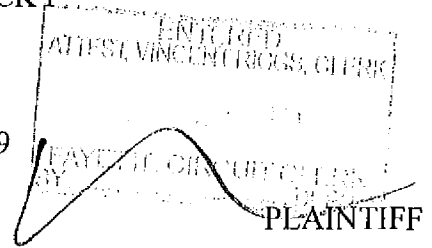


COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
CIVIL BRANCH
THIRD DIVISION
CIVIL ACTION NO. 17-CI-479



SARAH R. MOORE

v.

OPINION AND ORDER
GRANTING DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT

UNIVERSITY OF KENTUCKY, et al.

DEFENDANTS

*** **

This matter is before the Court on Defendants' Motion for Summary Judgment. The Court having reviewed the memoranda of the parties, having heard arguments of counsel on April 14, 2020, and being otherwise sufficiently advised, hereby renders the following Opinion and Order granting Defendants' Motion for Summary Judgment. The Court hereby declares the University of Kentucky ("UK") a unit of organization in the executive branch of state government authorized to refer debts for collection pursuant to KRS 45.237.

Factual Background

Plaintiff, Sarah R. Moore ("Moore"), challenges the ability of UK to refer debts for collection pursuant to KRS 45.237.

The parties appealed an earlier Fayette Circuit Court Order holding UK was not part of the executive branch of state government for purposes of KRS 45.237. *See Univ. of Kentucky v. Moore*, ___ S.W.3d ___, 2019 WL 5677931, at *1 (Ky. Oct. 31, 2019). The facts underlying the declaratory judgment action are set out therein as follows:

Moore sought medical care for herself or one of her dependent children at a University of Kentucky health care facility five times between May 2011 and December 2012. When Moore failed to pay the medical bills, UK HealthCare did not file a civil action against Moore to collect the accounts, but instead certified

each account as an 'agency' debt and then referred it to the Department of Revenue for collection.

The Department operates the Enterprise Collections Office to collect other agency-referred debt and the University claimed the qualifying 'agency' status pursuant to KRS 45.237(1)(a). The Department's efforts to collect Moore's UK HealthCare debt proceeded in the standard manner with imposition of a 25% collection fee and interest on the debt and then enforcement through garnishment of Moore's state and/or federal tax refunds and her bank accounts and paychecks. The Department's collection process for agency-referred debt does not include securing a judgment against the debtor for the amount owed and thus no judgment was ever obtained against Moore.

Moore filed suit against ... University of Kentucky-UK HealthCare and UK's Executive Vice President for Health Affairs, Michael Karpf, (collectively referred to as 'UK'), and the Department of Revenue and its Commissioner, Daniel P. Bork (collectively referred to as 'the Department'). Moore's complaint alleged that neither the University nor UK HealthCare is an agency within the executive branch as required by KRS 45.237(1)(a), and thus the statutory collection process is not available to them. Moore sought a judgment declaring that UK and UK HealthCare may not legally refer Moore's debt to the Enterprise Collections Office for collection and consequently the Department of Revenue and/or the Enterprise Collections Office may not legally undertake efforts to collect debt owed to UK, including efforts such as garnishing Moore's bank accounts, wages and tax refunds. The complaint also alleged that UK breached the contractual implied covenant of good faith and fair dealing, and that both UK and the Department violated the Takings and Due Process Clauses of the Fifth Amendment to the United States Constitution, and violated Section 2 of the Kentucky Constitution by exercising absolute and arbitrary power over Moore's liberty and property.

Moore subsequently amended her complaint, leaving only her request for declaratory relief. Contemporaneously, UK and the Department each moved the trial court to dismiss the claims against them pursuant to Kentucky Rule of Civil Procedure (CR) 12.02. UK maintained that it is a state agency that shares the Commonwealth of Kentucky's sovereign immunity. The Department moved for dismissal on the grounds that the circuit court did not have subject-matter jurisdiction to decide the 'agency' question since the Kentucky Board of Tax Appeals (KBTA) holds exclusive jurisdiction to hear actions regarding the Department's revenue-collection activities and Moore has not exhausted her administrative remedies with the KBTA. Finding that Moore's amended complaint only sought a declaration of rights against a government entity, the circuit court concluded that sovereign immunity did not bar its jurisdiction to declare those rights.

