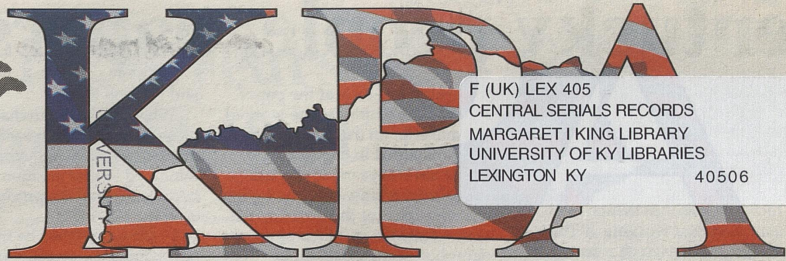


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Volume 74, Number 1 - January 2002 - Published by Kentucky Press Association/Kentucky Press Service

Court rules carriers are employees

The state's highest court reversed the decision of the Court of Appeals and ruled that newspaper carriers of Landmark Community Newspapers of Kentucky are employees performing services in covered employment for unemployment insurance purposes.

The case, which is over six years old, involved whether Landmark's newspaper carriers should be considered independent contractors or employees for purposes of drawing unemployment.

The Kentucky Unemployment Insurance Commission determined

that the newspaper carriers were in fact employees of the company. The Franklin Circuit Court upheld that decision, but it was reversed in the Court of Appeals.

Landmark hires individuals to work as carriers in order to deliver its newspapers to subscribers on various designated routes. Landmark requires that a carrier sign a "delivery agent" agreement, which supposedly makes the newly hired individual an independent contractor, instead of an employee.

The language of the agreement

specifies that the carrier is to install hooks or tubes on designated routes for delivery of Landmark's newspapers, that newspapers are never placed in or around the mailbox, that the carrier replace or repair the hooks or tubes and that the carrier must keep the newspaper dry. The carrier must also deliver copies of the weekly "Extra" section of the newspaper to non-subscribers on routes designated by Landmark. In addition, the carrier must have all the newspapers deliv-

See RULES on Page 8

Convention will be fun, educational

The 2002 KPA Convention and Trade Show is just days away, but it isn't too late for you to get in on the fun.

The event, held this year at the Hurstbourne Hotel and Conference Center in Louisville Jan. 23-24, promises to be an exciting and fun-filled event with its list of interesting and educational seminars and speakers.

Room reservations must be made before midnight on Thursday, Jan. 9, 2003 in order to reserve a room at the \$79 room rate. After that the KPA block of sleeping rooms will be released to the public. The deadline to register for the convention is Thursday, Jan. 16.

The fun gets underway on Thursday morning at 11 a.m. when the trade show opens.

Thursday is sure to provide beneficial information for any newspaper during the sessions scheduled for the afternoon.

Newspaper employees will be able to take back some valuable advice on keeping their newspaper in compliance during three separate sessions. The Kentucky Registry of Election Finance, the Kentucky Fair Housing Council and the Attorney General's staff will all be on hand to discuss compliance laws in their area of expertise. The Attorney General's staff will discuss complying with the new telemarketing laws.

Thursday afternoon will also feature a panel discussion with top legislative leaders talking about the

See CONVENTION on Page 10



The 2003 KPA/KPS Directory will be available at the Convention. The photo selected for the cover this year by former Messenger-Inquirer photographer Bryan Leazenby. This shot was taken at the Owensboro Riverfront during a fireworks display at the 2002 Kentucky Tourism Industry's Annual Conference in October 2002.

January News & Notes

General Assembly coverage begins

The 2003 General Assembly convened on Tuesday, Jan. 7 in Frankfort and the Kentucky Press Association News Bureau is once again providing coverage of the session for member newspapers interested in the service.

Legislative stories can be sent by e-mail or fax. If you want to receive the stories and/or photos and have not yet notified the News Bureau, please e-mail News Bureau Director Dana Ehlschide at dehlschide@kypress.com and let her know how you prefer to receive the stories.

Legislative roundup stories will be filed weekly each Friday by 4 p.m. and other stories, packages and/or photos will be filed in addition as key legislative initiatives move through the chambers.

As always, the News Bureau's coverage is on a first-come, first-served basis. Keep in mind, the News Bureau can fill such requests as: complete stories, a quote from your legislator to add to a local story or a photograph of your legislator in action. The service is free of charge to you as a KPA member. The only cost involved would be if overnight shipping or one-hour photo charges are incurred.

To make a request, contact Ehlschide at 1-800-264-5721 or at by e-mail at dehlschide@kypress.com.

Convention reservations should be made now

The Winter Convention is just

See NEWS on Page 3

Kentucky people, papers in the news

Newspaperman retires after nearly 50 years

Jerry Linville, an employee of The Winchester Sun for 49 years, retired Oct. 31.

When he was a junior at Winchester High School, he started working at The Sun after school and was in charge of the carriers on Saturday. After graduating in 1954 he took a week off and

began working full-time at the paper.

As a full-time employee, he worked on page makeup, on the newspaper press and remained in charge of the carriers for several years. In the late 1950s he started taking and developing local photographs for the paper, some for the news section and later as sports photographer. Some of his shots included those of Hank Aaron, Muhammad Ali, Paul "Bear" Bryant

and Adolph Rupp.

When The Sun purchased an offset press, one of the first in the state, he worked on page makeup and remained in that position until he became the paper's production manager in the late 1980s.

In the early 1990s he moved to the news department of the paper where he worked as page designer until his retirement.

staff there until coming to Owenton in July 1997.

Burton joins Kentucky New Era on copy desk

Gary W. Burton has joined the editorial staff of the Kentucky New Era as a copy editor.

Burton, 33, began his duties in November. Before relocating to the area, Burton spent the last three years working as a journalist in eastern Arkansas.

He was managing editor and staff writer for Rice World magazine based in Helena, Ark., and a technology column writer for two newspapers in the Arkansas Delta.

Earlier this year, Burton received two awards from the Managing Editors Association of Arkansas for his investigative work involving missing funds from an Arkansas school district.

Burton's duties at the New Era primarily will focus on copy editing and page design.

Prior to his work as a journalist, Burton was employed by country music entertainer Jett Williams, the daughter of the late Hank Williams.

Wright hired at Murray Ledger & Times

John Wright was recently hired as photographer/reporter for the Murray Ledger & Times.

He had previously worked as an award-winning sports editor at the Tribune-Courier in Benton, where he spent 11 years.

A 1991 graduate of Murray State University, Wright will work mainly in photography, plus news and feature writing for the daily newspaper.

Union County Advocate editor takes home communications award

Union County Advocate Editor Paul Monsour has been selected as the 2002 recipient of the Kentucky Farm Bureau's communications award to a writer. He received a plaque and a \$300 cash award during a ceremony Dec. 12 at Farm Bureau's 83rd annual convention.

The award has been presented annually since 1960 to a print journalist whose work generates a better public understanding of agriculture.

See PEOPLE on Page 12

The Kentucky Press

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Three sick days in 34 years of service is an admirable feat

I've never met Eulala Myre but from what I've heard recently, I'd have to admire her.

I took a sick day recently because of the flu, the first sick day probably since my heart attack five years ago. Oh, I coulda come to work if I could have taken a nap every few minutes. But the staff encouraged me to stay away. They didn't want to carry home any virus.

Eulala Myre had reason to take a day off recently, too, only she didn't.

Eulala is a newspaper carrier for The Paducah Sun. Has been for some 34 years.

Now in my almost 20 years with KPA, I've missed maybe 12 days because of sickness.

Eulala, remember, has been a newspaper carrier for 34 years. And in that span, she's missed three days. THREE DAYS! Figure that one up—less than one day every 11 years.

So why did she have reason to miss a day recently?

Her house burned. It happened at 11:45 p.m. on October 9. A little over two hours later, she was picking up her bundles of newspapers for her delivery route, which mainly winds through Reiland.

For that and for several other reasons, Eulala was recently named the Newspaper Association of America's National Carrier of the Year. Little

On Second Thought

By David T. Thompson
KPA Executive Director



wonder. If anyone deserved recognition for that kind of job performance, Eulala certainly did.

