COMMONWEALTH OF KENTUCKY
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OAG 25-07

Subject:	Whether the Fayette County School Board's vote to increase the occupational license tax without sufficient notice was lawful.
Requested by:	Amanda Mays Bledsoe, State Senator
Written by:	Christopher Thacker, General Counsel
Syllabus:	The School Board's failure to provide the statutorily-required notice makes the vote unlawful and void.

Opinion of the Attorney General

On the day after Memorial Day, May 27, 2025, the Fayette County School Board voted 3-2 to certify a .25% increase of the occupational license tax. This increased the tax from 0.5% to the maximum allowed for cities having 300,000 or more inhabitants, 0.75%. KRS 160.607. For authority to impose this increase, the School Board cited KRS 68.185, 160.482 to 160.488, and 160.607(2).[1] Board members were first told that the tax increase would be considered at the May 27 meeting on the Friday before the Memorial Day weekend, and at least one board member stated that she did not learn of the proposal until Saturday, May 24.[2] State Senator Amanda Mays Bledsoe has asked this Office to opine on whether the vote was lawful.

By law, school districts cannot levy any of the taxes authorized by KRS 160.601 to 160.633 until after complying with the statutory notice requirements. KRS 160.603. Specifically:

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1 Resolution No. 01-2025 ("This Board hereby certifies to the Fiscal Court its request for: (a) the levy of an OLTS effective for taxable years beginning on or after January 1, 2026, under authority of KRS 68.185, KRS 160 to 160.488 and KRS 160.607(2).").

2 May 27, 2025, meeting video, *available at* https://www.youtube.com/live/vRLSzTCCruk?si=fCj5JxGRYSja5txf. The discussion of the tax increase begins at 1:05:20.

> [N]otice shall be given by causing to be published, at least one (1) time in a newspaper of general circulation published in the county . . . the fact that such levy is being proposed. The advertisement shall state that the district board of education will meet at a place and on a day fixed in the advertisement, not earlier than one (1) week and not later than two (2) weeks from the date of the advertisement." *Id.*

There appears be no dispute that the Board failed to publish an advertisement, or otherwise provide the minimum 1-week public notice that is required under KRS 160.603.

The Fayette County School District, however, has issued a statement to the media asserting that the notice requirements of KRS 160.603 do not apply to its May 27 vote because the occupational license tax is a "county-level tax" that the Fayette County Fiscal Court must also vote to impose.[3]

This position is not supported by the relevant statutory language. The statute allowing the additional .25% tax for cities with 300,000 or more inhabitants is explicitly identified in KRS 160.603 as a statute to which the notice requirements apply. Moreover, KRS 160.482 expressly recognizes that levying an occupational license tax is a power shared jointly by the School Board and the Fiscal Court. KRS 160.482 ("To help provide for an efficient system of common schools in any county having three hundred thousand (300,000) or more inhabitants, the General Assembly delegates to the fiscal courts *and* boards of education of any such county the powers and duties set forth in KRS 160.482 to 160.488." (emphasis added)).

The Fiscal Court could not vote to "impose" the tax unless the Board first "certified" the new rate. Indeed, KRS 160.484(4) says that once the Board certifies a new rate, the Fiscal Court "*shall* impose the license fee at the higher rate." (emphasis added). Accordingly, when the School Board properly certifies a new rate, the Fiscal Court's role is ministerial; the discretion and decision-making power lies with the School Board—which is why it is the body that must give public notice prior to voting on whether to impose the additional tax. Therefore, it is the opinion of this Office that the Fayette County School Board's May 27 vote to increase the occupational license tax was unlawful.

As a result, the vote and resolution passed at the May 27 meeting is void and of no effect. *See Pendleton Cnty. Bd. Educ. v. Dickison*, 1993 WL 13969247, at *3 (Ky. App., 1993) (holding that "KRS 160.603 requires strict compliance," and affirming circuit court judgment declaring vote without proper notice void). The proposed

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[3] *See* Samantha Valentino, *Questions raised over legality of FCPS tax vote,* WKYT, https://www.wkyt.com/2025/05/28/questions-raised-over-legality-fcps-tax-vote/.

increase of the occupational license tax is, therefore, not properly before the Fayette County Fiscal Court at this time, and the Fiscal Court should not consider any change to the rate unless the change is certified by the School Board at a meeting held after the notice required by KRS 160.603. Any vote on an increase of the occupational license tax by the Fiscal Court without proper certification from the School Board would also be void.

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cc: Angela C. Evans, Fayette County Attorney
Shelley Chatfield, Chief Legal Officer, Fayette County School District