Louisville/Jefferson County Kentucky
Government Consolidation of 2003

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The History of Louisville & Jefferson County Mergers

For 223 years, Louisville and Jefferson County Kentucky had two governments. The City of Louisville, incorporated in 1778, had a mayor with executive authority and 12 aldermen, one from each city ward, with legislative responsibility.

Jefferson County, chartered in 1780, in which the City of Louisville is located, was governed by a Fiscal Court comprised of a County Judge/Executive and three commissioners, one from each county district.

The communities of Louisville and Jefferson County, Kentucky had put the question of merger before citizens twice in the early 1980s. Both attempts failed, primarily because the proposals mandated total consolidation and, as a result, elimination of community institutions such as volunteer fire departments and small suburban cities. The Merger Proposals of 1982 and 1983 were very complicated and detailed, creating overwhelming controversy and allowing a wealth of reasons for citizens to oppose consolidation.

As a compromise effort, the City/County Compact Agreement of 1986 combined some government departments, but separate governments still remained.

The 1999 campaign to put the question of merged governments before voters took a different approach – KISS, or Keep It Simple, Stupid. The referendum consisted of this question:

> "Are you in favor of combining the City of Louisville and Jefferson County into a single government with a mayor and legislative council, keeping all other cities, fire protection districts and special districts in existence?"

House Bill 647, aka "The Merger Bill" authorizing the referendum, specified that all entities and special districts were to be retained, and focused on the "bare bones" idea of blending governments while retaining services. HB 647, only 24 pages long, maintained the status quo through the governmental transition, and allowing future legislation and officials of the new merged government to determine the community's future.

One legislator called it the "Path of Least Resistance", but this approach resulted in voters approving the Louisville/Jefferson County consolidation plan on November 5, 2000, by 54%-46%.

The result was the first large-scale merger in 30 years in the U.S. (Lexington, KY was the most recent), and it has been a consolidation void of major problems.

Unforeseen Obstacles of HB 647

The simplicity of HB 647's passage did create some initial obstacles which required considerable effort to overcome.

Existing Constitutional Offices

The first issue involved elimination of constitutional officers in mid-term. Two of the three Jefferson County Commissioners were in the middle of their four-year terms when the new government took office. As constitutional offices, the Commissioners remained, but under merged government, the offices had no duties. The question then became whether or not they could be paid for the remainder of their terms. A legal decision ruled in favor of the Commissioners.

The Map

HB 647 called for the creation of 26 districts, equal in size and contiguous, and delegated the task to the head of the Geography Department at the University of Louisville. This was intended to avoid special legislation, and a logical choice, since he had routinely performed the task for the former Board of Aldermen.

He drew a preliminary legislative district map, and invited the public to comment. Based upon those comments and his own expertise, he presented a final map to the public on a Friday. However, while drinking wine in his garden that Sunday evening, he claimed to have had an epiphany in which he envisioned a different map with new district lines. So, on his own, he held another news conference Monday morning, revealing a completely new and different map. Needless to say, he did not consult with his attorney before this second media event.

Once the district map was drawn, HB 647 required the Jefferson Fiscal Court to approve it without amendment within 30 days. Fiscal Court did so on August 8, 2001. A court challenge upheld this process.

The mapping process added fuel to the fire of the 46% of voters who opposed merger, giving the appearance that the process was tainted. In the end, however, the Geographer's actions amounted to no more than a PR nightmare.

In retrospect, it might have been wise to have a committee of geographic and demographic experts determine the districts, which would have helped ensure impartiality and consistency.

Small Cities

Ironically, one of the main provisions of the merger campaign – retention of the 90+ small cities within Jefferson County – intended to eliminate a host of objections to the idea of consolidation, has had unintended consequences.