She received a crystal trophy and a trip for two to the NAA annual conference in Orlando. (I wouldn't be surprised to hear that Eulala thanked NAA for the gratis trip but told them she wouldn't be attending. She has papers to deliver.)

The award is given to a carrier based on performance on route, longevity on the route, overall service to the customer, things of that nature. Bill Johnson, president of the association said, "She had just done a great job on a very long tenure on her route. We thought that was fabulous. If anyone deserves the awards, she does. No one else in the country does it better."

When her house burned, Eulala had a firefighter retrieve her coat and car keys from the smoking ruins. She told Shelley Street, of the Paducah Sun, that she could have gone to someone's house and stewed, or she could have sat in front of her own home and cried. She said she had plenty of places to stay or go, but "I've got a paper route to run."

She began delivering The Sun on June 1, 1968, because her nine-year-old son wanted an after-school job. He couldn't drive but he could throw the Sun Democrat, as it was known

then. Eulala would stop by to get her bundles of newspapers, go to her son's school to pick him up and while she waited, she'd roll up as many as she could and attach the rubber bands.

Those first routes had 450 subscribers. By Christmas of 1989, she had 800 papers to deliver, most all of the increase was done single-handedly. By 1997, she had asked The Sun to split her route so now she's delivering some 350 newspapers seven mornings a week.

As I said earlier, she's missed three days in 34 years.

The reasons?

She missed two days of work because of surgery to remove a lump in her breast. Even for eight months, in 1995 and 1996 when her husband, Virgil, was hospitalized, and she made daily visits to see him, she was ready every morning to take care of her route. The third day she missed was April 27, 1996, the day of Virgil's funeral. That was the last day of work she's missed.

Perhaps until January 25-27 when she'll go to Orlando for the NAA conference to receive her award.

She sounds reluctant to go. Even though the circulation department has assured her they'll cover her route while she's out, she's thinking about those three days away from her subscribers.

But she might just be issuing a warning to those who'll be covering the route for her.

"I hope they learn it really good."

NEWS

Continued from page 1

around the corner, but it isn't too late to make arrangements to attend if you haven't already.

This year's convention will be held at the Hurstbourne Hotel and Conference Center in Louisville Jan. 23-24.

Room reservations must be made before midnight on Thursday, Jan. 9, 2003 in order to reserve a room at the \$79 room rate. After that the KPA block of sleeping rooms will be released to the public. So even if you're not sure how many nights you'll be staying, go ahead and make your room reservations to ensure the \$79 rate.

The deadline to register for the convention is Thursday, Jan. 16.

Noodles was a hit

"Noodles Makes a Boo-boo" chapter story was published in more than 700,000 copies each week, during the seven weeks it ran in 56 Kentucky newspapers.

Figuring that at least two people looked at each paper then that's 1.4 million people viewing the story each week. WOW!

Kypress.com online activities got over 425 hits.

A survey was faxed to all participating newspapers by Kriss Johnson, NIE coordinator. It would be so helpful if each person would take a couple minutes to fill it out and fax it back to Johnson at 859-231-1632.

The year 2002 brought many new challenges to KPS

Every year when the new year rolls around I think about the things that I should have done, or might have done if things were different. Well, not this year. Things WERE different for me in 2002.

In years past, when I was a newspaper publisher and served on the Kentucky Press Association Board of Directors I was very opinionated (imagine that - me opinionated!) about those who had served as the KPS Director of Sales. "If I had that job, I

Advertising Plus

By Teresa Revett
KPS Director of Sales



would do..."

Little did I realize that 2002 would mean that I would leave my comfort zone in Calhoun where I had worked for 25 years and move my family across the state. Before selling our house in Calhoun, I lived separate from my family for four months. Being away from my husband and two sons for five days a week so that I could go ahead and take this job while the boys finished out the school year was the hardest thing that I've ever had to do. That was a real learning experience and it won't ever happen again.

Since I decided to accept the job of Director of Sales at KPS one year ago, I have lived in an apartment in Frankfort, a triplex in Georgetown and finally built my family's current dream home in Georgetown. My mother agreed to move with us so that added to the fun of moving many of my childhood belongings from the home where I was raised and where my mother lived for almost 39 years to her brand new home in Georgetown.

There were many challenges outside of the personal issues of moving. Because I wanted to make a difference for Kentucky newspapers we set our goals high for 2002. With your help those goals were met but now it is time to do even better.

Next year is another election year in Kentucky. I'm not going to resolve to lose any weight in 2003 but I will strive to get as many political dollars for Kentucky newspapers as possible. To do that we have a plan. The plan has already been put in place. We're getting media packets out to all candidates showing them how easy it is to put newspaper advertising in their important media mix.

When the ad steering committee meets in January we will go over the political plan and with input from the committee, see to it that our goals for 2003 are met as well. My wish for all of you is a peaceful, worry free, deadline met life every day in 2003.

Retired journalist still has passion for life

Reprinted with permission
By DON WHITE

The Anderson News

It matters little that Don Towles has difficulty speaking these days.

The 75-year-old Anderson County native's actions have always spoken louder than words.

A legend in the newspaper industry when he retired from The Courier-Journal in 1993, Towles gained the respect of his peers and a nationwide reputation for his work in public relations during a career spanning five decades.

Still maintaining a hectic schedule, he shares a home in St. Matthews with wife Judy surrounded by walls filled with mementos.

An autographed photo of Marilyn Monroe and a plaque designating him a member of a distinguished group he helped found, the Kentucky Journalism Hall of Fame, are flanked by dozens of framed awards and honors.

Asked which of the mementos he treasures most, the father of two daughters points to a framed promotional advertisement from The Courier-Journal featuring a childhood picture of one of the girls.

A focus on family, strong Christian values, integrity, thoughtfulness and a sense of humor are among the assets most mentioned by friends and co-workers in describing Towles.

Many of his lifelong virtues may have been instilled by his grandparents, Mr. and Mrs. J. E. Blackburn. They reared him in Anderson County after the death of his mother when he was nine.

Lawrenceburg insurance agent Charles Humston recalls that he and Towles made up one half of the male population of the Lawrenceburg High class of 1945.

"He was a first-class gentleman," said Humston. "Still is, as far as I know."

"Didn't play sports, but was very studious. Always of extremely good character, thoughtful, never got into trouble."

"He was never one to participate in any gossip, so it's a bit surprising he would wind up in the newspaper busi-

ness," said Humston.

Humston and Towles went on to be classmates at the University of Kentucky where Towles majored in journalism and acquired the nickname "Scoop."

His father, the late Sterling Towles, had served as editor of the Advocate-Messenger in Danville. An uncle, the late Harry Towles, was in public relations with the Kentucky Fish and Wildlife Department and hosted a radio show broadcast statewide in the 1950s.

Towles joined his uncle in state government following graduation from UK, serving as editor of the "In Kentucky" magazine in the Division of Publicity. While serving in the military from 1952-54, he was a reporter and Okinawa bureau chief for the Pacific Stars and Stripes.

The late Henry Ward, former commissioner of highways and a candidate for governor, was instrumental in Towles' early days in journalism, serving as his boss while commissioner of conservation.

"Henry Ward told me to forget everything I had learned at UK and he would teach me to be a newspaperman," said Towles.

"He (Ward) was the most decent and honorable man I ever met," said Towles.

George Gill, retired publisher of The Courier-Journal, remembers Ward as "a tough bird" who depended on the more mild-mannered and diplomatic Towles to "smooth the way for him."

Towles left state government in 1956 and began his long tenure with The Courier-Journal, considered one of the nation's most highly respected



Top: A young Towles looks at his autographed photograph of Marilyn Monroe. Right: Towles, as a youngster, grew up in Anderson County and attended UK where he majored in journalism. During his career he worked in public relations, hosted a radio show as well as working at the Courier-Journal.



newspapers under ownership of the Bingham family.

Gill, who came up through the ranks with Towles, remembers him as "a great people person."

"He was a very gracious and sweet guy, great at putting on functions for the paper and making sure every detail was taken care of."

"Don knew Kentucky along with people like Joe Creason and John Ed Pearce," said Gill. As efficient as Towles was, Gill says there is a widely circulated story about him that may or may not be based on fact.

"When he worked for the state, a man in a white suit approached him saying he was looking for a bright young man to join him in promoting a new venture. The man said he ran a restaurant in Corbin and he had a new concept for cooking chicken. Don thought it was a dumb idea and dismissed the man," said Gill.

