

**Service of Process  
Transmittal**

10/27/2021

CT Log Number 540483919

**TO:** Registered Agent Department  
Business Filings Incorporated (Recipient Account Only)  
8020 Excelsior Dr Ste 200  
Madison, WI 53717-1998

**RE: Process Served in Kentucky**

**FOR:** Frankfort Newsmedia, LLC (Domestic State: KY)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** KENTUCKY STATE UNIVERSITY FOUNDATION, INC. vs. RANKFORT NEWS MEDIA, LLC

**DOCUMENT(S) SERVED:** -

**COURT/AGENCY:** None Specified  
Case # 21CI00798

**ON WHOM PROCESS WAS SERVED:** Business Filings Incorporated, Frankfort, KY

**DATE AND HOUR OF SERVICE:** By Certified Mail on 10/27/2021 postmarked on 10/25/2021

**JURISDICTION SERVED :** Kentucky

**APPEARANCE OR ANSWER DUE:** None Specified

**ATTORNEY(S) / SENDER(S):** None Specified

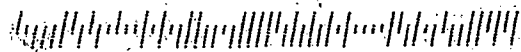
**ACTION ITEMS:** CT has retained the current log, Retain Date: 10/27/2021, Expected Purge Date: 11/01/2021

Image SOP

Email Notification, Registered Agent Department ctsop@bizfilings.com

**REGISTERED AGENT ADDRESS:** Business Filings Incorporated  
306 W. Main Street  
Suite 512  
Frankfort, KY 40601  
844-832-8351  
CTService@wolterskluwer.com

The information contained in this Transmittal is provided by CT for quick reference only. It does not constitute a legal opinion, and should not otherwise be relied on, as to the nature of action, the amount of damages, the answer date, or any other information contained in the included documents. The recipient(s) of this form is responsible for reviewing and interpreting the included documents and taking appropriate action, including consulting with its legal and other advisors as necessary. CT disclaims all liability for the information contained in this form, including for any omissions or inaccuracies that may be contained therein.



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10/25/2021

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Frankfort, KY 40601



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BUSINESS FILINGS INCORPORATED  
306 WEST MAIN STREET  
SUITE 512  
FRANKFORT, KY 40601



## CIVIL SUMMONS

Case #: **21-CI-00798**

Court: **CIRCUIT**

County: **FRANKLIN**

*Plaintiff*, **KENTUCKY STATE UNIVERSITY FOUNDATION, INC VS. FRANKFORT NEWS**, *Defendant*

**TO: BUSINESS FILINGS INCORPORATED  
306 WEST MAIN STREET  
SUITE 512  
FRANKFORT, KY 40601**

Memo: Related party is FRANKFORT NEWS MEDIA, LLC

The Commonwealth of Kentucky to Defendant:  
**FRANKFORT NEWS MEDIA, LLC**

You are hereby notified that a **legal action has been filed against you** in this Court demanding relief as shown on the document delivered to you with this Summons. **Unless a written defense is made by you or by an attorney on your behalf within twenty (20) days** following the day this paper is delivered to you, judgment by default may be taken against you for the relief demanded in the attached complaint.

The name(s) and address(es) of the party or parties demanding relief against you or his/her (their) attorney(s) are shown on the document delivered to you with this Summons.

*Amy Feldman*

Franklin Circuit Clerk

Date: **10/22/2021**

### Proof of Service

This Summons was:

☐ Served by delivering a true copy and the Complaint (or other initiating document)

To: \_\_\_\_\_

☐ Not Served because: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

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\_\_\_\_\_  
Title

Summons ID: 397836726804727@00001015223

CIRCUIT: 21-CI-00798 Certified Mail

KENTUCKY STATE UNIVERSITY FOUNDATION, INC VS. FRANKFORT NEWS



COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
CIVIL ACTION 21-C I- \_\_\_\_\_  
DIVISION \_\_\_\_\_

KENTUCKY STATE UNIVERSITY  
FOUNDATION, INC.

PLAINTIFF

vs.

COMPLAINT

FRANKFORT NEWS MEDIA, LLC  
d/b/a THE STATE JOURNAL

DEFENDANT

Serve: Office of the Attorney General  
700 Capitol Avenue, Suite 118  
Frankfort, KY 40601-3449

Serve: Registered Agent  
Business Filings Incorporated  
306 West Main Street, Suite 512  
Frankfort, KY 40601

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COMPLAINT

This case presents a question of importance under the Kentucky Open Records Act ("Act") as to whether a private non-profit ("KSUF") corporation is considered a "public agency" and falls within the definition and description of KRS 61.870(1). The Plaintiff contends that it is not a public agency as defined by the statute and it is not subject to the provisions of the Act. Alarming, Kentucky's Attorney General deemed Kentucky State University Foundation was determined in 1989 to be included under the previous Act and therefore remains a public agency subject to the current statute. This interpretation violates the plain meaning of the text of the Open Records Act. The



position of the Attorney General specifically ignores a requirement that a board must be “established, created, and controlled by a public agency” to be subject to the Act. KRS 61.870(1)(j). The Attorney General’s Opinion further ignores the response of the Plaintiff, dated September 17, 2021, along with exhibits addressing the arguments of the Defendant. (Exhibit #1)

### **PARTIES JURISDICTION AND VENUE**

1. The Kentucky State University Foundation, Inc. (“KSUF”) is a 501(c)(3) non-profit corporation with its principal place of business located at 118 Douglas Avenue, Frankfort, Kentucky 40601. For purposes of the Open Records Act, the KSUF does not meet the definition of “[p]ublic agency” contained in KRS 61.870(1).

2. The State Journal is an assumed name of Frankfort Media, LLC, operating as a domestic limited liability company, whose mailing address is 1216 Wilkinson Boulevard, Frankfort, Kentucky 40601.

3. This action is brought under KRS 61.880(5)(a) and KRS 61.882 to challenge the determination of the Attorney General Opinion 21-ORE-179 dated September 23, 2021, which concludes that the Plaintiff is a “public agency” required to produce records requested by the Defendant.

4. Jurisdiction and venue are proper in this Court because all parties principal place of business is in Franklin County, Kentucky.

### **FACTS**

5. The KSUF is a non-profit corporation whose stated purpose is to receive contributions, gifts, grants, devises, and bequests for the benefit of Kentucky State

University or any other educational entity and to use such funds at the discretion of the Board of Trustees of the Foundation. (Exhibit #2 Amended Articles).

6. Upon information and belief, KSUF operates as an independent corporation under Section 501(c)(3) of the Internal Revenue Code completely separate from control by Kentucky State University or its Board of Regents. (Exhibit #3 Amended Articles).

7. KSUF operates and is controlled by its own Board of Trustees with no overlap or participation by the Kentucky State University Board of Regents. This assertion was set forth to the Defendant by written correspondence on May 26, 2021. (Exhibit #4).

8. Upon information and belief, the Defendant has never disputed that KSUF has a Board of Trustees separate and distinct from Kentucky State University Board of Regents. It is assumed that such documents being readily available upon the website of the Kentucky Secretary of State were reviewed and that there was no serious contention to the contrary. (Copies of the Secretary of State's list of officers and directors is attached hereto as Exhibit #5).

9. The Kentucky State College Fund, Inc., which was formed in 1968 and its Trustees included the President of the college (now the University), President of the Alumni Association, Vice-Chairman of the Board of Regents of the college, and the Commissioner of the Department of Education. (Exhibit #6).

10. The Articles of Incorporation were amended in 1984 but still maintained the original Trustees.



11. The Amended Articles of Incorporation were adopted October 22, 1989, and again on December 7, 1991, which substantially changed the complexion of the Board of Trustees. (Exhibit #7).

12. KSUF operates under a Board of Trustees independent from any other Board or authority unlike the operation of the previous Board as reviewed by the Court in 1989.

13. The Attorney General has failed to properly interpret KRS 61.870(1)(j) as it applies to KSUF and ignored a long line of case law and KRS 446.080 with regard to the statutory construction of plain and clear language.

14. The Attorney General has further failed to consider that KSUF operates under different facts now than considered by the Supreme Court in *Frankfort Publishing Co., Inc. v. KSU Foundation, Inc.* KSUF does not maintain offices on campus, use the services of university personnel, or operate under by-laws that require its Board to be the same as the University Board of Regents. Likewise, the Foundation holds no state funds.

15. The Attorney General's Opinion further fails to consider the business affairs of KSUF are controlled by an independent Board of Trustees whose make up is not selected by the KSU Board of Regents.

16. The KSUF is entitled to relief from the determination of the Attorney General and receive a declaration from the Court that KSUF is not a public agency as defined in KRS 61.870(1) and is not subject to the Open Records Act.

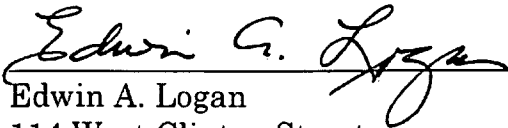
17. Pursuant to KRS 61.882(4), this action should take precedence on the Court's docket.

WHEREFORE, the Plaintiff demands judgment as follows:

1. An expedited briefing schedule and hearing on this matter;
2. A determination that the Plaintiff does not fall within the definition of public agency under KRS 61.870(1); and
3. For any and all other orders or relief to which the Plaintiff may appear to be entitled.

Respectfully submitted,

LOGAN BURCH & FOX

  
Edwin A. Logan  
114 West Clinton Street  
Frankfort, KY 40601  
(502) 875-3884  
ATTORNEY FOR PLAINTIFF

ref:\plc(Ed-Pleadings)\KSUF(FFNewsMedia).Complaint



**LOGAN BURCH & FOX**  
*Attorneys at Law*

114 West Clinton Street  
Frankfort, Kentucky 40601  
Telephone (502) 875-3884  
Facsimile: (502) 875-1113

Edwin A. Logan  
Stewart C. Burch  
Kevin P. Fox  
Brian A. Logan

September 17, 2021

Hon. Daniel Cameron  
Attorney General  
Capitol Building, Suite 118  
700 Capital Avenue  
Frankfort, KY 40601

Dear General Cameron:

Please accept this response to *The State-Journal's* reply correspondence dated September 10, 2021, basically alleging in substance:

- A. The KSU Foundation failed to address the 1992 Kentucky Supreme Court Opinion of *Frankfort Publishing, Inc. v. KSU Foundation, Inc.*, 834 S.W.2d 681 (Ky. 1992) or *Cape Publication, Inc. v. University of Louisville Foundation, Inc.*, 260 S.W.3d 818 (Ky. 2008).
- B. The KSU Foundation did not provide a copy of the University Resolution of Disaffiliation.
- C. That KRS 61.870's modification by the legislature has no effect on the *Frankfort Publishing* case.
- D. That Kentucky State University has "extensive control" over the Kentucky State University Foundation, Inc.