It was thought after merger that Metro Louisville would be the 16th largest city in the United States. The reason for that thought is that the Census Bureau determined that we would be able to include the population of the 84 small cities within Jefferson County. However, what the Census Bureau failed to say is that it would allow Metro Louisville to include small cities when comparing Metro Louisville against all other consolidated cities across the country, such as Nashville and Indianapolis. However, for actual population reporting purposes against all other cities, the Census Bureau does not include the population of the small cities in the Metro Louisville population, because it is required by law to estimate the population for every city in America at least every other year, and its position is that including the population of the small cities in Louisville Metro's count would be double counting and therefore inaccurate. As a result, the latest reports show Metro Louisville as the 26th largest city rather than 16th.

Social Security
Right after merger, our office discovered that there was a significant fiscal issue concerning hazardous duty employees. City Police, Firefighters, and EMS currently do not pay into Social Security, whereas County Police, EMS and Jefferson County Corrections pay into the system. The overall cost to the government to provide Social Security to all these employees would be somewhere in the nature of 4-6 million dollars This ended up requiring both federal and state law changes to maintain status quo for both these sets of employees by allowing them the option to choose whether to elect or not elect Social Security.

The bottom line is to check how your state is characterized on a federal and state level, and just be aware that there may need to be some changes.

At the end of the day, we got there, but this could have been a significant unintended cost to the government, and unintended effect on the exempt employees, who now would have been forced to contribute by the merger of the governments.

26 Districts
Although its exact origin is unclear, 26 was determined to be the most conducive to maximize minority representation on the new Metro Council, and quell any lawsuit based on the Voter's Rights Act due to dilution of minority representation.

The even number presents an unforeseen problem in obtaining a majority vote on the council. Electing a council president has been particularly problematic. Prior to merger, the longest voting process occurred in the former City of Louisville Board of Aldermen in the late 1970s. That vote was later known as "the Night of the Long Knives."

The current make-up of the Louisville Metro Council is 15 Democrats and 11 Republicans. A majority requires 14 votes. In the 2004 selection of a council president, two Democratic members kept voting with the 11 Republican members for more than 100 ballots, the longest vote and meeting in the history of local government.

Further, any matter in which there is a tie vote fails.

Democracy turns on a majority vote. To ensure there will be a majority vote cast and the business of the people tended to, hindsight demonstrates that an odd number of districts would be preferable.

Partisan Legislative Offices
Another issue which benefits from hindsight discussion is that our council seats are politically partisan. As shown in the example of the selection of a council president, this body is divided into Republican and Democratic caucuses, which often extends and complicates the decision-making of the council as a whole. Even a recent effort by the council president to make the support staff non-partisan, eliminating duplication, came under fire from both caucuses. I would suggest that this be done differently.

More Parochialism
With the advent of merger, thinking was that the focus on individual districts, present during the latter years of the Board of Aldermen, would go away. In fact, there was much political debate during many of the initial elections for Metro Council back in 2003 on doing away with neighborhood development funds, which were funds that were exclusively controlled by a single alderman for his or her ward in the old City of Louisville. Prior to merger each Alderman was allotted $50,000 per year to spend in his or her ward on various projects as he or she determined were worthwhile.

The reality of merger has not been a regression from these types of funds, but a significant expansion. Today, each Councilman not only receives $75,000 annually in the form of neighborhood development funds, which is $25,000 more than each Alderman received, but an additional $100,000 annually in capital infrastructure funds so as to enable each Councilperson to make capital improvements in his or her district. As you can see, there is still focus on individual districts, which amounts to more parochialism. This phenomenon stems from the fact that Councilpersons are elected by members of their district, and not countywide.

Perhaps a simple solution would be to require nominations by district and elections countywide.

No Definitive Transition Committee
HB 647 designated the Jefferson County Attorney's Office as legal council for the new government, it failed to appoint anyone to bring together the myriad essential details for a smooth transition to consolidation. Further, HB 647 affirmed the community's desire to merge governments, but by design gave no guidance on how that task was to be accomplished. Clearly, additional legislation was required.

The County Attorney's Office established the Merger Legal Task Force in the summer of 2002. The task force consisted of 20 Louisville attorneys with expertise in governmental law, who volunteered their time to this project.

