

**CAMPBELL COUNTY FISCAL COURT
MINUTES**

May 21, 2004

A special meeting of the Campbell County Fiscal Court was held on Friday, May 21, 2004, at 12:00 Noon at the Fiscal Court Conference Room, 24 W. 4th Street, Newport, Kentucky.

In attendance at the meeting were:

COUNTY JUDGE/EXECUTIVE
STEVE PENDERY

COUNTY COMMISSIONERS:
DAVID OTTO
WILLIAM VERST
KENNETH RECHTIN

Robert Horine	County Administrator
Justin Verst	County Attorney
Peter Klear	Planning & Zoning Director
Melissa Williams	Director of Administration
Sandra Mulligan	Fiscal Court Clerk

Due to a short delay, the meeting was called to order at 12:18 p.m. by Judge Pendency. A moment of silence was called for by Judge Pendency, followed by the Pledge of Allegiance. Following roll call, a quorum was declared present.

Judge Pendency then requested items of Old Business be brought before the Court. Ms. Williams presented for second reading and passage consideration Ordinance O-12-04, which she read by title and provided a summary. She explained that this Ordinance permits temporary off-site sales or display events, such as tent sales, of Motor Vehicles by a Dealer. The ordinance was requested by Mr. Rick Warner of Rick Warner Associates, the group that puts together a tent sale at NKU. She stated that Peter Klear, Planning & Zoning Director, was present to answer any questions. Judge Pendency then opened the floor for comments from anyone present who would like to make a statement on this issue.

Mr. Brad Lehman of Champion Ford addressed the members of the Court. He stated that he is not opposed to the concept of an organized event for the County, since it is a very good way to promote business for all the automobile dealers. He is, however, opposed to a sale that excludes Champion Ford, which is located in Campbell County. Over the past several years, Mr. Warner's company has excluded Champion Ford from the Campbell County sale held at NKU, citing lack of space. Mr. Lehman stated that the fact of the matter is that Mr. Warner and his client have moved many vehicles from the Boone County area into Campbell County during this sale for their financial benefit and restricted Champion Ford's ability to participate in an effort to gain a competitive advantage. Mr. Lehman asked that the upcoming event at NKU be postponed until such time as Champion Ford may be included in the sale, or limit the sale only to those Campbell County dealers already prepared, and exclude any Boone County dealers from the event. He understands that this may create a few problems for Mr. Warner and his client; however, he believes that in the long run it is the appropriate step to take. In the future, Champion Ford would very much like to be a part of these sales.

Mr. Rick Warner then addressed the members of the Court. He stated that his group has been putting this event together for nine years with dealerships in Campbell County and also considered to be Campbell County as far as their primary marketing area. They have had to limit the event to specific dealers who have participated and helped organize the event since the first event nine years ago, based on the limited amount of space that NKU allows them to use. Based on that fact, the amount of dealerships have had to be limited, which is why Champion Ford has not been included in the sale.

Judge Pendery asked Mr. Warner if he had other Campbell County dealers involved in the sale. Mr. Warner responded that Wyler franchises and Kerry franchises are involved in the event, such as Wyler GMC/Pontiac/Buick dealerships in Alexandria and Kerry Chevrolet/Hyundai, and a Wyler dealership in Ft. Thomas. He stated that these dealers who helped originally establish the event.

Commissioner Rechlin asked Mr. Warner if there were any other dealerships in Campbell County that participate in the event. Mr. Warner responded there were none.

Commissioner Verst asked Mr. Warner if there were other dealerships that have become part of this event subsequent to the original event. Mr. Warner responded that there were none except for the Kerry organization and Wyler organization. He noted that one of these organizations might have had an additional franchise participate.

Commissioner Rechlin asked Mr. Warner if there were other dealerships that call Campbell County their market area. Mr. Warner responded that Kerry Toyota and Kerry Nissan/Mazda dealerships consider Campbell County their primary marketing area. Those dealerships are not permitted to sell in other areas if it is outside of their primary marketing area. Mr. Warner stated that Mr. Lehman has the same opportunity as his group does to hold an off-site event at any location he may wish to choose, by going through the same channels his group has gone through.

Commissioner Rechlin stated that the ordinance, as written, excludes Mr. Lehman from using the site at NKU this year by only allowing three display events per calendar year. Mr. Klear stated that this ordinance was drafted by him and is not event-specific. He drafted the ordinance based on Boone County regulations. Since it is an ordinance, it governs countywide, and could not be event-specific. The ordinance has been drafted to allow only three events on NKU property during a calendar year.

Commissioner Verst asked Mr. Klear if there were other sites in the County that this would apply to. Mr. Klear called the Court's attention to text in ordinance which limits the off-site sales or display events to properties that are zoned institutional that have a minimum lot size of 340 acres. He pointed out that NKU is clearly the only property that would meet that profile. Mr. Klear stated that he anticipates taking the issue back to the Planning Commission for further review in order to expand the limits. This ordinance is basically a short-term measure to allow the upcoming specific NKU event.

