

# KENTUCKY GOVERNMENT

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## **FOREWORD**

While the lives of Kentucky's citizens are impacted by actions of government at all levels, it is most often state and local governments to which they turn for response to their needs. As society has become more complex and state and local governmental entities are affected by national and even global conditions, government has also become more complex.

The Information Bulletin, "Kentucky Government," has been prepared by the staff of the Legislative Research Commission as an overview of the structures and functions of both state and local government in the Commonwealth. In addition, it provides an overview of the cornerstone of government, the Constitution of the United States and the Constitution of the Commonwealth of Kentucky. Originally published in 1949, this bulletin has undergone extensive revision over several decades to reflect complex societal changes and to provide an accurate portrayal of the evolution of our state and local governmental institutions.

The first publication in 1949 was authored by Professor John Reeves. After five revisions the Legislative Research Commission contracted with Eastern Kentucky University for the services of General Arthur Lloyd and Professor J. Allen Singleton for a complete rewrite of the text. Their work was published in October 1980. This is the third revision of the publication by LRC staff since then. Special thanks are due to Tom Lewis, who edited the document, and Rita Ratliff who coordinated the preparation of the text.

**ROBERT S. SHERMAN**  
Director

The Capitol  
Frankfort, Kentucky  
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# CHAPTER I

## INTRODUCTION

As an introduction to government in Kentucky, this chapter presents a brief profile of the state and its people. The profile considers the geography, population, and economy of the Commonwealth. Together, these contours of land, people, and livelihood give shape to public policy and political life throughout the state. The information is presented historically and comparatively—in terms of both change and stability over time, and relative to other states and to the nation as a whole.

A table summarizing the data presented appears on the final page of the chapter.

### Geography

Kentucky's over 40,000 square miles rank it 37<sup>th</sup> in area among the states—between Tennessee (36<sup>th</sup>) and Indiana (38<sup>th</sup>). While not a large state, it is a diverse one geographically. Three distinct geographic areas are represented in Kentucky: the Gulf Coastal Plain in western Kentucky; the Interior Low Plateau of central Kentucky, including the Lexington Plain (or Bluegrass) and the Highland Rim (or Pennyrile); and the Appalachian (or Cumberland) Plateau of eastern Kentucky.<sup>1</sup>

Nearly 50 percent of Kentucky's land area is forested. The state's elevation ranges from a high of 4,145 feet, on Black Mountain in southeastern Kentucky (Harlan County), to a low of around 260 feet, along the Mississippi River in the southwest corner (Fulton County).<sup>2</sup> Kentucky's major lakes were created by dams and are an important source of tourism in the state. In addition to the state's system of 50 parks and hundreds of historical, cultural and recreational areas, the National Park Service operates six sites. The longest known cave system in the world, Mammoth Cave is the state's most popular tourist destination, with 1.9 million visitors reported in 2001.<sup>3</sup>

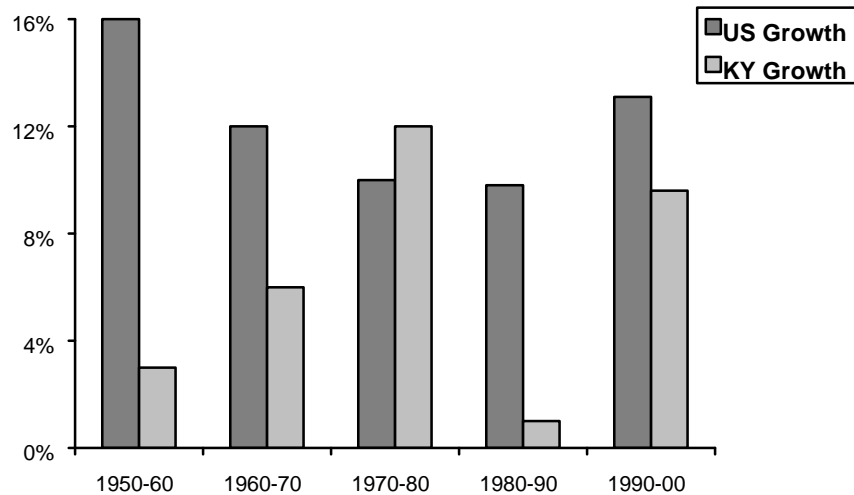
### Population

#### Growth

Kentucky's population was estimated at 4.04 million in 2000, ranking it 25<sup>th</sup> among the states. That ranking has fallen two places from the previous three Census counts (1970, 1980, and 1990). Kentucky has not shared generally, and in the 1980's in particular, in the ongoing shift of the nation's population from the Northeast and Midwest to the South and West. Although the state's population grew faster in the 1970's than the country's, its growth fell far short of that of the South overall.<sup>4</sup> During the 1980's, Kentucky barely grew at all: a nearly stagnant 0.7 percent, compared with 9.8 percent nationally and 13.4 percent for the South.<sup>5</sup> Kentucky had a much higher growth rate, 9.7 percent, during the 1990's. The following figure compares population growth for

Kentucky and the U.S. from 1960 to 2000. As can be seen, the state outgrew the nation during the 1970's, but generally population grew at a slower rate than nationally.

### KENTUCKY VS. US: POPULATION GROWTH 1950-2000



Source: Analysis by LRC staff using US Census Bureau data.

### Composition

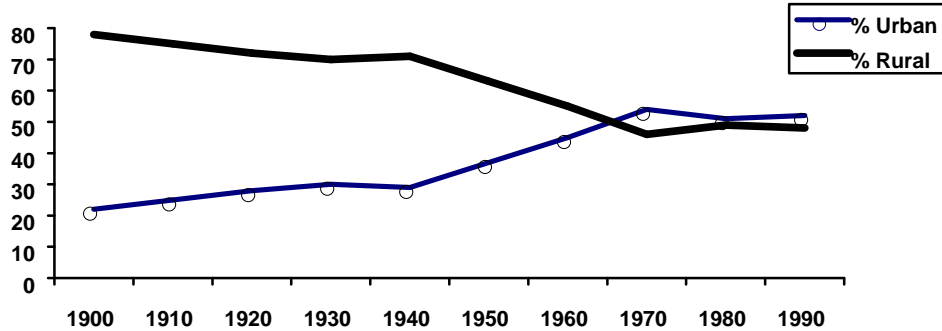
Kentucky's population is slightly more female and far more racially homogenous than the nation's. Of the 4.04 million Kentuckians in 2000, about 51.1 percent were females—vs. 50.9 percent female for the United States. Whites comprised 90 percent of the state's population, and blacks 7.3 percent—compared with 75.1 percent white and over 12.3 percent black for the nation. People of Hispanic origin (any race) comprised 1.3 percent of Kentucky's population and 12.5 percent of the country's. In terms of aged population, 12.5 percent of Kentuckians were estimated to be 65 or older in 2000, which closely mirrors the nation, at 12.7 percent.<sup>6</sup>

### Residence

Although Kentucky is one of the most rural states in the country, the majority of its population live in areas classified as urban by the Census Bureau. In 1990, almost 52 percent of Kentuckians lived in urban areas (information for the rural/urban population from the 2000 Census is not yet available). The state's transition from majority-rural to majority-urban occurred in the 1960's.

Since that transition, however, Kentucky's urban-rural mix has remained fairly stable. In fact, the percent of urban residents in the state peaked with the 1970 Census and has dipped slightly since. The figure below shows how Kentucky's population has changed over time by urban and rural residence.

**KENTUCKY'S POPULATION BY  
PERCENT AND RURAL RESIDENCE  
1900-1990**



Source: 1999 Kentucky Deskbook of Economic Statistics (Kentucky Cabinet for Economic Development, Frankfort, 1999).

While the majority of Kentuckians are classified as urban, the state is quite rural in relative terms. The classification of “urban” is applied to places of 2,500 or more persons, and only at the time of the decennial census are people determined to reside in either an urban or rural place. At the time of the 1990 Census, Kentucky had the 8<sup>th</sup> highest percentage of rural residents among the states, and the 4<sup>th</sup> highest in the South (West Virginia, Mississippi, and North Carolina were more rural). Kentucky’s population that year was almost twice as rural as the overall population of the U.S. (48.2 percent vs. 24.8 percent).<sup>7</sup>

The federal Office of Management and Budget defines a metropolitan area as a large population center along with any adjacent counties which are highly integrated with the center. Seven metro areas, representing 21 Kentucky counties, are located wholly or partially within the state: Cincinnati, Louisville, Lexington, Owensboro, Huntington(WV)-Ashland, Clarksville(TN)-Hopkinsville, and Evansville(IN)-Henderson. In 1999, nearly half (47.9 percent) of Kentuckians lived in these seven metro areas.<sup>8</sup> All but one—Lexington—are located on the state’s border. Just over half (50.9 percent) of Kentucky’s population in 1999 lived in counties bordering other states.<sup>9</sup>

In sum, then, Kentucky’s population has been evenly split between urban and rural and between metro and non-metro. However, compared with the country as a whole, which was predominantly urban (75 percent) and metro (80.2 percent), the Commonwealth is decidedly rural and non-metro. Only seven states were more rural, and eleven states less metro, than Kentucky.

### Economy

Kentucky can claim several economic superlatives. The Commonwealth leads the nation in the production of whiskey and burley tobacco (and ranks second behind North Carolina in overall tobacco production). It is also the world capital of the Thoroughbred

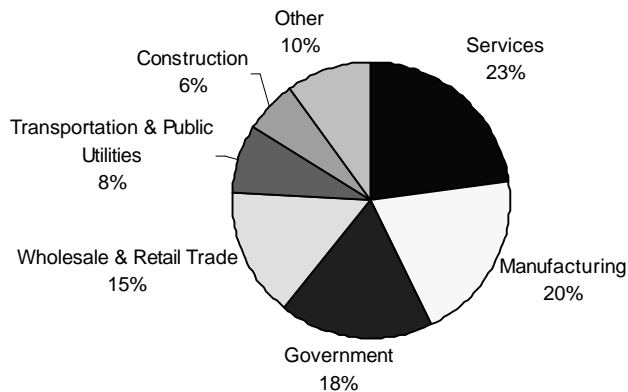
industry, both in tradition and by such measures as foal production and yearling sales.<sup>10</sup> Until 1988, Kentucky led the nation in coal production. In 2000 Kentucky was ranked third in coal production behind Wyoming and West Virginia.<sup>11</sup> Kentucky is the only state with coal production in two of the nation's three major coal basins: its Eastern Coal Field lies in the Central Appalachian basin, and its Western Coal Field in the Interior, or Illinois, basin.

A look at Kentucky's industrial makeup reveals important historical trends, as well as notable similarities and variances with the national economy. Just as the population's residence is measured by two yardsticks—urban/rural and metro/nonmetro—the industrial mix of an economy is often measured by earnings and by employment. Both measures are considered here.

### Earnings

Kentucky's rural status has often carried the reputation of a farming economy. As with its rural standing, Kentucky's agricultural standing is a matter of absolute and relative terms. In absolute terms, the label is long outdated: not since the 1940's did farming comprise the largest share of the state's earnings. Services and manufacturing are now Kentucky's leading sources of earnings, and farming is one of its smallest. The following pie chart shows Kentucky's economy by industry earnings in 2000.

**KENTUCKY'S ECONOMY  
BY INDUSTRY EARNINGS (2000)**



Source: Analysis by LRC staff using Bureau of Economic Analysis data. \*Other includes Finance, Insurance and Real Estate (5.4%), Mining (1.8%), Farming (2.2%), and Agricultural Services (0.7%).

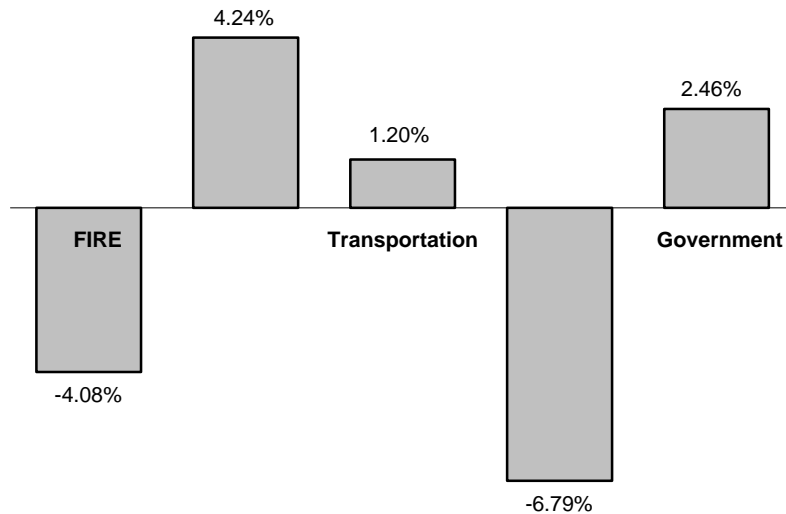
In 2000, earnings in Kentucky totaled over \$68 billion. Of that, services accounted for the largest portion (22.7 percent), manufacturing for slightly less (20 percent). Government (18 percent) and wholesale and retail trade (15.2 percent) accounted for the next largest shares. Mining and farming, industries traditionally associated with Kentucky, accounted for 1.8 percent and 2.2 percent, respectively.<sup>12</sup>

Strictly by earnings, then, Kentucky’s is a service economy, since the services industry accounts for the largest share of the state’s earnings. It is perhaps more accurately a services-and-manufacturing economy, since manufacturing is only fractionally smaller than services, and together they account for over two-fifths of total earnings. The top three industries —services, manufacturing, and government—together comprise over 60 percent of the state’s economy when measured by earnings.

Relative to the nation, however, the picture changes. That comparison is depicted in the bar graph below, which shows those industries which differ notably between Kentucky and the country overall. The five industries shown differ by more than one percentage point—either higher or lower—in their shares of state and national earnings. The five industries not shown were nearly the same (within one percentage point) in Kentucky and nationally.

For each industry, the bar’s length represents the percentage-point difference between its share of Kentucky’s earnings and its share of U.S. earnings. Thus, bars above the line (positive values) represent those industries relatively larger in Kentucky than in the U.S.; bars below the line represent those relatively smaller in the state than nationally.

**KENTUCKY VS. U.S.:**  
**INDUSTRIAL MIX BY EARNINGS (2000)**  
**(KY Industry Share Minus U.S. Industry Share)**



Source: Analysis by LRC staff using Bureau of Economic Analysis and U.S. Department of Commerce data. FIRE stands for Fire , Insurance and Real Estate.

Manufacturing is more prominent in Kentucky than in the U.S. Indeed, manufacturing is the state’s most over-represented industry by earnings, accounting for 20 percent of earnings in Kentucky vs. 15.8 percent for the U.S. Government.

The state's greatest departure from the country in industrial earnings comes not in over-representation, but in the under-representation of services. Although it is the state's largest source of earnings, services accounts for over 6 percentage points less of Kentucky's economy than of the country's (22.7 percent for Kentucky, 29.2 percent for the U.S.). The only other industry which is notably less prominent in Kentucky than nationally is that of Finance, Insurance, and Real Estate (FIRE).<sup>13</sup>

As measured by earnings, then, Kentucky has a services-and-manufacturing economy in absolute terms, since those two industries dominate the state's earnings almost equally. Compared with the nation, however, it is far more concentrated in manufacturing.

