

05/21/18

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION NO. I
CIVIL ACTION NO. 18-CI-00379

COMMONWEALTH OF KENTUCKY
ex rel. ANDY BESHEAR, ATTORNEY GENERAL

and

KENTUCKY EDUCATION ASSOCIATION

and

KENTUCKY STATE LODGE FRATERNAL ORDER OF POLICE PLAINTIFFS

v. MOTION FOR LEAVE TO FILE AN AMICUS MEMORANDUM
ON BEHALF OF KENTUCKY ASSOCIATION OF TRANSPORTATION
ENGINEERS AND KENTUCKY TRANSPORTATION EMPLOYEES
ASSOCIATION

MATTHEW G. BEVIN, in his official capacity
as Governor of the Commonwealth of Kentucky

and

BERTRAM ROBERT STIVERS, II, in his official capacity
as President of the Kentucky Senate

and

DAVID W. OSBORNE, in his official capacity as
Speaker Pro Tempore of the Kentucky House of Representatives

and

BOARD OF TRUSTEES OF THE TEACHERS'
RETIREMENT SYSTEM OF THE STATE OF KENTUCKY

and

BOARD OF TRUSTEES OF THE KENTUCKY
RETIREMENT SYSTEMS DEFENDANTS

The Kentucky Association of Transportation Engineers and the Kentucky Transportation Employees Association, both unincorporated associations of members, move the Court to permit the filing of the attached amicus memorandum on behalf of their members in support of the actions of Attorney General Beshear and the other plaintiffs in this proceeding, and in opposition to SB 151.

JOHNSON BEARSE, LLP

BY: 

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ATTORNEY FOR KENTUCKY ASSOCIATION
OF TRANSPORTATION ENGINEERS
AND KENTUCKY TRANSPORTATION
EMPLOYEES ASSOCIATION

NOTICE

The foregoing Motion will be brought on for hearing before the Honorable Phillip Shepherd, Judge of the Franklin Circuit Court, at the Franklin County Courthouse, 222 St. Clair Street, Frankfort, KY 40601 on May 30, 2018 at 9:00 a.m. or as soon thereafter as parties and counsel may be heard.

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing motion, memorandum and tendered order has been served this 21 day of May, 2018 by U.S. Mail, postage prepaid, upon:

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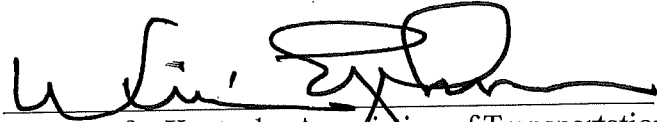
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A handwritten signature in black ink, appearing to read "William E. Lyman". The signature is written in a cursive style with a large, prominent initial "W".

Attorney for Kentucky Association of Transportation
Engineers and Kentucky Transportation
Employees Association

Kentucky Association of Transportation Engineers (“KATE”) and Kentucky Transportation Employees Association (“KTEA”) tender this Amicus Memorandum in support of the complaint of the Attorney General and others in opposition to SB 151, as enacted.

KATE is an unincorporated association of members who are, or have been, employed as engineers for the Transportation Cabinet, of the Commonwealth of Kentucky, and its predecessor governmental entities. It has approximately 500 members who will suffer irreparable injury if SB 151 becomes law. The members of KATE are parties to and beneficiaries of the “inviolable contract” between the Commonwealth of Kentucky and public employees under KRS 21.480, 61.692, 78.852 and 161.714. The KATE public employees either are employees of the Commonwealth of Kentucky at the present time or are retired public employees of the Commonwealth of Kentucky.

KTEA is an unincorporated association of members who are, or have been, employed by the Transportation Cabinet, of the Commonwealth of Kentucky, and its predecessor governmental entities. It has approximately 3800 members who will suffer irreparable injury if SB 151 becomes law. The members of KTEA are parties to and beneficiaries of the “inviolable contract” between the Commonwealth of Kentucky and public employees under KRS 21.480, 61.692, 78.852 and 161.714. The KTEA public employees are either employed by the Commonwealth of Kentucky, Transportation Cabinet, or are retired employees of the Transportation Cabinet.

STATEMENT OF FACTS

The 2018 Kentucky Legislative Session was nearly over. A so called pension reform bill, SB 1, had failed to pass either the House or the Senate. Suddenly, SB 151, a bill relating to sewer service, was called for an unscheduled and unannounced hearing by the House Committee on State Government. The 11 page sewer bill suddenly became the amended 291 page bill dealing with the Commonwealth public pension systems. The Representatives on the Committee were called to vote on the “new” bill without benefit of reading the bill, without an actuarial analysis required by KRS 6.350, and without any public consideration or debate. The bill passed out of committee by a partisan vote and was immediately called for a first reading in the House of Representatives. A vote, and passage by the House occurred, never mind the failure to comply with Section 46 of the Kentucky Constitution requiring three readings of a bill on three different days.