The Foundation will address the foregoing allegations after focusing on the real issue of this matter which is whether the KSU Foundation, Inc., as it exists and operates in 2021, meets the definition of "Public Agency" under KRS 61.870(1). The Foundation asserts that it does not come within the definition of a public agency.

**I. KSU Foundation is Not a "Public Agency".**

**A. Foundation Receives No Public Funds**

It is without question that Kentucky State University Foundation, Inc. is a private corporation qualified under 26 USC §501(c)(3) of the Internal Revenue Service Code. As such, it could only be considered a "Public Agency" under Subsection (h) or (j) of the statute. The Attorney General has previously recognized that private corporations do not come within the purview of the Open Records Act if they derive less than 25% of their funds from state or local authorities. OAG 81-377; OAG 82-216; OAG 84-237; OAG 88-61; OAG 93-78; and 92-ORD-

Exhibit



Hon. Daniel Cameron  
Attorney General  
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1114. It is undisputed that the Kentucky State University Foundation, Inc. does not receive any funds from a state or local authority, much less 25% of its funds from such a source.

**B. KSU Foundation Is Not Controlled By Kentucky State University.**

It is undisputed that the Kentucky State University Foundation, Inc. is controlled by its own Board of Trustees without direction, supervision, or participation by Kentucky State University or the KSU Board of Regents. The Attorney General has determined, when reviewing the question of public agency for a parent-teacher organization, that such an entity, if not established, created, and controlled by public agency, is not within the scope of the statutory definition. 99-OMD-178.

**C. Statutory Construction Says the KSU Foundation is Not a "Public Agency".**

In construing KRS 61.870(1), several principles as to statutory construction must be considered. In construing a statute, the courts look at the words used rather than surmising what may have been intended, but was not expressed. *Kentucky Association of Chiropractors v. Jefferson County Medical Society, et al.*, 549 S.W.2d 817 (1977). The words of a statute are to be given their usual, ordinary and everyday meaning. *Commonwealth v. Shiveley*, 814 S.W.2d 572 (Ky. 1991). Statutes likewise must be tested on the basis of what is said rather than what might have been said. *Musselman v. Commonwealth*, 705 S.W.2d 476 (Ky. 1986). If the words of a statute are plain and unambiguous, the statute must be applied to those terms without resort to any construction or interpretation. *Kentucky Unemployment Insurance Commission v. KACO Unemployment Insurance Fund*, 793 S.W.2d 845 (Ky. App. 1990). The definition of control within *Black's Law Dictionary*, 5th Ed., sets forth that control is "power or authority to manage, direct, superintend, restrict, regulate, govern, administer, or oversee." *Webster's Collegiate Dictionary* defines control as the exercise of "restraining or directing influence over." There are no facts that which would indicate that Kentucky State University has control over Kentucky State University Foundation, Inc. in any manner as used with the statute.

Note that Frankfort Publishing in its September 10, 2021, Reply has at times attempted to have and cite that the KSU Foundation as being involved in the 2003 Cape Publishing case by indiscriminately using quotation marks. The facts here and the facts in the Cape Publishing case are clearly different.

**D. 1992 KSU Foundation is Not the 2021 KSU Foundation**

In response to *The State-Journal's* assertions concerning the *Frankfort Publishing Company* case, the Foundation has repeatedly advised that the holding in that case is not dispositive of the issues in this case. The *Frankfort Publishing Company* case dealt with KRS 61.870(1) before its amendment to its current form. The Supreme Court specifically limited its decision to the sole issue of the application of the phrase "or agency thereof" as used in that statute. The Supreme Court, in concurring opinions, noted not every university foundation should be regarded as an agency of the university and that citizens should be entitled to form an organization for fundraising beneficial to a state university without being subject to the Open Records Act. The concurring opinions of Justice Lambert and Justice Stevens in the *Frankfort Publishing Company* case noted that at the time the lawsuit was instituted, the Kentucky State University Foundation was functioning as an agency of the University. It maintained offices on the campus, used the services of University personnel, and its By-Laws required its Board to be the same as the Board of Regents of the University. These facts were sufficient to render the Foundation as an agency of the University, but the Court noted that not every foundation should be so regarded. The decision of the Supreme Court in that case

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cannot be used to ignore a current statute or brand and chain the Foundation to a 1989 determination of the Court under completely different facts.

The Court's decision in *Cape Publication* in 2008 was also a determination under the previous statute and completely different set of facts. The University of Louisville Foundation is organized and operates differently than the Kentucky State University Foundation, Inc. There is no evidence in this matter that the Foundation and Kentucky State University acted one and the same or that the University "wholly controlled" the Foundation. In the facts in this case, the Foundation's Board of Trustees completely controls the activity of the Foundation and there exists nothing to indicate that the Foundation is controlled by the University or its Board of Regents.

Although the Kentucky State University Foundation is not the custodian of the University's records and could not provide an original resolution of the Kentucky State University Board of Regents previously, the Foundation has attached as Exhibit A a copy of the October 20, 1989 agenda and minutes of the Board of Regents. Section III(c) notes the approval of a resolution to disaffiliate the Kentucky State University Foundation from Kentucky State University. Exhibit B is a copy of the resolution to disaffiliate by the University. It is readily apparent that Kentucky State University and the Kentucky State University Foundation, after the decision of the Franklin Circuit Court in 1989, determined that they should disaffiliate and operate separate and apart from each other. Also attached is Exhibit C which is a copy of the Amended Articles of Incorporation of the Foundation. It is also apparent in that amendment that the Foundation shall receive contributions "for the benefit of Kentucky State University or any other educational entity..." The KSU Foundation purpose and function are not limited or tied solely to KSU.

E. Disbursements by KSU Foundation Are Made As Directed and/or Limited by Donors.

*The State-Journal* alleges that the Foundation has acknowledged that all disbursements and distributions are dependent on the President, faculty and staff approval. The reference to the Foundation's acknowledgment is that the University has policies, procedures and protocols that it follows with regard to disbursements and distributions. The Foundation has no input as to how the University may request funding or how the University handles the funds once received. The reference by the Foundation to the President, faculty and staff is that they have their own protocols, process and procedures before they make a request for funds. The Foundation has no involvement in that process. Once a request is made, the Foundation decides if the request should be funded or denied in accordance with restrictions on funds and/or donor intent in fulfilling its fiducial obligations. The President, staff and faculty have no control as to that decision. The only thing controlled by Kentucky State University is their request for funding. However, the Foundation has total control over whether or not the funding is granted or denied.

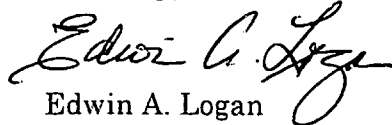
The referral of prospective contributors by the Kentucky State University website (a site over which the Foundation has no control) is hardly an example of control by the University. There is simply no evidence that checks mailed to the University's Office of Institutional Advancement from their website in any way controlled the receipt and use of those funds by the Kentucky State University Foundation. How the Kentucky State University wishes to monitor the use of its website and its effects is of no concern or interest to the Kentucky State University Foundation, Inc. The University website that assists visitors seeking inquiry concerning donations does not establish that the Foundation and the University act as one and the same. Quite to the contrary, it establishes that the Foundation receives and controls those outside funds. KSU and the KSU Foundation do not do or undertake joint fundraising efforts.



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In conclusion, as previously noted, the Kentucky State University Foundation, Inc. is not established, created and wholly controlled by a "public agency". The Foundation is a private entity which is intended to serve a public charitable purpose and operates completely separate and apart from Kentucky State University. The KSU Foundation does not receive nor expend public funds. The Kentucky State University Foundation receives oversight by a separate Board of Trustees with no overlap of board membership with the Kentucky State University Board of Regents. KSU Foundation is not a "public agency" subject to the Kentucky Open Records laws. Frankfort Publishing can not impute to the KSU Foundation what it is not.

Sincerely,

  
Edwin A. Logan

EAL:smp

Enclosures: Exhibit A - October 20, 1989 Agenda and Minutes of the KSU Board of Regents  
Exhibit B - KSU Foundation, Inc. Resolution to Disaffiliate from KSU  
Exhibit C - Amended Articles of Incorporation for KSU Foundation, Inc.

Deciding Index: NON DUH ID 1 CUEBUEBON /2107261

Deciding Index: NON DUH ID 1 CUEBUEBON /2107261

**AGENDA  
STATUTORY QUARTERLY MEETING  
BOARD OF REGENTS  
KENTUCKY STATE UNIVERSITY  
October 20, 1989**

**Prayer**

**Oath of Office**

**Roll Call**

**89-9-1--Approval of the Minutes of the September 22, 1989 Meeting**

**89-9-2--Action Items**

**I. Academic Affairs**

- A. Approval of Sabbatical Leave Policy
- B. Approval of Suspension of Associate of Arts Degree in Public Administration
- C. Approval of the Academic Calendar Policy

**II. Budget and Finance**

- A. Approval and Acceptance of the First Quarter FY 1990 Treasurer's Report
- B. Approval and Acceptance of First Quarter FY 1990 Grants and Contracts Report
- C. Approval of Budget Request for 1990-92 Biennium
- D. Approval and Acceptance of the FY 1989 Preliminary Audit of the University Financial Statement

**III. Other**

- A. Approval of Resolution to Disaffiliate the KSU Foundation from the University
- B. Approval of Amendment to the Articles of Incorporation of the KSU Foundation, Inc.