Although farming, manufacturing, and services together comprised less than half (45 percent) of Kentucky's earnings in 2000, their historical trends are instructive. These three industries have changed over the last 60 years, as measured by their shares of total earnings in the state. Farming was overtaken by manufacturing in the 1940's and by services in the 1950's; services then overtook manufacturing in 1992. The relative decline of farming in Kentucky's economy, beginning in the early 1940's, was accompanied at first by the rise in manufacturing, and later by the rise in services as well.

## **Employment**

Measuring the state's industrial makeup by employment yields somewhat different results. The bar graph which follows compares the Kentucky and U.S. economy by each industry's employment as a share of total employment. As can be seen, services is the largest industry by employment—as with earnings—for Kentucky. The services industry is also relatively larger in the state than at the national level (again, as measured by earnings as well).

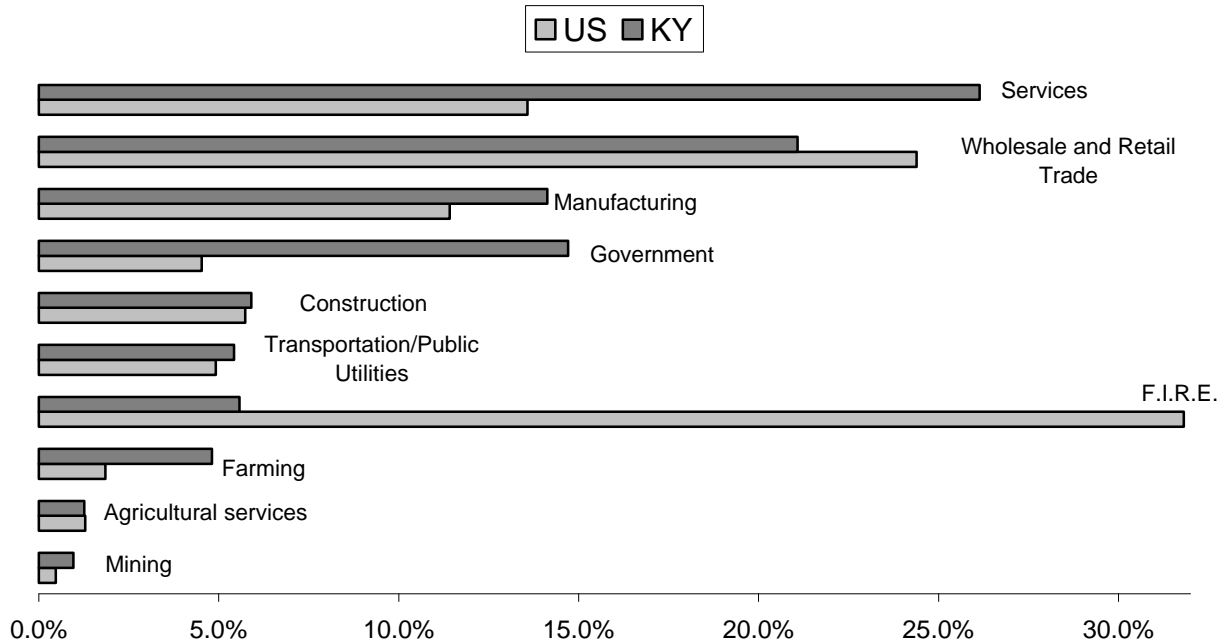
An important difference between the employment and earnings measures—for both Kentucky and the U.S.—is that one of the largest industries by employment is wholesale and retail trade, rather than manufacturing, as measured by earnings.<sup>14</sup> For Kentucky, manufacturing is fourth in total employment behind both government employment and services and trade. Historically, manufacturing jobs have provided higher wages than both the trade and service industries. This explains why manufacturing ranks second in total earnings, but only fourth in employment.

Another notable distinction between earnings and employment is the relative importance of farming in Kentucky. As noted earlier, farming is relatively one and a half times as large in Kentucky as in the nation overall, as measured by earnings. As measured by employment, however, farming is two and a half times more important in Kentucky—accounting for around 5 percent of the state's employment, compared with less than 2 percent nationally. The primary reason why Kentucky farming has relatively higher employment than earnings is because of the topographical nature of Kentucky. The hilly terrain necessitates farming on smaller acreage farms. Comparatively, many farming states have large farms and fewer farmers per acre farmed. The difference between farming employment and earnings, however, is not as great as one might suspect because of the high dollar yield per acre from tobacco farming in the state. Overall,



farming in Kentucky has fallen from the fifth-largest source of employment in 1992 to its eighth-largest employer in 2000.

**KENTUCKY VS. U.S.:**  
**INDUSTRIAL MIX BY EMPLOYMENT (2000)**  
**(Percent of Total State Employment)**



Source: Analysis by LRC staff using Bureau of Economic Analysis and U.S. Department of Commerce data. FIRE stand for Fire , Insurance and Real Estate.

Kentucky’s three largest manufacturers by employment are (in order) Ford Motor Co., General Electric Co., and Toyota Motor Corporation. Together they employed approximately 29,340 in 2002. One-fifth of the state’s manufacturing employment is concentrated in Jefferson County.<sup>15</sup>

**Indicators**

In addition to its industrial mix, an economy may be measured by size and performance. The size of a state’s economy is often measured by total personal income. For 2001, Kentucky’s total personal income was around \$101.3 billion, ranking 26<sup>th</sup> in the United States. Since states vary considerably in population, a more meaningful measure is per capita personal income—total personal income divided by the population. Total income simply measures an economy’s size, while per capita income reflects its performance. For 2001, Kentucky’s per capita personal income was \$24,923, compared with \$30,472 for the nation, ranking it 41<sup>st</sup> among the states.<sup>16</sup> Over the course of the century, per capita income in Kentucky has generally risen as a percent of the nation’s: from just over half in 1930, to 70 percent in the 1960’s, to 80 percent in the 1970’s,

and—after dipping slightly in the late 1980’s—to a high of 81.8 percent through 2001.<sup>17</sup> The average annual growth rate for per capita personal income over the past ten years was 5.0 percent. The growth rate over that same period nationally was 4.6 percent.

In addition to per capita income, economic health is often measured by the poverty rate. The poverty rate is the percent of the population whose income falls below the federal poverty line. In 2000-2001, Kentucky’s estimated average poverty rate was 12.6 percent, compared with 11.54 percent for the nation. The state’s poverty rate that year was the fifteenth highest in the country.<sup>18</sup>

The table on the following page summarizes much of the data presented in the discussion above.

**PROFILE OF KENTUCKY**  
**Geography, Population, and Economy**

	Kentucky	U.S	KY’s Rank Among States
<b>Area</b> (square miles)	40,411		37
<b>Population</b> (2000)	4,041,769	281,421,906	25
<b>Population Growth</b>			
Growth rate for:			
• The century, to last Census (1900-2000)	88%	269%	
• The ‘ 80s (1980-1990)	0.7%	9.8%	40
• The ‘ 90s, (1990-2000) (1990-99)	9.6%	13.1%	25
<b>Population by Sex</b> (2000)			
• Percent male	48.9	49.1	
• Percent female	51.1	50.9	
<b>Population by Race and Hispanic Origin</b> (2000)			
• Percent white	90	75.1	10
• Percent black	7.3	12.3	24
• Percent of Hispanic origin (any race)	1.3	12.5	44
<b>Rural Population</b> (1990)			
Percent living in rural areas	24.8%	48.2%	8

	<b>Kentucky</b>	<b>U.S</b>	<b>KY's Rank Among States</b>
<b>Metro Population (1999)</b>			
Percent living in metro areas	48.4%	80.2%	38
<b>Per capita personal income (1999)</b>	\$24,923	\$60,472	41
<b>Poverty rate (2000-2001 average)</b>	12.6%	11.5%	34

(Data sources to preceding text in endnotes)

## NOTES

- <sup>1</sup> *Encarta* multimedia encyclopedia (Microsoft, Redmond, WA), 1994.
- <sup>2</sup> Kentucky Cabinet for Economic Development, *Kentucky Facts*, 1998.
- <sup>3</sup> Kentucky Tourism Cabinet.
- <sup>4</sup> Census definition of the South comprises 16 states and the District of Columbia, U.S. Department of Commerce, Bureau of the Census.
- <sup>5</sup> U.S. Department of Commerce, Bureau of the Census, *Statistical Abstract*, 2001.
- <sup>6</sup> U.S. Department of Commerce, Bureau of the Census, *Statistical Abstract*, 2001.
- <sup>7</sup> U.S. Department of Commerce, Bureau of the Census, *Statistical Abstract*, 2001.
- <sup>8</sup> LRC Staff calculations from 2000 U.S. Census data.
- <sup>9</sup> LRC Staff calculations from 2000 U.S. Census data.
- <sup>10</sup> Kentucky Cabinet for Economic Development, *Kentucky Facts*, 1998.
- <sup>11</sup> Kentucky Coal Facts, 2001-2002
- <sup>12</sup> U.S. Department of Commerce, *Regional Economic Information System 1969-2000*.
- <sup>13</sup> U.S. Department of Commerce, *Regional Economic Information System 1969-2000*.
- <sup>14</sup> Wholesale and Retail Trade are variously grouped as one industry (Trade) or counted as separate industries. Here, they are counted as one.
- <sup>15</sup> Kentucky Cabinet for Economic Development, *2000 Kentucky Directory of Manufactures*.
- <sup>16</sup> U.S. Department of Commerce, Bureau of Economic Analysis.
- <sup>17</sup> U.S. Department of Commerce, Bureau of Economic Analysis.
- <sup>18</sup> U.S. Department of Commerce, Bureau of the Census, *Statistical Abstract of the United States, 1999*.

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- <sup>1</sup> *Encarta* multimedia encyclopedia (Microsoft, Redmond, WA), 1994.
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  - <sup>6</sup> U.S. Department of Commerce, Bureau of the Census, *Statistical Abstract*, 2001.
  - <sup>7</sup> U.S. Department of Commerce, Bureau of the Census, *Statistical Abstract*, 2001.
  - <sup>8</sup> LRC Staff calculations from 2000 U.S. Census data.
  - <sup>9</sup> LRC Staff calculations from 2000 U.S. Census data.
  - <sup>10</sup> Kentucky Cabinet for Economic Development, *Kentucky Facts*, 1998.
  - <sup>11</sup> Kentucky Coal Facts, 2001-2002
  - <sup>12</sup> U.S. Department of Commerce, *Regional Economic Information System 1969-2000*.
  - <sup>13</sup> U.S. Department of Commerce, *Regional Economic Information System 1969-2000*.
  - <sup>14</sup> Wholesale and Retail Trade are variously grouped as one industry (Trade) or counted as separate industries. Here, they are counted as one.
  - <sup>15</sup> Kentucky Cabinet for Economic Development, *2000 Kentucky Directory of Manufactures*.
  - <sup>16</sup> U.S. Department of Commerce, Bureau of Economic Analysis.
  - <sup>17</sup> U.S. Department of Commerce, Bureau of Economic Analysis.
  - <sup>18</sup> U.S. Department of Commerce, Bureau of the Census, *Statistical Abstract of the United States, 1999*.

## **CHAPTER II CONSTITUTIONAL BACKGROUND**

It can be said that the constitutional history of Kentucky began with its creation as a county in the Commonwealth of Virginia in 1776. Status as a Virginia county never quite satisfied the Kentuckians, of course. For one thing, the distance to the Virginia capital, first Williamsburg and later Richmond, was great and travel was hazardous for anyone going there for business, legislation, or court appeals. Perhaps as importantly, the laws passed by the mother Commonwealth applicable to Kentucky were objectionable to many of the population. These objections ranged from apprehension over the validity of land grants and titles to disapproval of the regulation of the use of militia against the Indians. (Local militia units could be used defensively but not offensively against the Indians outside of Kentucky without the approval of the Governor of Virginia.) Yet another element of the controversy with Virginia was economic. The economic prosperity of Kentucky required access to the Spanish-controlled market in New Orleans; Virginia's economic interests lay elsewhere.

These differences would not have been so significant had the population of the Kentucky territory not grown so dramatically. In spite of long distances, and the aggravation of slow and hazardous travel, the population in Kentucky increased rapidly. Coincidental with the influx of more people into Kentucky was an increased frequency of Indian raids by both Southern and Northern tribes. This increased activity was probably one of the major factors which led to Colonel Benjamin Logan's calling the first of a series of so-called constitutional conventions.

### **Separation from Virginia**

The first call for a constitutional convention called for delegates to meet in Danville on December 27, 1784. Altogether, there were nine such conventions between 1784 and 1790. At these conventions a certain amount of basic work leading toward a constitution was accomplished. Among topics considered were such matters as the need for protection from Indian raids, requests for permission to separate from Virginia, and the desirability of joining the Confederation of the States created by the Articles of Confederation. Grievances with the Virginia authorities, the status of Kentucky's economy, and the inequities of the tax system of Virginia were discussed. There was even some discussion of and support for the scheme of the infamous James Wilkinson to separate Kentucky from both Virginia and the Confederation. Wilkinson's goal of having Kentucky become a ward of Spain was based on Spanish control of the mouth of the Mississippi, which at that time was the most feasible outlet for Kentucky's marketable products.

## **The First Constitution**

The tenth constitutional convention convened in Danville in April, 1792. The session lasted only fourteen working days, but the delegates drafted Kentucky's first Constitution and submitted it to the United States Congress. Congress accepted the Constitution and on June 1, 1792, Kentucky was admitted to the Union as the fifteenth state. That so much was accomplished in such a brief period at the tenth convention was because the previous nine conventions had worked out so many of the difficult problems being considered for inclusion in the Constitution.

The document which the convention drafted included a number of relatively new and progressive features.<sup>1</sup> Two such features were the provisions which called for conducting all elections by ballot rather than by the widely-used voice vote of the times and the basing of representation of both houses of the General Assembly on population rather than geography.

The institution of slavery was recognized by Kentucky's first Constitution, and the General Assembly was given "no power to pass laws for the emancipation of slaves without the consent of their owners" or without compensation. However, the General Assembly was authorized to phase out the institution of slavery through regulation of slaves brought into the state as merchandise and through laws enacted to protect slaves and "treat them with humanity" (Article VII).

In summary, Kentucky's first Constitution provided a broad foundation for state government and authorized the General Assembly to enact detailed laws for its administration. Further, the need for future revision of the Constitution was recognized, and provision was made for taking a vote of the people five years later to determine if a majority wanted another constitutional convention to be held.

Most political scientists agree that a state Constitution, when modeled after the United States Constitution, should provide a broad framework of government, one which is divided into three coordinate branches, and with authority granted to the legislative branch to make necessary changes through legislation to conform with changing needs and population growth. A broadly written state Constitution should be difficult to amend. On the other hand, a state Constitution that is lengthy and detailed, and actually writes legislation rather than merely providing the necessary authority for it, should be relatively easy to amend.

