

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION _____
CIVIL ACTION NO.: 06-CI-_____

KENTUCKY COUNTY JUDGE EXECUTIVE
ASSOCIATION, INC.

PLAINTIFFS

115 East Second Street
Frankfort, Kentucky 40601

AND

ADAIR COUNTY FISCAL COURT
COLUMBIA, KENTUCKY

ALLEN COUNTY FISCAL COURT
SCOTTSVILLE, KENTUCKY

ANDERSON COUNTY FISCAL COURT
LAWRENCEBURG, KENTUCKY

BALLARD COUNTY FISCAL COURT
WICKLIFFE, KENTUCKY

BARREN COUNTY FISCAL COURT
GLASGOW, KENTUCKY

BATH COUNTY FISCAL COURT
OWINGSVILLE, KENTUCKY

BELL COUNTY FISCAL COURT
PINEVILLE, KENTUCKY

BOONE COUNTY FISCAL COURT
BURLINGTON, KENTUCKY

BOURBON COUNTY FISCAL COURT
PARIS, KENTUCKY

BOYD COUNTY FISCAL COURT
CATLETTSBURG, KENTUCKY

BOYLE COUNTY FISCAL COURT
DANVILLE, KENTUCKY

BRACKEN COUNTY FISCAL COURT
BROOKSVILLE, KENTUCKY

BRECKINRIDGE COUNTY FISCAL COURT
HARDINSBURG, KENTUCKY

BREATHITT COUNTY FISCAL COURT
JACKSON, KENTUCKY

BUTLER COUNTY FISCAL COURT
MORGANTOWN, KENTUCKY

CAMPBELL COUNTY FISCAL COURT
NEWPORT, KENTUCKY

CARLISLE COUNTY FISCAL COURT
BARDWELL, KENTUCKY

CARROLL COUNTY FISCAL COURT
CARROLLTON, KENTUCKY

CARTER COUNTY FISCAL COURT
GRAYSON, KENTUCKY

CASEY COUNTY FISCAL COURT
LIBERTY, KENTUCKY

CLARK COUNTY FISCAL COURT
WINCHESTER, KENTUCKY

CLAY COUNTY FISCAL COURT
MANCHESTER, KENTUCKY

CLINTON COUNTY FISCAL COURT
ALBANY, KENTUCKY

CRITTENDEN COUNTY FISCAL COURT
MARION, KENTUCKY

CUMBERLAND COUNTY FISCAL COURT
BURKESVILLE, KENTUCKY

DAVISS COUNTY FISCAL COURT

OWENSBORO, KENTUCKY

EDMONSON COUNTY FISCAL COURT
BROWNSVILLE, KENTUCKY

ELLIOTT COUNTY FISCAL COURT
SANDY HOOK, KENTUCKY

ESTILL COUNTY FISCAL COURT
IRVINE, KENTUCKY

FLEMING COUNTY FISCAL COURT
FLEMINGSBURG, KENTUCKY

FLOYD COUNTY FISCAL COURT
PRESTONSBURG, KENTUCKY

FRANKLIN COUNTY FISCAL COURT
FRANKFORT, KENTUCKY

FULTON COUNTY FISCAL COURT
HICKMAN, KENTUCKY

GALLATIN COUNTY FISCAL COURT
WARSAW, KENTUCKY

GARRARD COUNTY FISCAL COURT
LANCASTER, KENTUCKY

GRANT COUNTY FISCAL COURT
WILLIAMSTOWN, KENTUCKY

GREEN COUNTY FISCAL COURT
GREENSBURG, KENTUCKY

GREENUP COUNTY FISCAL COURT
GREENUP, KENTUCKY

HANCOCK COUNTY FISCAL COURT
HAWESVILLE, KENTUCKY

HARDIN COUNTY FISCAL COURT
ELIZABETHTOWN, KENTUCKY

HARLAN COUNTY FISCAL COURT

HARLAN, KENTUCKY

HARRISON COUNTY FISCAL COURT
CYNTHIANA, KENTUCKY

HART COUNTY FISCAL COURT
MUNFORDVILLE, KENTUCKY

HENDERSON COUNTY FISCAL COURT
HENDERSON, KENTUCKY

HENRY COUNTY FISCAL COURT
NEW CASTLE, KENTUCKY

HICKMAN COUNTY FISCAL COURT
CLINTON, KENTUCKY

HOPKINS COUNTY FISCAL COURT
MADISONVILLE, KENTUCKY

JACKSON COUNTY FISCAL COURT
MCKEE, KENTUCKY

JESSAMINE COUNTY FISCAL COURT
