

KDLA March 2013 Trustee Tip of the Month Trustee Oath of Office

Undertaking a public office in Kentucky generally requires swearing or affirming an oath for that office. This is found in KRS 62.010, where it states, "Each person appointed to an office shall take the oath of office within thirty (30) days after he receives notice of his appointment." The exact form of that oath is not specified in statute.

During the past several years, there have been two oaths of office in use by Kentucky public library boards: one containing the "code duello" (the affirmation that the board member has not taken part in a duel), and one which does not contain this provision. It should be noted that section 228 of the Kentucky Constitution presents the "code duello" oath, and changing that would require a constitutional amendment. The Kentucky legislature has considered dropping the "code duello" from the oath many times in recent years, reasoning that it was an outdated concept which was not needed in the modern world.

In a practical sense, which oath is utilized is largely unimportant. The Kentucky Supreme Court has held that possible inconsistencies in the administration of the oath did not invalidate the appointment to office, and that "[W]hen a man is exercising and discharging the general duties of an office, claiming right thereto under a commission or appointment, he is an officer de facto; and generally, if not universally, his acts are good as to third parties, however irregular his appointment or qualification[.] ... (Rice v. Commonwealth, 66 Ky. 14, 3 Bush 14, 1867 WL 4050 (1867)

Many public libraries, and most other governmental offices, continue to utilize the "code duello" as the oath for their members. In order to promote consistency and reduce any confusion, KDLA has decided to change the oath listed in the Kentucky Public Trustee Manual to that which reflects the wording of the constitutional "code duello" oath. We hope you will consider adopting this change when administering the oath of office to your board members. The "code duello" oath, in addition to being the most commonly administered oath in the Commonwealth, carries forward a tradition that harkens to our state's earliest history.

There is no guidance in the law on how the oath needs to be administered, but the wording suggests that it is read by the person taking the oath. There is guidance on who can administer the oath in KRS 62.020. Most commonly it is administered by the County Judge/Executive or a notary public, but see the KRS for additional people who are able to perform the duty. The administration of the oath does not affect the start date of the term of office or affect the end date of the last trustee holding that office.

A signed copy of the oath of office should be kept at the county clerk's office as stated in KRS 62.020(d): "In the office of the county clerk for the county from which an officer is elected to countywide office or office for a district within the county". It is also a good idea to keep a copy of the signed oath at the library.

A copy of the "code duello" oath is available at <http://kdl.ky.gov/librarians/trustees/Documents/Oathofoffice.pdf>.

This is not legal advice and I am not an attorney. If you feel you need legal advice you should consult an attorney.

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