## **The Constitution of 1799**

After being approved by the voters of Kentucky, the second constitutional convention was held in 1799, in Frankfort. It took only twenty-seven days to draft the second Constitution of the Commonwealth. The debates revealed deep political and economic perceptions. There were several significant changes provided by the second Constitution. It provided for the direct election of Governors and Senators by the voters rather than by electors, as was required in presidential elections. It also added a Lieutenant Governor to the list of elected constitutional officers.

The original Constitution provided for appointment of judges for life terms, but judges could be impeached or removed by the Governor if two-thirds of the General

Assembly voted to do so. Under the 1799 document, the Governor continued to appoint judges and, in addition, was granted the power to appoint local officials, many of whom had been elected previously. Sheriffs, surveyors, coroners, and justices of the peace were to be appointed by the Governor on recommendation of the county courts. Both of these provisions increased the power of the chief executive. Other changes made by the 1799 Constitution included increasing the number of state Representatives from forty to a minimum of fifty-eight but not more than one hundred, as the population grew, and the number of state Senators from a minimum of eleven to a minimum of twenty-four, with one new Senator being added in the future for every three new representatives. In addition to changing the method of electing the Governor, the 1799 Constitution also provided that a Governor could not succeed himself in office for seven years. In addition, the Court of Appeals was deprived of its original jurisdiction in land cases, leaving it with mainly appellate jurisdiction over lower court rulings.

Neither of the first two Constitutions of Kentucky required that a referendum be submitted to the people for their ratification, nor was there any provision for amending these basic documents. In fact, under the second Constitution, the calling of a constitutional convention was made difficult by the omission of the clause of the first Constitution which had permitted the General Assembly to convene a constitutional convention by a two-thirds vote, notwithstanding an unfavorable popular vote. In another regressive step, voting by voice vote replaced the voting by ballot that had been one of the very progressive features of the first Constitution. The provisions regarding slavery were almost identical to those in the earlier document.

### **Dissatisfaction with the 1799 Constitution**

In the three decades which followed adoption of the 1799 Constitution, many Kentucky voters became dissatisfied with several provisions in the document. One of the major concerns was the appointment of so many officials by the Governor. There were allegations of nepotism and even charges of outright sales of appointive offices. Because of these charges and the influence of the Jacksonian philosophy, many voters preferred to make all public offices, even judicial ones, elective.

Another public concern regarding the 1799 Constitution related to the state's floating debt and the lack of a sinking fund for its liquidation. The General Assembly was criticized for its lengthy sessions and there were demands for constitutional restraints on dueling, as well as criticism of the widespread illiteracy in the Commonwealth. Pro-slavery forces in the Commonwealth desired greater protection for slave property during this period. In other regions of the state, especially those increasing in population, there were demands for more equitable apportionment of legislative seats.

## **The Constitution of 1850**

As early as 1828, demands for another constitutional convention were heard in the General Assembly. It was ten years later that the General Assembly passed an act for a statewide referendum to determine the will of the people regarding the calling of a convention. Although that effort failed, sentiment for change continued. This movement finally culminated in 1847 and 1848, with the proposed call for a convention being submitted to the voters and approved by more than a two-to-one majority.

The constitutional convention convened in Frankfort on October 1, 1849, and remained in session until December 21, 1849. The constitutional debates were quite extensive. The written proceedings of this convention, covering 1,129 pages of small type, resulted in a number of significant changes in the fundamental law of the Commonwealth.

The 1850 Constitution was drafted in the midst of the conflicts over slavery. Pro-slavery factions dominated the convention proceedings and were successful in incorporating a significant number of changes into the state's fundamental law. In the Bill of Rights to the 1850 Constitution, slave property was given added protection by a provision that slaves and their offspring should remain in the state, and that ministers of religion, long under suspicion as anti-slavery agitators, could not hold the office of Governor or seats in the General Assembly.

The authors of the third Constitution were not only pro-slavery, they were also resentful of the broad power granted to the General Assembly by previous Constitutions. Therefore, the General Assembly was limited to biennial, instead of annual, sessions and its authority to enact special legislation was severely curtailed. Sessions were limited to sixty days, although they could be extended by a two-thirds vote of each chamber. A limitation of \$500,000 was placed on the state's indebtedness. (It should be borne in mind that in 1850 this amount was approximately one year's revenue receipts. This same limitation remains in the current Constitution, although General Fund revenue receipts for the fiscal year 2001-2002 were 6.5 billion dollars.) Membership in the General Assembly was fixed at one hundred in the House and thirty-eight in the Senate, the same as in the present Constitution.

Responsibility for public education was constitutionally recognized for the first time by the 1850 Constitution. It provided a fixed educational fund to be supported by taxation and for a popularly-elected Superintendent of Public Instruction. In keeping with the prevailing Jacksonian philosophy regarding public office, all state and local officials, including judges, were made elective. The document also contained a lengthy article detailing the requirements and manner of election of Commonwealth and county attorneys, circuit and county clerks, sheriffs, coroners, jailers, assessors, surveyors, and constables. The dueling prohibition, still effective in Kentucky, appeared for the first time in the third Constitution. Its appearance was probably due to the fact that the denunciation of the practice by the press and from the pulpit had not been effective in preventing men of distinction from being involved in such affairs of honor.



## **Post Civil War Attempts at a New Constitution**

The Civil War, and especially the adoption of the Thirteenth, Fourteenth, and Fifteenth Amendments to the U.S. Constitution, rendered the Kentucky Constitution of 1850 with its provisions protecting slave property and discriminating against free blacks obsolete. In addition, there were many other prevailing reasons for constitutional revision. Governor Stephenson, in December 1867, recommended that the legislature submit the convention question to a vote of the people. The 1850 Constitution had provided that the only way a constitutional convention could be held was through a proposal by the General Assembly approved by a majority of the voters voting in the last general election for two successive elections. The call for a convention was defeated on December 18, 1873, and again every two years through 1885, perhaps establishing a pattern for Kentucky voters of reluctance to change their Constitution in its entirety. Finally, the General Assembly, under the authority of the Constitution to “provide for ascertaining the number of citizens entitled to vote,” called for a registration of all eligible voters to be conducted at the next election. Following this registration in the 1887 election, the convention received the required majority in 1888. It subsequently passed again in 1889 and in the following year delegates were elected to serve at the convention, convening on September 8, 1890.

### **The Constitutional Convention of 1890-1891**

Although one delegate, Curtis F. Burnam of Richmond, recommended that the convention eliminate or repeal all provisions concerning slavery and any other obsolete sections, re-adopt the third Constitution, and go home, this was not to be.<sup>2</sup> This time the delegates deliberated for one hundred and ninety-seven legislative days, and, after spending many hours in long debates, drafted a Constitution of approximately 21,000 words, which was sixty percent longer than the 1850 Constitution.

To understand the action of the delegates in the 1890 convention, it is necessary to review the political-economic developments in Kentucky from the Civil War to 1890. While Kentucky did not secede from the Union, there were strong sympathies for the South, both during and long after the war. It can almost be said that following the firing on Fort Sumter, Kentucky seceded from both sides, by refusing to permit troops to be drafted in the state by the Union and yet declining to officially join the Confederacy.

The delegates to the 1890 convention were products of the era. Most of them were ultra-conservative and a majority were elderly. Many opposed the ratification of the war amendments and were bitter toward what they called radical Republicans and black suffrage. However, twenty years before the convention, the radical wing of the Republican Party had practically disintegrated and the Democrats ceased to fear radical control and the dangers of a large black vote. This led to the development of a “bourbon” and a “new South” factionalism, with opposing philosophies within the Democratic Party itself. Henry Watterson, editor of the Louisville *Courier-Journal*, urged Kentuckians to accept black suffrage and the war amendments, to cease determining fitness for public office on the basis of service in the Confederate army, and to support the industrial development of the state, particularly railroad development.<sup>3</sup> Although a proposal to

subsidize railroads by a ten million dollar bond issue was defeated in the General Assembly by the conservative agrarian members, the more liberal representatives did manage to get through generous tax exemptions and special privileges for railroads and other large corporations. As a result, during this era, Kentucky expanded railway mileage and encouraged large investments of Eastern capital in timber, coal, distilleries, and tobacco warehouses.

Following the Civil War, tobacco had become the primary cash crop in Kentucky agriculture; pre-war farming had been more diversified. The panic of 1873 hit Kentucky hard—it was followed by six years of real economic depression with tobacco prices dropping, banks failing, many individual and business bankruptcies, and a drastic decline in land values. Kentucky farmers were opposed to the demonetization of silver and the Resumption Act, calling for the redemption of greenbacks in gold. Like their colleagues in other states, particularly in the midwest, Kentucky farmers wanted cheap money to increase farm prices. The general discontent led to the organization of more than eleven hundred local chapters of the Patrons of Husbandry, part of the Grange movement throughout the Midwest. Although the Grange-oriented groups failed to enact most of their legislative program, they did succeed in creating a State Bureau of Agriculture, in building support for Kentucky's Agricultural and Mechanical College and in paving the way for the creation of a Railroad Commission, in order to limit the strength of large corporations to some extent.

A measure of prosperity returned after 1884 but this was of little actual benefit to Kentucky farmers. Since 1860, the average size of farms had decreased, tobacco prices were lower, credit and marketing conditions were uncertain, land tenure was unstable, and taxes were high. Thus, conditions were ripe for further agricultural protest. Many local groups affiliated with the Wheel, an agricultural lodge or society resulting from this agricultural unrest, which in turn, organized on a state basis and affiliated with the Farmer's Alliance in 1889. Reflecting the agrarian grievances, the Farmer's Alliance advocated as relief measures the free coinage of silver, a graduated income tax, anti-trust legislation, uniform taxes on all property, an end to the national bank note issue, elimination of all special privilege legislation, a tariff for revenue only, state regulation of railroad rates, elimination of the school book trust, increased appropriations for the State Agricultural and Mechanical College, greater authority for the Railroad Commission, regulation of tobacco warehouse charges, bank inspections, and elimination of all toll roads and bridges.<sup>4</sup>

At the time of the 1890 Constitutional Convention, Kentucky was still predominantly agricultural, with more than eighty percent of its nearly two million people living on farms or in small villages. Politically, two forces were struggling for control of public policy. The large corporations, particularly the railroad interests, sought every possible advantage and alliances were entered into to control prices. Privileges, particularly tax concessions, were sometimes gained by the purchase of votes of members of the General Assembly or their political henchmen. Utility franchises were the subject of political abuse and the railroads freely handed out passes and other political favors in return for support. As a result, railroad and other utility property frequently escaped taxation on the basis that their property was devoted to the public interest. So the railroads were highly profitable at a time when the farmers and small business interests in all the states were victims of depression. Many cities and towns were prevailed upon to

go into debt to finance railroads, industries, and other business ventures which subsequently created deplorable financial conditions for them. The voters generally believed that big business was taking over control of their government. This sentiment was not peculiar to Kentucky and was, in fact, responsible for pressuring Congress to enact the Interstate Commerce and the Sherman Anti-Trust Acts.

Thus, we see that when the one hundred delegates to the Constitutional Convention were assembled on a hot day in early September in 1890 in the Old Capitol Building in Frankfort, they were absorbed with the power that big corporation lobbies had exercised in shaping policy through the General Assembly.<sup>5</sup> Most of the delegates believed that the most important responsibility before them was to limit the nearly unrestrained power of the legislative branch and impose checks upon it that would benefit the citizenship. The delegates were also determined to put shackles on the influence of railroads and other large corporations.

What kind of people were the delegates to this convention?<sup>6</sup> All of the one hundred delegates were men, sixty were lawyers, twenty were farmers, thirteen were physicians, and seven were businessmen. The vast majority were of middle-age or older. Many of them were politicians whose partisanship was reflected in the new Constitution. All of them wanted to speak, which helps to account for the length of the convention and its 6,480 pages of proceedings. Debate on the Bill of Rights alone consumed more than a month, even though the final draft resulted in very few changes. Upon the conclusion of the long convention, a lengthy document of 272 sections under twenty-two separate headings had been produced. The document contained an enormous amount of detail.

### **The Constitution of 1891**

The present Constitution, then, was twice as long as its predecessor, and four times the length of the first Constitution of Kentucky. It has been pointed out that constitutions should be brief, broad, general documents confined to fundamentals, that leave much of the specific details to the legislative branch of the government. However, because of their mistrust of the General Assembly, the agrarian delegates in 1891 did not want to leave much room for inference.

For the first time in Kentucky, the Constitution required a referendum by the people for adoption. Although there was some opposition to the new revision from both the citizens and the press, such opposition was mainly confined to certain parts and not to the whole. In fact, there was more criticism of the extended time spent in its drafting than of the document itself. The popular vote on August 3, 1891 was overwhelmingly for ratification: 219,914 to 74,523. Following the election vote and ratification, the convention reconvened to make changes, polish the wording, and remove ambiguities. This work was completed by September 28; however, it only resulted in reducing the number of sections from 272 to 263.

The only substantive changes made during these weeks of final revision were that certain elected public officials (the Superintendent of Public Instruction, the Auditor, and the Clerk of the Court of Appeals) might not succeed themselves, the Railroad Commission was made elective rather than appointive, and a section was added requiring the General Assembly to provide for local option elections regarding the sale of alcoholic

beverages. These changes were never submitted to the voters, but when this omission was tested in the Court of Appeals (the court of last resort at that time), it held that the convention had not exceeded its authority and that to invalidate its action would “bring confusion and anarchy upon the state.” This validity was established in the case of *Miller v. Johnson* (1892) and was only the beginning of a long series of court interpretations of the 1891 Constitution.

Most of the various restrictions in the present Constitution can be explained by studying the times and the sentiment of the people during the period in which they were written. One good example is the restriction of sheriffs and state officials to a single four-year term, without power to succeed themselves. This provision probably resulted from the graft of the State Treasurer, James W. Tate, known as “Honest Dick Tate,” who left the state in 1888 during his ninth term of office with all the money from the State Treasury, \$247,028.50. The limiting of annual salaries of public officials to \$5,000 possibly resulted from the knowledge that officials in a few counties had pocketed as much as \$30,000 in fees. Even more important, \$5,000 in 1891 was considered an adequate and ample salary. The \$500,000 ceiling on state indebtedness, without requiring a vote of the people, was not unreasonable at that time, because money was scarce and the state’s credit had been damaged by “Honest Dick’s” departure.<sup>7</sup>

Regardless of the reasons motivating the delegates, they seemed determined to protect the electorate from public officials who might yield to the temptation to waste the taxpayers’ money in the future. They also wished to prevent individual officeholders in key positions from becoming powerful fixtures in the governmental process. The resulting constitutional restrictions made it difficult, however, for future Governors to attract competent and qualified people with salaries below those paid for comparable positions in other states, the federal government, or private industry. History also indicates that later attempts to remove or modify these restrictions usually failed. Some liberalization has been achieved, however, through judicial interpretation of certain constitutional sections, and subsequent amendments. Needless to say, after more than one hundred years of intermittent litigation and changes in the interpretations of certain sections, some provisions of this document remain obscure to the citizens and require further adjudication.

