

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2002-CA-000395-MR

DANIEL R. HAYES

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE ROGER L. CRITTENDEN, JUDGE  
ACTION NO. 01-CI-00109

COUNTY DEBT COMMISSION; EDDIE ROGERS,  
BOBBY KIRTLEY, ORVILLE NEWTON, JAMES  
COCHRAN, MARSHALL CAULK, ED GORHAN, AND  
J. W. MCFARLAND, AS MEMBERS OF THE FISCAL  
COURT OF TAYLOR COUNTY, KENTUCKY; AND  
EACH TAXPAYER OF TAYLOR COUNTY,  
KENTUCKY

APPELLEES

### OPINION

### AFFIRMING

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BEFORE: JOHNSON, KNOPF, AND MCANULTY, JUDGES.

MCANULTY, JUDGE. This is an appeal from the Franklin Circuit Court upholding the decision of the County Debt Commission to approve a bond issue by the Taylor County Fiscal Court to finance construction of a local jail facility. Appellant is a Taylor County taxpayer who questions the soundness of this

undertaking. The state local debt officer conducted a hearing and rendered a decision approving the proposed issuance of revenue bonds. Appellant appealed that decision to the County Debt Commission. The Commission affirmed the decision of the state local debt officer. Appellant appealed that decision to the Franklin Circuit Court.

The circuit court found that the agency decision in this case was supported by substantial evidence. On appeal, appellant does not challenge that conclusion. Appellant argues only that the decision was erroneous in several procedural respects. Appellant first alleges that the Commission's referee violated appellant's due process right to cross-examine witnesses at the hearing. Second, appellant argues that the record of the proceedings before the Commission failed to establish that there was a proper quorum present, or that the Commission affirmatively adopted its written resolution. Finally, appellant argues that the Commission's referee failed to adhere to the proper standard of review. We have reviewed these claims of error, and we affirm.

First, we examine appellant's argument that he was improperly denied the right to cross-examine witnesses at the public hearing before the Commission's Referee.<sup>1</sup> In

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<sup>1</sup> The reason given by the Referee for the denial was that for appellant to ask questions of the witnesses called by the county would constitute the unauthorized practice of law.

administrative hearings, due process affords affected parties the right of cross-examination when the hearing is of an adjudicatory nature. Kaelin v. City of Louisville, Ky., 643 S.W.2d 590, 591 (1982). A trial-type hearing is automatically required for disputes of adjudicative facts, as opposed to legislative facts. Id. Legislative facts may be determined without a hearing unless a hearing is required by the legislation applicable to the administrative body concerned. City of Louisville v. McDonald, Ky., 470 S.W.2d 173, 177 (1971). When a hearing is so required, it may permissibly take the form of an "argument-type" hearing, rather than a trial-type hearing. A trial-type hearing is not required for the development of legislative facts. Id. When the facts to be considered do not relate to a particular individual or the status of the individual's property, the body is acting in a purely policy-making role and a trial-type hearing is not required by due process. Id.; City of Northfield v. Holiday Manor, Inc., Ky., 479 S.W.2d 596 (1972).

At least one hearing was required in these circumstances by the County Debt Act statutes.<sup>2</sup> KRS 66.310 provides that before a county contracts a net indebtedness in

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<sup>2</sup> The record shows that there was a public hearing before the state local debt officer, a second hearing before the referee of the County Debt Commission and a final hearing before the Commission. Appellant inquired about cross-examining the county's witnesses at the hearing before the Commission's referee.

excess of one half of 1% of the value of its taxable property therein, as determined by the next preceding certified assessment, and issues bonds, it must first secure the written approval of the state local debt officer. The statute requires the state local debt officer to hold a hearing to determine whether any issue of bonds should be approved or disapproved. KRS 66.310(2). The state local debt officer "shall withhold his approval if he believes the financial condition and prospects of the county do not warrant a reasonable expectation that interest and principal maturities can be met when due without seriously restricting other expenditures of the county; if, in his discretion, the issue of bonds will not serve the best interests of both the county issuing the bonds and a majority of its creditors; or if it appears that the bonds or the issuance thereof will be invalid." KRS 66.310(3). The statute provides that any "party having a material interest shall have an opportunity to be heard and to present evidence." KRS 66.310(4). The state local debt officer shall make a record of the proceedings of the hearing and shall prepare a written decision approving or disapproving the issuance of the proposed bonds. Any interested party or taxpayer may appeal that decision within 15 days to the County Debt Commission, which shall pass upon the decision of the state local debt officer. Id. Thereafter, the statute provides for an appeal from the

decision of the County Debt Commission by any interested party or taxpayer to the Franklin Circuit Court, and from there to the Court of Appeals. KRS 66.310(5) and (6).