**89-9-3--Presidential Search Committee Report**

**89-9-4--Information Items**

- I. Fall, 1989 Enrollment Report
- II. Capital Construction Update
- III. Update on University Response to SACS
- IV. Report of First Quarter FY 1990 Personnel Actions

**Adjournment**

**EXHIBIT A**



MINUTES  
STATUTORY QUARTERLY MEETING  
BOARD OF REGENTS  
KENTUCKY STATE UNIVERSITY  
OCTOBER 20, 1989

The Board of Regents of Kentucky State University met on Friday, October 20, 1989 in the Board Room of the Academic Services Building on the Kentucky State University campus. Those Regents present were: Regent Louie Nunn, Regent Edward Breathitt, Regent Barbara Curry, Regent John H. Johnson, Regent Allan M. Lansing, Regent James E. Lockett, Regent William B. Moore, Regent Richard Taylor, and Regent Anthony Tichenor. Absent was Regent Edythe Jones Hayes. The Chairman of the Board, Regent Louie Nunn, called the meeting to order at 1:00 p.m.

A copy of the meeting agenda is attached.

The prayer was given by Regent William B. Moore. The oath of office was administered to Regent Richard Taylor by Mrs. Darlene Stivers. Chairman Nunn congratulated Regent Taylor and welcomed him to the Board. Chairman Nunn acknowledged Dr. Leola Travis' presence in the audience. He thanked her for her service and recommended that she remain on the Presidential Search Committee. Regent Lockett requested that she remain on the Committee. There being no objections from the Board, Dr. Travis will remain a member of the Committee. Dr. Travis expressed appreciation for the comments and accepted the nomination to serve on the Presidential Search Committee.

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Board of Regents Statutory Meeting  
October 20, 1989  
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89-9-1--Approval of the Minutes of the September 22, 1989 Meeting

Chairman Nunn asked for any corrections or comments on the September 22, 1989 Minutes. There were none.

It was moved by Regent Luckett and seconded by Regent Curry that the Board of Regents approve the Minutes of the September 22, 1989 Special Meeting. The motion passed unanimously.

(A copy of the September 22, 1989 Minutes is attached to these Minutes marked as Agenda Item 89-9-1.)

Prior to the Action Items, Chairman Nunn requested that certain matters be discussed because he would have to leave the meeting early. The matters pertained to letters which Chairman Nunn had received and he stated that he hoped the matters could be resolved with President Smith and/or other University personnel. He encouraged President Smith and her staff to meet with personnel who had grievances and try to resolve the matters within the University structure.

89-9-2--Action Items

I. Academic Affairs

A. Approval of Sabbatical Leave Policy

President Smith explained to the Board that this recommended change in policy was a result of the SACS Visiting Team recommendations and suggestions returned to the University. The revised policy was developed and approved by the



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Board of Regents Statutory Meeting  
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Faculty Senate, the Academic Vice President, and the Cabinet members. The revised policy is a clarification of the current policy. A brief discussion ensued.

It was moved by Regent Breathitt and seconded by Regent Taylor that the Board of Regents approve the revised Sabbatical Leave Policy to become effective, Fall 1990. The motion passed unanimously.

(A copy of the revised Sabbatical Leave Policy is attached to these Minutes marked as Agenda Item 89-9-2--I.A.)

B. Approval of Suspension of Associate of Arts Degree in Public Administration

President Smith explained to the Board that the associate of arts degree program in Public Administration has proven to be unproductive. By voluntarily suspending the program, it may be reactivated on action by the Board if a need for the program arises in the future.

It was moved by Regent Moore and seconded by Regent Curry that the Board of Regents approve the suspension of the University's associate of arts degree program in Public Administration to be effective at the conclusion of the Fall 1989 Semester with the provision that all students currently enrolled in the program be given an opportunity to complete it. The motion passed unanimously.

C. Approval of the Academic Calendar Policy

After presentation of this item to the Board, Regent Tichenor questioned the elimination of

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October 20, 1989  
Page 4

intersession. A discussion ensued. It was decided that Regent Tichenor would meet with President Smith to discuss the elimination of intersession.

It was moved by Regent Moore and seconded by Regent Luckett that the Board of Regents approve the Academic Calendar Policy for the 1990-2001 academic years. Regent Tichenor voted no. The motion passed.

(A copy of the Academic Calendar Policy is attached to these Minutes marked as Agenda Item 89-9-2--I.C.)

II. Budget and Finance

It was moved by Regent Taylor and seconded by Regent Lansing that items A, B, and C under Budget and Finance be approved and/or accepted. The motion passed unanimously.

(Copies of the First Quarter FY 1990 Treasurer's Report, First Quarter FY 1990 Grants and Contracts, and Budget Request for 1990-92 Biennium are attached to these Minutes marked as Agenda Item 89-9-2--II.A., 89-9-2--II.B., and 89-9-2--II.C., respectively.)

D. Approval and Acceptance of the FY 1989 Preliminary Audit of the University Financial Statement

The FY 1989 Preliminary Audit of the University Financial Statement was not available because the auditor discovered some reconciliation problems from last year, and the matter could not be resolved before the Board meeting. Chairman Nunn requested that the auditor attend the next Board meeting.



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Board of Regents Statutory Meeting  
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III. Other

The items to be discussed related to the disaffiliation of the KSU Foundation from the University. It was decided that three steps needed to be taken rather than the two steps listed. After a brief discussion, the Board voted on the steps to disaffiliate the Foundation from the University as listed below.

A. Indemnification Resolution

It was moved by Regent Nunn and seconded by Regent Tichenor that the Board accept the Indemnification Resolution of the KSU Foundation. The motion passed unanimously.

B. Approval of Amendment to the Articles of Incorporation of the KSU Foundation, Inc.

It was moved by Regent Luckett and seconded by Regent Curry that the Board of Regents approve the amendments to the Articles of Incorporation of the Kentucky State University Foundation, Incorporated which provide, among other things, that the members of the Kentucky State University Foundation shall be those persons who comprise the Board of Trustees of the Kentucky State University Foundation, Incorporated. The motion passed unanimously.

C. Approval of Resolution to Disaffiliate the KSU Foundation from the University

It was moved by Regent Breathitt and seconded by Regent Moore that the Board of Regents adopt a resolution acknowledging that Kentucky State University shall be disaffiliated from the Kentucky State University Foundation, Incorporated and that all legal actions

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October 20, 1989  
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necessary to carry out such disaffiliation shall be completed. The motion passed unanimously.

(Copies of the Indemnification Resolution, Amendment to the Articles of Incorporation of the KSU Foundation, Inc., and Resolution to Disaffiliate the KSU Foundation from the University are attached to these Minutes marked as Agenda Item 89-9-2--III.A., 89-9-2--III.B., and 89-9-2--III.C., respectively.

89-9-3--Presidential Search Committee Report

Regent James Luckett gave the report of the Presidential Search Committee. He informed the Board that there were approximately 60 applicants for the position of President. He stated that Search Committee members had reviewed approximately 30-40 files. He stressed that it was a long process and that the University personnel had been very cooperative. The Presidential Search Office is now open two nights per week for the committee members to review the files.

Regent Lansing requested that the 12-15 finalists be presented to the Board at its next meeting which Chairman Nunn had requested be held in approximately 30 days.

Regent Luckett stated that he would work with the Presidential Search Committee and hoped to meet this deadline.

At this point in the meeting, Chairman Nunn excused himself and Vice Chairman Curry acted on his behalf.



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89-2-4--Information Items

President Smith presented the Information Items to the Board. She stated that the Final Fall Enrollment Report showed a decrease in enrollment but an increase in full-time undergraduate students.

President Smith informed the Board that she had recently been notified by letter that the Kentucky State University Nursing Program had been approved by the Kentucky Board of Nursing after a review by a team which was on campus last year.

With regard to the University's Response to SACS, President Smith stated that the University had responded to the 13 recommendations and 23 suggestions listed in the Visiting Team's report. The Commission on Colleges, Southern Association of Colleges and Schools, will vote on the reaffirmation of Kentucky State University in December.

Regent Lockett requested that the Personnel Report show the total number for each asterisk at the end of the report.

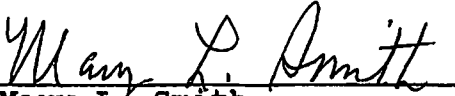
There being no further business, Vice Chairman Curry took questions from the press. After a brief question and answer period, Vice Chairman Curry asked for a motion to adjourn.

It was moved by Regent Tichenor and seconded by Regent Johnson that the meeting be adjourned. The

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October 20, 1989  
Page 8


motion passed unanimously. The meeting adjourned  
at 2:24 p.m.

Respectively submitted,

  
Mary L. Smith  
Interim President  
Kentucky State University

Adopted: 12-1-89

Approved:

  
Louie B. Nunn, Chairman  
Board of Regents  
Kentucky State University



Agenda Item 89-9-2--III.C.

**RESOLUTION**

BE IT RESOLVED that KENTUCKY STATE UNIVERSITY FOUNDATION, INCORPORATED ("Foundation") shall be disaffiliated with Kentucky State University ("University") for all purposes provided under KRS 164A.550 et seq., and that no election to be so affiliated be made by the University and all further legal proceedings required to carry out this resolution be made by both the University and the Foundation.

**EXHIBIT B**

Multi-page document. Select page: 1 2 3

# 28519  
AMENDED ARTICLES OF INCORPORATION

OF

KENTUCKY STATE UNIVERSITY FOUNDATION, INC.

RECEIVED & FILED

#8.00

Dec 9 1 12 PM '91

BREHER EHRLER  
SECRETARY OF STATE  
COMMONWEALTH OF KENTUCKY

Comes Kentucky State University Foundation, Inc., a Kentucky  
profit corporation, and pursuant to Chapter 273 of the Kentucky Revised  
Statutes, hereby amends its original Articles of Incorporation as amended, as  
follows:

657934

1. Article II, paragraph 2.1, of the Amended Articles of  
Incorporation filed in the Secretary of State's Office on October 23, 1989, is  
hereby amended to read as follows:

The purpose of the Kentucky State University Foundation, sometimes  
referred to herein as the "Foundation", shall be to receive contributions,  
gifts, grants, devises, or bequests, of real or personal property or both  
from individuals, foundations, partnerships, associations, governmental  
bodies, and public or private corporations, and to maintain, use, and apply  
such property and income therefrom for the benefit of Kentucky State  
University or for any other educational entity, or for any student, faculty,  
or staff member, or any line of work, teaching, or investigation of Kentucky  
State University or its agents, at the discretion of the Board of Trustees of  
the Foundation; provided, however, that no part of such income or principal  
shall be contributed to any organization whose net earnings or any part  
thereof inure to the benefit of any private shareholder or individual, and  
which does not qualify as exempt under 26 U.S.C. Section 501(c)(3), or the  
corresponding section of any future United States Internal Revenue Service  
Code provision.