Towles may have missed out on a chance to join Col. Harland Sanders in becoming a millionaire, but he already

had a recipe for happiness.

When he retired from The Courier-Journal, his list of community, church and professional involvement, awards and honors was numerous enough to fill a book.

He continues to lead a full life today despite a mysterious ailment that befell him two years ago, causing slurred speech.

"People think either I'm drunk or I've had a stroke," he said, smiling.

"I can do fairly well if I speak slowly and I can say everything that needs to be said. It's frustrating, but I can't complain because there are so many other worse things that could happen," he said. According to Towles, his favorite memories of Lawrenceburg are of "the warmth and friendliness of the people."

"I felt so secure growing up there. It was a caring community where people helped one another. I don't think that's changed."

Neither has Don Towles.

I've learned we really are the best

For years, I've heard KPA Executive Director David T. Thompson say he would put Kentucky

Oh, By The Way

By David Greer
KPA Member Services Director



Now I know why so many people judging

newspapers up against anyone else's. Now I know why.

Like many of you, I've judged newspapers from other states many times. It's a fascinating experience - one that I have always enjoyed, except, of course, for dirty hands from excessive ink rub-off. Contest judging has given me the opportunity to see papers large and small from all over the country and I often picked up ideas for my own papers back in my editor days.

Sometimes though, I saw papers that, well, let me just say, they were mediocre, at best. I'll never forget the weekly that jumped a story twice - on the same page. The story started at the top of an inside page, jumped to the middle of the page and then jumped again to the bottom of the same page. What do you suppose they were they thinking?

On another occasion, I judged a contest in which photo reproduction quality - black and white and color - was uniformly poor from most of the papers in a certain category. Nearly all the black and white photos were extremely grainy. They reminded me of something you would have seen in the early 1950s while the color photos were consistently out of register and not just a little bit.

On the other hand, since taking the KPA member services director position nearly a year ago, I've had an opportunity that few journalists enjoy - I get to see issues of nearly every paper published in the state. What I have seen is most impressive.

Kentucky papers in the various KPA contests over the years have bragged on us to David Thompson. There is a tremendous amount of first-class quality being produced by this state's print journalists.

At the risk of sounding too "golly-gee-whiz," the excellence in Kentucky newspapers transcends all parts of the state and circulation classes. A number of you have improved your layout and design and color reproduction in recent times.

Now I know why David and those judges have bragged on Kentucky papers so much over the past many years. Based on what I see, Kentucky's newspapers can compete with anyone, anywhere, anytime.

KHSJA convention. The Kentucky High School Journalism Association will hold its annual convention on April 16 at the Hurstbourne Hotel & Conference Center in Louisville. A big unknown at present is how the state's budget woes and education revenue shortfall might affect attendance.

But those schools that do attend will enjoy a KHSJA convention first - a real-time student writing contest. It's still very preliminary but details are being worked out on a competition in which students will attend a mock press conference and then sit down and write a story about it within a specified time limit. Contest entries will be judged on the spot and winners will receive certificates. It ought to be exciting and won't be for the faint of heart.

JMC high school workshop planned for Feb. 21 at MSU

Murray State University's Department of Journalism and Mass Communications will host the 30th annual JMC High School Workshop for regional high schools Feb. 21.

After registration and announcements from 8:30 to 9:45 a.m., students and their advisers will be able to pick from 25 programs over three sessions that end at 12:25 p.m.

At 12:30 winners of the newspaper and advertising competitions will be announced before the workshop ends at 1 p.m.

Director Dr. Bob McGaughey will be participating along with JMC faculty Dr. John Dillon, Jeff Prater, Joe Hedges, Dr. Roger Haney, Dr. Debbie Owens, Dr. Ann Landini, Dr. Jeanne Scafella, Orville Herndon, Robin Orvino-Proulx, Gill Welsch and Dr. Allen White.

Harold McGeehee and Wayne Rushing of Josten's Publishing will conduct the three sessions on producing a yearbook. David Greer of the Kentucky Press Association and former editor of Elizabethtown and Bardstown will conduct sessions on covering a beat.

The programs, designed to help high school

media staffs improve their products, include sports writing, editorials and columns, covering beats, newspaper design, ad sales and design, using the web, feature writing, cartooning, computer system maintenance and design, low-budget video production, copy editing, public relations careers, legal controls of mass media, issues for journalism, education teachers and tours of MSU's TV studios and THE MURRAY STATE NEWS.

Cost of the one-day event is \$4 per student with accompanying adviser's fee. The cost includes juice and donuts during registration.

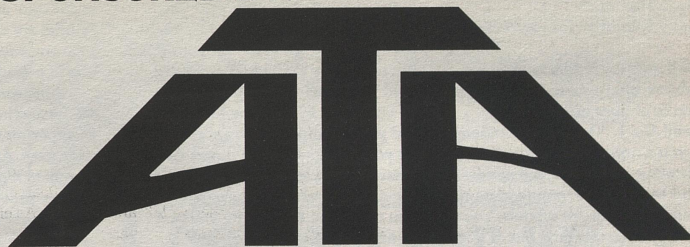
Competition rules/forms and registration forms have been mailed to regional high schools. If a high school has not received the mailing, it should contact McGaughey at (270) 762-6874 or e-mail at Robert.mcgaughey@murraystate.edu.

Deadline for registration is Feb. 14, but the fee can be paid at the door.

Last year 11 schools from Kentucky and Tennessee attended the workshop at the Curris Center.

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Kentucky Supreme Court confuses the issue

By KIM GREENE
KPA General Counsel
Dinsmore & Shohl



What's the deal with public access to court records? For a long time we've all operated as if our right of access to the contents of the court's file about a particular case is a given. A recent (11/21/02) decision of the Kentucky Supreme Court has left us wondering. *The History*. Beginning in 1980, the U.S. Supreme Court issued a series of decisions about access to court proceedings - trials, pretrial conferences, jury selection, testimony of juvenile sex abuse witnesses, etc. The Supreme Court decisions all dealt with criminal cases, so it became crystal clear that access to proceedings in criminal cases in this country was the strong presumption, which could be overcome in only narrow circumstances.

The Kentucky Supreme Court also has a strong line of cases establishing a right of access to court proceedings. Actually, the Kentucky Court recognized this right of access years before

the U.S. Supreme Court did, based upon the Kentucky Constitution's provision that the courts are open.

Following the U.S. Supreme Court's lead, the lower courts were asked to decide whether the same presumption of openness applies to proceedings in civil cases. All of them agreed that it does. The principles are the same. And they found support in the now well known footnote 17 in the U.S. Supreme Court's *Richmond Newspapers* decision. (Although *Richmond Newspapers* involved access to a criminal case and the issue of access to civil cases wasn't before the Court, the Court noted in footnote 17 that there really was no reason for treating civil cases differently.)

The lower courts were also asked to decide whether this presumption of public access to court proceedings extends to court records. Until recently, the answer has been a resounding yes. The Court of Appeals for the 6th Circuit (the federal circuit which encompasses Kentucky) stated it beautifully:

Throughout our history, the open courtroom has been a fundamental

feature of the American judicial system. Basic principles have emerged to guide judicial discretion respecting public access to judicial proceedings. These principles apply as well to the determination of whether to permit access to information contained in court documents because court records often provide important, sometimes the only, bases or explanations for a court's decision.

Brown & Williamson Tobacco Corp. v. FTC, 710 F2d 1165, 1177 (6th Cir. 1983)

Newer Developments. Recently, however, some of the federal courts have begun to take a broader view of the trial court's discretion to seal certain court records. For example, the 11th Circuit Court of Appeals has held there is no constitutional right of access to documents gathered during the discovery phase of a civil suit and filed in the court record. Instead, that court examined whether there was a common law right of access, a standard which gives the trial court much more discretion to seal records. The court held that even that depended on the reason the discovery records were

filed in the case file. If they were filed in connection with motions that require the court to resolve the case on the merits, public access was determined based on the common law right. If they were filed in the court record in connection with other motions, the public was not entitled to see them at all.