To understand these developments, the student must analyze not only the provisions of the current Kentucky Constitution but also the practical application of that document through statutes, court decisions, and the administrative regulations of the various government agencies responsible for its interpretation and enforcement.

## NOTES

- <sup>1</sup> “First Constitution of Kentucky,” *Kentucky Revised Statutes*, Volume 1, pp. 781-794.
- <sup>2</sup> George L. Willis, Sr., “Kentucky Constitutions and Constitutional Conventions,” *Register of the Kentucky Historical Society*, January, 1931.
- <sup>3</sup> Thomas D. Clark, *The History of Kentucky* (Lexington, Ky.: John Bradford Press, 1960), p. 412.
- <sup>4</sup> Clark, p. 419.
- <sup>5</sup> Hamilton Tapp and James C. Klotter, *Kentucky Decades of Discord, 1865-1900* (Frankfort, Ky.: Kentucky Historical Society, 1977), pp. 259-264.
- <sup>6</sup> The data for this paragraph is drawn from Allen E. Ragan, unpublished manuscript, Eastern Kentucky University.
- <sup>7</sup> Allen M. Trout, “Your Kentucky Constitution,” *The Louisville Courier-Journal*, July 10, 1966. Also see: Mary Helen Wilson, *A Perspective of Constitutional Revision in Kentucky*, Informational Bulletin No. 119 (Frankfort, Ky.: Legislative Research Commission, 1976).



### **CHAPTER III THE CURRENT CONSTITUTION OF THE COMMONWEALTH**

Today Kentucky is governed under the provisions of its fourth Constitution, commonly called the Constitution of 1891, although its effective date was not until January, 1892. To understand the framework of any state government, one must remember that each state functions under two constitutions. Not only is there a constitution of the particular state, but the United States Constitution governs each state as well. It is a fundamental fact that the Commonwealth of Kentucky is limited to a degree in what it may do by virtue of being a member of the federal union.

#### **The U. S. Constitution**

Although the U. S. Constitution confers upon all states of the union all powers not reserved exclusively by the federal government, there is one important qualification: the states cannot exercise powers forbidden to them by that document. Most of these prohibitions on state activities can be found in Article I, Section 10 of the U. S. Constitution.

Three further provisions regarding the relationship of the states to one another and of the states to the federal government are to be found in Article IV. The first obligates a state to give “full faith and credit” to the public acts, records, and judicial proceedings of the other states. A second provision calls upon any state to grant the “privileges and immunities” of its citizens to citizens of other states. The third obligation calls for a state to deliver fugitives from justice to the state having jurisdiction of the crime.

Some other important restrictions on the states are also found in amendments to the U. S. Constitution, primarily the Fourteenth Amendment. This provision, known as the “due process and equal protection clause,” has been interpreted to make certain parts of the first eight amendments applicable to the states, including all of the First Amendment guarantees. The Fourteenth Amendment forbids any states from depriving persons of life, liberty or property without due process of law, and forbids them to deny any person within their jurisdictions the equal protection of the laws. The equal protection clause has been widely used in recent years to invalidate state laws requiring racial segregation or furthering racial discrimination.

A further restriction on the states is found in Article VI of the U. S. Constitution which provides that the U. S. Constitution and laws passed by Congress under authority of the document “. . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding.”

## **State Constitutions as Fundamental Law**

Although the U.S. Constitution is paramount, it has been said that “the state constitutions are the oldest things in the political history of America.”<sup>1</sup> The citizens of each state, subject to the broad limitations of the U.S. Constitution, are free to create a draft of whatever kind of government they wish to have in their respective states. A constitution is a basic or fundamental law, which means that a constitution is the law upon which ordinary legislation is based. A further aspect of this tradition is that this fundamental law emanates from the people. Further, a constitution provides the people with a framework of government and protects them from arbitrary action on the part of their government.

## **Structure of the Kentucky Constitution**

Citizens within a state, subject to the constitutional limitations we have described, are free to create the type of democratic government they desire. However, it should be pointed out that all fifty state constitutions are quite similar in general outline. For example, not a single state has established a parliamentary system of government, such as they have in England. Neither has any state deprived judges of the power of judicial review, despite strong objections at times to specific decisions.

Kentucky’s Constitution follows the usual pattern of state constitutions. It has five parts: (1) a preamble, (2) a bill of rights, (3) the body, (4) an amendment or revisory clause, and (5) a schedule, which establishes a time and manner by which the Constitution will go into effect.

### **Preamble**

While all state constitutions except those of Vermont and West Virginia begin with preambles, these are not actually operative parts of the constitutions. For the most part, they are simply invocations, or they express gratitude to the Deity for the blessings of liberty, and designate the purpose of the document.

### **Bill of Rights**

The Bill of Rights in the present Constitution of Kentucky contains twenty-six individual sections, most of which were carried over from the 1850 Constitution. Actually the Bill of Rights has had few changes since Kentucky became a state in 1792.

The Bill of Rights provides a guarantee for liberties and rights traditionally found in a bill of rights, including that of the U.S. Constitution. Rights included in the U.S. Constitution are such guarantees as freedom of speech, press, assembly, and religion; property rights, the right to bear arms, free emigration, free elections, trial by jury, freedom from search and seizure, grand jury indictment in felony cases, the right to bail and habeas corpus; and prohibition against ex post facto laws, impairment of contracts, quartering of troops in peace time, involuntary servitude, bills of attainder, and titles of nobility or hereditary distinctions.



In keeping with the lengthy and detailed nature of the Kentucky Constitution, the twenty-six sections of Kentucky's Bill of Rights covers several pages of ordinary type. In contrast, the Bill of Rights in the U.S. Constitution is contained in ten short amendments which can easily be written on one page.

Advocates for a new constitution in Kentucky have not been inclined to alter the Bill of Rights, although the Constitution Revision Assembly proposed in 1965 that three sections be added to provide: (1) that a person accused of committing a felony could waive the right to grand jury indictment and go to trial on the basis of information supplied by the prosecutor; (2) that a material witness could not be held in prison to insure his appearance in a case; and (3) that electronic or other mechanical interception of communications should be prohibited.<sup>2</sup> The language found in Section 4 of the Constitution is quite similar to that found in the writings of the British political philosopher, John Locke, and also in Thomas Jefferson's Declaration of Independence. It reads:

All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety, happiness and the protection of property. For the advancement of these ends, they have at all times an inalienable and indefeasible right to alter, reform or abolish their government in such a manner as they deem proper.

Although some purists contend that a lengthy, detailed listing of the people's rights is superfluous in a state constitution, because of the nationalization of rights under rulings of the United States Supreme Court, it should be pointed out that protecting the average citizen's rights in state courts under a state Bill of Rights is a quicker and less expensive procedure than going through the federal courts.

### **Body of the Constitution**

The body of the Constitution contains articles providing for the separation of powers, a bicameral legislature, an executive department, an independent judiciary with power of judicial review, and the form and powers of local units of government. As of 2002, the body of the Constitution of Kentucky contains 215 sections.

The current Constitution, like the three previous ones, contains the traditional American provision for separation of powers. That is, the government is divided into the Legislative, Executive, and Judicial Branches. Powers are allocated to each that are considered ordinarily belonging to it, although strict separation is not always possible.

Indeed, in the federal government and in most states as well, the concept of strict separation of powers between branches is somewhat fictitious. For example, other provisions of Kentucky's Constitution permit the Governor to participate in the legislative process. The courts by custom, through judicial review, participate in policymaking by interpreting the law as well as the Constitution. Even state administrative agencies are usually permitted to make rules and regulations that have the force of law. The result of these types of provisions is often referred to as the principle of checks and balances. Its superimposition upon the pattern of separation of powers enables each branch of government to check upon the other branches in one way or another.

## **The Legislative Branch**

As mentioned in Chapter 2, the general public, as well as the delegates to the constitutional convention of 1890-1891, apparently desired to curb the authority of the General Assembly. It should be pointed out, however, that the 1891 Constitution made no changes in the structure, organization, rules of procedure, privileges, immunities, or terms of members of the General Assembly. On the other hand, its biennial session was limited specifically to sixty days. This limitation was removed by a 2000 constitutional amendment that provides for annual sessions, consisting of a sixty-day session in even-numbered years and a thirty-day session in odd-numbered years. No authority was provided the General Assembly, such as it had under the 1850 Constitution, to extend the legislative session by a two-thirds vote of the members, a privilege which had been frequently exercised under the latter document. The small number of matters forbidden as subjects of special legislation, as provided by the 1850 Constitution, was increased to twenty-eight. In addition to this requirement, the 1891 Constitution provided that no special law should be passed when a general law could be made applicable. Support for the concept that the General Assembly had abused the use of special legislation can be illustrated by the acts passed during the last session of the General Assembly under the 1850 Constitution. In that session, of the 1,926 acts passed, only 117 affected more than one county. A further limit on special legislation was incorporated into the 1891 Constitution by classifying cities. The Constitution divided cities into six classes according to population and required that any act applicable to cities had to apply to all cities in at least one of the six classes; however, a 1994 amendment changed this to allow the General Assembly to provide for classifications of cities.

Twenty-nine provisions (Sections 190-218) of the present Constitution are particularly significant, as they were intended to restrict and restrain certain activities of railroads and other large business corporations. These provisions also imposed limitations on the General Assembly in granting such corporations special privileges deemed detrimental to the public interest. These restrictive sections are too long and involved to summarize here, but a few may be given to illustrate their character. One example often cited is the ban on free passes or even reduced fees on railroads for any public official. A second example is prohibiting corporations from owning property not related to their business. Other examples include the establishment of an elected Railroad Commission which possesses regulatory powers; specific prohibitions against railroads; and authorizing the General Assembly to enact specific regulatory legislation regarding trusts, elevators, and warehouses. However, a 2000 constitutional amendment eliminated the provisions regarding the elected Railroad Commission, and a 2002 amendment repealed ten more of these sections.

## **The Executive Branch**

The framers of the fourth Constitution made few changes in the Executive Branch of government, although two additional constitutional, elected officials were provided, namely the Secretary of State and the Commissioner of Agriculture, Labor and Statistics. Even with these changes, the operation of state government in 1892 was relatively simple

by today's standards. The necessary functions of government were performed by those agencies designated in the Constitution. In the years since 1891 the complexity and magnitude of governmental activities has increased dramatically. It is probably very fortunate that the delegates in 1891 included in the Constitution, in a very off-handed way, a clause stating that "Inferior state officers, not specifically provided for in this Constitution, may be appointed or elected, in such manner as may be prescribed by law, . . . for a term not exceeding four years, and until their successors are appointed or elected and qualified" (Section 93). Today, it is these "inferior state officers" who administer the major administrative activities and functions of the state in the areas of highways, finance, revenue, parks, conservation, health and many others.

In adopting a 1992 amendment, the voters made several sweeping changes to constitutional provisions regarding the Executive Branch. Statewide elected state officers elected in 1995 and thereafter became eligible to serve two consecutive terms instead of the single four-year term to which they had been limited. The Governor and Lieutenant Governor were required to seek party nomination and election as a team rather than individually. Guidelines were established for determining whether the Governor was disabled and unable to perform the duties of the office. The provision that stripped the Governor of the powers of the office when out of state was deleted. The Lieutenant Governor was required to perform such duties as prescribed by the General Assembly and assigned by the Governor and would no longer preside over the Senate during legislative sessions. Finally, after three previous unsuccessful attempts, the elected office of Superintendent of Public Instruction was abolished. Instead, the General Assembly provided by law for a Commissioner of Education to be appointed by the State Board of Elementary and Secondary Education. Additionally, as noted above, a 2000 Constitutional Amendment eliminated the Railroad Commission.

### **The Judicial Branch**

The structure of the Judicial Branch was changed in many respects by the 1890-91 convention. The provisions for the judiciary were spelled out in great detail. Perhaps even more significantly, restrictive wording prevented any future General Assembly from tampering with the judicial structure. Section 135 provided that "No courts, save those provided for in the constitution, shall be established." Section 110 created a Court of Appeals, having only appellate jurisdiction, but coextensive with the state and having the power "to issue such writs as may be necessary to give it a general control of inferior jurisdictions." Previously there had been an intermediate appellate court, called the Superior Court, to which most appellate cases went; it was popularly known as the poor man's court. As a result of this structuring, the highest court in Kentucky was overburdened with appeals.

The convention spent a great deal of time discussing local courts and their jurisdiction. Prior to 1891 dozens of special courts to serve local communities had been created. These courts had been granted powers and jurisdiction which were overlapping and confusing. This situation was doubtless responsible for the decision by the framers of the 1891 Constitution to deny future legislatures authority to create courts. Experience since 1892 has sufficiently shown, however, that the somewhat overlapping authority of

minor courts provided for in the Constitution was not a satisfactory solution of earlier difficulties.

In contrast to the Kentucky Constitution, which permits only constitutional courts, it should be pointed out that the U.S. Constitution, in Article III, Section 1, provides that “the judicial Power of the United States shall be vested in one supreme Court and such inferior Courts as Congress may from time to time ordain and establish.” Kentucky voters did much to correct this awkward situation by approving in 1975 a constitutional amendment adopting a new judicial article. This will be discussed in greater detail in Chapter VIII.

## **Education**

Many centuries ago both Plato and Aristotle considered that education was a vital obligation of the government. In this country, Thomas Jefferson believed strongly that an educated citizenship was absolutely essential to democracy. Regardless of the views of these distinguished advocates, it is only during the past century that the idea that the government should provide tax-supported schools has gained general acceptance. Opponents of “free” education argued that such a practice would lead to social unrest, even undermine the family, require an extensive bureaucracy to administer, and give government control over the minds of the young. Others questioned the fairness of taxing people who could afford to educate their own children in order to educate others. Although there was some opposition, the Kentucky delegates in the Constitutional Convention of 1891 adopted Section 183, which provided that “the General Assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the state.”

Section 183 is a broad constitutional mandate, which gives the General Assembly wide authority in dealing with the common public schools.<sup>3</sup> To give backing to the authority, the General Assembly was made responsible for distributing a school fund to local districts in the manner in which the legislature deemed desirable.

The 1891 Constitution provided that separation of white and black schools was to be maintained but there was to be no discrimination between them in school fund distribution. No tax money was to be used for any church, sectarian, or denominational school.

There was a much more heated discussion in the convention over the question of higher education. Proponents of private colleges and academies completely opposed public support for other than the common schools (elementary schools). These proponents won a partial victory, and Section 184 reads in part: “No sum shall be raised or collected for education other than in common schools until the question of taxation is submitted to legal voters, and the majority of the votes cast at said election shall be in favor of such taxation.” The same section went on to state that, “The tax now imposed for educational purposes, and for the endowment and maintenance of the Agricultural and Mechanical College, shall remain until changed by law.” Fortunately for all Kentuckians, these rather severe constitutional restrictions have not prevented the development of the program of higher education in the Commonwealth.