For the next six months, the task force studied 8 areas:

Ethics Code
Statutory Agencies
Labor & Employment
Constitutional Officers
Taxation
Land Use/Zoning
Ordinance/Franchise Review
Legal Identity

The recommendations made by the Merger Legal Task Force became the basis for Kentucky House Bill 659, which, at 301 pages, was considered "clean-up legislation" for the 24-page Merger Bill HB 647.

Powers and Privileges
HB 659 changed new government's powers and privileges to the "greatest powers and least restrictions." This was a much broader grant of power on the new government because it went beyond the new government just having both powers of the city of the first class and the county containing such city.

Sovereign Immunity
Prior to merger, Jefferson County had Sovereign Immunity; the City of Louisville did not. HB 659 specifically assigned sovereign immunity to the new consolidated government.

Ordinances
All ordinances of the city and county will be retained for five years, unless readopted or amended by the Metro government. Also, HB 659 established an order of precedence so it could be determined which law was in effect.

For almost a year prior to Metro Government taking office, our office studied more than 2,000 ordinances, noting similarities and conflicts. The night each of the candidates was elected, which was the first Tuesday in November 2002, they were furnished a draft of the laws that would be in effect on January 6, 2003. We decided this would give them an opportunity to bone up on the governing laws of the new government.

Currently, the council is in the process of examining this set of ordinances, by far, the most daunting task facing it. With about two months to go in the five-year "sunset provision", the Council is more than 4/5 of the way to its goal.

Continuation of Existing Taxing and Service Districts
HB 647 called for continuation of existing taxing and service districts, but provided no real effective means to do so. HB 659 established an Urban Services Taxing District, which comprised the old City of Louisville where those citizens who were use to paying

more taxes for more services, could continue to do so. It also allowed the District to be extended. In addition, HB 659 created the ability to form service districts, which are cafeteria style districts, in which the citizens choose the individual services they want.

County Officers That Exist Constitutionally
HB 647 retained the offices, but provided no ability to give them duties. HB 659 allowed the new government at its discretion to give them duties.

Boards and Commissions
HB 647 never specifically addressed this issue, except that the Cooperative Compact, which had governed relations between the city and county governments and had established many joint agencies, was to be eliminated upon merger of the governments. HB 659 ensured those agencies, and in fact, all city and county agencies, would survive and only could be eliminated if the Metro Government passed an ordinance doing so. We did not want the inadvertent disbanding of a board or commission.

Vacancies
HB 647 vested power with the Governor to fill vacancies. HB 659 gave that power back to the local government to deal with.

Removal Procedure
HB 647 provided no removal procedure for Mayor or Council due to misdeeds in office. HB 659 put one in place.

Good Results

Independent Legal Counsel for Metro Government
HB 647 designated the Jefferson County Attorney as legal counsel for Louisville Metro Government. The County Attorney's Office is a constitutional elective office in Kentucky, and as such, the thinking was that it was in the best position to represent the new government. To date, this idea has been borne out. Our working relationship with the Metro Council and Mayor's Office is very good. In a few cases, our advice has not been what elected officials want to hear, but our philosophy has been to accommodate while following the law, which, more often than not, has provided satisfactory legal guidance.

Unified Police Department
Prior to merger, there was a City and County Police Department that did not always work together. Plus, it was not always clear which department had jurisdiction when an incident occurred. The city and county lines may have been clear to the respective departments, but were not clear to the citizens of this community who called to report an incident only to be told we don't make runs to that location you will need to call the city or the county police, as the case may be. Thus, thankfully, those blurred lines of whose responsibility it is are gone; and folks don't have to make additional calls in order to receive service.

First Responder Protocol
Prior to merger, there was a City of Louisville Fire Department and several Fire Protection Districts in Jefferson County that provided fire service. Much like that of the old city and county police, as just discussed, there was not a great deal of cooperation between the City of Louisville Fire Department and the Fire Protection Districts. However, that has changed. These entities since merger have instituted a first responder protocol, which basically provides that the closest entity to the fire emergency shall respond, which is a benefit to the entire community

Reduction in Duplication
After merger, citizens who had to deal with both the old city and county government, have been comforted by the fact, that they now must obtain only one permit, or appear before one administrative board. For instance, an electrical contractor needing an electrical permit need only obtain it from Metro Government, which is housed in one place, where all permits can now be obtained. Some of the efficiencies of merger are apparent from just this phenomenon.

