

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
CASE NO. 06-CI-00574

THOMAS C. BOWLING,

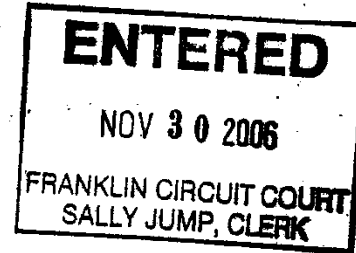
RALPH BAZE,

BRIAN KEITH MOORE,

Plaintiffs,

v.

KENTUCKY DEPARTMENT OF
CORRECTIONS
Defendant.



ORDER

Plaintiffs filed a declaratory judgment complaint on April 26, 2006, asking that this Court declare that the procedures used to implement KRS 431.220, Execution of Death Sentence, must be promulgated pursuant to the requirements of the Administrative Procedures Act. On May 26, 2006, the Department of Corrections responded to that complaint and moved to dismiss the complaint. Plaintiffs filed a motion for summary judgment on June 21, 2006. No response to that motion was filed. On November 29, 2006, argument was held on Plaintiffs' Motion for Summary Judgment and Defendant's Motion to Dismiss.

At argument, the Plaintiffs' contended that KRS 13A.100 required the Department of Corrections to promulgate rules to implement KRS 431.220. The

Defendant argued that KRS 13A.120 exempted them from the rulemaking requirements with respect to KRS 431.220.

This Court heard argument from the parties on Plaintiffs' motion for Summary Judgment. It also heard an argument from the Attorney General¹ that this complaint should be dismissed on the ground that it challenged the Constitutionality of KRS 431.220 without providing notice to the Attorney General and because of procedural default.

This Court makes the following findings:

1) There are no genuine issues of material fact in this case. This case is solely an issue of law.

2) Plaintiffs' Complaint for Declaratory Judgment and Motion for Summary Judgment does not call into question the constitutionality of KRS 431.220. This lawsuit only deals with the implementation of KRS 431.220 and whether the Department of Corrections' current execution procedures comply with the Administrative Procedures Act (KRS 13A.100 *et seq.*).

3) KRS 13A.100 requires the Department of Corrections to promulgate rules to implement KRS 431.220, and KRS 13A.120 does not exempt the Department from rulemaking in this case.


It is hereby **ORDERED** that:

- 1) The Defendant's Motion to Dismiss is **DENIED**.
- 2) The Attorney General's oral motion to dismiss is **DENIED**.
- 3) The Plaintiffs are entitled to judgment as a matter of law, and thus their motion for summary judgment is **GRANTED**.

The Department of Corrections is hereby **ORDERED** to promulgate rules pursuant to the procedures set out in the Administrative Procedures Act to implement KRS 431.220.

There being no just cause for delay, this is a final and appealable order.

Date: 11-30, 2006


Sam McNamara
Judge, Franklin Circuit Court

Tendered by: David M. Barron
John Anthony Palombi

Have seen: Jeff Middendorf
David A. Smith

¹ The Attorney General is not a party to this action and never moved to intervene in this action.

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