MERGER OPTIONS FOR KENTUCKY LOCAL GOVERNMENTS

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The Many Faces of Merger…

- Consolidated Local Governments
- Urban County Governments
- Charter County Governments
- Unified Local Governments
- Merger of Two or More Cities
- Consolidation of Counties
- Interlocal Agreements
Consolidated Local Government

- KRS Chapter 67C
- Applies only to counties and first class cities
- Mayor and 26-member legislative council elected in partisan elections from districts in which members live
- Constitutional county offices remain in existence, but powers are assigned by statute to the new government
Urban County Government

- KRS Chapter 67A
- Applies to counties and all cities except first class
- Charter developed as part of the merger process
- No particular organization structure required, except retention of county offices
- LFUCG has mayor and 15-member legislative council elected in nonpartisan elections
- Similar to 2nd through 6th class mayor-council plan
Charter County Government
KRS 67.825 to 67.875

• Initiation Procedure
  – *Ordinance*
    • Fiscal court and a majority of cities within the county adopt ordinance to study question of merging county government with all other units of local government in the county or consolidating any agency, subdivision, department, or subdistrict providing services/performing functions
  – *Petition*
    • Filed with county clerk requesting referendum on adoption of charter county government or consolidation of services/functions
    • Signed by number of registered voters equal to at least 20% of county residents voting in previous regular election
Charter County Government

• Charter County Study Commission
  – Formed within 60 days of adoption of ordinance or filing of petition
  – Jointly appointed by fiscal court and legislative body of each city to “study the question”
  – Fiscal court decides size of membership (20 – 40)
    • County appointments = 55% of membership
    • Same class cities join together to make appointments
    • Jointly city appointments = 45% of membership
    • Each class must have at least one representative
    • If only one city of particular class, city makes appointments based on ratio of percentage of city population to countywide population
Charter County Government

• Study Commission (cont.)
  – County judge/exec serves as voting member and chairman
  – Funded by fiscal court and each city in proportion to membership ratio
  – Must develop comprehensive plan for charter county government or consolidation
Charter County Government

• Comprehensive Plan
  – Charter county government plan must include but is not limited to:
    • Form, structure, functions, powers, name
    • Officers and powers, duties
    • Procedures for amending the plan
  – Consistent with Kentucky Constitution
  – Advertised at least 90 days before regular election
Charter County Government

• Referendum
  – Voters asked to approve or disapprove adoption of plan
  – Question filed with county clerk not later than second Tuesday in August preceding next regular election
  – Vote taken in accordance with election laws (KRS Ch. 116 – 121)
  – Results certified by county board of election commissioners to county clerk
  – If majority of those voting are in favor of adopting the plan, election board enters the fact of record
  – Charter county commission must then organize the government or must provide for consolidation as provided in the plan
Charter County Government

• Redistricting
  – Legislative body may defer redistricting legislative districts until after completion of redistricting state legislative seats within the charter county subsequent to the census
  – Redistricting is effective for the first regular charter county government primary election scheduled more than 180 days after completion of redistricting
  – Redistricting becomes effective no later than 2 years after release of census data
Charter County Government

- Election of Officials and Effective Government
  - Following plan adoption, officials are elected at the next regularly scheduled election at which county officers are elected
  - Upon election and qualification, the government immediately becomes effective
  - All debts, property, franchises, and rights of county and cities is assumed by the charter county as designated in the plan
Charter County Government

**Dissolution of Cities and Special Districts**
- Plan may provide for corporate dissolution of cities and special districts
- CEO of charter county makes determinations following a public hearing

**Rights, Powers, Privileges, Immunities**
- Rights of county and highest class city in effect on government effective date, and rights subsequently authorized for county, city class, or charter county
- Rights above continue to be authorized unless expressly repealed for charter counties
Ordinance Powers

– May enact any ordinances not in conflict with state law as required for health, education, safety, welfare and convenience of citizens and for effective government administration

– Certain prohibitions on ordinances imposing taxes or fees or requiring a license/franchise/other permission regarding utilities

– Specific requirements regarding readings, publication, effective dates, etc.
Charter County Government

- **Service Districts**
  - May divide into service districts constituting separate tax districts
  - Levy and collect taxes in accordance with services provided in each district
  - Legislative body may abolish, alter, or create new

- **Ad Valorem Tax Rates**
  - KRS 68.245, 132.010, and 132.017 apply
• Employee Merit or Civil Service System
  – If plan requires system, it must be implemented to guarantee rights of employees of governments in existence prior to merger date
  – During the implementation period, rights are protected
  – If plan does not require system, must continue to guarantee rights of employees who had merit system or civil service protection through a local government in existence prior to merger date
Charter County Government

• Prohibition of Employment Based on Political Activity
  – No political appointments, dismissals, suspensions, or reductions in grade/pay
  – No forced political organization payments or collections, campaign contributions, or political activity
  – No employee political activity while on duty

