

MARTIN COUNTY BOARD OF EDUCATION

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REVISED REQUEST FOR WAIVER

Date: September 17, 2015
To: Kentucky Board of Education
From: Board of Education of Martin County, Kentucky
Re: Revised Request for Waiver

Please consider this letter as a revision of the Board's original request for a waiver of the requirements contained in 702 KAR 4:050 Section 4 (4)(a) submitted in mid-August of this year on behalf of the Martin County School District. The surface of the proposed site of the new Martin County High School is presently owned by the Martin County Fiscal Court which obtained title to the surface by Deeds from the Commonwealth of Kentucky Transportation Cabinet and Asher Maynard. Both Deeds have been previously submitted for your review. The Martin County Fiscal Court will convey a 56 acre tract composed of the two aforementioned parcels of land to the Board of Education for construction of the new Martin County High School. The Transportation Cabinet has agreed to execute a forbearance agreement for the coal owned by it to the Board of Education. (The Board's original Request for Waiver erroneously stated that the Transportation Cabinet intended to convey the coal owned by it to the Board. The Cabinet has since determined to execute a forbearance agreement in favor of the Martin County Board of Education.) The Transportation Cabinet purchased coal to a depth of 150' below the surface in connection with its condemnation of the property in question. Plats, deed descriptions, core drilling information and other data have been previously supplied in connection with the Board's request for a waiver.

This revised request for waiver applies to all coal underlying the proposed school site not presently owned by the Kentucky Transportation Cabinet. 702 KAR 4:050 Section 4 (4)(a) provides that where mineral rights are not purchased beneath a site on which a school is to be constructed, that a forbearance agreement be obtained to ensure surface support. Coal underlying the proposed school site is owned by at least 126 separate individuals, the names and addresses of many are unknown as is the extent of their individual ownership. In as much as present Kentucky mining laws and administrative regulations

adopted pursuant to those laws prohibit surface mining within 300' of a school and underground mining beneath or adjacent to a school, obtaining actual title to the coal or a forbearance agreement under the circumstances should not be required.

The Board of Education has previously furnished copies of the applicable mining laws and regulations which ensure protection of school buildings and facilities from coal mining where mineral rights are not acquired in fee simple. In addition, a letter has been written to Mr. Steve Hohmann, Commissioner of the Kentucky Department for Natural Resources seeking confirmation from Commissioner Hohmann that the School District's interpretation of present mining laws and regulations is correct with respect to protection of school property and assets at the present location. The School District expects written confirmation from Commissioner Hohmann as previously requested.

KRS 350.085(3) and 405 KAR 8:030(4) prohibit surface mining without written consent of the surface owner. As owner of the surface, the Martin County School Board would not consent to surface mining of school property. Moreover, a local school board cannot consent by way of execution of a lease, license or other document on public school property without the prior written consent of the Kentucky Department of Education which of course would not be granted. In addition, 405 KAR 18:210(4)(1) prohibits underground mining beneath or adjacent to schools unless the subsidence control plan demonstrates that subsidence will not cause material damage to, or reduce the reasonably foreseeable use of the features or facilities.

Accordingly, the Martin County Board of Education requests issuance of a waiver of the requirement that title to the coal or a forbearance agreement from the coal owners be required under the circumstances. As a practical matter, the Board of Education cannot within any reasonable period of time, locate and attempt to obtain forbearance agreements from the more than 100 owners of small undivided interests. Such a requirement seems unnecessary in view of the fact that Kentucky mining laws and regulations provided adequate protection against damage to school property and facilities.

Sincerely,



John D. Goble, Interim Superintendent
Martin County Schools



Kathleen Price, Chairperson
Martin County Schools