Through judicial interpretation, needed changes have been construed as constitutional and the severity of the restrictions ameliorated. Judicial interpretations did later permit a new statutory appropriation for the support of the Agricultural and Mechanical College and even concurred in renaming this college a state university.<sup>4</sup> In 1906, two state normal schools were created, to which teacher education programs were transferred. In 1922, two others were created, and subsequently all four were authorized four-year teachers' college status. Still later, the four became state universities. This clause was also interpreted by the courts to enable the legislature to make appropriations to higher education without submitting the matter to a vote of the people.

In June 1989, the Kentucky Supreme Court affirmed the Franklin Circuit Court's ruling in *Rose v. Council for Better Education*, which held that the system of financing education in use at that time was unconstitutional, in that insufficient funds were provided to permit the poorer school districts to have an efficient system of public schools. The high court ruled that the statutory system as a whole and the interrelationship of its parts were in violation of Section 183 of the Constitution and stressed that the General Assembly has the sole responsibility and absolute duty to re-create and re-establish a new an efficient system of schools. A Task Force on Education Reform, twenty-two legislators and representatives of the Governor's office, developed recommendations for a new system and presented them toward the end of the 1990 session of the General Assembly. The General Assembly adopted the recommendations as the Kentucky Education Reform Act of 1990.

The most controversial institutional provision relating to education regards the selection of the Superintendent of Public Instruction. As noted before, until 1992 the people had defeated every attempt to tamper with this office. This recent change of opinion most likely stems from statutory amendments made by the Kentucky Education Reform Act of 1990. That legislation removed all the duties of the Superintendent of Public Instruction and provided for the State Board of Elementary and Secondary Education to employ a Commissioner of Education. The Commissioner serves as the executive officer of the board, implementing its educational policies and directing all persons employed in the Department of Education. Additionally, in 1996, the voters approved the elimination of the racially discriminatory language requiring schools to be racially segregated.

## **Local Government**

If the length of the discussions and long sessions spent on local government are any criteria, the framers of the 1891 Constitution considered local government of great importance. The numerous and often detailed provisions dealing with cities and counties reveal the intent of the framers to leave as little as possible to future determination by either the General Assembly or any local legislative body. It can be said that these provisions put local government in a bind from which it has never escaped.

As already indicated, cities were divided into six classes, according to population, largely to prevent special legislation. Section 156 of the Constitution provided that "the organization and powers of each class shall be defined and provided for by general laws, so that all municipal corporations of the same class shall possess the same powers and be

subject to the same restrictions.” It further provided that the legislature “by general law, shall provide how towns may be organized, and enact laws for the government of such towns until the same are assigned to one or the other of the classes.” However, in 1994, Section 156 was repealed and a new Section 156a authorized the General Assembly to provide for the creation, organization, and governance of cities and to establish classifications of cities based upon population, tax base, form of government, geography, or any other reasonable basis. Section 156a also provides that all legislation relating to cities of a certain classification shall apply equally to all cities of the same classification.

Authority for local governments to incur indebtedness was also strictly limited. Local units were forbidden to grant utility licenses for more than twenty years, and then only to the highest and best bidder. Local officials were limited to holding one office. It should be remembered that both counties and cities, unlike political units in the federal system, are creatures of the state and can be created or abolished by the General Assembly, although the state Constitution imposed some limits on its authority to do so. County officials were enumerated in the Constitution, thus making future reorganization and improvement of county government very difficult. Somewhat similar provisions dealing with city officials have frequently thwarted the modernization of municipal government.

In 1984, after three previous unsuccessful attempts, the voters approved an amendment to Section 99 of the Constitution that deleted the prohibition against county sheriffs immediately succeeding themselves in office. In 1986, under an amendment to Section 160, mayors of cities of the first and second class were permitted to serve three consecutive terms.

## **Taxes**

The delegates to the 1891 convention were also troubled over the issue of taxation. Under the old Constitution, some corporations had escaped taxation by contending that their property was devoted to a public purpose. The framers of the 1891 Constitution remedied this loss of needed revenue by requiring that all property, individual or corporate, should be taxed at a uniform rate. Some of the delegates to the convention were even opposed to exempting the property of such non-profit organizations as church and private schools. That issue ended in a compromise by providing certain limited exemptions. However, an amendment adopted in 1990 exempted from taxation all real property owned and occupied by, and all personal property, both tangible and intangible, owned by institutions of religion. Another amendment in 1998 permits the General Assembly to exempt motor vehicles and other personal property from the property tax.

Additional financial restrictions imposed by the 1891 Constitution include the requirement that taxation must be for a public purpose, that taxes be uniform for all property in the same class, that all taxation be by general law, that all property be assessed at a fair cash value, and that the power to tax should not be surrendered by any grant or contract to which the Commonwealth should be a party. Referring to this limitation, it may be of interest to point out that the state, in Section 176, was forbidden to pledge or loan its credit to any individual, corporation, or political subdivision, or

become a stockholder in or make any donation to any corporation, or to construct any railways or other highways. However, within sixteen years of the time the Constitution went into effect, this provision was changed by a vote of the people to provide that the credit of the Commonwealth could be pledged or loaned to counties for public road purposes.<sup>5</sup> A very significant provision, in view of the state's continuing need for increased revenue, was included in Section 174, which states that: "Nothing in this Constitution shall be construed to prevent the General Assembly from providing for taxation based on income, licenses or franchises."

### **Voting and Elections**

Only a few changes were made in voting and election procedures in the 1891 Constitution. The voice voting required by the Constitution of 1850 was discarded and the Australian secret ballot was required, except for disabled voters.<sup>6</sup> Nor was there any attempt to circumvent the intent of the Fifteenth Amendment of the U.S. Constitution. By contrast, a number of Southern states had instituted poll taxes or difficult residence or registration requirements in their Constitutions, to prevent some people from voting. The General Assembly was required to make voter registration mandatory in cities of 5,000 or more. Its power to require registration elsewhere was discretionary. Many years later, through ordinary statute, primary nominations came to be required.

The 1891 Constitution created a process by which there would be an election each year, but no local officials except city councilmen were to be elected when federal officials were on the ballot. This provision was incorporated into the Constitution largely because of events in Washington. In 1890-91, a bill was before the Congress of the United States which was primarily aimed at Southern states denying black suffrage. If that bill had passed it would have given the national government control of elections in which federal officials were chosen.

In 1992, the voters approved an amendment to the provisions of the 1891 Constitution to reduce the frequency of elections held in Kentucky. That amendment shifted all elections that were being held in odd-numbered years to even-numbered years, except for elections for statewide-elected state officers which will continue to be held in odd-numbered years. Under this change, there were no elections held in 1997, and every fourth year thereafter will be election-free.

### **The Amending Process**

Kentucky's first three Constitutions contained no provisions for amendments. This subject received extensive discussion in the convention and was resolved in favor of having an amending procedure. However, the amendment process was made very difficult. It requires that a proposed amendment must first receive a three-fifths majority vote of the total membership of each house of the General Assembly at a regular session. This must be followed by a majority popular vote "at the next general election for members of the House of Representatives" (Section 256), before the amendment can be adopted. The requirement that not more than two amendments, each devoted to a single

subject, could be submitted in any election makes the amending process even more restrictive. In the general election of 1979, Kentucky voters approved a constitutional change liberalizing this amendment process to increase to four the number of amendments allowed on the ballot every two years. This step, coupled with judicial doctrine which allows the submission of very broadly based amendments, such as the 1976 amendment which completely restructured the judiciary, seems to be the most likely way that major changes in the present Kentucky Constitution will occur.<sup>7</sup> Appendix A contains a listing of amendments which have changed the 1891 Constitution, as well as amendments that have been proposed but not adopted.

### **Other Constitutional Provisions**

It should be pointed out that the foregoing discussion has largely been a summary of the Constitution. The thirty-three sections called “General Provisions” and the schedule regarding the time and manner in which the Constitution would be put into operation have not been discussed. The former is largely a “hodge-podge” which suggests that the delegates may have been trying to make certain they had not forgotten something and that each delegate had been given an opportunity to include his favorite idea in a document already entirely too long. Of course, it is necessary that every constitution have a schedule indicating when and in what manner the new document shall become effective. Many of the provisions in this constitution or in any revised constitution require action by the legislative body to implement the basic document. It took eighteen months of continuous sessions of the Kentucky General Assembly to bring the statutes into conformity with the new Constitution.

### **A New Constitution?**

There have been several attempts to draft a new Constitution for the Commonwealth. As early as the Griffenhagen and Associates report of 1924, which studied the government of the state, a movement has been present in the state to rewrite the Constitution. The first defeat at the polls for a formal call for a convention came in 1931 (97,778 against to 28,204 for a convention). Again in 1947 a call for a convention was defeated (191,876 to 144,192). Prominent in the statewide discussion during that campaign was the Committee of One Thousand. Among other claims they made, this group contended that a convention might destroy the Bill of Rights and allow other dire consequences to befall the state.

One of the more important sidelights of the 1947 constitutional campaign was the holding in *Gaines v. O'Connell*, which validated the General Assembly's right to attach conditions limiting any convention's authority in revising the Constitution.<sup>8</sup> This holding was later reaffirmed in *Chenault v. Carter*, which held that the calling of a convention at a special session of the General Assembly, if confirmed by the next regular session, is valid. It also held that a constitutional question could be on the ballot at the time of a presidential election.<sup>9</sup>



In 1949 Governor Earle B. Clements created by Executive Order a Constitutional Review Commission (CRC). The CRC was given a permanent basis by the 1950 session of the General Assembly and continued until 1956, when the Commission was abolished and its duties transferred to the Legislative Research Commission. Governor Clements had appointed seven attorneys and judges to the Commission. The 1950 Report of the CRC is generally recognized as being the most significant recommendation of the Commission. It presented a section by section analysis of the Constitution. In all, it recommended that a minimum of 68 of the 263 sections of the Constitution be deleted or changed. The recommendation for changes was met by significant opposition, as reflected in the newspaper reports of the time.

After the call for a limited constitutional convention, begun in December, 1959, by Governor Bert Combs failed (342,501 against and 324,777 for a convention), yet another attempt at updating the Constitution was made. This time it was through the 1964 creation of a Constitutional Revision Assembly. Having failed in all previous efforts to bring a major change in the Constitution, those most interested in constitutional change in Kentucky made a bold attempt to structure what they called a “modern” constitution for the state. The charge to the CRA was based on Section 4 of the Constitution, which provides in part that the people have the “inalienable and indefeasible right” to change their government as they see fit. The unusual nature of this approach to constitutional change was labeled “Kentucky Unorthodoxy” in an article by David A. Booth and John E. Reeves in *National Civic Review* (June, 1966, pp. 310-316).

The CRA was created on the recommendation of Governor Edward T. Breathitt. It consisted of fifty members, one appointee from each of the state’s thirty-eight Senatorial districts, five appointees from the state at large, and the seven living former Governors.

The CRA engaged in an extensive section by section review of the Constitution. A list of members of the CRA and a comparison of the 1891 Constitution and the proposed revisions is to be found in the LRC Informational Bulletin No. 52, “A Comparison . . . The Present —The Proposed Kentucky Constitution.” Again, opposition to change was highly organized and the CRA document was defeated soundly, with 517,034 against it and only 143,133 for it.

Fortunately, as indicated earlier, the courts had applied a broad interpretation of the constitutional provision that a constitutional amendment must deal with only one subject. Under the doctrine of that case, two attempts at major changes in the structure of government have been presented to the voters of the Commonwealth. The first such attempts were unsuccessfully made in 1973.<sup>10</sup> At that election voters rejected two amendments (See Appendix A). The second attempt, proposing completely revamping the judiciary, met with a favorable vote in 1975.

## NOTES

<sup>1</sup> James Bryce, *The American Commonwealth* (New York: McMillan Press, 1921), Volume I, p. 427.

<sup>2</sup> James T. Fleming and John E. Reeves, *A Comparison ... The Present ¾ The Proposed Kentucky Constitutions*, Informational Bulletin No. 52, (Frankfort: Kentucky Legislative Research Commission, 1966), p. 6.

<sup>3</sup> *Louisville v. Board of Education*, Ky., 195 S.W. 2d 291 (1946).

<sup>4</sup> *James v. State University*, Ky., 114 S.W. 2d 767 (1908).

<sup>5</sup> Section 157a of the Kentucky Constitution as proposed by 1908 Acts, Chapter 36, and ratified by the voters at the November, 1909 election.

<sup>6</sup> *Major v. Barker*, Ky., 35 S.W. 543 (1896).

<sup>7</sup> *Hatcher v. Meredith*, Ky., 173 S.W.2d 665 (1943); see also *Funk v. Fielder*, Ky., 243 S.W.2d 474 (1951).

<sup>8</sup> Ky., 204 S.W.2d 425 (1947).

<sup>9</sup> Ky., 332 S.W.2d 523 (1960).

<sup>10</sup> The General Assembly proposed the amendments in 1972 and they were submitted to the voters in November, 1973, in accordance with the provisions of Constitution Section 256 in effect at the time.

## **CHAPTER IV POPULAR CONTROL OF GOVERNMENT**

One of the striking ironies of the democratic process is its ultimate reliance on politics while at the very same time many citizens either decry the corruptness of politics and fail to participate or simply try to ignore the political process completely. Despite, or perhaps because of, these major inconsistencies, people who do participate in the political process generally do so because they feel they gain something from that participation. It may be a sense of civic accomplishment. It may be the satisfaction of supporting a cause.

### **Political Parties**

The one unifying factor which makes the democratic process work is the existence of political parties. The reason is utilitarian. Despite the detractors from political parties and their function, an essential truth is that parties make government possible. If one is willing to acknowledge that there are matters that are public in nature (e.g., records, legal instruments) then some form of government is inevitable, if simply to keep records! There must first be some systematic method for selection of persons to fill the governmental posts to execute these functions. Secondly, before any governmental action can take place there must be some type of coalition for a decision-making process, for example, a *legislative majority*, to determine what specific policies will be followed.

Even with this critically-defined function of political parties, it is difficult to assign a definition to the term “political parties.” They obviously do exist. There are rules and regulations defining what they can and cannot do and what it takes “officially” to be a political party. Further, there has been substantial evidence generated that people respond to candidates because of labels they bear. Despite these realities, parties remain amorphous, perhaps in part because we are talking about a multi-faceted phenomenon. At the least are involved what one political scientist has labeled the party-in-the-electorate, the party-in-government, and party organization.

### **Origin of Political Parties in Kentucky**

The development of political parties in Kentucky followed a pattern much like those of all the early states and the federal government. Political parties as we know them today did not exist when Kentucky’s first Constitution was written. That is not to say that there were not factions, issues, and all the necessary ingredients of viable political rivalries; these elements were present and were important. In fact, there are some who advocate that the foundations of modern political parties were laid in the controversies over land titles, Indian problems, and the nature of the relationship (or split) with Virginia. For example, Watlington, in *The Partisan Spirit*, develops the argument that the nuclei of the National Republican Party and the Federalist Party are to be observed in the struggle to determine the status of Kentucky in relation to the federal government and

Virginia.<sup>1</sup> In fact, she contends that there were three parties. The third had its roots in the partisan Tories.