Recent Kentucky Supreme Court Decision. The Kentucky Supreme Court's decision in *Roman Catholic Diocese of Lexington v. Mary Noble, Judge, and others* falls somewhere in between these two extremes. It also leaves much room for interpretation and confusion.

The Court first recognizes the common law right of access to judicial records and documents. That means, the Court says, that judicial documents are presumptively available to the public. The Court gave us some good language about the purpose of public access:

Access provides the means through which the citizenry monitor the courts. And monitoring provides judges with

See COURT on Page 7

School board members may be required to save e-mails as matter of public record

Reprinted with permission
By BRAD HUGHES
Kentucky School Boards Association

Quick quiz for school board members who receive e-mail on computers at home or at their offices:

E-mail No. 1: The superintendent sends you a notice that the local facilities planning committee will meet Monday to discuss recommendations on closing one or more schools. You make note of the meeting, but as you are not planning to attend, you delete the e-mail.

E-mail No. 2: The day after the committee meets, the superintendent forwards a report with the panel's recommendations. You reply, asking that a hard copy of the report be sent to you, along with any comments from the superintendent. Then you delete the e-mail.

E-mail No. 3: A constituent who read a newspaper story about the committee's recommendations e-mails you

to encourage you to vote against closing the school. You reply that you appreciate your constituent's insight, that you have not made up your mind, but will study the matter carefully. And you delete the e-mail.

Question: By deleting these e-mails, did you a) simply free up some space on your computer, or b) break the law? Answer: In at least two of these situations, legal and records experts say you may have technically violated Kentucky's Open Records law.

Technicality or not, questions about e-mail communications by public officials, including school board members, are becoming a hot topic. In September, the Attorney General's office issued a ruling concerning access to e-mails produced by a Kentucky superintendent which is available on the agency's Web site at <http://www.law.state.ky.us/civil/orom/02ord160.htm>. And a team representing the Governor's Office of Technology, the Department of

Libraries and Archives and the offices of the state auditor and the attorney general are working on guidelines for state employees on the use and retention of e-mails.

Approximately half of Kentucky's 882 local school board members and all superintendents have e-mail addresses. And more than 100 board members receive e-mail at addresses that are provided by and maintained by their school districts.

E-mail is a public record. If you e-mail somebody as part of your job, then you've created a public record," said Jim Cundy, a local records administrator for the Department of Libraries and Archives. "People use e-mail for informal correspondence so much that they tend not to think of it that way, but it is. It's an official record."

Assistant Attorney General Amye Bensenhaver believes that many public officials, including school board members and superintendents, aren't aware of their e-mail responsibilities.

Ultimately, with the volume of communication that is being done now by e-mail, there is something more transient about it that makes people think it doesn't have that same official character, but it does," Bensenhaver said. "The bottom line is that they need to be aware that those e-mails may be accessible under the Open Records law and should be treated in the same responsible manner as any other official correspondence."

While it's clear that public officials' e-mails are public records, there is more ambiguity about which e-mails must be kept, which can be deleted, and when. **District created, district saved**

"Obviously, the district has the responsibility to retain certain e-mails that would reflect major agency actions and decisions," said Steve Kirby, KSBA's director of legal services. "There's no question that the attorney general has said that e-mails

See E-MAILS on Page 10

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AG Opinions

WHAS-11/Justice Cabinet

The Attorney General's Office found that the Justice Cabinet's denial of Mark Hebert's request for records relating to former State Police Commissioner Jerry Lovitt was a violation of the Open Records Act.

In Hebert's request dated Oct. 17, he requested access to any sexual harassment complaints, grievances or informational correspondence alleging misconduct against Lovitt. He also requested the results of the investigations into those complaints/grievances or allegations, any sexual harassment complaint/grievance or correspondence against Lovitt filed by a named trooper and the cabinet's response and actions taken regarding that complaint/grievance or correspondence.

Three business days after the request, Justice Cabinet Deputy Secretary Barbara W. Jones denied Hebert's request invoking KRS 61.878(1)(a) explaining that "the privacy interest of any individual making an allegation of sexual harassment dictates that such complaints and allegations remain confidential."

After receiving the denial letter, Hebert initiated his appeal with the attorney general's office emphasizing that although allegations of sexual harassment may be "of a very personal nature," the privacy interests implicated do not necessarily "trump the public's right to know if their public servants have filed, or are the targets of, sexual harassment complaints," and if the agency properly responded to those complaints.

The attorney general's office has generally held that the privacy interest of public employees who have been disciplined for, or exonerated from charges of, misconduct in the course of their employment is outweighed by the public interest in monitoring agency action.

According to the AG's written opinion on the matter, "disclosure of such records is not, in general, prohibited by KRS 61.878(1)(a) as a clearly unwarranted invasion of personal privacy. This view is premised on the notion that: "Public service is a public trust. When Public employees have been disciplined for matters related to the performance of their employment ... this office has consis-

tently held that the public has a right to know about the employee's misconduct and any resulting disciplinary action taken against the employee. These opinions hold, either no privacy interest existed under the facts, or if a cognizable privacy interest existed that it was outweighed by the public's right to be informed."

The AG's opinion does say that portions of the records that contain personally identifiable information implicating significant privacy interests but unrelated to the specific allegations Lovitt can be withheld on the basis of KRS 61.878(1)(a), but that the trooper's name and personally identifiable information be redacted.

Daily News and News-Democrat & Leader/Russellville City Council

The attorney general's office ruled that although the Russellville City Council violated KRS 61.84(1) in failing to respond to the open meetings complaints it received, the council did not violate the act to the extent that is closed session discussion focused exclusively on "matters commonly inherent to litigation, such as preparation, strategy or tactics."

On Nov. 13, 2002, Daily News reporter Robyn L. Minor submitted a written complaint to the Russellville City Council in which she alleged that the council violated the Open Meetings Act at its Nov. 12 special meeting by conducting an unauthorized closed session discussion of Electric Plant Board personnel.

She maintained that EPB employees are not city employees, nor are EPB members city employees. She also believed that the discussions concerned general matters pertaining to the EPB rather than specific issues that could lead to the hiring, discipline, or firing of an employee.

Minor challenged the council's reliance on the litigation exception to the Open Meetings Act, questioning what grounds for litigation the council might have. On Nov. 14, News-Democrat & Leader publisher Randall E. Fuqua submitted a similar written complaint to the council alleging that discussion "of personnel matters in general terms, and more specifically EPB employees, includ-

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COURT

Continued from page 6

critical views of their work. . . it casts the disinfectant of sunshine brightly on the courts, and thereby acts as a check on arbitrary judicial behavior and diminishes the possibilities for injustice, incompetence, perjury and fraud. . . Furthermore, the very openness of the process should provide the public with a more complete understanding of the judicial system and a better perception of its fairness.

Roman Catholic Diocese of Lexington, slip opinion

But that presumption of openness may be overcome (and court records sealed) by competing considerations, such as a litigant's privacy interests.

Unlimited access to every item turned up in the course of litigation would be unthinkable. Reputations would be impaired, personal relationships ruined, and businesses destroyed on the basis of misleading or downright false information.

Roman Catholic Diocese of Lexington, slip opinion

The Court then discussed how the competing concerns should be balanced. It will be harder to overcome the presumption of access where we are trying to gain access to "documents and records that play an important role in determining the litigants' substantive rights." It will be easier to overcome the presumption of access where we are arguing over "documents and records that play only a minor or negligible role in adjudicating the rights of the litigants."

What the heck does that mean? It sounds a lot like the 11th Circuit decision. If there are documents in the court file that help the court reach its decision in the case then we should have access, even if one of the parties believes there is private or sensitive information in them. But what hap-

pens if it's early on in the case and the court hasn't made a decision? How difficult will it be to determine whether the documents will "play an important role in determining the litigants' substantive rights?" Does this mean courts will insist that those documents can remain sealed until there has been a decision on the merits of the case?

In addition to the common law right of access to court documents, the Supreme Court recognized a qualified First Amendment right of access. As a threshold, to determine whether a particular document is entitled to a First Amendment right of access a court must address a two-pronged inquiry: (1) whether the document is one which has been historically open to inspection by the public, and (2) whether public access plays a significant positive role in the functioning of the particular process in question. This test, too, will probably generate as much confusion as it does clarity. What exactly does the Court mean by "significant positive role in the functioning of the particular process in question?"

