

Section IV, Question 1

**Established Local Applicant Exhibit**

Eastern Kentucky University (“EKU”) hereby claims three (3) points as an established local applicant as of December 16, 2013 based on the fact that it is and was at this time a government entity considered local within its jurisdiction. See 47 C.F.R. § 73.7000.

Pursuant to Kentucky Revised Statute § 44.073, EKU as a state institution, is and was as of December 16, 2013, local anywhere in the State of Kentucky. EKU is providing copies of the following statutes which are accurate as of today and as of December 16, 2013 as documentation in support of this claim:

- (1) KY. REV. STAT. § 44.073
- (2) KY. REV. STAT. § 164.310
- (3) KY. REV. STAT. § 164.321

**44.073 State institutions of higher education declared agencies of state government  
-- Jurisdiction of Board of Claims -- Sovereign immunity.**

- (1) For purposes of KRS 44.072, state institutions of higher education under KRS Chapter 164 are agencies of the state.
- (2) The Board of Claims shall have primary and exclusive jurisdiction over all negligence claims for the negligent performance of ministerial acts against the Commonwealth, any of its cabinets, departments, bureaus, or agencies, or any officers, agents, or employees thereof while acting within the scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus, or agencies.
- (3) The Board of Claims shall have primary and exclusive jurisdiction to make findings of fact, conclusions of law, and legal determinations with regard to whether the alleged negligent act was on the part of the Commonwealth or any of its cabinets, departments, bureaus, or agencies or any officers, agents, or employees thereof.
- (4) The Board of Claims shall have primary and exclusive jurisdiction to make findings of fact, conclusions of law, and legal determinations with regard to whether the alleged negligent act was on the part of the Commonwealth or any of its cabinets, departments, bureaus, or agencies, or any of its officers, agents, or employees while acting within the scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus, or agencies.
- (5) No action for negligence against the Commonwealth, any of its cabinets, departments, bureaus, or agencies, or any officers, agents, or employees thereof may be brought initially in any other court or forum in the Commonwealth except the Board of Claims until the Board of Claims makes a determination, that has become final, that the Board of Claims has or does not have primary and exclusive jurisdiction over the claim.
- (6) The determination by the Board of Claims becomes final only after all appellate rights have been finalized or waived.
- (7) Any applicable statute of limitations for bringing negligence actions in any court or forum other than the Board of Claims shall be tolled pending the final determination that the Board of Claims does not have primary and exclusive jurisdiction of the negligence claim.
- (8) No action for negligence may be brought in any court or forum other than the Board of Claims against the Commonwealth, any of its cabinets, departments, bureaus, or agencies or any of its officers, agents, or employees while acting within the scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus, or agencies.
- (9) Negligence as used herein includes negligence, gross negligence, or wanton negligence.
- (10) The defense of contributory negligence is not a complete bar to recovery of plaintiff's claim in the Board of Claims, and the doctrine of comparative negligence shall be utilized by the board.
- (11) Except as otherwise provided by this chapter, nothing contained herein shall be

construed to be a waiver of sovereign immunity or any other immunity or privilege maintained by the Commonwealth, its cabinets, departments, bureaus, and agencies and its officers, agents, and employees.

- (12) Except as otherwise specifically set forth by statute and in reference to subsection (11) of this section, no action for damages may be maintained in any court or forum against the Commonwealth, any of its cabinets, departments, bureaus, or agencies or any of its officers, agents, or employees while acting within their official capacity and scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus, or agencies.
- (13) The preservation of sovereign immunity referred to in subsections (11) and (12) of this section includes, but is not limited to, the following:
  - (a) Discretionary acts or decisions;
  - (b) Executive decisions;
  - (c) Ministerial acts;
  - (d) Actions in the performance of obligations running to the public as a whole;
  - (e) Governmental performance of a self-imposed protective function to the public or citizens; and
  - (f) Administrative acts.
- (14) The filing of an action in court or any other forum or the purchase of liability insurance or the establishment of a fund for self-insurance by the Commonwealth, its cabinets, departments, bureaus, or agencies or its agents, officers, or employees thereof for a government-related purpose or duty shall not be construed as a waiver of sovereign immunity or any other immunity or privilege thereby held. Except as specifically set forth by statute, no counterclaim, set-off, recoupment, cross-claim, or other form of avoidance of the claim for damages may be asserted by any person when suit is brought against said person by the Commonwealth or any of its cabinets, departments, bureaus, or agencies thereof.
- (15) Neither the Commonwealth nor any of its cabinets, departments, bureaus, or agencies or any officers, agents, or employees thereof shall be liable under a respondeat superior theory or any other similar theory for the acts of independent contractors, contractors, or subcontractors thereof or anyone else doing work or providing services for the state on a volunteer basis or pursuant to a contract therewith.