In her amended complaint, Moore requested a declaration that UK is not an agency, defined in KRS 45.237(1)(a) as an 'organizational unit or administrative

body in the executive branch of state government’; that the University may not lawfully refer the accounts of UK HealthCare to the Department of Revenue under KRS 45.237 et. seq. for collection; and that the Department of Revenue may not lawfully collect such accounts. By separate motion, Moore presented the narrow question of whether UK is an agency ‘within the executive branch.’ Collectively, UK and the Department opposed the declaratory judgment action and motion arguing pertinently that UK is part of the executive branch; Fayette Circuit Court lacks subject-matter jurisdiction because Moore has not exhausted the administrative remedies available to her; and sovereign immunity bars the declaratory judgment action because Moore does not allege an ongoing violation of law and because the declaratory/injunctive relief exception to sovereign immunity cannot be used to obtain money or forgive debt.

Id. at *1-2 (emphasis added, footnotes omitted). The Supreme Court affirmed the trial court’s conclusion that “sovereign immunity does not bar this declaratory action” and reversed the trial court insofar as it held UK was not within the executive branch of state government for purposes of KRS 45.237. *Id.* at *11.

Accordingly, the issue on remand is whether UK is an organizational unit or an administrative body for purposes of KRS 45.237. On that issue, the Supreme Court stated:

[T]he *University of Kentucky* may be included or excluded from the definition of ‘agency’ in regard to particular statutes, i.e., being an agency for purposes of one statute but not necessarily others. As to the statutes at hand, KRS 45.237 et seq., we only declare that the University is in the executive branch of state government. *On remand, the circuit court must determine whether UK is an executive branch entity entitled to refer debts to the Department of Revenue for collection pursuant to KRS 45.238.*

Id. at *8 (emphasis added, footnotes omitted).

Summary Judgment Standard

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” CR 56.03. The record is viewed in the light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in its favor. *Steelvest,*

Inc. vs. Scansteel Serv. Ctr. Inc., 807 S.W.2d 476, 480 (Ky. 1991) (citations omitted). The parties hereto agree the issue is one of law to be decided by the Court.

UK seeks to include in the scope of the declaratory judgment whether UK is authorized to refer the debt pursuant to KRS 131.130(11), a separate statute authorizing the Department of Revenue to “enter into annual memoranda of agreement” with certain state entities “to assume the collection duties for any debts due the state entity...” KRS 131.130(11). The parties agree the debt herein was not referred for collection pursuant to this statute.

The Court concludes no actual controversy exists with regard to KRS 131.130(11) and the Court lacks jurisdiction to consider this issue. *See* KRS 418.040 (“In any action in a court of record of this Commonwealth having general jurisdiction *wherein it is made to appear that an actual controversy exists*, the plaintiff may ask for a declaration of rights, either alone or with other relief; and the court may make a binding declaration of rights, whether or not consequential relief is or could be asked.” (emphasis added)).

Opinion

The General Assembly has enacted legislation permitting state agencies and local governments to refer debts to the Department of Revenue for collection. Specifically, “[d]ebts that are certified by an agency or by a local government as provided in KRS 45.237 shall be referred to the department [of revenue] for collection.” KRS 45.238(1). “Agency” is defined as “an *organizational unit* or *administrative body* in the executive branch of state government as defined in KRS 12.010[.]” KRS 45.237(1)(a) (emphasis added). In turn, “organizational unit” and “administrative body” are defined as follows:

- (1) ‘Organizational unit’ means any unit of organization in the executive branch of the state government that is not an administrative body, including but not limited to any agency, program cabinet, department, bureau, division, section or office;

*** **

(8) 'Administrative body' means any multi-member body in the executive branch of the state government, including but not limited to any board, council, commission, committee, authority or corporation, but does not include 'branch,' 'section,' 'unit' or 'office';

KRS 12.010(1), (8).

The statute includes definitions for "department" (included within organizational unit), "division" (included within organizational unit), "branch" (excluded from administrative body), "section" (included within organizational unit/excluded from organizational unit), "unit" (excluded from administrative body), "office" (included within organizational unit/excluded from administrative body), and "program cabinet" (included within organizational unit).