2. Article II, paragraph 2.5, of the Amended Articles of  
Incorporation filed in the Secretary of State's Office on October 23, 1989, is  
hereby amended to read as follows:

If the Foundation is ever dissolved, its assets shall be distributed  
as determined in a plan of liquidation and dissolution to be determined at the  
discretion of the Board of Trustees of the Foundation, but said plan of  
liquidation shall not violate any State or Federal law which would affect the  
non-profit and tax exempt status of the Foundation.

~~3. Article IV of the Amended Articles of Incorporation filed in the  
Secretary of State's Office on October 23, 1989, is hereby amended to read as  
follows:~~

Multi-page document. Select page: 1 2 3

EXHIBIT C

Multi-page document. Select page: 1 2 3

~~The address of the registered office of the Kentucky State University Foundation, Inc. shall be 306 West Main Street, Suite 413, Frankfort, Kentucky 40601 and the registered agent for the corporation shall be Mr. Charles Whitehead, 306 West Main Street, Suite 413, Frankfort, Kentucky 40601.~~

4. Article V of the Amended Articles of Incorporation filed in the Secretary of State's Office on October 23, 1989, is hereby amended to read as follows:

The address of the principal office of the Kentucky State University Foundation, Inc. shall be 306 West Main Street, Suite 413, Frankfort, Kentucky 40601 or such other place as the Board of Trustees may from time to time so designate.

5. Article VI, paragraph 6.6 of the Amended articles of Incorporation filed in the Secretary of State's Office on October 23, 1989, is hereby amended to read as follows:

The Board of Trustees shall elect from among their members a President, Vice-President, Secretary, Treasurer, and Executive Secretary and such other officers as they deem desirable. All trustee officers shall serve one-year terms and the Treasurer and Executive Secretary shall serve at the pleasure of the Board.

IN TESTIMONY WHEREOF, the Kentucky State University Foundation, Inc., has caused its corporate name to be hereunto subscribed, in triplicate originals, on this 7th day of December, 1991, and said Amended Articles of Incorporation have been approved by the Board of Trustees and the members of the Kentucky State University Foundation, Inc.

KENTUCKY STATE UNIVERSITY FOUNDATION, INC.

By: Charles Whitehead  
Charles Whitehead, President

ATTEST:

Charles Lambert  
Charles Lambert, Executive Secretary

Multi-page document. Select page: 1 2 3

Exhibit

#2

AMENDED ARTICLES OF INCORPORATION  
OF

KENTUCKY STATE UNIVERSITY FOUNDATION, INC.

RECEIVED &amp; FILED

#8.00

Dec 9 1 12 PM '91

BREMER EHRLER  
SECRETARY OF STATE  
COMMONWEALTH OF KENTUCKY

Comes Kentucky State University Foundation, Inc., a  
profit corporation, and pursuant to Chapter 273 of the Kentucky Revised  
Statutes, hereby amends its original Articles of Incorporation as amended, as  
follows:

657934

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The purpose of the Kentucky State University Foundation, sometimes  
referred to herein as the "Foundation", shall be to receive contributions,  
gifts, grants, devises, or bequests, of real or personal property or both  
from individuals, foundations, partnerships, associations, governmental  
bodies, and public or private corporations, and to maintain, use, and apply  
such property and income therefrom for the benefit of Kentucky State  
University or for any other educational entity, or for any student, faculty,  
or staff member, or any line of work, teaching, or investigation of Kentucky  
State University or its agents, at the discretion of the Board of Trustees of  
the Foundation; provided, however, that no part of such income or principal  
shall be contributed to any organization whose net earnings or any part  
thereof enure to the benefit of any private shareholder or individual, and  
which does not qualify as exempt under 26 U.S.C. Section 501(c)(3), or the  
corresponding section of any future United States Internal Revenue Service  
Code provision.

2. Article II, paragraph 2.5, of the Amended Articles of  
Incorporation filed in the Secretary of State's Office on October 23, 1989, is  
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If the Foundation is ever dissolved, its assets shall be distributed  
as determined in a plan of liquidation and dissolution to be determined at the  
discretion of the Board of Trustees of the Foundation, but said plan of  
liquidation shall not violate any State or Federal law which would affect the  
non-profit and tax exempt status of the Foundation.

~~3. Article IV of the Amended Articles of Incorporation filed in the  
Secretary of State's Office on October 23, 1989, is hereby amended to read as  
follows:~~



~~The address of the registered office of the Kentucky State University Foundation, Inc. shall be 306 West Main Street, Suite 413, Frankfort, Kentucky 40601 and the registered agent for the corporation shall be Mr. Charles Whitehead, 306 West Main Street, Suite 413, Frankfort, Kentucky 40601.~~

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5. Article VI, paragraph 6.6 of the Amended articles of Incorporation filed in the Secretary of State's Office on October 23, 1989, is hereby amended to read as follows:

The Board of Trustees shall elect from among their members a President, Vice-President, Secretary, Treasurer, and Executive Secretary and such other officers as they deem desirable. All trustee officers shall serve one-year terms and the Treasurer and Executive Secretary shall serve at the pleasure of the Board.

IN TESTIMONY WHEREOF, the Kentucky State University Foundation, Inc., has caused its corporate name to be hereunto subscribed, in triplicate originals, on this 7th day of December, 1991, and said Amended Articles of Incorporation have been approved by the Board of Trustees and the members of the Kentucky State University Foundation, Inc.

KENTUCKY STATE UNIVERSITY FOUNDATION, INC.

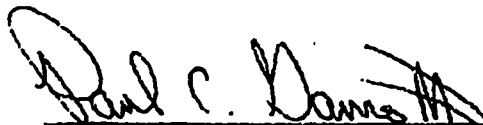
By: Charles Whitehead  
Charles Whitehead, President

ATTEST:

Charles Lambert, Executive Secretary

STATE OF KENTUCKY  
COUNTY OF FRANKLIN

Subscribed, sworn to, and acknowledged before me by Charles Whitehead, President of the Kentucky State University Foundation, Inc., and Charles Lambert, Executive Secretary of the Kentucky State University Foundation, Inc., for and on behalf of said corporation, on this 7th day of DECEMBER, 1991.




Notary Public, Ky., State at Large

MY COMMISSION EXPIRES:

2/11/92

THIS INSTRUMENT PREPARED BY:



Paul C. Gaines III  
LOGAN & GAINES  
100 East Main Street  
Frankfort, Kentucky 40601  
(502) 875-3884



## AMENDED ARTICLES OF INCORPORATION

OF

KENTUCKY STATE UNIVERSITY FOUNDATION, INCORPORATED

## ARTICLE I

NAME AND MEMBERS

1.1 The name of this corporation is "Kentucky State University Foundation, Incorporated".

1.2 The members of the Foundation shall be those individual persons who comprise the Board of Trustees of Kentucky State University Foundation, Incorporated.

## ARTICLE II

PURPOSE

2.1 The purpose of the Kentucky State University Foundation, sometimes referred to herein as the "Foundation", shall be to receive contributions, gifts, grants, devises, or bequests of real or personal property or both from individuals, foundations, partnerships, associations, government bodies, and public or private corporations, and to maintain, use, and apply such property and income therefrom exclusively for the benefit of Kentucky State University, or of any student, faculty, or staff member therein as such, or any line of work, teaching, or investigation of Kentucky State University or its agents; provided, however, that no part of such income of principal shall be contributed to any organization whose net earnings or any part thereof inure to the benefit of any private shareholder or individual, and which does not qualify as exempt under 26

-3-

Exhibit



U.S.C. S 501 (c) (3) (or the corresponding provision of any future United States internal revenue law).

2.2 No part of the net earnings of the Foundation shall inure to the benefit of any trustee or officer of the Foundation, or any private individual, except that reasonable compensation may be paid for services rendered to or for the Foundation in connection with one or more of its purposes; and no trustee or officer of the Foundation, or any private individual shall be entitled to share in the distribution of any of the Foundation's assets on dissolution of the Foundation.

2.3 No part of the activities of the Foundation shall involve carrying on propaganda or otherwise attempting to influence legislation, or participating in or intervening (including the publishing or distribution of statements) in any political campaign on behalf of any candidate for public office.

2.4 Notwithstanding any other provision of these articles, the Foundation shall not carry on any other activities not permitted to be carried on by a corporation exempt from United States income tax under 26 U.S.C. S 170 (c) (2) (or the corresponding provision of any future United States internal revenue law).

2.5 If the Foundation is ever dissolved, its assets shall be distributed to Kentucky State University, or, if said University be not in existence, then to such organization or organizations qualified as exempt under 26 U.S.C. S 501 (c) (3) (or the corresponding provision of any future United States

internal revenue law) as determined in a plan of liquidation voted by the Board of Trustees and approved by the members.

2.6 Notwithstanding any provision stated herein, if at any time the Foundation is declared a "private foundation" as defined in 26 U.S.C. S 590 (a) (or the corresponding provision of any future United States internal revenue law) then:

(1) The Foundation shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by 26 U.S.C. S 4942 (or the corresponding provision of any future United States internal revenue law).

(2) The Foundation shall not engage in any act of self-dealing as defined in 26 U.S.C. S 4941 (d) (or the corresponding provision of any future United States internal revenue law).

(3) The Foundation shall not retain any excess business holdings as defined in U.S.C. S 4943 (c) (or the corresponding provision of any future United States internal revenue law).

(4) The Foundation shall not make any investments in such manner as to subject it to tax under 26 U.S.C. S 4944 (or the corresponding provision of any future United States internal revenue law).

(5) The Foundation shall not make any taxable expenditures as defined in 26 U.S.C. S 4945 (d) (or the corresponding provision of any future United States internal revenue law).



## ARTICLE III

DURATION

The Foundation shall have perpetual duration.

## ARTICLE IV

REGISTERED AGENT

The address of the registered office of the Kentucky State University Foundation, Incorporated shall be Hume Hall, Kentucky State University, Frankfort, Kentucky 40601 and the name of its registered agent for service of process shall be Mr. Charles H. Lambert.