Constitutional and statutory provisions continued to be ignored as this piece of legislation moved forward. The bill was never signed by the elected Speaker of the House as required by Section 56 of the Kentucky Constitution.

On to the Senate goes the bill traveling the road of Constitutional deprivation. There the bill was passed without benefit of hearings or public participation.

In neither the Senate or the House was the bill accompanied by a fiscal note described in KRS 6.965. Neither chamber by a two thirds majority voted to waive the fiscal note requirement. A review of the bill shows why this sewer bill, changed to a pension bill, was shoveled through the Legislature without compliance with constitutional and statutory law. This bill would never have passed if under scrutiny in the light of day. It truly belongs to the laws of darkness.

ARGUMENT

EVEN IF THE BILL HAD SOME MERIT, IT MUST BE STRICKEN BECAUSE ITS PROCEDURE OF PASSAGE IS SO CONSTITUTIONALLY DEFECTIVE.

If anyone searched the records concerning the passage of legislative acts in Kentucky, he or she would not find any valid law where the constitutional and statutory laws have been so arrogantly ignored. The Governor and members of the General Assembly swear by oath or affirmation, to uphold the Constitution of Kentucky. The Constitution of Kentucky sets forth provisions that must be followed in enacting laws for the citizens and residents of Kentucky. The constitutional and statutory provisions were totally ignored as are set forth in the statement of facts above.

THE LANGUAGE OF THE BILL IS CONTRARY TO THE INVIOLEABLE CONTRACT EXISTING BETWEEN THE COMMONWEALTH AND THE EMPLOYEES PROTECTED BY THE LAW.

The members of KATE and KTEA will be greatly affected by SB 151 if it becomes law. The Kentucky employees Retirement System is authorized by provisions set forth in Chapter 61 of the Kentucky Revised Statutes. The Supreme Court of Kentucky in the case of *Brereton C. Jones, Governor v. Board of Trustees of Kentucky Retirement Systems*, 910 S.W.2d 710, 713 Ky. (1995) said: “. . . we recognize that the retirement savings system has created an inviolable contract between KERS members and the Commonwealth, and acknowledge that the General Assembly can take no action to reduce the benefits promised to participants” SB 151 does reduce, alter and impair pension benefits due KERS members, including KATE and KTEA members. Sections 14, 16, 19 and 30 of SB 151 all have the effect of altering and impairing the benefits and rights set forth in KRS 61.510 – 61.705.

SB 151, as enacted, violates Section 19 of the Constitution of Kentucky. Subsection (1) reads as follows: "No ex post facto law, nor any law impairing the obligation of contracts, shall be enacted." In *Union Gas & Oil Co. v. Diles*, 254 S.W.205, (Ky. 1923), the Court quoted the United States Supreme Court in *Green v. Biddle*, 8 Wheat. 1, 5 L.Ed. 547 (1823):

"The objection to a law, on the grounds of its impairing the obligation of a contract, can never depend upon the extent of the change which the law effects in it. Any deviation from its terms, by postponing or accelerating the period of performance which it prescribes, imposing conditions not expressed in the contract, or dispensing with the performance of those which are however minute, or apparently immaterial, in their effect upon the contract of the parties, impairs its obligation."

SB 151 impairs the inviolable contract between the Commonwealth and the employees covered by the Kentucky Employees Retirement System including the amicus parties named herein.

THE FAILURE OF THE GENERAL ASSEMBLY TO COMPLY WITH CONSTITUTIONAL AND STATUTORY PROVISIONS IN CREATING LEGISLATION THAT IMPAIRS AN EXISTING CONTRACT VIOLATES SECTION 2 OF THE KENTUCKY CONSTITUTION.

Section 2 of the Constitution of Kentucky states: "Absolute and arbitrary power over the lives, liberty and property of freemen exist nowhere in a republic, not even in the largest majority."

It is doubtful that we will ever see a more arbitrary action than the acts of those who pushed the passage of SB 151, as enacted. There was a total ignoring of numerous constitutional and statutory provisions.

CONCLUSION

If we are going to have a government of laws, then we must abide by the laws. No one person, or group of persons should be allowed to ignore the law and pass legislation in the manner present in the passage of SB 151. Neither should a bill that impairs the contractual rights of Kentuckians become law.

The relief sought by the Attorney General should be granted.

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ORDER

MATTHEW G. BEVIN, in his official capacity
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BERTRAM ROBERT STIVERS, II, in his official capacity
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RETIREMENT SYSTEMS

DEFENDANTS

Kentucky Association of Transportation Engineers and Kentucky Transportation Employees Association having filed a motion for leave to file an amicus memorandum herein, and said motion having come on for hearing, the Court having considered same, and being fully advised, orders as follows:

The motion is granted and the amicus memorandum is ordered filed.

This _____ day of _____, 2018.

Judge, Franklin Circuit Court

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