The statute does not define "agency" (included within organizational unit), "board" (included within administrative body), "bureau" (included within organizational unit), or "council" (included within administrative body).

The statute is silent as to whether a university or institution fall within the definition of organizational unit or administrative body.

In *Moore, supra*, the Supreme Court noted "KRS 12.010(1) and KRS 12.010(8) place limits on the definitions of 'organizational unit' and 'administrative body' by informing the reader not only what each is, but also by stating what it is not, and by providing examples of entities which would qualify. 'University' or 'institution' is not a listed example under either the 'organizational unit' or 'administrative body' definitions." *Id.* at *4. The Court further framed the issue before the Court as "whether the University is an 'organizational unit,' an 'administrative body,' or neither..." *Id.*

1. **Establishment of University of Kentucky**

The University of Kentucky is recognized by statute as a land-grant institution:

The University of Kentucky located at Lexington, is recognized as established and maintained. It is the institution that was founded under the land grant of 1862 by the Congress of the United States under the corporate designation and title of 'Agricultural and Mechanical College of Kentucky.' The university shall be maintained by the state with such endowments, incomes, buildings and equipment as will enable it to do work such as is done in other institutions of corresponding rank, both undergraduate and postgraduate, and embracing the work of instruction as well as research.

KRS 164.100. Chapter 164 defines "institution" to include "a university." KRS 164.001(12).

Chapter 164 further establishes the various colleges, schools, divisions, departments, bureaus, and offices contained within UK:

The University of Kentucky includes the following colleges and schools: The College of Arts and Science, The College of Agriculture, The College of Engineering, The College of Law, The College of Education, The College of Commerce, and The Graduate School. The *colleges, schools, divisions, departments, bureaus and offices now established and maintained or which in the future may be established by the board of trustees of the university shall constitute the University of Kentucky.* The branches of learning required by the Act of Congress approved July 2, 1862, shall continue to be integral and indispensable courses of instruction at the university.

KRS 164.120 (emphasis added).

"The government of the University of Kentucky is vested in a board of trustees appointed for a term set by law pursuant to Section 23 of the Constitution of Kentucky." KRS 164.131(1)(a).¹

The board of trustees shall be a *body corporate*, under the name of board of trustees of the University of Kentucky, *with the usual corporate powers*, and shall possess all the immunities, rights, privileges and franchises usually attaching to the *governing bodies of educational institutions.* It may receive, hold and administer, *on behalf of the university*, subject to the conditions attached, all revenues accruing from endowments, appropriations, allotments, grants or bequests, and all types of property.

KRS 164.160 (emphasis added).²

¹ The definition of "board" and "governing board" includes "the board of trustees for the University of Kentucky". KRS 164.001(4).

² Certain authorities, such as the authority to "[r]eview, revise, and approve the mission of the state's universities", are reserved for the Council on Postsecondary Education. See KRS 164.020(4). The power and limits of the UK

At one time, UK was organizationally part of the Department of Education.³ As the Supreme Court noted in *Moore, supra*, “[i]n 1952, the General Assembly removed the University of Kentucky and the state teachers colleges from the Department of Education.” *Id.* at *5. The General Assembly provided UK “shall be an independent agency and instrumentality of the Commonwealth.” KRS 164.225 (emphasis added).

2. Organizational Unit or Administrative Body

Kentucky Revised Statute 446.080 provides, “[a]ll statutes of this state shall be liberally construed with a view to promote their objects and carry out the intent of the legislature[]” and “[a]ll words and phrases shall be construed according to the common and approved usage of language, but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in the law, shall be construed according to such meaning[.]” KRS 446.080(1), (4).

In interpreting a statute, [w]e have a duty to accord to words of a statute their literal meaning unless to do so would lead to an absurd or wholly unreasonable conclusion. As such, we must look first to the plain language of a statute and, if the language is clear, our inquiry ends. We hold fast to the rule of construction that [t]he plain meaning of the statutory language is presumed to be what the legislature intended, and if the meaning is plain, then the court cannot base its interpretation on any other method or source. In other words, we assume that the [Legislature] meant exactly what it said, and said exactly what it meant.