## ARTICLE V

PRINCIPAL OFFICE

The address of the principal office of the Kentucky State University Foundation, Incorporated shall be Hume Hall, Kentucky State University, Frankfort, Kentucky 40601.

## ARTICLE VI

BOARD OF TRUSTEES

6.1 The Foundation shall be managed by a Board of Trustees, not less than fifteen nor more than thirty-six in number, the exact number to be fixed by the by-laws or at the organization meeting; provided, however, that the number of trustees shall always be evenly divisible by three. The trustees shall be elected at the organization meeting of the Original Trustees, which shall be held on Alumni Day, Saturday, June 1, 1968, or at a time and place to be designated by the President of Kentucky State University, if not held on that day.

6.2 Each trustee shall serve for a three-year term or until such trustee's successor is elected. The first Board of Trustees elected shall be divided by lot into three classes, one-third to serve for one year, one-third to serve for two years, and one-third to serve for three years; thereafter all trustees shall serve for three years unless elected to fill out an unexpired term.

6.3 After the election of the first Board of Trustees, one-third of the Trustees shall be elected each year at the annual meeting of the members of the Foundation which shall be held on Alumni Day at Kentucky State University or on such other day as the Trustees may designate. Election shall be by the members of the Foundation.

6.4 Forty percent or more of the elected Trustees shall constitute a quorum at any meeting unless otherwise provided by the by-laws. All actions shall be taken by a majority of those present and voting.

6.5 It shall be the duty of the Board of Trustees: to have immediate and constant supervision of securing gifts in aid of Kentucky State University; to make investments and reinvestments of the funds belonging to the Foundation in accordance with law; to control all disbursements and expenditures; and to attend to such other duties as may be necessary for the success of the Foundation.

6.6 The Board of Trustees shall elect from among their members a president, vice president, secretary, and such other



officers as they deem desirable; the Board of Trustees shall also elect a treasurer and an executive secretary who shall be suitably qualified employees of Kentucky State University. All trustee officers shall serve one-year terms; and the treasurer and executive secretary shall serve at the pleasure of the Board.

6.7 The Board of Trustees shall keep a record of its proceedings and shall make an annual report to the Board of Regents of Kentucky State University.

6.8 The Board of Trustees may create such committees as it deems desirable, and membership on such committees shall not be limited to the Board of Trustees; provided, however, that a majority of the members shall be Trustees.

#### ARTICLE VII

##### EXPENDITURE OF FUNDS

The Board of Trustees shall see that funds and properties received are applied to the uses specified by the donors; or in the case of gifts, grants, devises, or bequests of a general nature, then to such uses described in 2.1 herein as may be agreed by the Board of Trustees.

#### ARTICLE VIII

##### BY-LAWS

The Board of Trustees may adopt by-laws not inconsistent with these Articles of Incorporation.

## ARTICLE IX

FISCAL YEAR

The fiscal year of the Foundation shall begin on July 1 and shall end on the following June 30.

## ARTICLE X

AMENDMENTS

The Articles of Incorporation may be amended by action of members of the Foundation, pursuant to the terms of paragraph 273.267 of the Kentucky Revised Statutes.

## ARTICLE XI

EXCULPATION OF LIABILITY

The private property of the members, trustees, officers, and managers shall not be subject to any of the debts, obligations or liabilities of the Foundation.



IN TESTIMONY WHEREOF, KENTUCKY STATE UNIVERSITY FOUNDATION, INCORPORATED has caused its corporate name to be hereunto subscribed, in triplicate originals, this the 6 day of October, 1989 by Charles Whitehead, President.

KENTUCKY STATE UNIVERSITY FOUNDATION,  
INCORPORATED

By Charles Whitehead  
CHARLES WHITEHEAD  
PRESIDENT

STATE OF KENTUCKY )  
COUNTY OF FRANKLIN )

The foregoing instrument was acknowledged before me this 6th day of October, 1989 by Charles Whitehead, President of Kentucky State University Foundation, Incorporated, on behalf of the Foundation.

My commission expires: June 27, 1992

Harold S. Jackson  
NOTARY PUBLIC

THIS INSTRUMENT PREPARED BY:

Reginald L. Thomas  
REGINALD L. THOMAS  
GENERAL COUNSEL  
KENTUCKY STATE UNIVERSITY  
FRANKFORT, KENTUCKY 40601

-10-

Agenda Item 89-9-2--III.C.

## RESOLUTION

BE IT RESOLVED that KENTUCKY STATE UNIVERSITY FOUNDATION, INCORPORATED ("Foundation") shall be disaffiliated with Kentucky State University ("University") for all purposes provided under KRS 164A.550 et seq., and that no election to be so affiliated be made by the University and all further legal proceedings required to carry out this resolution be made by both the University and the Foundation.



**LOGAN BURCH & FOX**  
*Attorneys at Law*

114 West Clinton Street  
Frankfort, Kentucky 40601  
Telephone (502) 875-3884  
Facsimile: (502) 875-1113

Edwin A. Logan  
Stewart C. Burch  
Kevin P. Fox  
Brian A. Logan

May 26, 2021

Mr. Austin Horn  
The State Journal  
1216 Wilkinson Boulevard  
Frankfort, KY 40601

SENT VIA EMAIL TO  
[austin.horn@state-journal.com](mailto:austin.horn@state-journal.com)

RE: Open Records Request

Dear Mr. Horn:

I represent Kentucky State University Foundation, Inc. and please consider this correspondence as a response to your email to Mr. D.W. Lyons dated May 24, 2021. The Kentucky State University Foundation, Inc. is not a public agency as defined by KRS 61.870(1) and is not subject to the Open Records Act. The formation and operation of this foundation does not fall within the parameters of the facts outlined by the Supreme Court in the *The Courier Journal v. University of Louisville Foundation* case. There is no similarity between the formation and operation of Kentucky State University Foundation, Inc. and the manner in which the University of Louisville Foundation was organized and conducted its business. The KSU Foundation is an independent 501(c)(3) corporation completely separate from the Kentucky State University, its employees, and Board of Trustees. Therefore, the Foundation is not subject to the Open Records Act. The Kentucky State University Foundation, Inc. has a separate Board of Trustees with no overlap with the Kentucky State University in its operation. The Kentucky State University Foundation, Inc. receives no state, federal or municipal funds for its operation and remains distinctly separate from the Kentucky State University in both corporate organization and operation.

Over the past years, the Kentucky State University Foundation, Inc. has attempted to be cooperative with newspaper requests while remaining an independent entity that is not subject to KRS 61.870 to KRS 61.884. In furtherance of that cooperation, the Foundation extended the opportunity to your reporter to visit the Foundation offices and review the Foundation's copy of the audit report. Your reporter was further extended the opportunity to receive a copy of that report voluntarily from the Foundation. The Foundation is not an "agency" of Kentucky State University and is not required to provide any information to your publication. The Foundation, under the foregoing condition, remains available for your review and copy of the audit.

Please directly contact Mr. Lyons of the Kentucky State University Foundation, Inc. to arrange for an agreeable time for a review of the document.

Very truly yours,

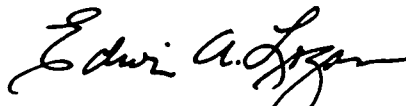
  
Edwin A. Logan

Exhibit  
#4





# Kentucky Secretary of State

## Michael G. Adams

### KENTUCKY STATE UNIVERSITY FOUNDATION, INCORPORATED

File Annual Report

File Statement of Change of Principal Office

File Statement of Change of registered Agent / Registered Address

Printable Forms

Additional Services

Certificates

#### General Information

<b>Organization Number</b>	0028519
<b>Name</b>	KENTUCKY STATE UNIVERSITY FOUNDATION, INCORPORATED
<b>Profit or Non-Profit</b>	N - Non-profit
<b>Company Type</b>	KCO - Kentucky Corporation
<b>Status</b>	A - Active
<b>Standing</b>	G - Good
<b>State</b>	KY
<b>File Date</b>	7/31/1968
<b>Organization Date</b>	7/31/1968
<b>Last Annual Report</b>	2/9/2021
<b>Principal Office</b>	118 DOUGLAS AVE. PO BOX 4210 FRANKFORT, KY 40604-4210
<b>Registered Agent</b>	DONALD W. LYONS PO BOX 4210 118 DOUGLAS AVENUE FRANKFORT, KY 40604 4210

#### Current Officers

<b>President</b>	Willie E Peale, Jr.
<b>Vice President</b>	Patricia W. Stone
<b>Secretary</b>	Tava T. Clay
<b>Treasurer</b>	Donald W. Lyons
<b>Director</b>	Lytle T. Davis
<b>Director</b>	Jeffrey McDonald

21-CI-00798

10/22/2021

Amy Feldman, Franklin Circuit Clerk

Exhibit  
#5



Filed	21-CI-00798	10/22/2021	Amy Feldman, Franklin Circuit Clerk
Director	Dr. Clifford Claiborne		
Director	A. Frazier Curry		
Director	Cuttie W. Bacon, IV		
Director	Kevin Cooke		
Director	Latonya Dawson		
Director	Ann B. Garvin		
Director	Kendra Hamilton-Wynn		
Director	Dr. George Moore		
Director	Lea Robertson		
Director	Dr. Johnny D. Sheppard		
Director	Kathleen Sloan		
Director	Mary Loretta Stewart		
Director	Dr. Herbert N. Watkins		
Director	Mr. Charles Whitehead		

## Individuals / Entities listed at time of formation

Director	CARL M HILL
Director	GERTRUDE LIVELY
Director	WENDELL BUTLER
Director	HOMER E NUTTER
Incorporator	GERTRUDE LIVELY
Incorporator	WENDELL P BUTLER
Incorporator	HENRY R HEYBURN
Incorporator	VINCENT A BARR
Incorporator	JOHN B ASTLER

## Images available online

Documents filed with the Office of the Secretary of State on September 15, 2004 or thereafter are available as scanned images or PDF documents. Documents filed prior to September 15, 2004 will become available as the images are created.