Small City Partnerships
Prior to the advent of merger, there was anything but spirited cooperation between the former City of Louisville and the other 84 small cities located in Jefferson County. In fact, there was much distrust amongst these entities, especially during the annexation wars. This has changed with the increased voice these small cities have in Metro Government by electing a Metro Council representative and the Mayor. In fact several small cities have territory in more than one district, and thus, have potentially more representation in Metro Government, or certainly have an ability to bend more than one Councilman's ears. As a result, just recently passed, was an ordinance that allows Metro Government and small cities to enter into partnerships for capital improvement projects, such as the installation of sidewalks. So, I believe that in the future these partnerships will grow and become very common joint ventures

Unified Voice
It wasn't too long ago when the old City of Louisville was trying to court the Houston Rockets, and then the Charlotte Hornets to relocate to Louisville. The Houston Rockets courtship was in 1998, and the Charlotte Hornets was in 2002. In both these pursuits, there was talk of financing a downtown arena. However, in both these endeavors, there was only one unit of government in favor of doing so, which was the City of Louisville. Jefferson County government was adamantly opposed to it on both occasions. The result ended in no NBA Team or downtown arena being constructed.

However, the likelihood of a downtown arena being built appears to becoming a reality with the commitment on the part of Metro Louisville of $300 million dollars over the next 30 years. I believe this time around there are two reasons that this project is going to be built. First, and most importantly, the local leaders of this community are speaking with one, unified voice and not divergent viewpoints this time around. Secondly, it is not primarily at least at this juncture being built in hopes of landing an NBA team. However,

I don't think that the possibility of an NBA franchise relocating to Louisville after this arena is built is entirely out of the question.

Similarly, this unified voice has made downtown development less complicated and cumbersome. We have seen the results of these efforts with the recently announced Downtown Medical Complex project; the newest addition to the Louisville skyline, Museum Plaza; 4th Street Live and the planned Center City District project.

Need and Ability to Balance Laws
When the Council started, it had a two-volume code, which set forth all the laws in effect on January 6, 2003. However, as is the prerogative of any legislative body, they liked some, but not others. They also had the unenviable task of trying to reconcile old city laws that may have gone by the way side with the reality that now some city laws were applying in a county which was still considered rural in some places and certainly not use to the degree of regulation that had existed in the more populated urban city.

Following are three examples of laws that have been adopted by this Council to strike a balance between urban and suburban or rural living that provide a more effective local enforcement scheme for code enforcement.

1. *Noise Ordinance*
   Prior to merger, both the City of Louisville and Jefferson County had noise ordinances. They were nothing alike. The City's ordinance was a very complex, scientific scheme, which required the use of sound meters to determine the decibel levels of particular noises, and then to discern whether the sound reading was in violation of the decibel standards established by the ordinance. In theory, I think this was thought to be a sound ordinance (no pun intended). However, in reality, this ordinance turned out to be nightmare to enforce. The difficulty was measuring a particular noise while trying to extract the ambient noise around it, which also was required to be measured every time. Needless to say, after one year in trying to implement and enforce this ordinance, city officials gave up.

   The County's noise ordinance on the other hand was a more common sense approach. It provided that a noise was too loud if it could be plainly heard at a distance of 50 feet from the noise's point of origination. The only problem with this ordinance was that the violation thereof was a criminal violation and thus required to be heard in Jefferson District Court. The judiciary routinely felt like noise violations were not meritorious offenses compared to other crimes they were dealing with such as DUIs, drug offenses, and assaults, and dismissed many of these cases with a lecture at best. Due to not getting the necessary results from the Court system, police officers basically stopped issuing noise infractions citing what was the point "they will just be dismissed."