Even our trusty crystal ball clouds up when we ask it what will be the fallout from the *Roman Catholic Diocese of Lexington* case. Maybe we will end up defeating motions to seal and gaining access to court records just as often as we do now. One thing appears evident, though. The analysis to get there has just become more cumbersome. The road to access has more potholes. Traveling that road, therefore, could get a lot more time consuming and expensive. We'll see.

If you have any questions about this issue or any others covered by the Hotline, don't hesitate to contact your Hotline attorneys.

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Kimberly K. Greene: 502/540-2350
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RULES

Continued from page 1

ered by no later than 7 a.m. on the day of publication. If subscribers are not pleased with the manner in which the newspaper was delivered by the carrier or if the newspaper is not timely delivered, the subscribers complain directly to Landmark. The agreement provides that either the carrier or Landmark can terminate the agreement for any reason upon 30 days written notice, but Landmark may terminate a carrier for any reason without notice if her or she fails to meet any condition of the agreement. The carriers are paid on a weekly basis of seven cents per newspaper and "Extra" section delivered. The carriers are paid no fringe benefits of any sort, and each carrier must furnish his or her own transportation in order to make deliveries along the routes designated by Landmark.

The case began when two former newspaper delivery persons, Leonard Faulkner and Ronald Warner, filed claims for unemployment insurance benefits. Landmark terminated the contracts of both Faulkner and Warner in 1996. In response to the men's claim, the Division of Employment Insurance assigned an auditor to conduct an appropriate investigation of those claims, and other delivery persons that Landmark claimed as contract labor. The Division found Faulkner, Warner and 21 other individuals were employees and not independent contractors for unemployment insurance purposes.

After the Division's findings, Landmark brought an appeal before the Commission. The Commission conducted an evidentiary hearing, upheld the Division's findings, and concluded that Landmark's newspaper delivery persons were employees that performed services in covered employment for unemployment insurance purposes. The Commission considered factors set forth in Restatement (Second) of Agency 220 (1958) when reaching its decision.

Landmark appealed the

Commission's order to the Franklin Circuit Court. The circuit court affirmed because it held that the Commission's decision was supported by substantial evidence from the record and was based on a correct interpretation of applicable law.

Landmark appealed again and sought review in the Court of Appeals. The Court of Appeals concluded that the Commission's decision, which held that the newspaper carriers were employees, was wrong. The Court of Appeals stated the evidence showed the newspaper carriers were independent contractors, and not employees of Landmark. The Court of Appeals reversed and remanded the case to the circuit court.

The Commission then moved for the Supreme Court to grant discretionary review.

The Supreme Court reversed the judgment of the Court Appeals.

The Supreme Court's opinion written by Justice Stumbo, states there was no solitary rule for a court to employ in ascertaining whether one should be characterized as being engaged in "covered employment" for unemployment insurance purposes. The opinion stated that there are various factors that may be considered by a court when confronted with this type of issue.

In determining whether a person acting for another is a "servant or an independent contractor," the court considered several facts including: "the extent of control which, by the agreement, the master may exercise over the details of the work; the skill required in the particular occupation; the method of payment, whether by the time or by the job; whether or not the work is part of the regular business of the employer and whether or not the parties believe they are creating a relation of master and servant."

In his opinion, Stumbo wrote, "The ability to control the specific details of work is an important factor for a court or administrative agency to consider. However, we do not believe this factor is of greater importance than the others."

The Court of Appeals determined

that the facts were undisputed. It determined that the question for its review was a question of law, which the court phrased as "whether the Commission correctly applied the law to those facts in concluding that the newspaper carriers were employees."

After applying the Restatement factors to the case, the three-judge panel of the Court of Appeals determined that two of the factors unquestionably supported an employer-employee relationship. The court states that Landmark was in business as a newspaper publisher and that the job of delivering newspapers requires minimal skill, but the Court equally found that other factors could equally favor a finding that the newspaper carriers are either employees or independent contractors. The Court then determined that in its view the remaining factors clearly evidenced an independent contractor relationship between Landmark and the carriers and held that the newspaper carriers were not employees.

"We must disagree with the Court of Appeals," Stumbo wrote. "In our view the Commission's finding of fact are supported by substantial evidence of probative value. The Commission also applied the correct rule of law by employing the previously mentioned factors of Restatement (Second) of Agency."

Landmark contended that the Commission's decision was a mere "legal conclusion" that was corrected on appeal by the Court of Appeals, which Landmark claims correctly applied the law to determine that the carriers were actually independent contractors. The Supreme Court did not agree.

"We fail to see how the Commission misapplied the law to the findings of fact," the opinion stated. "The commission correctly identified the factors from Restatement (Second) of Agency 220(2), which are used in determining whether one is an employee or an independent contractor."

The Supreme Court ruled that substantial evidence existed to support the conclusion reached by the

Commission, and they found no error in that decision.

"Since we have found sufficient evidence is present to support the Commission's decision that the newspaper carriers at issue were employees for unemployment insurance purposes, we cannot say that the Commission's findings were clearly erroneous. Thus, the judgment entered by the Commission cannot be found to be arbitrary."

"In our opinion, the Court of Appeals incorrectly decided to substitute its own judgment for that of the Commission and the Franklin Circuit Court. That was error. The fact that a reviewing court may not have come to the same conclusion regarding the same findings of fact does not warrant substitution of a court's discretion for that of an administrative agency."

In a dissenting opinion written by Justice Wintersheimer and joined in dissent by Justice Johnstone, stated the "Court of appeals followed the correct standard of review in reaching its legal conclusion that the Commission had improperly applied the Restatement (Second) of Agency 220 (1958) to the facts of the case."

The opinion stated that Landmark did not supply any of the instrumentalities necessary to deliver the papers other than the papers themselves. The carriers were paid per unit delivered and the contract clearly stated that the arrangement was that of an independent contractor. It also stated that there was little if any control of the method and means by which the work of delivery was accomplished that only the result mattered to the newspaper.

"The provision requiring a dry newspaper to be delivered on a hook or in a tube by 7 a.m. on publication days was not controlling of the details of the work of delivery but only a statement regarding the end result to be accomplished by the contract," the opinion stated. "The carriers had the freedom to plan their own routes and decided the time of delivery."

Both justices would have affirmed the opinion of the Court of Appeals.

What's happening at your newspaper?

We want to let others know about it by publishing your news in the Kentucky Press. E-mail your stories about your newspaper's employees, awards or community service to: Dana Ehlschide at dehlschide@kypress.com.

2002 KPA Convention Agenda

Thursday, January 23

- 8 a.m.- Trade Show Set Up
- 10 a.m.- KPA/KPS Board of Directors Meeting
- 11 a.m.- Trade Show Opens
- Noon - KPA/KPS Board of Directors Luncheon

1:30 p.m. - KPA Ad Division **Kentucky Registry of Election Finance** - John L. Smith, chairman; Rosemary Center; and, W. Greg Cordier

Seems every year is an election year in Kentucky and that means more advertising laws that newspapers must adhere to. What determines a "political ad?" What disclaimers must be published in each ad and what happens if the newspaper forgets to include one? Those are frequently asked questions. 2003 is a major election year in the state with the top government positions up for new four-year terms. Officials from the Registry tells you how to keep your newspaper in compliance with state laws.

1:30 p.m. - KPA News Editorial Division - **Legislative Leaders Panel**

The General Assembly will have begun its short odd-year session and the body's top leaders will tell us what's in store for the session. Will a state budget finally be approved and how will Kentucky deal with the expected revenue shortfall? Will public financing for gubernatorial campaigns be repealed? Are legislative leaders looking at a new tax structure? Find out what's on the minds of Kentucky's legislative leaders.

2:45 p.m. - KPA Ad Division - **Kentucky Fair Housing Council**

Tony Baize, the council's assistant director, will tell us how to keep our papers in compliance with federal regulations governing proper language in advertising. Attend this session and learn how to avoid being fined for noncompliance as happened recently to some Indiana papers.

3 p.m. - Scholastic Journalism Meeting (tentative)

4 p.m. - KPA Circulation Division - **Complying With Kentucky's New**

Telemarketing Law

During the 2002 Kentucky General Assembly, the legislature passed one of the country's most stringent Telemarketing Laws. It provides for a statewide "No Call" list and sets severe penalties against companies who violate the "No Call" wishes of some 1 million Kentuckians. The attorney general's staff will explain the new law and how to keep in compliance.