Annual Report	2/9/2021	1 page	PDF	
Annual Report	2/28/2020	1 page	PDF	
Registered Agent name/address change	5/28/2019 4:37:04 PM	1 page	PDF	
Annual Report	5/28/2019	1 page	PDF	
Annual Report	6/12/2018	1 page	PDF	
Annual Report	5/4/2017	1 page	PDF	
Annual Report	6/30/2016	1 page	PDF	
Annual Report	3/30/2015	1 page	PDF	
Annual Report	6/23/2014	1 page	PDF	
Registered Agent name/address change	6/22/2013 8:24:01 AM	1 page	PDF	
Annual Report	6/22/2013	1 page	PDF	
Annual Report	6/26/2012	1 page	PDF	
Annual Report	8/18/2011	1 page	PDF	
Annual Report	9/14/2010	1 page	tiff	PDF
Annual Report	7/11/2009	1 page	PDF	
Annual Report	6/25/2008	1 page	PDF	
Annual Report	1/13/2007	1 page	PDF	
Annual Report	9/18/2006	1 page	tiff	PDF
Annual Report	10/27/2005	1 page	PDF	
Statement of Change	9/18/2003	1 page	tiff	PDF

A 28519

# Commonwealth of Kentucky

## Department of State



Exhibit

#6

### Office of Secretary of State

ELMER BEGLEY, SECRETARY

#### DOMESTIC CORPORATION DEPARTMENT

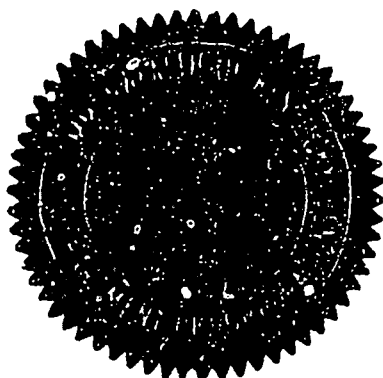
#### NON-STOCK CORPORATION

I, **ELMER BEGLEY**, Secretary of the State of Kentucky, hereby certify that Articles of Incorporation of the

KENTUCKY STATE COLLEGE FUND, INCORPORATED(Frankfort, Kentucky)

has this day been filed in my office.

It appearing from said Articles of Incorporation that the said Corporation has no capital stock, and no private pecuniary profit is to be derived therefrom, the said Corporation is not required by law to pay a tax on organization; and it further appearing that the aforesaid Corporation has complied with all the requirements of the law, this certificate is issued as evidence of the fact that the said Corporation is now authorized and empowered to do business in this State under its charter, subject to the restrictions imposed by the statutes of Kentucky.



Given under my hand as Secretary of State,  
this 31<sup>st</sup> day of July 1968

By

Secretary of State

Assistant Secretary of State

## ARTICLES OF INCORPORATION

KENTUCKY STATE COLLEGE FUND, INCORPORATED

SECRETARY OF STATE

1. Name

1.1 The name of this corporation is "KENTUCKY STATE COLLEGE FUND, INCORPORATED".

Commonwealth of Kentucky

2. Purpose

2.1 The purpose of the Kentucky State College Fund, sometimes referred to herein as the "Fund", shall be to receive contributions, gifts, grants, devises or bequests of real or personal property or both from individuals, foundations, partnerships, associations, governmental bodies and public or private corporations, and to maintain, use and apply such property and the income therefrom, except the principal of the Endowment Fund described in 9.1(a) herein, exclusively for the benefit of Kentucky State College; provided, however, that no part of such income of principal shall be contributed to any organization whose net earnings or any part thereof inure to the benefit of any private shareholder or individual.

2.2 No part of the net earnings of the Fund shall inure to the benefit of any member, trustee, officer of the Fund or any private individual (except that reasonable compensation may be paid for services rendered to or for the Fund in connection with one or more of its purposes); and no member, trustee, officer of the Fund or any private individual shall be entitled to share in the distribution of any of the Fund's assets on dissolution of the Fund.

2.3 No part of the activities of the Fund shall involve carrying on propaganda or otherwise attempting to influence legislation or participating in or intervening (including the publishing or distribution of statements) in any political campaign on behalf of any candidate for public office.

2.4 If the Fund is ever dissolved, its assets shall be distributed exclusively to Kentucky State College.

3. Duration

3.1 The Fund shall have perpetual duration.

#### 4. Principal Office and Process Agent

4.1 The principal office of the Fund shall be at Kentucky State College, Frankfort, Kentucky 40601.

4.2 The resident agent for service of process shall be Dr. Carl M. Hill, President of Kentucky State College.

#### 5. Original Trustees

5.1 Original trustees who shall serve until the first annual meeting of the Fund shall consist of the following persons:

Dr. Carl M. Hill, President of Kentucky State College  
Kentucky State College, Frankfort, Kentucky 40601

Mrs. Gertrude Lively, President of the Kentucky State  
College Alumni Association  
1027 South Western Parkway, Louisville, Kentucky 40211

Wendell Butler, Chairman, Board of Regents  
State Department of Education, Frankfort, Kentucky 40601

Rev. Homer E. Nutter, Vice Chairman, Board of Regents  
407 North Upper Street, Lexington, Kentucky 40506

#### 6. Charter Members of Kentucky State College Fund

6.1 The persons who contribute to the Kentucky State College Fund during the first year of the Fund, that is on or before June 30, 1968, shall be Charter Members of the Kentucky State College Fund and their contribution to the Fund shall be gratefully recorded here for posterity by Amendment to be adopted after the first year of the Fund.

## 7. Trustees

7.1 The Fund shall be managed by a Board of Trustees, not less than fifteen nor more than twenty-seven in number, the exact number to be fixed by the by-laws or at the organization meeting. The original trustees shall be elected at the organization meeting of the Charter Members, which shall be held on Alumni Day, Saturday, June 1, 1968, at a time and place to be designated by the President of Kentucky State College, if not held on that day.

7.2 Each trustee shall serve for a three-year term or until such trustee's successor is elected; provided, however, that the number of trustees shall always be evenly divisible by three. The first Board of Trustees elected shall be divided by lot into three classes, one-third to serve for one year, one-third to serve for two years and one-third to serve for three years; thereafter all trustees shall serve for three years unless elected to fill out an unexpired term.

7.3 After the election of the first Board of Trustees, one-third of the Trustees shall be elected each year at the annual meeting of the Fund which shall be held on Alumni Day at Kentucky State College or on such other day as the Trustees may designate. Election shall be by the Board of Trustees unless some other method of election is designated in the by-laws.

7.4 At least two-thirds of the Trustees shall be Alumni of Kentucky State College.

7.5 Forty percent or more of the elected Trustees shall constitute a quorum at any meeting unless otherwise provided by the by-laws. All actions shall be taken by a majority of those present and voting.

## 8. Duties of the Board of Trustees.

8.1 It shall be the duty of the Trustees to have immediate and constant supervision of securing gifts in aid of Kentucky State College; to make investments and re-investment of the funds belonging to the Fund either directly or indirectly through an investment committee or agent as determined by the Trustees and the terms of any instruments controlling such gifts and in accordance with law; to control all disbursements and expenditures; and to attend to such other duties as may be necessary for the success of the Fund.

8.2 The Trustees shall elect from among their members a president, vice-president, secretary and treasurer and such other officers as they deem desirable; and the Trustees may also elect an

executive secretary who may be an employee of the Kentucky State College..

8.3 The Board of Trustees shall keep a record of its proceedings and shall make an annual report to the Board of Regents of Kentucky State College.

8.4 The Trustees may create such committees as they deem desirable, and membership on such committees shall not be limited to the Board of Trustees; provided, however, that a majority of the members of any committee shall be Trustees. The following shall be appointed:

(a) Investment Committee: There shall be a standing committee of at least three members of the Trustees and such other persons as may be determined by the Trustees to be known as the Investment Committee. This committee shall be appointed annually by the president. Said Committee is authorized generally to buy and sell stocks, bonds and securities; subject, however, to any restrictions in any controlling instruments relating to the funds to be invested and subject to statements of investment policy of the Trustees then in effect; and provided further that the Trustees may employ a corporate trustee or an investment counsel or both to help manage and account for the assets of the Fund, subject to the overall supervision and control of the Trustees acting through the Investment Committee.

(b) Nominating Committee: There shall be a standing nominating committee of at least three Trustees who shall be appointed annually by the President of the Trustees, and who shall submit to the Trustees at least one qualified nominee for each office to be filled by the Trustees. Additional nominations for any such offices may be made by any Trustee. The nominating committee shall consult with the officers, directors and membership of the Kentucky State College Alumni Association in order to obtain qualified candidates for the Board of Trustees of the Fund.

## 9. Organization

9.1 The Fund shall be divided into at least two parts as follows:

(a) Endowment Fund: Into this fund shall be placed all gifts or bequests specifically restricted by the donor to expenditure of the income only. The principal of the Endowment Fund shall not be expended under any circumstances.



(b) Annual Giving Fund: Initially, every effort shall be made to create a broad base among the alumni and friends of Kentucky State College who will give annually to the Fund; and such gifts will be used currently for special projects, including scholarships, which would not ordinarily be feasible out of the regular budget of the College. All assets in the Annual Giving Fund shall be available at all times for any purpose; provided, however, that the Trustees may transfer funds from the Annual Giving Fund to the Endowment Fund if they deem it desirable to do so.

9.2 The Fund shall be organized so that an annual solicitation is made among alumni and friends of Kentucky State College for the Annual Giving Fund. This solicitation may be made through a regular, organized system of Class Secretaries and Regional Chairmen.

9.3 Each graduating class of Kentucky State College shall elect a class secretary to serve as that class's representative to the Fund and such person shall be responsible (with the assistance of the administrative staff of Kentucky State College) for the annual solicitation of the members of his class on behalf of the Fund. As a class secretary dies or resigns, his successor shall be designated by the Board of Trustees of the Fund after consulting with other members of the class.

9.4 The Trustees may also designate area chairmen who shall assist the class secretary in the annual solicitation.

9.5 Every effort will be made by the Board of Trustees, with the assistance of the administrative staff of the College, the class secretaries and the area chairmen to obtain the maximum participation, in terms of percentage of Alumni of the college who give to the Fund each year.