**Effective:** July 15, 1986

**History:** Created 1986 Ky. Acts ch. 499, sec. 2, effective July 15, 1986.

**164.310 Boards of regents for state regional universities and Kentucky Community and Technical College System.**

There shall be a board of regents for each of the state universities, to be known as the board of regents of the .... State University and a board of regents for the Kentucky Community and Technical College System.

**Effective:** May 30, 1997

**History:** Amended 1997 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 96, effective May 30, 1997. -- Amended 1948 Ky. Acts ch. 11, sec. 2. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 4527-39.

**164.321 Boards of Regents of Eastern Kentucky, Morehead State, Murray State, Western Kentucky, Kentucky State, Northern Kentucky Universities, and Kentucky Community and Technical College System -- Membership -- Terms.**

- (1) Eastern Kentucky University, Morehead State University, Murray State University, Western Kentucky University, Kentucky State University, Northern Kentucky University, and the Kentucky Community and Technical College System shall each be governed by a board of regents appointed for a term set by law pursuant to Section 23 of the Constitution of Kentucky.
  - (a) Each board of the comprehensive universities shall consist of eight (8) members appointed by the Governor, one (1) member of the teaching faculty, one (1) member of the university nonteaching personnel, and one (1) member of the student body of the respective university or college. The members of the board shall select a chairperson annually.
  - (b) The board of the Kentucky Community and Technical College System shall consist of eight (8) members appointed by the Governor, two (2) members of the teaching faculty, two (2) members of the nonteaching personnel, and two (2) members of the student body.
    1. No more than three (3) appointed members of the board shall reside in any one (1) judicial district of the Kentucky Supreme Court as of the date of the appointment.
    2. A change in residency of a gubernatorial appointee after the date of appointment shall not affect the appointee's ability to serve or eligibility for reappointment, except an appointee who assumes residency outside the fifty (50) United States shall become immediately ineligible to serve. The Council on Postsecondary Education shall notify the appointee of his or her ineligibility to serve.
    3. In making initial appointments, the Governor shall act so as to provide equal representation of the two (2) sexes. In filling vacancies, the Governor shall act so as to provide, inasmuch as possible, equal representation of the two (2) sexes by appointing a member of the sex that is the lesser represented at the time of the appointment. If the remaining membership already has an equal number of males and females, the Governor may appoint a member of either sex.
- (2) The terms of appointed members shall be for six (6) years and until their successors are appointed and qualified, except the initial appointments to the board of regents for the Kentucky Community and Technical College System shall be as follows:
  - (a) One (1) member shall serve a one (1) year term;
  - (b) One (1) member shall serve a two (2) year term;
  - (c) Two (2) members shall serve three (3) year terms;
  - (d) One (1) member shall serve a four (4) year term;
  - (e) One (1) member shall serve a five (5) year term; and
  - (f) Two (2) members shall serve six (6) year terms.

New appointees of a board of regents shall not serve for more than two (2) consecutive terms. Board members serving as of May 30, 1997, may be reappointed at the end of their existing terms and may serve two (2) additional full consecutive terms.

- (3) The gubernatorial appointments may include one (1) graduate of the respective institution who resides outside the Commonwealth. Not more than two (2) appointed members of any board shall be residents of one (1) county. The appointments shall reflect the proportional representation of the two (2) leading political parties of the Commonwealth based on the state's voter registration. Membership on the board shall reflect no less than proportional representation of the minority racial composition of the Commonwealth. Membership on the board shall not be incompatible with any state office. A change in residency after the date of appointment shall not affect a member's ability to serve nor shall it prevent a member's eligibility for reappointment, except a member who assumes residency outside the fifty (50) United States shall become immediately ineligible to serve. The Council on Postsecondary Education shall notify the appointee of his or her ineligibility to serve.
- (4) Appointments to fill vacancies shall be made in the same manner and within the same time after the occurrence of the vacancy as regular appointments. The person appointed shall hold the position for the unexpired term only.
- (5) Each member of the board shall serve for the term for which the member is appointed and until a successor is appointed and qualified.
- (6)
  - (a) The faculty member of a comprehensive university shall be a teaching or research member of the faculty of his or her respective university of the rank of assistant professor or above. The faculty member shall be elected by secret ballot by all faculty members of his or her university of the rank of instructor, assistant professor, or above. The faculty member shall serve for a term of three (3) years and until his successor is elected and qualified. The faculty member shall be eligible for reelection, but he or she shall not be eligible to continue to serve as a member of the board if he or she ceases being a member of the teaching staff of the university. Elections to fill vacancies shall be for the unexpired term in the same manner as provided for the original election.
  - (b) The faculty members of the Kentucky Community and Technical College System shall be represented by one (1) faculty member elected from the community colleges and one (1) faculty member elected from the technical institutions to serve three (3) year terms and until their successors are named. The faculty representative of each branch shall be elected by means of a process established by the board. The faculty members may be reelected but shall not serve more than two (2) consecutive terms. A faculty member shall be ineligible to continue to serve as a member of the board if he or she ceases to be a member of the faculty at one (1) of the institutions within the system. Elections to fill vacancies shall be for the unexpired term in the same manner as provided for the original election. These two (2) members shall collectively have one (1) vote which may be cast one-half (1/2) vote by each member.