Univ. of Louisville v. Rothstein, 532 S.W.3d 644, 648 (Ky. 2017) (internal citations and quotation marks omitted).

board of trustees was analyzed in *Commonwealth ex rel. Beshear v. Commonwealth Office of the Governor ex rel. Bevin*, 498 S.W.3d 355, 380-81 (Ky. 2016), where the Kentucky Supreme Court held UK’s board of trustees has a “fundamental independence” not enjoyed by other boards within the executive branch.

³ Under the current structure, the Department of Education is part of the Education and Workforce Development Cabinet. *See* KRS 12.020(11)(2)(j).

UK argues it should be considered a “board” and, in turn, an administrative body, because its government is vested in the board of trustees. UK’s Memorandum of Law at 7. Moore counters that the “University itself... exists outside its Board of Trustees, and is more than the ‘multi-member body’ that is its Board.” Plaintiff’s Response at 5. Alternatively, UK argues “there can be no doubt it is an ‘organizational unit.’” UK’s Memorandum of Law at 8.

UK is a university and institution designated a separate agency of the state. UK is more than a “multi-member body” such as a board. No lay person would refer to UK as a “board” as that term is commonly used. Accordingly, the Court concludes UK is not an administrative body.

“Organizational unit” includes “any unit of organization in the executive branch of the state government that is not an administrative body, including but not limited to any agency, program cabinet, department, bureau, division, section or office[.]” KRS 12.010(1). Neither “university” nor “institution” are included among the non-exclusive list of entities in the definition of “organizational unit.” However, the definition is broadly written to include large units of organization such as a “program cabinet” which is defined as including “a group of departments, or departments and administrative bodies.” KRS 12.010(1), (9).

As an example, the Justice and Public Safety Cabinet is a program cabinet and, pursuant to KRS 12.010(1), qualifies as an Organizational Unit. KRS Chapter 12 further enumerates the “departments, program cabinets and their departments, and the respective major administrative bodies that they include.” KRS 12.020. As set out therein, the Justice and Public Safety Cabinet includes other departments and administrative bodies such as the Department of Kentucky State Police, Office of Legal Services, Parole Board, and Kentucky State Corrections Commission. *See* KRS 12.020(II)(1).

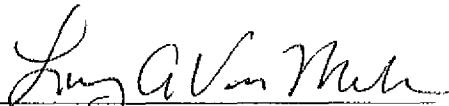
As set out above, UK is a separate agency of the state, governed by a board of trustees, and is comprised of multiple colleges, schools, divisions, departments, bureaus and offices. See KRS 164.120. Much like a program cabinet, UK is a large unit of organization within which other entities reside. Accordingly, the Court concludes UK is a unit of organization within the executive branch of state government.

Order

For the reasons set out herein, the Defendants' Motion for Summary Judgment is GRANTED. The Court hereby declares the University of Kentucky a unit of organization in the executive branch of state government authorized to refer debts for collection pursuant to KRS 45.237.

This is a final and appealable order and there is no just cause for delay.

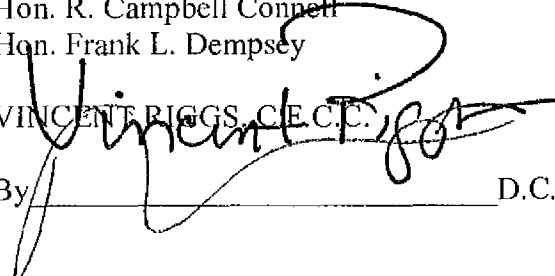
Entered this 21 day of April, 2019.


Lucy A. VanMeter
Judge, Fayette Circuit Court

Attested copies this ___ day of April 2019 to:

Hon. E. Douglas Richards
Hon. William L. Davis
Hon. Kevin G. Henry
Hon. Bryan H. Beauman
Hon. Joshua M. Salsburey
Hon. Donald C. Morgan
Hon. William E. Thro
Hon. R. Campbell Connell
Hon. Frank L. Dempsey

VINCENT RIGGS, C.E.C.C.

By  D.C.