9.6 The president of the Kentucky State College Fund shall each year make a report which shall be distributed to all alumni. The report shall show the amounts received, the current status of the Endowment Fund and the Annual Giving Fund, the purposes for which the amounts received were expended, and the names, by class, of the contributors to the Fund. When memorial gifts have been made, the names of the persons so memorialized shall be included in the annual report.

## 10. Expenditure of Funds

10.1 The Trustees of the Fund shall contribute all amounts received, after deduction of expenses, directly to the College to be

used as the Board of Regents directs; provided, however, that such gifts may be made to the College for specific purposes, or the Board of Trustees of the Fund may indicate its preference or the general area in which it desires the funds to be spent; provided further that all gifts from the Fund to the College shall be used for the direct benefit of Kentucky State College, its faculty and students.

#### 11. Membership

11.1 Irrespective of any other provision in these Articles of Incorporation the Board of Directors may in the by-laws establish one or more classes of membership in the Kentucky State College Fund and may further provide that such memberships shall participate with the Trustees, in the election of the Board of Trustees; provided, however, that the Charter Members of the Fund shall elect the first Board of Trustees at the organization meeting of the Fund on Alumni Day, 1968, or on the an alternate date.

#### 12. By-Laws

12.1 The Board of Trustees may adopt by-laws not inconsistent with these Articles of Incorporation; provided, however, that such by-laws may make further provision as to what persons or classes of persons, either alumni or friends of Kentucky State College, shall serve on the Board of Trustees.

#### 13. Fiscal Year

13.1 The fiscal year of the Fund shall be the same as the fiscal year of the College.

#### 14. Amendments

14.1 These Articles of Incorporation may be amended by a majority of all of the elected members of the Board of Trustees.

*Gertrude Lively*  
*John B. Butler*  
*John R. Lively*  
*Harold A. Barr*

*John B. Butler*  
*Henry R. Lively*  
*Harold A. Barr*



State of Kentucky )  
 )  
County of Franklin )

This day appeared before me a notary public in and for the state and county aforesaid the persons whose signatures are affixed ~~to the~~ and acknowledged and delivered the within articles of incorporation of Kentucky State College Fund, Incorporated to be ~~the~~ their act and deed, all at Frankfort, Kentucky, this 27th day of June, 1968.

My commission expires July 13, 1971

William J. Simmons, Jr.

Notary Public, Franklin County, Ky

By: Stile - at Large

These Articles of Incorporation were prepared by the undersigned Henry R. Hayburn, 712-725 Kentucky Home Life Building, Louisville, Kentucky 40202.

Henry R. Hayburn

ORIGINAL COPY  
FILED AND RECORDED

Shirley B. B. B.

JUL 31 1968

SECRETARY OF STATE OF KENTUCKY  
FRANKFORT, KENTUCKY

Shirley B. B. B.  
ASSISTANT SECRETARY OF STATE

28519-A

AMENDED ARTICLES OF INCORPORATION  
OF  
KENTUCKY STATE UNIVERSITY FOUNDATION, INCORPORATED ~~28519~~

KNOW ALL MEN BY THESE PRESENTS:

578425

That the undersigned, Charles Whitehead, President, of  
KENTUCKY STATE UNIVERSITY FOUNDATION, INC., a corporation  
organized on July 31, 1968 under the laws of the State of  
Kentucky, having its principal office in Frankfort, Kentucky,  
does adopt the following amendment to its current Articles of  
Incorporation:

FIRST: Article 1.2 reads as as follows ---- "The  
members of the Foundation shall be those individual  
persons who comprise the Board of Trustees of Kentucky  
State University Foundation, Incorporated."

SECOND: Articles VI and VII have been combined  
and a new Article XI now reads ---- "The private  
property of the members, trustees, officers, and  
managers shall not be subject to any of the debts,  
obligations or liabilities of the Foundation."

The undersigned further certifies that these Amended  
Articles of Incorporation superseding all provisions of the  
original Articles of Incorporation and of any amendments thereto  
which may be inconsistent therewith were adopted at a regular  
meeting of the members held on the 20th day of October, 1989, a  
quorum of members being present at such meeting, upon the  
affirmative vote of more than two-thirds (2/3) of the members

Exhibit  
#7

RECEIVED AND FILED  
OCT 23 1989

DATE

TIME

9:45 AM

AMOUNT

\$2000 / 6.00

BOOKED

SECRETARY OF STATE

COMMONWEALTH OF KENTUCKY  
Franklin Circuit Clerk

present, written notice of such meeting, setting forth the proposed Amended Articles of Incorporation, having been given to each member entitled to vote at such meeting at least ten (10) days but not more than thirty five (35) days prior thereto, such proposed Amended Articles of Incorporation having been previously approved by unanimous resolution of the Board of Directors on the 6th day of October, 1989, the said Amended Articles of Incorporation, so adopted, being in words and figures as follows, to-wit:

**AMENDED ARTICLES OF INCORPORATION****OF****KENTUCKY STATE UNIVERSITY FOUNDATION, INCORPORATED****ARTICLE I****NAME AND MEMBERS**

1.1 The name of this corporation is "Kentucky State University Foundation, Incorporated".

1.2 The members of the Foundation shall be those individual persons who comprise the Board of Trustees of Kentucky State University Foundation, Incorporated.

**ARTICLE II****PURPOSE**

2.1 The purpose of the Kentucky State University Foundation, sometimes referred to herein as the "Foundation", shall be to receive contributions, gifts, grants, devises, or bequests of real or personal property or both from individuals, foundations, partnerships, associations, government bodies, and public or private corporations, and to maintain, use, and apply such property and income therefrom exclusively for the benefit of Kentucky State University, or of any student, faculty, or staff member therein as such, or any line of work, teaching, or investigation of Kentucky State University or its agents; provided, however, that no part of such income of principal shall be contributed to any organization whose net earnings or any part thereof inure to the benefit of any private shareholder or individual, and which does not qualify as exempt under 26



U.S.C. S 501 (c) (3) (or the corresponding provision of any future United States internal revenue law).

2.2 No part of the net earnings of the Foundation shall inure to the benefit of any trustee or officer of the Foundation, or any private individual, except that reasonable compensation may be paid for services rendered to or for the Foundation in connection with one or more of its purposes; and no trustee or officer of the Foundation, or any private individual shall be entitled to share in the distribution of any of the Foundation's assets on dissolution of the Foundation.

2.3 No part of the activities of the Foundation shall involve carrying on propaganda or otherwise attempting to influence legislation, or participating in or intervening (including the publishing or distribution of statements) in any political campaign on behalf of any candidate for public office.

2.4 Notwithstanding any other provision of these articles, the Foundation shall not carry on any other activities not permitted to be carried on by a corporation exempt from United States income tax under 26 U.S.C. S 170 (c) (2) (or the corresponding provision of any future United States internal revenue law).

2.5 If the Foundation is ever dissolved, its assets shall be distributed to Kentucky State University, or, if said University be not in existence, then to such organization or organizations qualified as exempt under 26 U.S.C. S 501 (c) (3) (or the corresponding provision of any future United States

internal revenue law) as determined in a plan of liquidation voted by the Board of Trustees and approved by the members.

2.6 Notwithstanding any provision stated herein, if at any time the Foundation is declared a "private foundation" as defined in 26 U.S.C. S 590 (a) (or the corresponding provision of any future United States internal revenue law) then:

(1) The Foundation shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by 26 U.S.C. S 4942 (or the corresponding provision of any future United States internal revenue law).

(2) The Foundation shall not engage in any act of self-dealing as defined in 26 U.S.C. S 4941 (d) (or the corresponding provision of any future United States internal revenue law).

(3) The Foundation shall not retain any excess business holdings as defined in U.S.C. S 4943 (c) (or the corresponding provision of any future United States internal revenue law).

(4) The Foundation shall not make any investments in such manner as to subject it to tax under 26 U.S.C. S 4944 (or the corresponding provision of any future United States internal revenue law).

(5) The Foundation shall not make any taxable expenditures as defined in 26 U.S.C. S 4945 (d) (or the corresponding provision of any future United States internal revenue law).

**ARTICLE III****DURATION**

The Foundation shall have perpetual duration.

**ARTICLE IV****REGISTERED AGENT**

The address of the registered office of the Kentucky State University Foundation, Incorporated shall be Hume Hall, Kentucky State University, Frankfort, Kentucky 40601 and the name of its registered agent for service of process shall be Mr. Charles H. Lambert.

**ARTICLE V****PRINCIPAL OFFICE**

The address of the principal office of the Kentucky State University Foundation, Incorporated shall be Hume Hall, Kentucky State University, Frankfort, Kentucky 40601.

**ARTICLE VI****BOARD OF TRUSTEES**

6.1 The Foundation shall be managed by a Board of Trustees, not less than fifteen nor more than thirty-six in number, the exact number to be fixed by the by-laws or at the organization meeting; provided, however, that the number of trustees shall always be evenly divisible by three. The trustees shall be elected at the organization meeting of the Original Trustees, which shall be held on Alumni Day, Saturday, June 1, 1968, or at a time and place to be designated by the President of Kentucky State University, if not held on that day.

6.2 Each trustee shall serve for a three-year term or until such trustee's successor is elected. The first Board of Trustees elected shall be divided by lot into three classes, one-third to serve for one year, one-third to serve for two years, and one-third to serve for three years; thereafter all trustees shall serve for three years unless elected to fill out an unexpired term.

6.3 After the election of the first Board of Trustees, one-third of the Trustees shall be elected each year at the annual meeting of the members of the Foundation which shall be held on Alumni Day at Kentucky State University or on such other day as the Trustees may designate. Election shall be by the members of the Foundation.

6.4 Forty percent or more of the elected Trustees shall constitute a quorum at any meeting unless otherwise provided by the by-laws. All actions shall be taken by a majority of those present and voting.

6.5 It shall be the duty of the Board of Trustees: to have immediate and constant supervision of securing gifts in aid of Kentucky State University; to make investments and reinvestments of the funds belonging to the Foundation in accordance with law; to control all disbursements and expenditures; and to attend to such other duties as may be necessary for the success of the Foundation.

6.6 The Board of Trustees shall elect from among their members a president, vice president, secretary, and such other



officers as they deem desirable; the Board of Trustees shall also elect a treasurer and an executive secretary who shall be suitably qualified employees of Kentucky State University. All trustee officers shall serve one-year terms; and the treasurer and executive secretary shall serve at the pleasure of the Board.