NICHOLASVILLE, KENTUCKY

JOHNSON COUNTY FISCAL COURT
PAINTSVILLE, KENTUCKY

KENTON COUNTY FISCAL COURT
INDEPENDENCE, KENTUCKY

KNOTT COUNTY FISCAL COURT
HINDMAN, KENTUCKY

KNOX COUNTY FISCAL COURT
BARBOURVILLE, KENTUCKY

LARUE COUNTY FISCAL COURT
HODGENVILLE, KENTUCKY

LAUREL COUNTY FISCAL COURT
LONDON, KENTUCKY

LAWRENCE COUNTY FISCAL COURT

LOUISA, KENTUCKY

LEE COUNTY FISCAL COURT
BEATTYVILLE, KENTUCKY

LESLIE COUNTY FISCAL COURT
HYDEN, KENTUCKY

LETCHER COUNTY FISCAL COURT
WHITESBURG, KENTUCKY

LEWIS COUNTY FISCAL COURT
VANCEBURG, KENTUCKY

LINCOLN COUNTY FISCAL COURT
STANFORD, KENTUCKY

LIVINGSTON COUNTY FISCAL COURT
SMITHLAND, KENTUCKY

LOGAN COUNTY FISCAL COURT
RUSSELLVILLE, KENTUCKY

LYON COUNTY FISCAL COURT
EDDYVILLE, KENTUCKY

MAGOFFIN COUNTY FISCAL COURT
SALYERSVILLE, KENTUCKY

MARION COUNTY FISCAL COURT
LEBANON, KENTUCKY

MARSHALL COUNTY FISCAL COURT
BENTON, KENTUCKY

MARTIN COUNTY FISCAL COURT
INEZ, KENTUCKY

MASON COUNTY FISCAL COURT
MAYSVILLE, KENTUCKY

MCCRACKEN COUNTY FISCAL COURT
PADUCAH, KENTUCKY

MCCREARY COUNTY FISCAL COURT

WHITLEY CITY, KENTUCKY

MCLEAN COUNTY FISCAL COURT
CALHOUN, KENTUCKY

MEADE COUNTY FISCAL COURT
BRANDENBURG, KENTUCKY

MENIFEE COUNTY FISCAL COURT
FRENCHBURG, KENTUCKY

MERCER COUNTY FISCAL COURT
HARRODSBURG, KENTUCKY

METCALFE COUNTY FISCAL COURT
EDMONTON, KENTUCKY

MONROE COUNTY FISCAL COURT
TOMPKINSVILLE, KENTUCKY

MONTGOMERY COUNTY FISCAL COURT
MOUNT STERLING, KENTUCKY

MORGAN COUNTY FISCAL COURT
WEST LIBERTY, KENTUCKY

MUHLENBERG COUNTY FISCAL COURT
GREENVILLE, KENTUCKY

NELSON COUNTY FISCAL COURT
BARDSTOWN, KENTUCKY

NICHOLAS COUNTY FISCAL COURT
CARLISLE, KENTUCKY

OHIO COUNTY FISCAL COURT
HARTFORD, KENTUCKY

OLDHAM COUNTY FISCAL COURT
LA GRANGE, KENTUCKY

OWEN COUNTY FISCAL COURT
OWENTON, KENTUCKY

OWSLEY COUNTY FISCAL COURT

BOONEVILLE, KENTUCKY

PENDLETON COUNTY FISCAL COURT
FALMOUTH, KENTUCKY

PERRY COUNTY FISCAL COURT
HAZARD, KENTUCKY

PIKE COUNTY FISCAL COURT
PIKEVILLE, KENTUCKY

POWELL COUNTY FISCAL COURT
STANTON, KENTUCKY

PULASKI COUNTY FISCAL COURT
SOMERSET, KENTUCKY

ROBERTSON COUNTY FISCAL COURT
MOUNT OLIVET, KENTUCKY

ROCKCASTLE COUNTY FISCAL COURT
MOUNT VERNON, KENTUCKY

ROWAN COUNTY FISCAL COURT
MOREHEAD, KENTUCKY

RUSSELL COUNTY FISCAL COURT
JAMESTOWN, KENTUCKY

SCOTT COUNTY FISCAL COURT
GEORGETOWN, KENTUCKY

SHELBY COUNTY FISCAL COURT
SHELBYVILLE, KENTUCKY

SIMPSON COUNTY FISCAL COURT
FRANKLIN, KENTUCKY

SPENCER COUNTY FISCAL COURT
TAYLORSVILLE, KENTUCKY

TAYLOR COUNTY FISCAL COURT
CAMPBELLSVILLE, KENTUCKY

TODD COUNTY FISCAL COURT

ELKTON, KENTUCKY

TRIGG COUNTY FISCAL COURT