The substance of the action to be taken and the rights that are affected determine the nature of a hearing. Dawson v. Birenbaum, Ky., 968 S.W.2d 663 (1998). Under the County Debt Act, the purpose is to give supervisory authority to state officials over the issuance of bonds by counties. Lincoln Nat'l Bank, Inc. v. County Debt Comm'n, 294 Ky. 642, 172 S.W.2d 463 (1943). The design of the County Debt Act is to assist counties in their financial affairs and to afford state relief through the agency; to "curb deplorable practices due to inefficiency, carelessness, or in some instances, quasi criminality in the handling of county finances in utter disregard of the public welfare[;]" and to protect investors in county bonds. Id. at 467.

We are convinced that the hearing required was a legislative rather than an adjudicatory hearing, and so due process did not necessitate that appellant was entitled to a trial-type hearing including the right of cross-examination. In light of the act's purpose and with regard to the particular issues herein, we conclude that this is not a dispute affecting a particular individual or individual right. Appellant did not possess any individual interest that differed from that of other

county taxpayers generally. Moreover, we conclude that the hearings held herein were held for the purpose of developing legislative facts. Therefore, we do not believe this process was adjudicative in nature, and so did not require a trial-type hearing. As such, appellant was not entitled to cross-examine the witnesses called by the county. There was no error.

Appellant's second claim of error was that the County Debt Commission was not authorized to act because it was not properly constituted. Specifically, appellant argues that the record of proceedings fails to establish that it proceeded with a quorum of members present under KRS 66.300(2), or that it affirmatively adopted the resolution signed by the chairman. We agree with the appellees that appellant has not shown that he objected to these procedural issues when the case was before the Commission. Nevertheless, we will address his complaints.

Appellant alleges that the Commission did not follow the correct methods of convening and proceeding under the statute establishing the County Debt Commission. KRS 66.300(1) states "each member except the Governor and Lieutenant Governor may, by advising the Governor in writing, authorize an executive officer of the department of which he is head to act for him as a member of the commission." Appellant argues that the commission members did not accurately comply with the statute in

terms of adequately designating their alternates as persons statutorily authorized to act for them.

Appellant did not raise these issues at the time of the meeting, presumably when any questions as to authority to act could have been addressed. The record shows that the secretary of the Finance and Administration Cabinet served as a proper chairman under the statute in the Governor's absence. Two letters addressed to the Governor and two written "proxies" are contained in the record in which commission members designated an alternate. Even if the State Treasurer's failure to designate his alternate in writing voided that designation, a quorum was present to hear the appeal. Therefore, we perceive no prejudice from the lack of precision. The purpose of the statute is to assemble the commission members, and to ensure that they are represented with proper authority. Appellant does not complain that this was not accomplished. We regard the statute as having been substantially complied with, and so we agree with the circuit court below that this was "either not prejudicial or not error at all." Appellant also argues that there was no indication that the members actually voted upon the resolution. We find no basis for this contention.

Finally, appellant argues that the commission's referee failed to conform to the de novo standard of review it announced that it would follow. Again, appellant does not show

how the referee's review was prejudicial. The circuit court concluded that there was substantial evidence to support the Commission's decision. We find no error.

For the foregoing reasons we affirm the order of the Franklin Circuit Court which upheld the decision of the County Debt Commission.

JOHNSON, JUDGE, CONCURS.

KNOFF, JUDGE, CONCURS IN RESULT.

BRIEF FOR APPELLANT:

Robert Spragens, Jr.  
John S. Smith  
Spragens, Smith, & Higdon,  
P.S.C.  
Lebanon, Kentucky

BRIEF FOR APPELLEE TAYLOR  
COUNTY TAXPAYERS:

Craig Cox  
Campbellsville, Kentucky

BRIEF FOR APPELLEE COUNTY DEBT  
COMMISSION:

Phillip J. Shepherd  
Frankfort, Kentucky