4 p.m. - Ad Division Steering Committee

6 p.m. - Opening Reception - Trade Show Area

7:15 p.m. - Open Reception Ends -

Dinner On Your Own

Friday, January 24

8 a.m. - Trade Show and Registration Desk Opens

8 a.m. - KPA Business Meeting
KPA's annual business meeting involves the election of the Vice President for 2003, introduction of the officers for the Kentucky Press Association/Kentucky Press Service for the year and presentation of the KPA/KPS budget, as well as the vote on the new proposed KPA dues structure.

9 a.m. - KPA General Session **Gubernatorial Candidates Forum**
Kentucky elects a new governor in 2003 starting with the primary in May and general election in November. Come and hear and meet the candidates. 90 minutes.

9 a.m. - KPA General Session **Motivating Young Staff Members - Paula Butterfield**

This 90-minute session features Dr. Paula Butterfield, a business coach, speaker and psychologist who helps people develop the capacity to get the results they want. Her client base includes executives seeking to be more effective leaders, entrepreneurs struggling with growing pains, professionals moving into leadership and management roles and business owners who want to nurture entrepreneurial spirit among their workers. Butterfield teaches how to achieve more trust and commitment among

those you lead, how to achieve higher retention of your best performers and customers and how to grab a marketplace advantage your competitors can't copy or buy.

10:30 a.m. - KPA News Editorial Division/KPA College Student Seminar **Improving Your Editorial Content - Rick Horowitz**

You have plenty of stories to tell; what you need in a way to get those stories into your pages with power, purpose - and even a little pizzazz. In this 90-minute session, Horowitz, a syndicated columnist and two-time National Headliner Award winner, will show you how. "Getting Your Words Worth" has won rave reviews at API seminars and Horowitz has made presentations at numerous state press association conventions and newspaper groups. Reporters and editors find his lively, incisive approach to better writing entertaining and very practical.

10:45 a.m. - KPA General Session **"Kentucky: Where we've been and where we're headed" - Dr. Thomas Clark, Kentucky-historian-for-life**

Born in 1903, Dr. Clark, an author of more than 20 books, continues to study his adopted state and share his knowledge in the search for a better tomorrow. Clark, a Mississippi native and longtime UK faculty member, is a much sought-after speaker and thinker. His opinions and thoughts about Kentucky have long been sought by the state's leaders. Years before the current emphasis on improving Kentucky's educational system, Clark wrote in one of his books: "I know of nothing that would improve conditions in Kentucky and give it future status more than a highly effective, efficient educational system."

10:45 a.m. - KPA Circulation Division **The ABCs of NIE (Newspaper in Education) - Gayle Knapp**

Knapp is educational services manager of the Press-Telegram in Long Beach, Calif. She has been an NIE professional with the paper since 1979. Prior to that, she was a public school teacher and private tutor where she worked with students in all grades and subjects. Her NIE workshops have taken her from kindergarten through adult education classes and she has done training on

the state, national and international levels.

During her 60-minute program, discover strategies for using the talent on your newspaper staff and in your community to provide an exciting educational program for every age group. Newspapers provide the opportunity for all levels of learning and Knapp's presentation will show how to start a program, how to improve an NIE program or how to take NIE to the next level. The newspaper is a current, living textbook which is an ideal tool for promoting and motivating literacy efforts. Find out how your "textbook" can benefit the students, parents, teachers and the corporations that want to hire literate employees in your community

Noon - **Changing of the Guard Lunch & The Future of Newspapering - Dean Singleton**

KPA's 2002 President Dave Eldridge, publisher of the Jessamine Journal in Nicholasville, passes the gavel to Winchester Sun General Manager Sharon Tuminski as she becomes the 118th president of the Kentucky Press Association.

Following the passing of the gavel and remarks by both Dave and Sharon, Dean Singleton, CEO of MediaNews Group of Denver and chairman of the Newspaper Association of America, will share with us his view of the future of newspapering.

1:45 p.m. - KPA Ad Division **Improving Your Private Party Classified Revenue - Carol Richer**

Richer is in charge of her own training firm, Sales Training Plus, after serving 16 years as associate publisher for MacDonald Classified Services. She has spoken at more than 100 classified conventions and has conducted training workshops for telephone sales professionals at more than 400 newspapers, including USA Today, The Philadelphia Inquirer, The Atlanta Journal and Constitution, The Los Angeles Times and the Wall Street Journal. In 2000, she was given the McGovern Award by the Newspaper Association of America for her service to the classified industry. 90 minutes.

1:45 p.m. - KPA News Editorial

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AGENDA Continued from page 9

Division/KPA College Student Seminar

Newspaper Design - Improving Your Paper - Ed Henninger

Henninger has been an independent newspaper consultant since 1989 and is director of OMNIA Consulting in Rock Hill, S.C. Henninger has led the redesign of numerous papers across the nation and is now working with papers in Mississippi, Virginia and North Carolina on redesigns. He has spoken at numerous state press association conventions and several papers utilizing his redesigns have

won awards for their new appearance. His column on newspaper design appears regularly in Publisher's Auxiliary, the publication of the National Newspaper Association and the Southern Newspaper Publishers Association bulletin. 60 minutes.

3 p.m. - KPA News Editorial Division/KPA College Student Seminar

Improving Your Newspaper Photography - Kentucky Newspaper Photographers Association Joe Imel, Daily News, Bowling Green

Learn how to shoot award-winning photos. 60 minutes

1:45 p.m. - KPA New Media Division
What's New In Technology? (1:45-2:45 p.m.)

2:45-3 p.m. Break

The latest version of PhotoShop (3-5 p.m.)

Kevin Slimp - Syndicated columnist, speaker

Slimp founded the University of Tennessee Institute of Newspaper Technology in 1997. He is now adjunct professor at UT and serves as a syndicated technology columnist and is director of communications for the Holston Conference. In his role with Holston, he supervises the production of newspapers, magazines, videos and other materials. In addition, his monthly syndicated column

on technology is carried by 40 publications in the United States, Canada and Australia. Slimp has spoken at more than 30 press association conferences in the United States and Canada.

4 p.m. - KPA Associates Division
What Do Newspapers Want From Public Relations Firms?

6 p.m. - KPA Excellence in Kentucky Newspapers Contest Awards Reception

7 p.m. - KPA Excellence in Kentucky Newspapers Contest Awards Banquet

9:30 p.m. - KPA President's Reception

E-MAILS Continued from page 6

are subject to the Open Records Act and as official records, they are subject to the retention schedule (which is set by the Department of Libraries and Archives)."

That doesn't mean that all e-mails retained as public records are necessarily subject to public inspection. "An e-mail that is correspondence with a private individual may not be open to public inspection," Kirby said. However, the e-mail remains a public record that must be maintained, even if it's not accessible by reporters or the general public.

In most cases, when school board members get e-mails from, for example, the superintendent, it's the district's responsibility as the sender to retain the e-mail as a public record. But a reply to the original e-mail changes things, according to Glen McAninch, branch manager for Technology Analysis and Support in the Department for Libraries and Archives.

Usually, it is the sender who retains the e-mail (as) the official version. But when you have a response or it gets forwarded, it's best to retain the last exchange, because that has both sides of the exchange," McAninch said.

That may apply when a board member gets an e-mail from a constituent, and the sends it on to the superintendent. "When an e-mail is forwarded to the central office, I don't think the original e-mail to the board member needs to be preserved," he said.

Yet, if the board member merely

receives the constituent e-mail, it must be retained for two years. Meeting notices are to be retained for one year and then destroyed.

To delete or not to delete, that is the question

Which e-mails legally can be deleted, and when, is another complicated matter. The state's public records law classifies correspondence in two categories: official and general.

Official correspondence must be maintained permanently, while general records, such as e-mails from constituents to board members, must be retained for shorter periods, usually two years.

However, according to the Department of Libraries and Archives official Records Retention Schedule, general correspondence is "not crucial to the preservation of the administrative history of the agency," "is generally of a non-policy nature and without permanent value," and "deals only with the general operations of the agency...which are better documented by other records maintained by the agency." In one Open Records appeal, the attorney general's office ruled that "discretion rests with the agency and user to determine whether general correspondence need be retained. Accordingly, if (a state employee) elects to delete general correspondence having no permanent value, his actions do not contravene state records retention policy."