However, a more traditional view is that it took the regular functioning of the governmental process to precipitate the formation of modern political parties. This process had two separate elements. The first was legislative, the give and take of the legislative process of determining policies that had lasting effects on the state, as factional elements cemented into political parties in Kentucky. The second element was elections, particularly the 1824 presidential race, in which Kentucky nominated a favorite-son candidate, U. S. Congressman Henry Clay, and called upon other states to support its choice. After his failure in his own bid for the presidency, Clay's role as Speaker of the House became critical when the presence of four strong candidates threw the 1824 election into the U. S. House of Representatives. In Congress, Clay successfully backed John Quincy Adams, although the Kentucky legislature had instructed him to support the Tennessean, General Andrew Jackson. As a result of Clay's actions, the period between 1825 and the 1828 election saw the drawing of fast and strong lines between the Jacksonian Democrats and the Whig forces of Henry Clay. A product of the period was the first convention for the purpose of determining a party nominee. This convention was held by the Whig party in Frankfort on December 17, 1827.<sup>2</sup>

Even though it is easy to observe the relationship of party development to the national arena, Kentucky politics were at this time still defined in terms of domestic questions, such as the courts controversy and fiscal relief. These two prime issues persisted throughout the 1820's.<sup>3</sup>

Since these early beginnings Kentucky has maintained essentially a two-party system as far as state-wide elections are concerned.<sup>4</sup> This is not to say that elections have split anywhere near 50-50; rather, the Republican Party has mustered a significant minority of voters in every election that they did not win.<sup>5</sup>

### **Population and Politics**

Critical to analysis of political parties in Kentucky is the changing distribution of population within the state. Sectionalism (also termed regionalism or localism) has always been a significant factor in Kentucky politics. It still is, but it has taken on new and as yet unexamined dimensions in the Commonwealth. Three factors not previously present in Kentucky are impinging upon each other and upon the political process itself. The first is that, according to the 1970 census, for the first time a majority (52.3%) of Kentucky's population is located in urban areas (as defined by the U. S. Bureau of the Census).<sup>6</sup> Perhaps more importantly, the population of the presently designated Standard Metropolitan Statistical Areas equaled 48.8 percent of the total population.<sup>7</sup> These trends have held true over the last twenty years, with 52.9 percent residing in urban areas<sup>8</sup> and 48.1 percent residing in the designated SMSAs.<sup>9</sup>

The second factor was the development of the turnpike and interstate highway network, making rapid travel between the diverse portions of the Commonwealth convenient for the first time in the state's history. Kentuckians from the Purchase area or

the Ashland area can reach Louisville, Frankfort, and Lexington with ease today. Thus we are seeing greater contact and interaction between regions.

The impact of these two factors becomes even more significant when they are coupled with the effect of the modern mass media on political style and campaigning. These factors have the most direct effect in the major statewide campaigns.

## **Voting and Elections**

Political parties are not mentioned in the Kentucky Constitution, nor in the federal Constitution. However, extensive rules and regulations pertaining to voter registration and election are provided by both the federal and state governments through statute law. These statutes, by regulating the primary process, do affect the operation and function of political parties. When Kentucky inaugurated its presidential preference primary, it added a new dimension, increasing the impact of state laws on all aspects of the party process at the local level.

Most constitutional processes pertaining to voting and elections are found in Sections 145 to 155 of the Kentucky Constitution. Most of the specific provisions concerning registration (including voter qualification) and the election process are left to the General Assembly. The Constitution establishes residency requirements and excludes certain classes of persons from voting. “Universal Suffrage” has never been “universal” in the Kentucky Constitution. Convicted felons, those in prison, persons declared mentally incompetent, and persons on active military service in Kentucky, unless otherwise a resident, are prohibited from voting in Kentucky.

The Constitution also requires that voters be citizens. Even though the U.S. Constitution provided for equal voting rights by women via the Nineteenth Amendment, the Kentucky Constitution retained the wording “every male citizen” until 1955. The present wording of “every citizen” was incorporated into the Constitution at that time, upon passage of its Seventeenth Amendment. That amendment also lowered the minimum voting age to eighteen, making Kentucky the second state to do so (Georgia was the first).

Kentucky law makes voter registration mandatory for “cities and towns having a population of 5,000 or more” (Section 147) and gives the General Assembly the discretion of providing, by general law, for registration of other voters. Section 147 of the Constitution further provides that all elections will be by secret ballot, that absentee voting is permitted, and that voting machines may be used. It also provides that “persons illiterate, blind or in any way disabled may have their ballots marked or voted as herein required.” The General Assembly has enacted the necessary legislation to fulfill these requirements.

Although the General Assembly is given specific authority in prescribed sections, the writers of the 1891 Constitution saw fit to give it broad power, authorizing it to provide through statute the “framework” of the registration and election process. Section 153 is titled “Power of General Assembly as to elections” and provides that:

Except as otherwise herein expressly provided, the General Assembly shall have power to provide by general law for the manner of

voting, for ascertaining the result of elections and making due returns thereof, for issuing certificates or commissions to all persons entitled thereto, and for the trial of contested elections.

Most statutory law pertaining to elections is to be found in Chapters 116 through 121A of the *Kentucky Revised Statutes*.

The Constitution also stipulates minimum residency requirements, but these provisions were made inoperative in 1972 by the U. S. Congress for all federal elections.<sup>10</sup> Under the extensive revision of Kentucky election laws in 1972 and 1974, Chapter 116 of the *Kentucky Revised Statutes* incorporated the 30-day residency requirement for all elections in Kentucky.

In a mobile society the question of voting residency can be a complicated matter. The statutory provisions contained in KRS 116.035 are fairly precise regarding criteria for determining residency, but two major problems remain. One regards the status of college students. The Kentucky Constitution says that a voter's residence is considered to be the place where "habitation" is, and to which, when absent, "he has the intention of returning." The question is, "which is a college student's 'habitation,' a dormitory 'home' or the place of residence of a student's parents?" Until late in the 1970's, a college student was assumed to retain the legal residence of his parents or guardian unless he could prove an intention to maintain a permanent residence in the college town. Even prior to the present interpretation many jurisdictions in Kentucky allowed otherwise qualified college students to maintain their voting residence in the county where they were attending school.

The second aspect of the wording of KRS 116.035 which creates ambiguities is the "intention" (already mentioned in discussing college students). The word "intention" in all cases calls for the application of value judgments, which are always fallible as well as subject to abuse. Generally, however, these kinds of questions rarely if ever create major questions of voter fraud or discrimination, even though they may cause momentary inconveniences for a rather limited number of individuals in unusual circumstances.

Prior to the enactment of the election laws of 1972 the registration and recordkeeping process was almost exclusively a local process. It was with the passage of that law that Kentucky adopted a uniform automatic process for creating voter lists for each voting unit in each county. The registration process is still performed at the local level.

Any eligible person may register to vote or change his party affiliation in any of the following ways:

- (a) In person;
- (b) By mail;
- (c) By means of the federal post card application, if the person is a resident of Kentucky and a member of the Armed Forces, or a dependent of members of the Armed Forces, or overseas citizen;
- (d) By mail-in application form prescribed by the Federal Election Commission pursuant to the National Voter Registration Act of 1993 (commonly referred to as the "Motor-Voter" Act, which will be discussed later); or
- (e) By such other methods of registration, or re-registration, as approved by the State Board of Elections, including the use of voluntary interested groups

and political parties, under the proper supervision and directions of the county clerk, which may include door to door canvassing. [KRS 116.045(4).]

No one may register or change party affiliation during the twenty-eight days preceding any primary, special, or general election or during the seven days following such an election [KRS 116.045(2)], but a voter who has moved from one precinct to another within the same county may update his voter registration record at the polls on election day [KRS 116.085(2) and (3)]. Change of party affiliation between the general and primary elections disqualifies a person from voting for partisan candidates in the primary, although all registered voters may vote for such non-partisan candidates as judges in a primary (KRS 116.055).

As of September, 2002, there are over 2.6 million registered voters in Kentucky. Of this total, over 1.5 million are registered Democrats, about 902,000 are registered Republicans, and approximately 168,000 are registered under other party labels or have no stated political party preference.

The voter registration forms are “prescribed and furnished” by the State Board of Elections (described below). The form is in duplicate. One copy is retained in the county clerk’s office; the other copy is sent to the State Board of Elections office, where a statewide computerized record is maintained.

Registration is permanent in Kentucky. Once a person is registered, no re-registration is required, unless he moves to a different voting unit, changes his name, or changes party affiliation. Failure to respond to an address confirmation notice sent by the State Board of county board of elections and failure to vote in the last two federal elections, however, will cause the State Board of Elections to place a person’s name on an inactive voters’ list. A voter who no longer resides within the county in which he is registered may be purged from the voter rolls if he does not respond to notices from the State Board of Elections concerning his voting eligibility. Purgation can be challenged through an appeal to the county board of elections. A person whose name has been purged may re-register, providing he remains eligible. The first state purgation under the revised 1974 statutes took place during May of 1978 and now a biennial purge of ineligible voters is conducted.

In 1993, Congress enacted the National Voter Registration Act, which has been referred to as the “Motor-Voter” Act. That legislation expands voter registration opportunities beginning in 1995 by requiring the states to permit their residents to register to vote when they:

- (1) apply for or renew a driver’s license or nondriver’s identification card;
- (2) apply for or renew an application for various entitlement programs including Aid to Families with Dependent Children, Food Stamps, Medicaid, or the Special Supplemental Food Program for Women, Infants, and Children, and any state-funded disability services; and
- (3) visit an Armed Forces recruitment office.

The states may also designate other public and private agencies to serve as voter registration agencies. It is expected that some 250,000 residents per year will register to vote using these new registration methods. Residents may still register to vote at the county clerk’s office as well.

## **State Board of Elections**

The State Board of Elections is charged with the responsibility of overseeing the registration and election process of the state. It is comprised of the Secretary of State and six members appointed by the Governor. Technically four of the State Board's members, two from each party, are to be chosen from a list of five nominees "submitted by the state central executive committee of each of the two political parties that polled the largest vote in the last preceding election for state officials" (KRS 117.015).

In practice this has meant that Democrats and Republicans have been appointed. Although the American Independent Party made an appreciable showing in Presidential elections during the 1960's, it has never secured enough votes to gain representation on the State Board of Elections. The same is true of other independent parties, such as the one spearheaded by Ross Perot in 1994. Since the creation of the State Board, every Secretary of State has been a Democrat, thereby giving the Democratic Party a majority on the board.

There is a county board of elections in each of Kentucky's 120 counties. Each board is composed of the county clerk, the sheriff of the county, and two other board members appointed by the State Board from a list of five nominees presented by the county executive committee of each of the two political parties that polled the largest number of voters in the state at the last preceding election for presidential electors. The county clerk presides at all meetings. In case of a tie, the county clerk may cast an additional vote. Records of all the board's proceedings are kept and filed in the county clerk's office (KRS 117.035). In addition to their responsibilities as general overseer of the electoral process in the county (for example, the board stays in session all day election day and is responsible for securing adequate polling places for each precinct), the county board is charged with the selection of precinct election officers (a total of four persons for each precinct in the county) and alternates. These precinct officers serve in all elections held in the county during the year.

Additionally, the county board of elections is responsible for determining the precinct boundaries of the county. KRS 117.055 indicates that precincts should contain "as nearly as practicable, an equal number of voters." The county board of elections shall review the precinct boundaries of all precincts having more than 700 votes cast in the last regular election, and the State Board of Elections may require a written report on those precincts and the county board of elections is not prohibited from dividing election precincts. The State Board of Elections may, in its discretion, withhold the state share of election expenses from a county having a precinct with more than 1,500 registered voters. (KRS 117.055).

## **Elections**

Most of the laws pertaining to elections in the Commonwealth are to be found in Chapters 116-121A of the statutes. Five types of elections are described: primaries, runoff primaries for party nominations for Governor and Lieutenant Governor if no candidate receives at least forty percent of the primary vote, regular elections, special



elections, and presidential preference primaries. In addition, Chapter 118A describes the procedure for nonpartisan election of judges.

To be officially recognized as a “political party” in Kentucky the statutes provide that:

A “political party” is an affiliation or organization of electors representing a political policy and having a constituted authority for its government and regulation, and whose candidate received at least twenty percent (20%) of the total vote cast at the last preceding election at which presidential electors were voted for.

KRS 118.015(1).

“Political organization” is defined as a political group not constituting a political party whose candidate received two percent or more of the vote of the state at the last preceding election for presidential electors, and a “political group” is a political group not constituting a political party or political organization. KRS 118.325 provides that “political organizations” that received at least two percent of the vote at the last preceding election for presidential electors may nominate candidates for public office either by the convention process or by a party primary. Further, KRS 118.315 provides for nomination of candidates by petition, except for those of the two major parties who must be nominated through the primary process. This device may be used by any independent candidate or organization choosing to do so, the singular requisite being a required number of qualified signatures (5,000 registered voters for a statewide election). However, such a petition does not bring its sponsors official recognition as a “political organization” within the terms of Chapter 118.

In Kentucky the secret ballot on voting machines is guaranteed for each election precinct. Primary elections are set for the first Tuesday after the third Monday in May preceding the general election. The general election is set for the first Tuesday after the first Monday in November. If a runoff primary for nominations for Governor and Lieutenant Governor is necessary, it is held thirty-five days following the date of the primary.

The polling place is to be open continuously from 6:00 a.m. local time to 6:00 p.m. local time. A person who is waiting in line to vote at 6:00 p.m. shall be entitled to vote so long as his ballot is cast by 7:00 p.m. It is mandatory that no votes be cast later than 7:00 p.m.

Kentucky’s Constitution and statutory law also provide that all employees are to be allowed not less than four hours off work to vote. The employer does have the right to say which hours an employee may be absent from work. Also, the request for time off to vote must have been made prior to election day.

Except for certain positions explicitly exempted, all political party candidates are to be nominated at the primary election. (The exceptions are some local elections—for sub-district school trustees, and board of education members—municipal elections, and presidential elections.)

The county clerk of each county is obliged to publish and post the names of all primary candidates in the order in which they are to appear on the voting machine. Each candidate is charged a filing fee by the appropriate office (county clerk for local offices,

Secretary of State for state offices) for processing of the candidate's papers. Persons may run as write-in candidates, but must file a declaration of intent to be a write-in candidate to have votes cast for him counted.

Perhaps the single most significant aspect of primary election law is the provision for nominations by a plurality of votes. Simply put, this means that the candidate receiving the greatest number of votes in the primary is the party's nominee, except in party primaries to nominate candidates for Governor and Lieutenant Governor where a slate must win at least forty percent of the primary vote to avoid a runoff primary. There is no way to compare the specific results of this system with one which would require a majority vote or, failing that in the primary, would require a runoff primary for other offices. Nor is it possible to say that different results emanate from the different procedures. Many observers feel that the "plurality" requirement favors candidates who have strong organizational support from entrenched factions. This is particularly true where there are several candidates. A runoff system forces the two slates of candidates for Governor and Lieutenant Governor having the largest votes to build coalitions from among supporters of the other candidates, in order to gain a majority of the votes in the runoff primary.