• Employee Retirement System
  – May provide retirement system only by participating in CERS
• Initiation Procedure
  – Fiscal court and one or more cities enact ordinances to form commission to study question of unifying county with one or more cities
  – Executive authority of each city enacting an ordinance files copy with county clerk within 10 days
  – Unification process initiated when clerk determines ordinances have been filed by county and at least one city
  – Clerk notifies county judge exec, mayors of all cities, and CEOs of special districts that process has been initiated by county and cities listed in the notice
Unified Local Government

• Unification Review Commission
  – Appointed within 60 days of county clerk’s notification
  – Judge exec and mayor of largest participating city determine size (20 – 40)
  – Membership divided equally between county and participating cities
    • Each mayor appoints, with legislative body approval, a number based on ratio of city’s percentage of population to population of all participating cities
    • Each participating city has at least one representative
    • Judge exec appoints, with fiscal court approval, a number equal to city members
Unified Local Government

• Review Commission (cont.)
  – Chair is a citizen member elected by majority vote at first meeting
  – Vacancies filled in same manner as original appointments
  – Funded by fiscal court and participating cities in relation to population, unless otherwise agreed
  – Studies feasibility of unification, decides whether to propose unification, and develops plan if proposed
Unified Local Government

• Unification Plan
  – Commission may propose plan under which county and one or more participating cities unite
  – Must be completed within 2 years
    • If can’t agree on plan, commission is dissolved
  – If proposed, plan must include:
    • Process for establishment
    • Form, structure, functions and powers
    • Officers and powers
    • Procedure for transition of powers of county, participating cities, and any eliminated special districts to new government
    • Procedures for plan amendment
Unified Local Government

• Officers
  – Legislative Council elected as plan provides
  – Chief Executive Officer elected as plan provides
    • Powers of judge exec (KRS 67.710) and mayor (KRS 83A.130)
    • Salary no less than judge exec under KRS 64.535
    • Appoints members of boards/other entities created by new government, with majority council approval
    • Fills vacancies on boards/other entities existing prior to plan which continue to exist after plan, with majority council approval
  – Chief Administrative Officer
    • May be appointed by CEO with 3/5 council approval
    • Public administration education or experience
    • Removed by executive order or 3/5 vote of entire council
Unified Local Government

• Public Hearings on Unification Plan
  – At least one hearing required prior to plan finalization
  – Notice of time, date, location and purpose published in accordance with KRS Chapter 424

• Approval of Plan by Review Commission
  – Vote following final public hearing
  – Majority vote required for approval
  – If approved, must be submitted to registered county voters for vote at next general election
Unified Local Government

• Vote and Plan Approval
  – Question of whether to adopt plan filed with county clerk by second Tuesday in August before next election
  – Plan advertised at least once within 90 days of election
  – “Are you in favor of unifying ____ according to the plan?”
  – Plan adopted if majority of those voting are in favor
  – Election laws followed and result certified by county board of elections; government organized after entered on record
  – Officers elected in next even-numbered regular election following plan adoption
  – Plan takes effect January 1 following officer election
  – If rejected, cannot vote on unification again for 5 years
Unified Local Government

• Redistricting
  – If plan calls for council election by legislative district, may defer redistricting until after census and redistricting of General Assembly seats within unified local government

• Government Powers and Ordinances
  – Has current and future rights of county and highest class city, and rights assigned to unified local gov.
  – Same sovereign immunity as county
  – Ordinances enacted and enforced pursuant to KRS 83A.060 and 83A.065
Unified Local Government

- Retention of local laws in force; Conflicts
  - Unless otherwise specified in plan, county and city laws in effect that don’t conflict with plan remain in effect until superseded by new government
    - County ordinances prevail over conflicting city ordinances
    - City ordinance on subject not addressed by county ordinance remains in effect in city territory only, until changed by new government
    - Conflicting city ordinances on subject not addressed by county remain in effect in each city, until changed
    - County ordinance on subject not addressed by city goes into effect countywide
Unified Local Government

• **Contracts and Obligations of County & Cities**
  – Contracts, bonds, franchises and obligations existing prior to new government are honored after unification
  – Conflicts resolved in way that does not impair rights of parties

• **Continuation of Offices**
  – Offices in Sections 99 and 144 of KY Const. still exist after unification, but duties are assigned to new government
  – Does not effect election, term, powers or duties of county clerk, county attorney, coroner, jailer, sheriff, surveyor, or assessor
  – Funding and oversight of county officers, including sheriff and clerk budget approval, transferred to new government
Unified Local Government

• County and City Employees
  – Regular employees become employees of new government upon effective date of plan
  – Rights of regular employees in a civil service system remain effective until changed by statute or ordinance
  – Rights of beneficiaries of city retirement or pension fund remain effective until all benefits are paid

• Service Districts
  – May divide into service districts constituting separate tax districts
  – May abolish or alter existing service districts and form partial service districts
Unified Local Government

• Boards, Commissions, Authorities, & Interlocal Agreements
  – Ordinances deemed reenacted unless eliminated under plan, and members can serve out their terms
  – Council can, by ordinance, abolish, alter or restructure any board, etc. unless prohibited by statute
  – Planning commissions under KRS Chapter 100 continue to exist until abolished as provided by law