CADIZ, KENTUCKY

TRIMBLE COUNTY FISCAL COURT
BEDFORD, KENTUCKY

UNION COUNTY FISCAL COURT
MORGANFIELD, KENTUCKY

WARREN COUNTY FISCAL COURT
BOWLING GREEN, KENTUCKY

WASHINGTON COUNTY FISCAL COURT
SPRINGFIELD, KENTUCKY

WAYNE COUNTY FISCAL COURT
MONTICELLO, KENTUCKY

WEBSTER COUNTY FISCAL COURT
DIXON, KENTUCKY

WHITLEY COUNTY FISCAL COURT
WILLIAMSBURG, KENTUCKY

WOLFE COUNTY FISCAL COURT
CAMPTON, KENTUCKY

WOODFORD COUNTY FISCAL COURT
VERSAILLES, KENTUCKY

v.

**AMENDED VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT**

COMMONWEALTH OF KENTUCKY, JUSTICE
AND PUBLIC SAFETY CABINET, KENTUCKY
DEPARTMENT OF CORRECTIONS

Serve: Attorney General Jack Conway
700 Capital Avenue, Suite 118
Frankfort, Kentucky 40601

And

Serve: LaDonna H. Thompson, in her official capacity as Commissioner, Kentucky Department of Corrections.

COMMONWEALTH OF KENTUCKY FINANCE AND
ADMINISTRATION CABINET

Serve: Attorney General Jack Conway
700 Capital Avenue, Suite 118
Frankfort, Kentucky 40601

AND

KENTUCKY GENERAL ASSEMBLY

Serve: Hon. Senator David Williams, President, Kentucky State Senate
Hon. Representative Jody Richards, Speaker, Kentucky House of Representatives

* * * * *

Comes the Plaintiffs, Kentucky County Judge Executive Association, Inc. ("KCJEA") and the above named County Fiscal Court Plaintiffs, by counsel, and pursuant to KRS 418.040 et seq. and CR 57, hereby bring this action seeking a Declaratory Judgment that KRS 431.215 (2) and KRS 441.025 (1) are unconstitutional because said statutes contravene the Kentucky Constitution and declaring that the Commonwealth Kentucky is responsible for reimbursement to the counties for expenses incurred by the counties for prisoners housed in county jails for which the inmate receives a credit for time served, for the reasons set forth below:

THE PARTIES

1. Plaintiff is a corporation duly organized and existing under the laws of the Commonwealth of Kentucky with its principal office address at 115 East Second Street, Frankfort, Kentucky 40601.

2. The Defendant, Commonwealth of Kentucky, Justice and Public Safety Cabinet ("Justice"), Kentucky Department of Corrections, is a recognized agency of the Commonwealth of

Kentucky and is charged with the legal duty to house and care for state inmates. Justice is located at 125 Holmes Street, Frankfort, Kentucky 40601. Pursuant to CR 4.04 (6), Attorney General Jack Conway is the party upon whom process shall be served in all actions against the Commonwealth. Attorney General Conway's address is 200 Capital Avenue, Frankfort, Kentucky 40601.