- (7) (a) The nonteaching personnel member in a comprehensive university shall be any full-time staff member excluding the president, vice presidents, academic deans, and academic department chairpersons. He or she shall represent all nonteaching university employees including, but not limited to, building facilities and clerical personnel. The member shall be elected by secret ballot by the nonteaching employees. The nonteaching personnel member shall serve a term of three (3) years and until a successor is elected and qualified. The nonteaching personnel member shall be eligible for reelection, but he or she shall not be eligible to continue to serve as a member of the board if he or she ceases being an employee of the university. Elections to fill vacancies shall be for the unexpired term in the same manner as provided for the original election.
- (b) The nonteaching personnel members in the Kentucky Community and Technical College System shall be any full-time staff member excluding a president, chancellor, vice president, academic dean, academic department chair, or other administrator. They shall represent all nonteaching employees in their respective branch institutions including, but not limited to, support and clerical personnel. One (1) member shall be a representative from the community colleges and one (1) member shall be a representative from the technical institutions. They shall serve three (3) year terms and until their successors are named. These two (2) members shall collectively have one (1) vote which may be cast one-half (1/2) vote by each member. The nonteaching personnel members of each branch shall be elected by means of a process established by the board. A nonteaching personnel member may be reelected but shall not serve more than two (2) consecutive terms. A nonteaching employee shall be ineligible to continue to serve as a member of the board if that employee ceases to be a nonteaching employee at one (1) of the institutions within the system. Elections to fill vacancies shall be for the unexpired term in the same manner as provided for the original election.
- (8) (a) The student member on a comprehensive university board shall be the president of the student body of the university during the appropriate academic year and may be an out-of-state resident if applicable. If the student member does not maintain his or her position as student body president or status as a full-time student at any time during that academic year, a special election shall be held to select a full-time student member. The student member shall serve for a term of one (1) year beginning with the first meeting of the fiscal year which contains that academic year.
- (b) Two (2) full-time student members shall be elected to the board of regents for the Kentucky Community and Technical College System. One (1) shall represent students of the community colleges and one (1) shall represent the technical institutions. The student members shall be elected by means of a process established by the board. The student members shall serve one (1) year terms beginning with the first meeting of the fiscal year that contains the academic year. If the student member does not maintain his or her status as a full-time student, a special election shall be held to fill the vacancy. The two

- (2) members shall collectively have one (1) vote which may be cast one-half (1/2) vote by each member.
- (9) All persons appointed after May 30, 1997, shall be required to attend and complete an orientation program prescribed by the council under KRS 164.020, as a condition of their service.
- (10) Board members may be removed by the Governor for cause, which shall include neglect of duty or malfeasance in office, after being afforded a hearing with counsel before the Council on Postsecondary Education and a finding of fact by the council.

**Effective:** July 15, 2010

**History:** Amended 2010 Ky. Acts ch. 41, sec. 1, effective July 15, 2010. -- Amended 2008 Ky. Acts ch. 113, sec. 10, effective July 15, 2008. -- Amended 2003 Ky. Acts ch. 26, sec. 2, effective March 10, 2003; and ch. 56, sec 2, effective June 24, 2003. -- Amended 2001 Ky. Acts ch. 12, sec. 1, effective June 21, 2001. -- Amended 1997 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 97, effective May 30, 1997. -- Amended 1994 Ky. Acts ch. 41, sec. 1, effective July 15, 1994. -- Created 1992 Ky. Acts ch. 10, sec. 5, effective July 1, 1992.