

KENTUCKY DEPARTMENT OF EDUCATION STAFF NOTE

Topic: Martin County School District Request for Waiver of 702 KAR 4:050

Date: October 2024

Action Requested: Review Action/Consent Action/Discussion

Held In: Full Board State Schools United We Learn

SUMMARY OF ISSUE BEFORE THE BOARD:

Pursuant to KRS 156.160(2), the Martin County Board of Education requests approval by the Kentucky Board of Education KBE and waiver of the forbearance agreement requirement to acquire a site adjacent to the Martin County High School for the new Inez Elementary School.

COMMISSIONER’S RECOMMENDATION:

The Commissioner recommends that the Kentucky Board of Education (KBE) approve the district’s request for waiver of 702 KAR 4:050 waiving the forbearance agreement requirement for acquisition of a site for the construction of the new Inez Elementary School.

APPLICABLE STATUTE OR REGULATION:

KRS 156.160, 162.010 and 702 KAR 4:050

BACKGROUND:

Existing Policy:

KRS 156.160 permits for the waiver by the KBE of regulations when requested by a local board of education when an alternative approach will achieve the same result required by the administrative regulation; implementation of the administrative regulation will cause a hardship on the school district or school or jeopardize the continuation or development of programs; or there is a finding of good cause for the waiver. Regulations related to health and safety, civil rights or required by federal law are not subject to waiver.

KRS 162.010 states in relevant part “In the acquisition of land for school purposes, whether by purchase or condemnation, or otherwise, the title obtained shall be in fee simple”

702 KAR 4:050 Building sites; inspection, approval Section 4(4)(a) states in relevant part “Should the mineral rights not be acquired, it shall require a forbearance agreement to ensure surface support.”

Summary of Issue:

For a local board of education to receive approval from the Kentucky Department of Education (KDE) to acquire a building site, a forbearance agreement is required to ensure surface support when the title to mineral rights cannot be obtained.

In the case at hand, the district proposes to acquire a site for the construction of a new Inez Elementary School adjacent to the high school.

A large property parcel, known as the Hollybush site, was acquired by the Kentucky Transportation Cabinet (KYTC) for the construction of KY 645E. This acquisition included mineral rights to a depth of one hundred fifty feet (150'). Mineral rights to the coal below this level are owned by one hundred twenty-six (126) individuals. After completion of the highway project, ownership was transferred to the Martin County Fiscal Court and later the surface rights were transferred to the Martin County Economic Development Authority (MCEDA). The district subsequently acquired a portion of the Hollybush site from MCEDA for the high school. The district proposes to acquire the remainder of the site from MCEDA in exchange for district property to be declared surplus and transferred to MCEDA at a future date. KYTC has proposed a forbearance agreement with the Martin County Board of Education related to the mineral rights it owns (150' depth) contingent on the district constructing a school and/or athletic facilities within a period of ten (10) years and for as long as the board owns the surface tract and operates an active school facility and/or athletic facilities.

Because KYTC owns the mineral rights and has agreed to provide a forbearance conditioned on the construction of school facilities and after consultation with the Martin County School District, KDE facilities staff support waiver of the regulation to permit the district to move forward with the construction of a new elementary school.

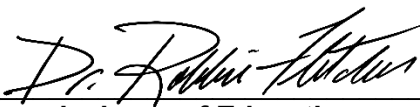
Budget Impact:

There is no impact on KDE's budget.

Enter names of groups consulted and responses

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Commissioner of Education

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