Mr. Warner stated that in the past when his group has talked to NKU, they have given them additional dates that were available for such sales, which indicated to him that NKU was open to holding these events more than one time per year.

Judge Pendery asked County Attorney Verst if there was anything instructive in the legislative intent associated with the statutes. Mr. Verst stated he had not researched the issue, but does not recall any statute that would govern this issue.

Mr. Lehman then asked what would prevent dealers from other counties, such as Hamilton County in Cincinnati, from applying to hold this type of event, once the Ordinance is in place. He also pointed out that Champion Ford was one of the original dealers when this event was started nine years ago.

Commissioner Verst inquired as to how much space NKU allocates for the use of this event, and how many cars on average were displayed in the sale. Mr. Warner stated that NKU provides two parking lots for the set up of the automobiles, a restroom, and a food tent, and stated that there are approximately 1,000 cars on display.

Judge Pendery stated that, with the many comments presented to the Court on this issue, he does not feel the Court should hold up on allowing the upcoming event. However, he believes it would be fair that a deeper consideration be taken going forward to rework the ordinance. Since NKU has negotiated the upcoming event, he believes they are sensitive to looking after local businesses in the County to try to prevent a situation where those outside our jurisdiction gains an advantage over those inside our jurisdiction and part of our tax base. In order to strike a balance, he believes the Court should allow the upcoming event to take place and ponder the issue more carefully for future events. It may not be the Court's place to step in to a commercial relationship that NKU has arranged, but it might be useful to have it pointed out to them that local businesses may suffer from this arrangement.

Mr. Lehman stated that once the ordinance is passed, there would be nothing to prevent dealers in areas such as Lexington from coming up and holding a tent sale at NKU. Mr. Klear stated that, as the ordinance is written now, nothing would prevent this situation. Judge Pendery responded that the Court would then need to consider whether this ordinance would need to be changed.

Mr. Randy Blankenship, an associate of Mr. Warner, stated that those dealers would not be permitted to hold tent sales at NKU, because they can only market in the primary marketing area that they are assigned to. Mr. Lehman stated that they would be allowed to market used cars, which are involved in the upcoming sale.

Judge Pendery suggested the Court approve the ordinance in order to hold the already scheduled upcoming event and have the County Attorney and others consider whether this is the right thing to do for the future.

Commissioner Verst commented that the Court only became aware that it needed to do anything on this issue quite late into the game. He believes it would do more harm than good not to allow the current event to take place, but also believes Mr. Lehman made some points that need to be considered for the future. The County needs to look at what controls it can put in to this ordinance and encourage the private sector to look at the issue to be resolved.

Commissioner Otto stated that he agreed with Judge Pendery's statements, and understands the inequities that may be involved since he deals with the same thing with his printing business, but is not sure it is county government's place to try to sort this type of issue out. He believes that perhaps NKU, Mr. Warner's group, and local dealers should try to work the issue out.

Mr. Lehman then stated that his concerns are twofold; one being that his group would like to be involved in the sale in the future since they were originally involved. He believes it is very unusual that, having all the major franchises Mr. Warner listed involved in a Campbell County sale, there would not be a Ford franchise involved. Mr. Lehman stated he is aware of some of these sales being shut down at the last minute throughout the state where dealers have gone to the county sheriff to have the sale stopped, because there was no standing ordinance on the issue. He asked the Court to consider reworking the ordinance in a manner that would protect him and Mr. Warner's group from the traveling used car show that brings 300 used cars in.

There being no further discussion, Commissioner Verst made a motion and Commissioner Otto seconded, to approve Ordinance O-12-04, with the proviso that the Court will look into the issue further for the future. Commissioner Rechtin then asked Mr. Klear to clarify what the process will be and what steps will be taken to review the issue. Mr. Klear stated that the issue seems to be related to land use, and something that would be regulated by zoning ordinance. If that is the case, it would require a text amendment to the zoning ordinance. A public hearing would have to be held and then a text amendment would be presented to the Court for approval. This would create three opportunities for the public to give their input. He stated that he believed the County may be able to regulate whether these types of sales are for new cars or used cars, but may not have the jurisdiction to be able to regulate who participates. All voted "AYE" and the motion passed unanimously.

There being no further business to come before the meeting, it was moved by Commissioner Otto, seconded by Commissioner Rechtin, that the meeting be adjourned. All voted "AYE" and the meeting was adjourned at 12:42 p.m.

Attachments:

Ordinance O-12-04: Permit for Temporary Off-Site Sales or Display Events of Motor Vehicles
by Dealers

Approved:

/s/ Steve Pendery
STEVE PENDERY
Campbell County Judge/Executive

Attest:

/s/ Sandra L. Mulligan
Sandra L. Mulligan
Fiscal Court Clerk