"So, while not every document has to be retained permanently, you do have to retain documents for specified periods of time," Kirby said. "I think the best advice is that each district should look at the state retention

schedule and decide which e-mails need to be retained, and then apply that policy from that point on."

E-mailings can affect meetings, too

Bensenhaver, the assistant attorney general, sees bigger e-mail issues ahead for board members than just questions of saving or deleting messages.

"If you inappropriately delete stuff that should be retained, you basically are precluding the public from accessing public records, and that would be a problem, (but) if any of these communications by e-mail are diminishing public debate in board meetings, there conceivably could be an issue under the Open Meetings law," she said.

"Obviously, the most critical factor would be whether you had a quorum of the members discussing this matter outside the public scrutiny or a series of e-mails initially involving less than a quorum - for example, two members talking, then one goes to a third member," said Bensenhaver. "That could open some serious Open Meetings issues (because) a lot of this would be under the radar of the public.

"Obviously, when the statute was enacted in 1974, this technology didn't exist. Now we have this technology in place (and) I hear a lot of people talking about chat rooms and virtual discussions and instant messaging," she said. "I am concerned about the issue of responsible use of e-mail. It has to be treated as a public record. That's abundantly clear. Unless it qualifies for exclusion under one of the exceptions, the public is going to see it. My concern and hope is that people will treat it responsibly."

CONVENTION Continued from page 1

General Assembly session.

Friday will offer a jam-packed day of seminars of interest as well as a gubernatorial candidate forum in the morning.

Dean Singleton will be the keynote speaker during Friday's changing of the guard luncheon. Singleton is vice-chairman and CEO of MediaNews Group, publisher of 50 daily newspapers and 94 non-daily publications in 13 states. He is also chairman of the board and publisher of The Denver Post, the company's largest newspaper, and Chairman of the Board for the Denver Newspaper Agency and the publisher of the Rocky Mountain News.

He began his newspaper career at the age of 15 as a part-time reporter in his hometown of Graham, Texas. He bought his first newspaper at the age of 21.

Probably the convention's most anticipated event, the Excellence in Kentucky Newspapers awards ceremony, will be held at 7 p.m. to close out the convention.

This is the first awards ceremony under the contest's new name with categories from the former Best Newspaper Contest and Fall Newspaper Contest combined into one larger contest focusing on writing, photography and design.

A complete convention schedule is on page 9-10 of this edition.

OPINIONS

Continued from page 6

ing board members, who are not city employees, is a direct violation of the Open Meetings Act." As a means of remedying the alleged violations, the News-Democrat & Leader proposed that all future discussions of public business be conducted in a public forum, and that the council otherwise conform its conduct to the requirements of the Open Meetings Act. Neither the Daily News nor the News-Democrat & Leader received a response from the Russellville City Council, prompting each to initiate an open meetings appeal.

Attorney David F. Broderick responded to the appeals on behalf of the council. In his response he said he was representing the council in possible litigation against certain members of the City of Russellville Electric Plant Board. The investigation is an ongoing matter and the city council suspected certain fiduciary duties and city ordinances and policies may have been breached by members of the Electric Plant Board. Broderick said at the Nov. 12 meeting that he advised the council that any discussions involving a proposed litigation could and should be discussed in closed session. He said that nothing but the proposed litigation was discussed during closed session.

Broderick disputed the complainants' "characterization of this matter as a 'general personnel matter.'" He did acknowledge that statements made by at least one council member about possible indictments of KPB members were clearly in error and may have spawned confusion. Broderick offered his assurance that all formalities for conducting the closed session were strictly observed, and that "the council's stated and actual reason for meeting in closed session was the discussion of proposed litigation on behalf of the city council."

The AG's office found no violation of the Open Meetings Act other than the procedural violation of not responding to the request within three business days.

Lexington Herald-Leader/Cabinet for Health Services

The question in this appeal is whether the Cabinet for Health Services subverted the intent of the Open Records Act, short of denial of inspection, by failing to afford

Lexington Herald-Leader reporters Karla Dooley and Barbara Isaacs timely access to a broad range of records relating to the Cabinet's Medicaid program. The AG's office found that although the Cabinet's response to the reporters' request did not comply, in all particulars, with the requirements of KRS 61.872(5), the record on appeal does not support the Herald-Leader's claim that the Cabinet has failed to afford Dooley and Isaacs timely access to the records identified in their request.

In a letter dated Oct. 3, Dooley requested copies of or access to: records, summaries or analysis that indicate total Medicaid enrollment by age, county or region, and program for each fiscal year from 1998 through 2003; records, summaries or analysis that indicate the number of KenPAC providers in Kentucky, their names, county or region, type of provider (i.e. hospital, internist, etc.) state KenPAC patient capacity and total claims paid for each fiscal year form 1998 through 2003, as well as monthly reports reflecting some or all of this data for the fiscal years 1998 through 2003; records, summaries or analysis that indicate the number of Passport providers in Kentucky, their names, county, type of provider (i.e. hospital, internist, etc.) state Passport patient capacity and total claims paid each fiscal year between 1998 through 2003, as well as monthly reports reflecting some or all of this data for the fiscal years 1998 through 2003; Medicaid, KenPAC, and Passport rate schedules for each fiscal year from 1998 through 2003 or summaries of changes to the schedule for each of those years. If differences among regions exist, please include records indicating what those differences are; records, summaries or analysis indicating the length of time the state took to pay clean claims filed under the Medicaid program for each fiscal year from 1998 through 2003. If possible, please break this down by county or region; records, summaries or analysis indicating the length of time the state took to pay clean claims filed under the Medicaid program for each fiscal year from 1998 through 2003. If possible, please break this down by county or region; and The MA 264 report for each quarter for the years 1998 through 2002.

The Herald-Leader maintains that this request was faxed to the Cabinet on Oct. 3, but was later advised that the faxed request was not received. On Oct. 10 or 11, the request was faxed

again.

On Oct. 15, Assistant General Counsel John H. Walker responded to Dooley's request. He advised her that "the cabinet is in the process of reviewing the request to determine what it may have which will fit your request. This process will take approximately five more business days, and at that time, the agency will be able to give you a more specific response to your various requests for data."

Having received no further communication, on Nov. 1, Herald-Leader City Editor Deedra Lawhead contacted the Cabinet to find out the status of Dooley's request. Cabinet spokesman Gil Lawson indicated that Cabinet attorneys had determined that "they would be able to say what records they would be able to make available in 10 to 15 days."

Dissatisfied with the response, the Herald-Leader initiated an appeal on Nov. 7 claiming that the Cabinet had failed to comply with the three-day statutory deadline, KRS 61.872(5).

Walker, in a written statement to the AG's office after the appeal was initiated, said that while the Herald-Leader's request seems narrow in scope, "the nature of the information sought from the department is comprehensive and requires a review of data and reports to determine whether the information sought is in a format useful to the requester." He also stated that "the department is in the process of obtaining copies of the reports for the last four fiscal years. Just the annual reports obtained thus far exceed 2,500 pages of material."

He said that because the request was often not specific as to a document, or what types of documents it wanted other than references to analysis and lists and summaries, "the threshold question for the agency is what exists which fits the bill."

In the opinion of the AG, the Cabinet's supplemental response to the Herald-Leader's request contains the "detailed explanation of the cause ... for delay" that was envisioned by the legislature in enacting KRS 61.872(5). Had the Cabinet provided the Herald-Leader with a similar explanation, along with the earliest date on which the records would be available for inspection, in response to the initial request, that response would have conformed, in all particulars, with the requirements of KRS 61.872(5). Because the Cabinet has not yet identified a disclosure date that is reasonable in light of the scope of the

Herald-Leader's request, we find that it is not yet in full compliance with the Open Records Act."

According to the AG's office, in its supplemental response, the Cabinet demonstrated that there is "no compiled record corresponding to the request." On this basis alone, the Cabinet could have, arguably at least, denied the Herald-Leader's request. Rather than deny the request on this basis, the Cabinet agreed to conduct a search for records that might yield the information sought. According to the AG the Cabinet's supplemental response demonstrates that the information sought has not already been compiled in a record or group of records, and that locating, retrieving and evaluating records which contain that information require the expenditure of considerable staff time and effort.