### **The Presidential Preference Primary**

Kentucky's first experience with a presidential preference primary came in 1976, after the 1974 session of the General Assembly had provided for such a primary. Like the regular primary election, the presidential preference primary is a "closed" primary. That is, only persons registered as members of a political party may vote in that party's primary. Once again, the defining of "political party" creates some difficulty. In the presidential preference primary a political party is defined as a "political party that cast ten percent (10%) or more of the votes for Governor in the preceding election, or has a registration equal to ten percent (10%) or more of the total registered voters in the Commonwealth" (KRS 118.551). No provisions are made for any other "parties" to be involved in the presidential preference primary, even though KRS 118.591 provides for nomination of candidates by petition.

In 1988, Kentucky and twelve other Southern states conducted their presidential preference primaries together on the third Tuesday in March, rather than on the dates their primaries for other offices were conducted. This primary, which was referred to as "Super Tuesday" because of the large number of electoral votes at stake, was intended to draw presidential candidates to the Southern states so they would get some understanding of the region, though some political analysts felt that its purpose was to produce a Southern candidate or give the South extra clout in the selection process. The Reverend Jesse Jackson and then-Tennessee Senator Albert Gore took most of the Democratic votes in the 1988 primary, with the eventual party nominee, Michael Dukakis, finishing third. In 1990, the Kentucky General Assembly voted to discontinue Kentucky's participation in "Super Tuesday" and returned the presidential preference primary to the regular May primary date, in part because Kentucky had the lowest voter turnout of all the participating states and the total expense of conducting a separate statewide election (\$4.1 million) for that purpose was prohibitively high.<sup>11</sup>

In 1992, the General Assembly permitted the political parties to determine whether their delegate votes for presidential candidates at the party national conventions would be determined by a party caucus, a presidential preference primary, or a combination of the two. If the delegate votes are to be distributed on the basis of party caucuses only, no presidential primary will be held.

In most procedural respects, the presidential preference primary is governed and conducted in the same manner as other primary elections. One difference is the \$1,000 deposit required for a candidate's name to be placed on the ballot. This deposit is not refunded unless no presidential preference primary for the candidate's party is held.

Names of candidates for the presidential preference primary may be placed on the ballot by either one of two ways. The State Board of Elections meets in Frankfort on the second Tuesday before the primary for the purpose of nominating candidates for the primary. It is charged with nominating "all those candidates of the political parties for the office of President of the United States who have qualified for matching federal campaign funds" (KRS 118.581). The second method, and a way of perhaps insuring that a candidate's name appears on the ballot, is by petition. A petition may be filed by either an individual or a group which has the consent of the candidate. The petition requires the signatures of 5,000 qualified voters who are affiliated with the candidate's political party and are registered voters in Kentucky.

Once a person has been properly nominated by petition or by the State Board, the Secretary of State notifies him that his name will appear as a candidate on the Kentucky presidential preference primary ballot of his party. If the nominee fails to pay the filing fee, such action is considered a disclaimer and a withdrawal from the primary. In addition to the candidates whose names have qualified to appear on the ballot, provision is made for a slate of "uncommitted" delegates.

Each candidate, as well as the "uncommitted" delegates, receives a prorated portion of the party's authorized delegate vote, provided that the candidate has received at least fifteen percent of the party's total votes cast in the presidential preference primary or party caucus. However, "uncommitted" delegates are not bound by the requirement that they vote "uncommitted" on the first ballot at the national convention as the delegates for named candidates are.

In 2000, a total of 311,602 people voted in the Democratic and Republican presidential preference primaries. A total of 220,279 voted for a total of four individual candidates, including "uncommitted," in the Democratic Party. There were six candidates, including "uncommitted," and a total of 91,323 votes cast in the Republican primary.<sup>12</sup>

The fact that the delegates, except for "uncommitted" delegates, are bound only for the first ballot places some significance on who these delegates are and how they are chosen. Technically speaking, every person who is registered and who indicated a party preference is a member of that party.<sup>13</sup> More practically, the operations and decision-making of the political parties are carried out through a system of standing committees organized in a hierarchical pattern functioning in conjunction with a series of conventions. The base of this pattern is the precinct—the smallest voting unit. However, since many precinct party components are generally not active, the significant components in the state party structure are the county and/or congressional district committee and convention. It is at this level and the state level that the importance of

party organization emerges. These elements have significant roles to play in terms of executing statutory grants of authority and as nuclei for developing organizational strength for successfully conducting a political campaign. It is quite likely then that those persons who are actively and continuously involved in partisan politics will emerge as the decision-makers at the county and state level. The openness and competitiveness of the local units and the mathematical chances for any of a variety of coalitions to develop tend to make the struggle for control of a majority of the delegate/organizational votes at the state level a constant search for a new balance between old and new factions. Obviously in such an arena the incumbents have an advantage.

Prior to its removal in 1992, the constitutional limit preventing the Governor from being re-elected to an immediately succeeding term served to increase the probabilities of constant realignment of factions within both parties. It should be pointed out that it is not necessary that factional leadership be lodged in the hands of an elected public official. It is quite possible, particularly at the local level, for a leader of a political faction to emerge who is not generally visible to the public.

Unfortunately most people feel that voting is the only way they can participate in politics; all too often even this step is not taken. For example, only 15.7 percent of Kentucky's registered voters turned out in the 1994 primary; 41.7 percent turned out in the 1993 primary in which nominations for local offices were decided; and in 2000, a presidential election year, 14.2 percent voted in the primary while 61.3 percent voted in the general election.<sup>14</sup>

### **Registry of Election Finance**

The Registry of Election Finance was statutorily created in 1966 as an independent state agency to administer the statutes pertaining to political campaign and election financing. With the reform of campaign finance and election laws in 1988 and 1992, the Registry's duties and enforcement authority have steadily increased. In 1992, the General Assembly enacted the Public Financing Campaign Act and transferred the agency from the Public Protection and Regulation Cabinet to the Department of State.

The seven members of the Registry are appointed, subject to Senate confirmation, by the Governor, Auditor of Public Accounts, Attorney General, and Secretary of State in a bipartisan or nonpartisan manner for staggered four-year terms (KRS 121.110).

The duties of the Registry include developing forms for required campaign financial reports, publishing a manual for candidates, slates of candidates for Governor and Lieutenant Governor, and committees describing campaign finance law requirements, preparing and publishing various reports pertaining to receipts and expenditures in campaigns, reviewing financial reports filed by candidates, slates of candidates, and committees for legal compliance, registering committees with the Registry, conducting random audits of receipts and expenditures of local and district campaigns, auditing receipts and expenditures of campaigns for all statewide offices, initiating investigations of possible infractions of campaign finance laws, and referring knowing violations of election finance laws to the Attorney General or local prosecutor for civil or criminal prosecution while reserving the right to petition the court to enable the Registry's attorney to prosecute if the Attorney General or local prosecutor does not

proceed with the prosecution in a timely manner (KRS 15.243, 119.305, 121.110, 121.120, 121.140, 121.170, and 121.180).

The Public Financing Act of 1992, codified as KRS Chapter 121A, provides that all policy and enforcement decisions concerning the regulation of campaign finance are the ultimate responsibility of the Registry. The Act created an election campaign fund in the State Treasury from which funds may be paid only upon warrants issued by the Registry. The Registry distributes transfers for the two-for-one matching of qualifying contributions to qualifying slates of candidates for Governor and Lieutenant Governor that have agreed to limit their spending to \$1.8 million per election and reports to the General Assembly within three months following an election for Governor and Lieutenant Governor the total amount of fund transfers paid from the election campaign fund. In general, a slate of candidates for Governor and Lieutenant Governor that has agreed to abide by the spending limit qualifies for matching public funding when it raises from \$300,000 to \$600,000 in qualifying contributions of \$1,000 or less per person, political action committee, executive committee of a political party, or contributing organization, so long as at least one other opposing slate has also reached the minimum qualifying threshold in contributions received. The Registry preserves all receipted bills and accounts for six years and conducts an audit of contributions to and campaign expenditures by any campaign committee of each slate of candidates (KRS Chapter 121A generally).

The Registry may appoint an executive director and other employees and may issue advisory opinions. The Registry must conduct a public hearing within three days after it receives a report that a slate of candidates has, or may have, received contributions or made expenditures in excess of the spending limit.

## NOTES

<sup>1</sup> Patricia Watlington, *The Partisan Spirit: Kentucky Politics 1779-1792* (Atheneum, New York: McClelland and Stewart, Ltd., 1972).

<sup>2</sup> Thomas D. Clark, *A History of Kentucky* (Lexington: John Bradford Press, 1960), pp. 146-154.

<sup>3</sup> Steven A. Channing, *Kentucky: A History (The State and The Nation Series)*, (New York: W. W. Norton and Co., Inc., 1977), Chapter 3.

<sup>4</sup> Jasper B. Shannon and Ruth McQuawn, *Presidential Politics in Kentucky 1824-1948* (Lexington: University of Kentucky Bureau of Government Research, 1950). There is also a discussion in Malcolm E. Jewell and Everett W. Cunningham, *Kentucky Politics* (Lexington: University Press of Kentucky, 1968), Chapter 1.

<sup>5</sup> Robert Sexton, "Kentucky Politics and Society 1919-1932," Ph.D. thesis, University of Washington, 1970.

<sup>6</sup> J. Allen Singleton, "Population and Politics," Geography Section (Louisville: Kentucky Academy of Science, 1976).

<sup>7</sup> *2000 Census*, U.S. Department of Commerce, Bureau of the Census.

<sup>8</sup> U.S. Department of Commerce, Bureau of the Census.

<sup>9</sup> U.S. Department of Commerce, Bureau of the Census.

<sup>10</sup> *Dunn v. Blumstein*, 92 S. Ct. 995 (1972).

<sup>11</sup> Associated Press, "Conference Endorses 'Super Tuesday' in 1992," *Louisville Courier-Journal*, 26 March 1990.

<sup>12</sup> Official Primary and General Election Returns for 2000, Office of the Secretary of State, Frankfort, Kentucky.

<sup>13</sup> There is no recent extensive study of political parties in Kentucky.

<sup>14</sup> All voter turnout percentages are from official reports by the Kentucky State Board of Elections, Frankfort, Kentucky.

## **CHAPTER V THE GENERAL ASSEMBLY**

In every state and at the federal level as well, the legislative branch of government is one of three coordinate branches. In Kentucky, this branch is officially designated the General Assembly. The Constitution of Kentucky states that “The Legislative powers shall be vested in a House of Representatives and a Senate, which, together, shall be styled the ‘General Assembly of the Commonwealth of Kentucky.’” (Section 29).

The legislatures of forty-nine of the fifty states are bicameral, or composed of two chambers, an upper chamber, generally called the “Senate”, and a lower chamber, most commonly called the “House of Representatives.” The state of Nebraska and the territories of Guam and the Virgin Islands have a unicameral, or single-chamber, legislature whose members are called Senators.<sup>1</sup>

House members in Alabama, Louisiana, Maryland, Mississippi, North Dakota and in the Commonwealth of Puerto Rico have terms of four years. In the remaining states, including Kentucky, House members are elected for two-year terms. State senators usually serve four-year terms; however, senators have two-year terms in the states of Arizona, Connecticut, Georgia, Idaho, Maine, Massachusetts, New Hampshire, New York, North Carolina, Rhode Island, South Dakota, and Vermont. Senate terms in Illinois and New Jersey are a combination of two and four years.<sup>2</sup> In Kentucky, the four-year Senate terms are staggered so that one half of the senators are elected every two years.

Beginning in the early 1990’s, enactment of term limits on state legislators, generally by popular initiative and referendum, occurred in a number of states. As of September 2002, the number of states limiting state legislators’ terms stood at seventeen.<sup>3</sup>

There are one hundred members of the Kentucky House of Representatives and thirty-eight members of the Kentucky Senate. The largest of the fifty states’ lower chambers is New Hampshire’s House of Representatives, which has 400 members, while the smallest is Alaska’s forty-member House. The states’ senates range in size from Alaska’s twenty members to Minnesota’s sixty-seven.<sup>4</sup>

### **Legislative Districts**

Section 32 of the Kentucky Constitution requires that House and Senate members be elected from single-member districts. The framers of the 1891 Constitution provided that the legislative districts would be as nearly equal in population as possible without dividing any county, except where a county contained more than one district, and without combining more than two counties to make a representative district. Less than two decades later, Kentucky’s highest court held that “more than two counties may be joined in one district, provided it be necessary to effectuate the equality of representative which the spirit of the whole section so imperatively demands.”<sup>5</sup>

Section 33 of the Constitution further requires the General Assembly to redistrict the one hundred representative districts and thirty-eight state senatorial districts every ten years. Prior to 1963, the only valid statewide redistrictings under the 1891 Constitution took place in 1891-3, 1918, and 1942.<sup>6</sup> Due to the failure to redistrict on a regular basis as the population changed, significant inequalities in representation existed in Kentucky and other states in 1962, when, in Baker v. Carr,<sup>7</sup> the United State Supreme Court

determined that the federal courts had jurisdiction over redistricting matters. In Kentucky in 1962, the population of Senate districts ranged from 45,122 to 131,906. The smallest House district had a population of 11,364, and the largest contained 67,789 people.<sup>8</sup>

The *Baker v. Carr* decision triggered litigation that led to a series of further federal court rulings in the 1960's establishing the principle of "one person, one vote," or equal representation based upon population as a key, U.S. Constitution-based standard for state legislative redistricting. In the wake of *Baker v. Carr* many states, including Kentucky, began redistricting activities.

A special session of the General Assembly which convened in January 1963 passed a redistricting plan which reduced the inequality of population among the state legislative districts. However, the act was based on (1) observing the state constitutional mandate against splitting counties "except where a county contains more than one district" and (2) leaving existing districts as they were unless the deviation from the average district population would be too great. As a result, the population of state senatorial districts ranged from 62,810 (the Lexington city part of Fayette County) to 120,700 (all of Kenton County); and state representative districts ranged from 20,821 (two Floyd County districts) to 40,480 (a Jefferson County district).<sup>9</sup>

By the time the 1970 U.S. Census of Population was completed, federal courts had become increasingly strict in the interpretation of the "one person, one vote" doctrine. In a 1971 special session, the General Assembly enacted a House redistricting plan which split 20 counties and had deviations from the ideal (or average) population ranging from 12.8 percent above to 12.7 percent below the ideal. The Senate redistricting plan split two counties and had deviations ranging from 12 percent above to 7 percent below the ideal senatorial district population. The 1971 redistricting act was challenged in U.S. District Court. On July 26, the court, in an unpublished decision, ruled that the deviations were unjustified. The opinion indicated that deviations from the ideal greater than three percent would not be permitted; and it declared the county-splitting prohibition of Kentucky Constitution Section 33 void to the extent that it prevented meeting the federal population equality standard.<sup>10</sup> In 1972 regular and special sessions, the General Assembly enacted redistricting plans that split additional counties and achieved the under-three-percent deviation standard.

