cannot be used for any but library purposes [KRS 173.360(2)] it is not readily apparent what else you would do with the money.

*3 (8) Could we operate the Bookmobile out of our money with our Agreement with the Library Division?

Yes. Although this office does not know the details of the Agreement that you have with the Department of Libraries, KRS 173.310(4) permits the legislative body of any governmental unit to contract on its own initiative to receive service from the State Department of Libraries. This would include an Agreement for a Bookmobile.

It is hoped that these answers prove helpful.

Sincerely,
Steven L. Beshar
Attorney General

John H. Gray
Assistant Attorney General

[FN1] See OAG 67-458 which states that no geographical limits apply.

Ky. OAG 80-570, 1980 WL 103219 (Ky.A.G.)

END OF DOCUMENT

Westlaw

1984 Ky. Op. Atty. Gen. 2-170, Ky. OAG 84-141, 1984 WL 185792 (Ky.A.G.)

Page 1

1984 Ky. Op. Atty. Gen. 2-170, Ky. OAG 84-141, 1984 WL 185792 (Ky.A.G.)

*1 Office of the Attorney General
Commonwealth of Kentucky

OAG 84-141

April 6, 1984

Mr. John B. Nichols
Boyle County Clerk
Danville, Kentucky 40422

Dear Mr. Nichols:

You have a problem concerning the Boyle County Library District. Its chief source of income is its special ad valorem tax. It needs more funds for expansion of its physical facilities and services. Consequently, the district board members and other friends are circulating petitions requesting the raising of the tax rate to a specific figure. The petition form sets out blanks for the personal signature of the individual registered voter, the address, and date signed.

You understand that when finished and accepted by the fiscal court, the petition will be turned over to you, as county clerk, for verification of signatures. Actually, under KRS 173.610(1), the petition of qualified and registered voters is filed directly with you as county clerk. And if the petition is legally sufficient, as described in the statute, you, as clerk, must cause the question to be prepared to be presented to the voters of the library district.

Your question is: What constitutes an acceptable signature of such petitioners?

We assume the petition is filed pursuant to KRS 173.610. See KRS 173.610(2) for an increase limit. As relates to the signatures of voters, a reasonable comparison of signatures would suffice. Thus a person named Alice K. Jones could sign as Mrs. John Jones if the handwriting appears to be by the same person. However the comparison may go, you as clerk must finally satisfy yourself that the petitioners are in fact qualified voters under § 145, Kentucky Constitution, and registered voters of the district at the precise time they sign the petition. Note that the term "qualified voters" is used consistently in KRS 173.470 and 173.610. See § § 145 and 147, Kentucky Constitution; Coffey v. Anderson, Ky., 371 S.W.2d 624 (1963); and Howell v. Wilson, Ky., 371 S.W.2d 627 (1963). Thus you must be reasonably certain of identification of a petitioner, but as a qualified and registered voter of the district at the time they sign the petition to get it on the ballot.

As concerns the address and date, ditto marks would be acceptable where the two parties can be identified under the conditions listed above.

Sincerely,
David L. Armstrong
Attorney General

By: Charles W. Renyan

1984 Ky. Op. Atty. Gen. 2-170, Ky. OAG 84-141, 1984 WL 185792 (Ky.A.G.)

Page 2

Assistant Deputy Attorney General

1984 Ky. Op. Atty. Gen. 2-170, Ky. OAG 84-141, 1984 WL 185792 (Ky.A.G.)

END OF DOCUMENT

173.790 Increase or decrease in tax levy -- Procedure.

- (1) The special ad valorem tax rate for the maintenance and operation of a public library district created pursuant to KRS 173.710 to 173.800 before July 13, 1984, shall not be increased or decreased unless a duly certified petition requesting an increase or decrease in the tax rate of a specifically stated amount is signed by fifty-one percent (51%) of the number of duly qualified voters voting at the last general election in each county in the district. Such petition shall be filed with the fiscal court in each county in the district not later than ninety (90) days after the date of the first signature. The fiscal court shall order the court to increase or decrease the ad valorem tax, as stated in the petition.
 - (a) The petition shall read, "The following duly qualified voters of (insert name of county or counties) hereby petition the fiscal court of each county concerned to increase (or decrease) the special ad valorem tax from (insert exact amount) to (insert exact amount) on each one hundred dollars (\$100) worth of property assessed for local taxation in the district for the maintenance and operation of the (insert name) Public Library District."
 - (b) The petition shall contain the following: The name and address of each petitioner and the date upon which he signed the petition.
- (2) Any increase provided for in subsection (1) of this section shall not exceed twenty cents (\$0.20) on each one hundred dollars (\$100) of the assessed valuation of all property in the district.
- (3) A petition requesting a decrease in the tax rate will not be considered of any legal effect if, at any time prior to the filing of such a petition for decrease, either:
 - (a) Contractual obligations have been assumed by pertinent contracting authorities in connection with said subject library, which contractual obligations would be adversely affected by any such decrease; or
 - (b) If, as of the time of filing of such a petition for decrease, the board of such district shall have arranged for the financing of a library in that district pursuant to a plan of financing involving a lease of that library to the board under which lease the board is not bound for more than one (1) year at a time without exercising an annual option to renew the lease and such lease remains effective and has not been terminated; or
 - (c) If less than three (3) years have passed since the certified copy of the order of the fiscal court ordering the levy of the tax was filed with the county clerk.

Effective: July 13, 1984

History: Amended 1984 Ky. Acts ch. 100, sec. 16, effective July 13, 1984. -- Amended 1978 Ky. Acts ch. 384, sec. 299, effective June 17, 1978. -- Amended 1972 Ky. Acts ch. 223, sec. 10. -- Amended 1970 Ky. Acts ch. 241, sec. 7. -- Created 1964 Ky. Acts ch. 92, sec. 17.