• Tax Schedules, Rates, and Service Levels
  – Remain in effect until changed by council
  – Existing restaurant taxes may be retained
  – Specific procedures for ad valorem tax rates and delinquent taxes
Unified Local Government

• Non-Participating Cities
  – Those cities that do not enact and file the initial ordinance and were not listed in the clerk’s notice
  – Remain incorporated with all existing rights unless dissolved in accordance with KRS 81.094

• New City Incorporations and Annexations
  – No new cities may be incorporated
  – Existing cities attempting annexation after formation of the new government must get approval from the legislative council per KRS 67.940(3)
Comparing Charter County and Unified Local Government

CHARTER COUNTY GOV.
• Merger of county and all cities required
• Initiated by ordinance or petition
• More bare bones statutory structure
• County study commission appointments outweigh city
• County judge exec serves as presiding officer

UNIFIED LOCAL GOV.
• Merger of county and participating cities only
• Initiated by ordinance only
• More detailed statutory structure
• Equal representation on review commission
• Citizen serves as presiding officer
## Comparing Charter County and Unified Local Government

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<thead>
<tr>
<th>CHARTER COUNTY GOV</th>
<th>UNIFIED LOCAL GOV</th>
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<tbody>
<tr>
<td>• Once commission is formed, <strong>must</strong> form a plan and submit it to voters</td>
<td>• Commission can decide against unification and not to submit plan to voters</td>
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<td>• No public hearings prior to plan adoption</td>
<td>• Public hearing required prior to plan adoption</td>
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<td>• No procedure for commission dissolution if can’t agree on plan</td>
<td>• Commission must dissolve if no plan is developed within two years</td>
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<td>• Can require dissolution of all incorporated cities</td>
<td>• Non-participating cities remain incorporated</td>
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Past Merger Attempts

• **1988**
  – Frankfort-Franklin County, *Urban County Government* - **Failed**
  – Georgetown-Scott County, *Urban County Government* - **Failed**

• **1990**
  – Bowling Green-Warren County, *Urban County Government* - **Failed**
  – Owensboro-Daviess County, *Urban County Government* - **Failed**

• **2002**
  – Campbellsville-Taylor County, *Charter County Government* - **Failed**

• **2004**
  – Frankfort-Franklin County, *Charter County Government* - **Failed**
Recent Merger Movement

- **Lancaster-Garrard County**, *Charter County Government*
  - County voted unanimously to adopt ordinance to form study commission; city had first reading but delayed second reading in lieu of forming ad hoc committee to study all merger options

- **Taylorsville-Spencer County**, *Charter County Government*
  - On hold while awaiting Court of Appeals ruling on constitutionality of charter county government statutes and petition process

- **Ravenna-Irvine-Estill County**, *Unified Local Government*
  - Volunteers studying issue and preparing report
Recent Merger Movement

- **Paducah-McCracken County**, *Charter County Government*
  - Formed commission which may submit plan for vote in 2012; public meetings being held

- **Elizabethtown-Radcliff-Vine Grove-Sonora-Upton-West Point-Hardin County**, *Unified Local Government*
  - Independent entity (Hardin County United) formed to promote unification; some city officials still opposed to merger
Legislation and Cases to Watch

- **House Bill 190**
  - Passed the House of Representatives 94-0 on 1/20/12. Awaits committee assignment in the Senate. Amends the charter county government statutes and the unified local government statutes to require a comprehensive plan developed by a commission for merger to include procedures for dissolution of the merged government and allows any city to opt out of the merged government if the proposal is not approved by the voters within the respective city.

- **House Bill 189**
  - Makes many of the same changes included in HB but also includes numerous other changes to the charter county government statutes. Those provisions include clarification on the petition process and limitations on the time a study commission has to complete its work.
Legislation and Cases to Watch

• **City of Taylorsville v. Spencer Co. Fiscal Ct., et. al**
  – After a charter government task force in Spencer County submitted a petition to the county clerk to start the merger process, Taylorsville filed a lawsuit in Spencer County Circuit Court challenging the validity of the petition and the constitutionality of the charter county government statutes. After the Circuit Court ruled that the petition was valid and the statutes were constitutional, Taylorsville appealed the decision to the Kentucky Court of Appeals.
  – City claims statutes are unconstitutionally vague because they fail to provide clear standards for filing petition to initiate merger or a workable method for appointing member to the study commission
  – Awaiting Court of Appeals ruling on constitutional issues
To Merge or Not to Merge?

*Tips for Making an Informed Decision*

- Vet your reasons for considering merger
  - Fiscal? Economic? Avoiding duplication of services? Administrative and governmental efficiency?

- Consider your current local government’s assets and liabilities and how merger will strengthen your position

- Consider your citizens and get their input

- Consider how much control your local government is willing to concede

- Talk to other local governments that have considered merger
To Merge or Not To Merge?

Tips for Making an Informed Decision

• Follow legislation and case law for updates to the merger process you’re considering
• Remember that you can form committees to “study” merger without forming a statutory commission
• Consider timelines for implementation
• Consider alternatives such as interlocal agreements