6.7 The Board of Trustees shall keep a record of its proceedings and shall make an annual report to the Board of Regents of Kentucky State University.

6.8 The Board of Trustees may create such committees as it deems desirable, and membership on such committees shall not be limited to the Board of Trustees; provided, however, that a majority of the members shall be Trustees.

#### ARTICLE VII

##### EXPENDITURE OF FUNDS

The Board of Trustees shall see that funds and properties received are applied to the uses specified by the donors; or in the case of gifts, grants, devises, or bequests of a general nature, then to such uses described in 2.1 herein as may be agreed by the Board of Trustees.

#### ARTICLE VIII

##### BY-LAWS

The Board of Trustees may adopt by-laws not inconsistent with these Articles of Incorporation.

## ARTICLE IX

FISCAL YEAR

The fiscal year of the Foundation shall begin on July 1 and shall end on the following June 30.

## ARTICLE X

AMENDMENTS

The Articles of Incorporation may be amended by action of members of the Foundation, pursuant to the terms of paragraph 273.267 of the Kentucky Revised Statutes.

## ARTICLE XI

EXCULPATION OF LIABILITY

The private property of the members, trustees, officers, and managers shall not be subject to any of the debts, obligations or liabilities of the Foundation.



IN TESTIMONY WHEREOF, KENTUCKY STATE UNIVERSITY FOUNDATION, INCORPORATED has caused its corporate name to be hereunto subscribed, in triplicate originals, this the 22 day of October, 1989 by Charles Whitehead, President.

KENTUCKY STATE UNIVERSITY FOUNDATION,  
INCORPORATED

By Charles Whitehead  
CHARLES WHITEHEAD  
PRESIDENT

STATE OF KENTUCKY )  
COUNTY OF FRANKLIN )

The foregoing instrument was acknowledged before me this 22nd day of October, 1989 by Charles Whitehead, President of Kentucky State University Foundation, Incorporated, on behalf of the Foundation.

My commission expires: June 27, 1992

Starlene K. Jackson  
NOTARY PUBLIC

THIS INSTRUMENT PREPARED BY:

Reginald L. Thomas  
REGINALD L. THOMAS  
GENERAL COUNSEL  
KENTUCKY STATE UNIVERSITY  
FRANKFORT, KENTUCKY 40601



COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON  
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118  
700 CAPITAL AVENUE  
FRANKFORT, KENTUCKY 40601  
(502) 696-5300  
FAX: (502) 564-2894

21-ORD-179

September 23, 2021

In re: Austin Horn/Kentucky State University Foundation

**Summary:** The Kentucky State University Foundation (the "Foundation") is a public agency and it violated the Open Records Act ("the Act") when it denied a request to inspect records.

*Open Records Decision*

Austin Horn ("Appellant") asked the Foundation to provide copies of records related to payments made to a specific individual for a two-year period, as well as "payments made for the purposes of parties celebrating [the specific individual's] birthday[.]" The Appellant also sought to inspect "any records or documentation reflecting payments of more than \$1,500 made to any entity or individual[.]" In a timely response, the Foundation denied the Appellant's request because it claims it "is not a public agency as defined by KRS 61.870(1) and is not subject to the [Act]." This appeal followed.

A public agency is defined in KRS 61.870(1)(j) as "[a]ny board, commission, committee, subcommittee, ad hoc committee, advisory committee, council, or agency . . . established, created, and controlled by a public agency as defined" under KRS 61.870(1). Likewise, "[a]ny entity where the majority of its governing body is appointed by a public agency" under KRS 61.870(1) is a "public agency." KRS 61.870(1)(i). The Kentucky Supreme Court has specifically held that the Foundation is a public agency subject to the Act under a previous version of KRS 61.870(1). See *Frankfort Publ'g. Co. v. Kentucky State Univ. Found., Inc.*, 834 S.W.2d 681, 682 (Ky. 1992). This Office has also

Appendix

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previously found that the Foundation is a public agency. *See, generally* OAG 89-92; OAG 92-62.

To overcome this unfavorable precedent, the Foundation claims that it has changed its structure such that its Board of Directors is no longer selected by Kentucky State University ("the University"). Noticeably, however, the Foundation does not explain how its Board of Directors is now selected. From the evidence in this record, the Foundation appears to be the same entity it was in 1989, prior to the Court's holding in *Kentucky State Univ. Found., Inc.* that the Foundation is a public agency subject to the Act. 834 S.W.2d at 682. The Foundation's claim that it is a different entity than the one before the Court in 1992 is not supported by the record before this Office.

The Foundation next argues that the Supreme Court's holding in *Kentucky State Univ. Found., Inc.* should no longer apply because the definition of "public agency" under KRS 61.870(1) has been since amended. However, in a 2003 unpublished decision, the Kentucky Court of Appeals rejected a similar argument raised by the University of Louisville's Foundation that sought to distinguish itself from Kentucky State University's Foundation. *Univ. of Louisville Found., Inc. v. Cape Publ'n, Inc.*, Case No. 2002-CA-001590, 2003 WL 22748265 (Ky. App. Nov. 21, 2003). The Court of Appeals held "this modification of KRS 61.870 would have no effect on the holding in" *Kentucky State Univ. Found., Inc. Id.* at \*7. This Office agrees that amendments to KRS 61.870(1) did not, on their own, convert the Foundation from a public agency into a private entity not subject to the Act. Nothing in this record warrants deviation from the unmistakable holding by the Kentucky Supreme Court that the Foundation is a public agency subject to the Act.<sup>1</sup>

Because it is a public agency subject to the Act, the Foundation was required to provide responsive records or explain how an exemption applied to

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<sup>1</sup> Specifically, KRS 61.870(1)(i) defines public agency to include "any entity where the majority of its governing body is appointed by a public agency." The Foundation provides no evidence that clarifies how its Board of Directors is selected. And although the Foundation claims on appeal that none of its Board of Directors are themselves members of the University's Board of Trustees, the Foundation never explains how its Board of Directors is actually selected. *Cf. Univ. Med. Cent., Inc. v. American Civil Liberties Union of Kentucky, Inc.*, 467 S.W.3d 790, 800 (Ky. App. 2014) (finding that a majority of the University's Medical Foundation were appointed by a nominating committee that is itself selected by the University, which made the Medical Foundation a "public agency" under KRS 61.870(1)(i)).

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deny the Appellant's request. KRS 61.880(1). But in response to the Appellant's request for records related to "payments of more than \$1,500 made to any entity or individual," the Foundation denied the request as being "vague, overly broad, unduly burdensome, and an unwarranted invasion of personal privacy[.]"

Under KRS 61.872(3)(b), a requester who seeks copies of public records to be delivered by mail must "precisely describe" the records which he or she wishes to receive. A requester seeking copies of public records by mail must frame his or her request with enough specificity that a public agency can determine which records are being sought and where such records are located. *See, e.g.*, 13-ORD-077; OAG 89-8. However, under KRS 61.880(1)(c), "[t]he burden of proof in sustaining the action shall rest with the agency." Under KRS 61.872(6), "if the application places an unreasonable burden in producing public records . . . the official custodian may refuse to permit inspection of the public records or mail copies thereof. However, refusal under this section shall be sustained by clear and convincing evidence." In 21-ORD-126, an affidavit describing in detail how a request lacked precision, and the burden such a request posed, supported an agency's denial of a request that was imprecise and unreasonably burdensome.

Here, the Foundation's response is deficient in comparison. It may be true that the Appellant's request for any payment in the amount of \$1,500 to any person, with no limitation in temporal scope, does not precisely describe the records sought. To carry its burden, however, the Foundation just conclusory states the request is unreasonably burdensome without any analysis. Therefore, the Foundation's "limited and perfunctory response" violated the Act.<sup>2</sup> *See Edmondson v. Alig*, 926 S.W.3d 856, 858 (Ky. App. 1996).

Finally, the Foundation directed the Appellant to submit his request for payments made to a specific individual, and payments made for that person's birthday party, to the University. The Foundation claimed that historically, University "Presidents, faculty and staff have requested funding but such requests that were acted upon were subject to approvals and documentation by [the University]. All source documents relating to [University] expenditures are located at [the University]. Any expenditures for such activities, as travel

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<sup>2</sup> For the same reason, the Foundation's claim that the request implicated the personal privacy of unknown individuals was deficient. The Foundation neither cited KRS 61.878(1)(a), the basis of its claimed exemption, nor did it explain how any individual's personal privacy right would be implicated by providing the requested records.



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and birthday parties, can be likewise addressed directly to" the University. But by addressing his request to the Foundation, the Appellant clearly sought any such payments made by the *Foundation* to the individual, not payments made by the *University* to the individual. If there are no responsive records in the Foundation's possession, it should have affirmatively stated so. *See Bowling v. Lexington Urban County Gov't*, 172 S.W.3d 333, 341 (Ky. 2005); *see also* 21-ORD-113; 21-ORD-004. The Foundation's failure to do so violated the Act.

To summarize, in the absence of any evidence that explains how the Foundation's Board of Directors are now selected, the Foundation is still a public agency under KRS 61.870(1)(i).<sup>3</sup> As a public agency, the Foundation had the burden of proving that exceptions to the Act applied that would allow it to deny the Appellant's request. It failed to carry that burden on each of its claimed exemptions, and it therefore violated the Act.

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882. Pursuant to KRS 61.880(3), the Attorney General shall be notified of any action in circuit court but shall not be named as a party in that action or in any subsequent proceedings.

Daniel Cameron  
Attorney General

/s/Matthew Ray  
Matthew Ray  
Assistant Attorney General

#273

Distributed to:

Austin Horn  
Edwin A. Logan

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<sup>3</sup> Whether the Foundation is a public agency under KRS 61.870(1)(j) would turn on whether its incorporator, Charles Whitehead, was a private individual when he formed the Foundation in 1989—another question of fact that has been unaddressed by the Foundation. *See Univ. Med. Cent., Inc.*, 467 S.W.3d at 799 (finding that the Medical Foundation was not a public agency under KRS 61.870(1)(j) because it had been "created" by private corporations, but the Foundation was nevertheless a public agency under KRS 61.870(1)(i) because its members were *de facto* selected by the University).