3. The Defendant. Commonwealth of Kentucky, Finance and Administration Cabinet ("Finance") is a recognized agency of the Commonwealth of Kentucky and is charged with the legal duty of paying for the housing and care of state inmates. Finance is located at 383 Capitol Annex, Frankfort, Kentucky 40601. Pursuant to CR 4.04 (6), Attorney General Jack Conway is the party upon whom process shall be served in all actions against the Commonwealth. Attorney General Conway's address is 200 Capital Avenue, Frankfort, Kentucky 40601.

4. The Kentucky General Assembly is the sole legislative body for the Commonwealth of Kentucky and is charged with the legal duty of enacting laws on behalf of the citizens of Kentucky which are beneficial to the health and welfare of all citizens of the Commonwealth and which are constitutional. The Kentucky General Assembly is joined in this action to give it the opportunity to address the legal and constitutional issues raised in this action relative to laws which the Kentucky General Assembly has previously passed and enacted into the law of the Commonwealth.

5. Jack Conway is the Attorney General of the Commonwealth of Kentucky, and the agent for service of process of Defendants, Justice and Finance, pursuant to CR 4.04, as well as legal advisor of all state offices, departments and agencies pursuant to KRS 15.020. Attorney General Conway is also required to receive notice of the filing of the above-captioned action, pursuant to KRS 418.075, since it involves the validity of a certain statute or statutes of this Commonwealth.

JURISDICTION AND VENUE

6. This action is brought under KRS Chapter 418 (the “Declaratory Judgement Act”). This court has jurisdiction over this matter pursuant to KRS 23 A.010, and venue is proper in this Court.

FACTS AND CONTROVERSY

7. The Commonwealth of Kentucky takes the position that it has no legal obligation to reimburse counties for the costs associated with housing, feeding and providing health care to inmates charged with a felony who are held in county detention facilities while awaiting trial or sentencing. After sentencing an inmate on a felony charge the Commonwealth of Kentucky treats the inmate in the county detention facility as a state inmate prior to sentencing by granting the inmate credit for time served in the county facility against the sentence the inmate ultimately has to serve in a state prison.

The Plaintiffs take the position that inmates charged with a felony who are ultimately convicted of a felony are state inmates for all purposes, including payment for the inmates housing costs, while incarcerated prior to final sentencing on a felony or felony charges.

8. The Kentucky Constitution, Section §254, imposes upon the Commonwealth of Kentucky the responsibility of providing for the care and expenses of convicts, and providing as follows:

The Commonwealth shall maintain control of the discipline, and provide for all supplies, and for the sanitary condition of the convicts, and the labor only if convicts may be leased.

9. The legal financial obligations of the Commonwealth for prisoners, is set forth in KRS §431.25 (2) as follows:

When the judgement imposes a sentence of death or confinement in the penitentiary, the county in which

the prisoner is incarcerated shall receive from the State Treasury a fee per day following the day on which the judgment was rendered, and ending the day that the defendant is delivered to the penitentiary. The fee shall be paid to the County Treasurer for use in the incarceration of prisoners as provided in KRS 441.025.

10. The obligation of the counties for housing prisoners is set forth in KRS 441.025 (1), which provides:

The fiscal court of each county shall provide for the incarceration of prisoners arrested in the county or sentenced or held by order of the courts in this county.

11. Under KRS 531.120 (3), an inmate is given credit for time served in a County Jail, as follows:

[t]ime spent in custody prior to the commencement of a sentence as a result of the charge that culminated in the sentence shall be credited by the court imposing sentence toward service of the maximum term of imprisonment. If the sentence is to an indeterminate term of imprisonment, the time spent in custody prior to the commencement of the sentence **shall be considered for all purposes** as time served in prison. (Emphasis added).

12. The counties are required to bear the expense of housing state prisoners who are awaiting trial or sentencing on state felony charges and who are subsequently convicted and sentenced on a felony charge. However, the Commonwealth receives the benefit of the time credit given to the inmate for the time spent in a county jail awaiting trial and sentencing thereby reducing the time the inmate will spend in a state penitentiary and the Commonwealth does not pay or reimburse Counties for expenses associated with such incarceration in County jails.

13. Because of the conflicts between the statutes and the constitution there exists an actual controversy between the parties regarding whether the Commonwealth should pay for prisoner

housing costs for prisoners charged with a felony while awaiting trial or sentencing that is ripe for resolution by this Court.

COUNT I

14. The Plaintiff realleges and incorporates by reference each and every allegation contained in numerical paragraphs 1 through 13.