When the new Council took a look at this issue, they very much wanted to change the attitude that this was not a serious problem. All Council members were constantly being hounded by their constituents to get something done to stop people from blasting their radios while driving. What the Council ended up doing is largely adopting an approach similar to what was used in the old County ordinance. However, instead of going the criminal route, they made the infraction of the noise ordinance a civil penalty. So, rather than going to Jefferson District Court, these violations are now heard by the Code Enforcement Board. This ordinance is now being routinely enforced by our police officers, and that the Code Enforcement Board is routinely upholding fines for violations thereof.

2. Animal Ordinance

The old City of Louisville and Jefferson County had completely different laws pertaining to animals. The city, more urban, had a much stricter law. In fact, swine, sheep, and goats were banned in the city. The County, largely rural, did not ban any livestock, but merely required that they be restrained or kept in an enclosure. Thus, animals became one of the first "Rural/Urban" issue faced by the Council. Animal controls brought the community together to discuss how the new government would balance these laws to satisfy both city and county residents.

In addition, there were two pressing issues that arose with respect to two specific types of animals.

<u>Chickens</u>

In the boundaries of the old City of Louisville limits, there was a proliferation of people owning chickens, and, more problematic, roosters. In fact, there were several hearings on the matter of chickens and roosters. The complaint was not only the odor and uncleanliness of having too many chickens on too small a lot, but the fact that the roosters were crowing in the wee hours of the morning making it very difficult for neighbors to sleep.

On the other side, the Jefferson County Farm Bureau argued that any regulation regarding chickens and roosters could have a dramatic and disparate effect on farming in Jefferson County. The resulting compromise was that a person could have as many crowing and non-crowing poultry as he or she wanted on tracts or lots of at least .5 acres or more. However, if a tract or lot is on less than .5 acres, then a person may only have up to five non-crowing poultry, and no more than one crowing poultry.

<u>Horses</u>

The other real contentious issue dealt with horses and other small livestock being kept on too small of lots within the old City of

Louisville limits. The issue this time was that the stench of manure was interfering with nearby neighbors' rights to enjoy their property. Again, the Jefferson County Farm Bureau weighed in cautioning that any regulation may have a disparate impact on farms in Jefferson County where having horses and other livestock is part of daily living. Again, a compromise was reached to attempt to strike a balance between urban and rural living. Here is what the Council came up with:

All livestock weighing more than 40 pounds, except horses, mules, jacks, jennies, goats and sheep, must be kept on tracts or lots of at least .5 acres or more.

Horses, mules, jacks and jennies must be kept on an individual tract, lot or parcel of at least one acre or more.

3. Code Enforcement Board

The Council adopted is a Code Enforcement Board. State law allows municipalities to establish a lay person board to enforce any ordinance of a local government. However, in order to do so, the local government must classify the violation of such ordinance as a civil offense. In other words, there is not the possibility of any jail time, but there are monetary penalties. As I mentioned about the reluctance of Jefferson District Court to enforce many of the ordinances because the offenses were not serious enough, this Board has proved to be a real tool to get quality of life issues addressed and violators punished. The types of offenses that are heard by this Board now are:

Housing Code Violations
Smoking Violations
Noise Violations
False Alarm Violations

Since the establishment of this Board, Louisville Metro is finally getting some areas addressed that would otherwise be overlooked if they were put in front of a Court. As a prosecutor in District Court, I am not being critical of District Court and I understand the reluctance to take many of these issues seriously. There are so many cases on a daily docket to get through, and many of them are just so much more serious in nature. So, I believe the establishment of this Board has been a real boon for Louisville Metro because it is now redressing issues that likely slipped through cracks when enforced in the court system as a criminal penalty.

Has the consolidation of Louisville and Jefferson County Kentucky been successful? I think so. The issues we have discussed here, while crucial at the time, have been addressed satisfactorily. The most important success we have experienced to date is the small amount of impact the change has had on Louisville Metro's citizens.

Will this merger be considered a success 30 years from now? That depends upon the decisions that Louisville Metro Government makes today and tomorrow.

The process of merger has been challenging, but I must say rewarding. I was pleased to play a role in the most comprehensive change our community has experienced in its history. The consolidation of Louisville and Jefferson County governments exemplifies the reason I chose public service as a career, and I am very proud of what my community has accomplished.