"We deal not with the record keeping system that the Herald-Leader believes should exist, but with the record keeping system that does exist. It remains for the Cabinet to provide a good faith estimate of how much time and effort are required by identifying the earliest date on which records containing the requested information will be available. As long as the date is reasonable in light of the broad scope of the Herald-Leader's request, and the records are produced on or before that date, we believe that the Open Records Act requires the Cabinet to do no more," Assistant Attorney General Amye L. Bensenhaver wrote.

Approximately one month elapsed between the date Dooley submitted her request and the date on which the Herald-Leader initiated the appeal. The Cabinet's Nov. 13 response to the appeal suggests that efforts were still underway on that date to locate, retrieve and evaluate records containing the information she requested. Neither the Cabinet nor the Herald-Leader has notified the AG's Office that responsive records have been produced. "Clearly, the Cabinet is fast approaching the outermost limit of what is reasonable in light of the breadth of Ms. Dooley's request. We urge the Cabinet to bear in mind that 'it is the legislative intent that public employee exercise patience and long-suffering in making public records available for public inspection,' and to focus its efforts on release of the records on the earliest date certain," Bensenhaver wrote.

PEOPLE

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Monsour is a Louisville native who holds a BA degree in journalism from the University of Kentucky. He has been in Union County for 27 years, serving stints at both of the county's newspapers. He has been editor of *The Advocate* since 1999 and formerly was managing editor of *The Sturgis News*.

He was one of the finalists the KFB award in both 2000 and 2001. His nomination by the Union County Farm Bureau included letters of recommendation from Judge-Executive Larry Joe Jenkins, county Farm Bureau President Roy Robinson, extension agent Rankin Powell, FSA executive director Susan Girtlen plus other local agriculture and civic leaders.

Cason takes job at Anderson News

Jay Cason recently took the position of full-time reporter with *The Anderson News*.

Cason, a retired educator, is a native of Northern Kentucky and a 1968 graduate of Georgetown College. He earned a master's degree in guidance counseling and by 1977 Cason had completed a specialist in education degree at Indiana University.

His latest job in education was as superintendent in Bourbon County.

Cason attended the 2002 Kentucky Press Association Journalism Boot Camp.

WKU students win Hearst Journalism Awards

A Western Kentucky University student picked up a writing award and two received photojournalism awards at the 43rd annual Hearst Journalism Awards Program.

Ryan Clark, a Louisville senior, won the feature writing competition and received a \$2,000 scholarship. He also qualified for the National Writing Championship next June in San Francisco. Western's School of Journalism and Broadcasting received a matching \$2,000 award.

Clark's winning entry was a golf story called "The chase for an ace" that he wrote last summer during an internship at the Atlanta Journal-Constitution.

Clark, who graduated in December, has accepted a spring internship in the sports department at The Orlando Sentinel.

Brian Wagner, a senior from Knoxville, Tenn., finished second and received a \$1,500 scholarship in the

feature and portrait/personality photography contest.

Wagner also qualified for a semi-final round of judging next June.

John Lok, a Bowling Green senior, was sixth in the contest and received a \$500 scholarship. WKU's School of Journalism and Broadcasting will receive matching awards totaling \$2,000.

Cynthiana Democrat gets new ad sales rep

Brian Rue was recently added to the staff at *The Cynthiana Democrat*.

He is a new advertising sales representative and covers the Lexington area. He also represents *The Cats' Pause* publication.

He is a graduate of Georgetown College where he majored in psychology.

Carrollton will begin production, management of The Trimble Banner

Beginning Jan. 1, *The Trimble Banner* will become the third weekly publication to be managed and produced at the Carrollton office.

The Banner's office in Bedford will remain in operation with Darrin Pike as editor and Hilda Parrish as office manager.

They will be adding a full-time advertising sales consultant to better serve advertisers in Trimble County and the Madison area of Indiana. There will also be a full-time classified advertising consultant at the Carrollton office to assist with classified reader and display advertising needs.

The News-Democrat, *The Trimble Banner* and *River City Trading Post* will begin offering a rate package called the "Triple Play" which offers all three publications each week at up to twenty-four percent off the regular rates. They are also introducing new frequency rates to assist advertisers in setting their advertising budget for the next year.

Louisville SPJ Celebrates 50 years

The Louisville chapter of the Society of Professional Journalists will celebrate its 50th anniversary in February - and journalists from across the state are invited to help mark the occasion.

The chapter is planning a dinner and cocktail reception Saturday, Feb. 22 at the Kentucky Derby Museum at Churchill Downs. Tickets to the event are \$50. Helen Thomas, dean of the White House press corps and a

Kentucky native, is the featured speaker.

The evening also includes a photo display of the past 50 years of Louisville journalism history and special presentations by current and former members.

The Louisville chapter was founded February 6, 1953 by some legendary names of Kentucky journalism - Barry Bingham Sr., Earl Ruby, Robert Clark, Gordon Englehart and Norman Isaacs.

For more information or to reserve tickets, contact SPJ President Chris Poynter at cpoynter@courier-journal.com or call him at 502-582-4475. SPJ Vice President Kit Fullenlove is seeking addresses for former SPJ members. Contact her at kfullenlove@bhsi.com or (502) 897-8844

Hornback is named new copy editor

Stephanie Hornback takes a new position at *The News-Enterprise* in Elizabethtown.

She is working as the new copy editor. Originally from Sonora, Hornback has a bachelor's degree in English and allied Language Arts from Western Kentucky University.

Grant County News sponsors Air Force Band of Flight concert

Grant County News sponsored the Air Force Band of Flight in concert on Oct. 17. This marked the first performance of the band in the Northern Kentucky area.

Grant County native and band member, Jeremiah True worked with editor Jamie Baker-Nantz to schedule the Grant County concert. The concert was a free community event.

The Grant County News made all arrangements and provided cookies and punch for everyone.

Glasgow Daily Times installs new color press

The Glasgow Daily Times has recently completed the installation of a new ten unit DGM 430 press which will now allow them to more easily run color.

They hope that by replacing their 35 year old King press it will make life easier for their sales staff and ad reps and believe their clients will be impressed by their color reproduction.

Foley hired as NIE consultant

Stephanie Foley has been hired as a retention expert and NIE consultant for *The News-Enterprise* in

Elizabethtown.

She recently relocated from Minnesota to Elizabethtown to be closer to her parents and siblings.

Vanderhoof named new Pocono Record publisher

Joe Vanderhoof, a publisher at newspapers in Kentucky and Minnesota, was named president and publisher of the *Pocono Record*.

Vanderhoof has worked for Ottaway Newspapers Inc. for 27 years at two newspapers, *The Daily Independent* in Ashland, Ky., and *The Free Press* in Mankato, Minn. Most recently, Vanderhoof was publisher in Ashland. Ottaway also owns the *Pocono* paper.

Vanderhoof, 47, takes the post held by Carolynn Allen-Evans, who is retiring after serving as president and publisher since 1996.

Vanderhoof began his new job at the start of next year.

New column running in Citizen-Times

The *Citizen-Times* has started running a new column called "Out & About, Kentucky Style," by Gary P. West.

Through the column readers will learn about many of the special happenings that have become a big part of the quality of life in Kentucky's small towns as well as finding out about unique people doing unique things.

West, the director of tourism in Bowling Green, grew up in Elizabethtown, where he worked at the Hardin County Enterprise and Elizabethtown News. He attended Western Kentucky University before receiving his journalism degree from the University of Kentucky. Following graduation, West spent two years in the Army where he edited the nation's largest military civilian enterprise newspaper at Fort Bragg, N.C. From there he worked in the corporate offices of State Farm Insurance in Bloomington, Ill., writing advertising copy and designing brochures.

During that time, West has written articles for numerous publications, most recently *Kentucky Monthly Magazine*. His resume includes publishing an advertising shopper for 19 years and 13 years in the Western Kentucky University athletic department. West also served as the color commentator on the Hilltopper Basketball Radio Network.

In 1993, he was named executive director of the Bowling Green Area Convention and Visitors Bureau.