15. Because KRS 531.120 (3) states that time in county custody is “considered for all purposes” as time spent in state custody, an inmate’s time in county custody as a state prisoner should be treated as the state’s financial obligation, and the Commonwealth should be required to reimburse the counties for fees incurred for housing such convicts.

COUNT II

16. The Plaintiff realleges and incorporates by reference each and every allegation contained in numerical paragraphs 1 through 15.

17. The application of KRS 441.025 (1), KRS 431.215 (2) and KRS 532.120 (3) contravenes the mandates of § 254 of the Kentucky Constitution which places the responsibility for inmate upkeep on the Commonwealth, and relies upon designations and distinctions that have no rational or reasonable basis or purpose and are therefore arbitrary and capricious in violation of Section II of the Kentucky Constitution as well as other federal and state laws.

18. By virtue of the arbitrary and capricious nature of the application of KRS 441.025 (1), KRS 431.215 (2) and KRS 532.120 (3), the Plaintiffs have suffered, and continue to suffer, an unconstitutional deprivation of their rights for which no adequate remedy at law exists.

COUNT III

19. As a result of the unconstitutional actions of the Defendants, the Plaintiffs are deprived of their liberty and property without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States and in violation of Section 2 of the Constitution of Kentucky.

20. The Defendants' refusal to reimburse the counties for inmate expenses discriminates against the Plaintiffs, and those similarly situated, and deprives them of equal protection of the law to which they are otherwise entitled, in violation of the Fourteenth Amendment of the Constitution of the United States, and in violation of Section 2 of the Constitution of Kentucky.

COUNT IV

21. The Plaintiff realleges and incorporates by reference each and every allegation contained in numerical paragraph 1 through 20 set forth herein.

22. KRS 441.025 (1), KRS 431.215 (2) and KRS 532.120 (3) represent special legislation, enacted for the sole purpose of benefiting the Commonwealth at the expense of the Counties, in violation of Section 59 of the Constitution of Kentucky.

23. The Plaintiff has no adequate remedy at law except for the discontinuation of the Defendants' enforcement of KRS 441.025 (1), KRS §532.120 (3) against the Plaintiffs and seek a declaration from this Court that said statutes are unconstitutional and invalid.

COUNT V

24. The Plaintiff realleges and incorporates by reference each and every allegation contained in numerical paragraphs 1 through 23 set forth herein.

25. There is an actual controversy between the parties.

26. The Defendants have, under color the State law, enacted statutes which have deprived and continued to deprive the Plaintiff and its members of their rights, privileges and immunities guaranteed by the Fourteenth Amendment to the United States Constitution.

27. The Plaintiff's are entitled to a judgement against the Defendants awarding the reasonable cost and attorneys' fees associated with this action.

WHEREFORE, Plaintiff hereby demands judgement as follows:

1. A declaration that KRS 441.025 (1), KRS 431.215 (2) and KRS §532.120 (3) are unconstitutional and void;
2. A declaration that the Commonwealth must reimburse the Counties for expenses incurred for housing state inmates for such time that is credited toward the inmate's felony conviction;
3. For an award of the Plaintiff's reasonable attorneys' fees and costs; and
4. For any and all other relief, both legal and equitable, as the Court deems just and proper.

Respectfully submitted,

BOEHL, STOPHER & GRAVES, LLP
444 West Second Street
Lexington, Kentucky 40507
(859) 252-6721

BY: _____
BRENT L. CALDWELL
ATTORNEYS FOR PLAINTIFF

VERIFICATION

Comes the undersigned and verifies that he has read the foregoing and the information contained therein is true and correct to the best of his knowledge and belief.

KENTUCKY COUNTY JUDGE/EXECUTIVE
ASSOCIATION, INC.

BY: _____
Vince Lang
Executive Director

STATE OF KENTUCKY

COUNTY OF _____

Subscribed, sworn to and acknowledge before me by Vince Lang in his capacity as Executive Director of Kentucky County Judge/Executive Associate, Inc., a Kentucky corporation, for and on behalf of the said corporation, on this the _____ day of November, 2008.

My Commission Expires: _____

NOTARY PUBLIC, STATE AT LARGE,
KENTUCKY