Kentucky legislative districts have been redistricted five times since 1972, in the 1982 Regular Session, 1991 and 1995 special sessions, the 1996 Regular Session, and the 2002 Regular Session. The 1982 redistricting plan was implemented without incident, but the 1991 plan was successfully challenged in the state court system on the basis that it violated the prohibition in Kentucky Constitution Section 33 against dividing a county to form a legislative district except where there may be more than one district in the county. In a series of decisions in 1994-97, the Kentucky Supreme Court invalidated the 1991 and 1995 redistricting plans and held that Section 33 requires the General Assembly to "make full use of the maximum constitutional population variation set forth herein [5% above or below the ideal or average population] and divide the fewest possible number of counties."<sup>11</sup>

The 2002 state legislative redistricting plans became law on January 31, 2002. The Senate district plan split three counties and its districts range from 4.78 percent below the ideal population of 106,362 to 4.75 percent above the ideal. The House district plan splits 27 counties and its districts range from 4.94 percent below the ideal population



of 40,418 to 5.06% above the ideal. As of this writing, one challenge to the 2002 House redistricting plan's splitting of Bullitt County among four districts was filed in the Bullitt Circuit Court and subsequently moved to the Franklin Circuit Court.<sup>12</sup> The 2002 primary elections were held in the new districts; and no action occurred to prevent their use in the 2002 general election.

### **Constitutional Restrictions**

The 1891 Kentucky Constitution placed a number of restrictions of various types on the state legislature. Among the most rigid and perhaps the most important limitations were those imposed on the length and frequency of legislative sessions. The Constitution of 1891 provided for biennial sessions of the General Assembly with a maximum length of sixty days, excluding Sundays and legal holidays. A further restriction permits only the Governor to call a special or extraordinary session and determine the subject matter that may be considered during a special session.

In 1979, the voters of the Commonwealth approved two amendments to Sections 36 and 42 of the Constitution affecting legislative sessions. One added to the list of days excluded from the sixty legislative day limit, "...any day on which neither House meets," and provided that no regular session could last beyond April 15. The other required the General Assembly to meet in January in odd-numbered years for not more than ten legislative days for the "...purposes of electing legislative leaders, adopting rules of procedure and the organizing of committees."

The effect of the first amendment was to give the General Assembly the opportunity to create a ten-day "veto period" during which it is temporarily adjourned for the Governor's action on legislation already passed by the legislature. After the veto period, the General Assembly can reconvene to consider bills vetoed by the Governor and override the veto with the approval of a majority of the members elected to each chamber (Constitution Section 88). The second amendment, coupled with legislative elections in even-numbered years, also the result of a 1979 constitutional amendment, gave new and veteran legislators alike a full year to become acquainted with current issues before being required to cast votes in regular session.

In November 2000, the voters again approved a constitutional amendment to Sections 36 and 42 substituting an odd-year regular session of thirty days for the ten-day organizational session. The odd-year session begins in January for the purposes of organizing and introducing bills. Once organized, the General Assembly adjourns until the second Tuesday in February when it reconvenes for the remainder of the thirty days it is permitted to meet. The session must end by March 30. In an odd-year regular session, no bill raising revenue or appropriating funds can become law unless it is agreed to by three-fifths of all the members elected to each chamber.

The mandatory sixty-day and thirty-day limits for regular sessions coupled with early Spring deadlines for their final adjournment, makes it difficult for legislators to have time to study every bill. Because of the time limitation, the Senate and House of Representatives rely on standing committees to screen legislation within their jurisdictions and to refer to the floor only those bills the committees find worthy of consideration by the entire chamber.

Committees are able to get a head start on consideration of issues through an interim committee system which convenes under the jurisdiction of the Legislative Research Commission. The interim joint committees are subcommittees of LRC consisting of the members of the House and Senate standing committees of like jurisdiction. Bills scheduled for introduction during the upcoming session may be brought before the interim joint committee at the request of the bill's sponsor through a process called "prefiling" and referral of prefiled bills by the Commission. On reviewing a prefiled bill, an interim joint committee may propose and attach amendments to the bill with the sponsor's consent. This system of review makes more likely the approval of the bill by the respective standing committees during session.

The 1891 Constitution contained 263 sections, approximately 140 of which named the General Assembly, its chambers, or its members. Many of those sections established additional limits on the legislature's powers. For example, the General Assembly may not pass local or special laws concerning a variety of subjects (Sections 59 and 60); it is restricted in its ability to contract debt (Section 49); and it may not release or extinguish any person's or corporation's debt to the state, a county, or a city (Section 52). Other provisions of the Constitution, by regulating a matter in detail, effectively restrict the General Assembly's latitude in dealing with that matter. Examples of detailed constitutional regulation are the twenty-eight sections governing corporations in general and railroads in particular.

### **State Legislative Sessions**

Due to the increasingly complex problems faced by state legislatures, the trend in many states has been to go to annual regular sessions, as Kentucky has done. Only five of the fifty state legislatures, those of Arkansas, Montana, Nevada, North Dakota, and Oregon, now meet only biennially in regular session. Three other states, Minnesota, North Carolina, and Vermont, while constitutionally required to meet biennially, are permitted to divide their regular session to meet every year, and in practice have done so. Of the forty-one states whose Constitution's provide for annual sessions, five place limits on the types of legislation that can be considered in the second year of the biennium.<sup>13</sup>

In twenty states, including Kentucky, the legislature may not call itself into special or extraordinary session. Restrictions on the selection of subjects for legislation, as well as the length of extraordinary sessions, vary greatly among the fifty states. The Kentucky General Assembly is one of fourteen state legislatures that may not determine the subject matter to be considered in a special session at all. Thirty-two states, including Kentucky, have no limitation on the length of an extraordinary session.<sup>14</sup>

### **Prerequisites and Perquisites of Legislators**

Constitution Section 32 establishes the qualifications of members of the General Assembly. It requires a representative to be twenty-four years of age and a citizen of Kentucky at the time of his or her election and to have resided in Kentucky two years, the last year being "in the county, town or city from which he may be chosen." A senator must, at the time of his or her election, be thirty years of age, a citizen of Kentucky, and have "resided in this state six years next preceding his election, and the last year thereof

in the district for which he may be chosen.” Each chamber of the General Assembly has the power to judge the elections, qualifications, and returns of its members (Section 38). Each chamber is also empowered to “determine the rules of its proceedings, punish a member for disorderly behavior, and, with the concurrence of two-thirds, expel a member, but not a second time for the same cause” (Section 39).

The 1891 Constitution established compensation for legislators and provided that it could be changed by law. Effective January 1, 2003, the rank and file members of the General Assembly receive compensation of \$166.34 per day during sessions and on days they attend committee meetings during the interim. Members in leadership positions and committee chairpersons earn additional pay. The highest-ranking members of leadership, the President of the Senate and the Speaker of the House, receive compensation of \$208.20 per day. In addition, all members receive a daily expense allowance of \$93.50 during sessions and when attending meetings. They receive a monthly interim allowance, now set at \$1,580.73, for secretarial assistance and other expenses related to the performance of their duties. The monthly allowance is not paid during sessions. Each session, members receive an allowance for stationery which, in 2003, was \$250 for representatives and \$500 for senators. Finally, members receive a mileage allowance of 36 cents per mile for travel to and from Frankfort for sessions (one trip per week) and interim committee meetings.<sup>15</sup> General Assembly members are also eligible for membership in a state retirement system and receive group health and life insurance coverage.

### **Functions of the Legislature**

The principle function of state legislative bodies is law-making: the introduction, consideration, and enactment of bills which establish, change, or repeal laws; appropriate funds for the operation of the government; or propose constitutional amendments to the voters. The General Assembly also passes joint resolutions, which have the force of law, and concurrent and simple resolutions expressing the will of one or both chambers. The House and Senate also consider and less formally adopt legislative citations to honor persons or organizations.

In the sixty-day 2002 Regular Session, 1,169 bills and 574 resolutions were introduced in the Kentucky General Assembly. Of the 1,169 bills, 314, or 26.86 percent, passed and became law. In the first thirty-day, odd-year regular session held in 2001, 579 bills were introduced of which 128, or 22.11 percent, became law. Interestingly, the advent of annual sessions in Kentucky did not immediately see an increase in the number of new laws. In the 2000 Regular Session, 1,441 bills were introduced of which 479 became law. In the 2001 and 2002 Regular Sessions combined, 1,748 bills were introduced, of which 442 became law.<sup>16</sup>

As can be expected, the work of state legislatures varies greatly, depending upon such factors as the size and population of the individual states and the length of sessions. Comparing bill introductions in the six biennial session states in the 1998-1999 regular sessions, Kentucky, with the shortest regular session of the group, ranked fourth in the number of bills submitted for consideration: 1,369. The geographically largest and most populous of the biennial session states, Texas, had 5,766 bills introduced in its 1999 Regular Session, which was 140 calendar days in duration.<sup>17</sup>

## **Organization of the General Assembly**

To exercise the function of lawmaking, the General Assembly relies on two organizational structures: the committee system and political party organization. In addition, each chamber adopts rules of procedure to govern its deliberations.

The presiding officers of the Senate and the House of Representatives, the President of the Senate and the Speaker of the House are elected by vote of all the members of their respective chambers but are effectively selected by the majority party caucus, as are the President Pro Tempore and the Speaker Pro Tempore who preside in their absence or when they vacate the chair. Other legislative leaders are elected in their respective political party caucuses, consisting of all legislators who are members of the same political party, and include Majority and Minority Floor Leaders, Caucus Chairs, and Whips. The party caucuses also meet throughout the session to discuss issues pending before the Senate or House.

There are three kinds of committees in the General Assembly: (1) procedural, (2) special, and (3) standing. There are three procedural committees in each chamber. The Committee on Committees is composed of chamber and party leaders and supervises the employees of the legislature, appoints members and designates chairmen of committees, and refers bills to committees. The Rules Committee determines which bills are considered on the floor for debate, amendment, and vote and when these deliberations will take place. The Enrollment Committee supervises the preparation of enacted bills for delivery to the Governor.

Special committees are exactly that: committees created for special purposes. Most typical of the special committees is the conference committee which is created to resolve differences between House and Senate versions of the same bill. Another special committee is the committee of the whole. Either house may resolve itself into the "committee of the whole," a mechanism that allows the chamber to debate a measure more informally under committee rules rather than its rules of formal debate on the floor. The committee of the whole takes no final action but makes a recommendation to the chamber which then takes appropriate formal action.

The process of screening proposed legislation for possible floor action is executed through the standing committee system which is set forth in each chamber's rules of procedure. In 2002, there were eleven standing committees in the Senate and sixteen standing committees in the House of Representatives as follows:

<b>Senate Committees</b>	<b>House Committees</b>
Agriculture and Natural Resources	Agriculture and Small Business
Appropriations and Revenue	Appropriations and Revenue
Banking and Insurance	Banking and Insurance
Economic Development, Tourism and Labor	Economic Development
Education	Education
Health and Welfare	Elections, Constitutional Amendments and Intergovernmental Affairs
Judiciary	Health and Welfare
Licensing, Occupations, and Administrative Regulations	Judiciary
State and Local Government	Labor and Industry
Transportation	Licensing and Occupations
Veterans, Military Affairs and Public Protection	Local Government
	Natural Resources and Environment
	Seniors, Military Affairs and Public Safety
	State Government
	Tourism Development and Energy
	Transportation

Under the Senate’s 2002 rules of procedure, each standing committee has no more than twelve members except the Committees on Appropriations and Revenue, Education, and Veterans, Military Affairs and Public Protection. In the House, each standing committee is limited to a maximum of twenty-nine members. A representative shall be appointed to no less than one standing committee nor to more than three committees except the Committees on Appropriations and Revenue, Education, and State Government.

Each standing committee has regularly scheduled meetings during the regular session. As the session progresses, additional special meetings may be called. The meetings are open to the public. In the House, but not the Senate, the committee chairperson normally posts bills for consideration three calendar days in advance of the meeting, although the posting requirement may be waived by the House. The chairperson is not required to post a bill or place it on the committee’s agenda.

In its meetings, the standing committee may take testimony on a bill and can take one of three formal actions on the measure: report the bill with a recommendation for its passage by the full chamber; report it with one or more amendments or a committee substitute bill and with a recommendation for passage as amended; or report it with no expression of opinion.

Under Kentucky’s Constitution, a bill must be “read” on three separate days in each chamber before it is enacted (Section 46). In practice, bills are formally read by number and title alone. The announcement of the standing committee’s recommendation on the bill constitutes its “first reading.” A bill receives its second reading upon its formal

referral from the chamber to the Rules Committee. It is read a third time when it is presented to the chamber for debate and possible passage.

There are various resources through which the public can monitor regular session and interim proceedings. Services provided by the Legislative Research Commission are discussed in Chapter VI. In addition to coverage by newspapers and commercial radio and television stations, the session and interim are extensively covered by Kentucky Educational Television. Beginning with the 1978 Regular Session, KET has carried live coverage of the General Assembly and its activities during each legislative day.

### **Post-Adjournment Powers**

In January 1984, the Supreme Court of Kentucky issued a landmark decision, modified in March 1984, clarifying the authority of the General Assembly and the Legislative Research Commission (LRC) when the legislature is not in session. Styled (for brevity) *LRC v. Brown*,<sup>18</sup> the court's findings were made on appeal from a judgment of the Franklin Circuit Court.

The LRC filed action in circuit court seeking a declaration of rights as to the validity of several statutes granting the LRC "oversight" authority over executive agencies during the interval between sessions of the General Assembly. Prompted by a challenge by the Governor to the constitutionality of several acts passed in the 1982 regular session, the case was billed as a test of the relative powers of the Governor and the General Assembly. The Supreme Court saw it "...as a case which deals with legislative enactments that confer certain powers on the Legislative Research Commission, most of which are designed to be exercised by that body when the General Assembly is adjourned."

The subject matters of the contested statutes included, in general, the following: (1) the power of the LRC to act in the stead of the General Assembly; (2) the power of the Speaker of the House and the President of the Senate to make appointments to and serve as members of certain boards and commissions; (3) the power of the LRC to determine or to approve budget reductions when the General Assembly is adjourned; (4) the power of the LRC to approve the action of the executive in applying for federal "block grants"; (5) the power of the LRC to grant or withhold legal effect from any executive order promulgated by the Governor which reorganizes the administrative structure of the executive branch; and (6) the power of the LRC to delay the legal effect of administrative regulations adopted by the Governor.

The decision by the Supreme Court, affirming in part and reversing in part the findings of the trial court, decreed that: (1) the General Assembly may not delegate its legislative power, including its authority to legislate, to the LRC; (2) the House Speaker and Senate President are prohibited from appointing members to and serving as ex-officio members on nonlegislative boards and commissions, and the Governor may not be required to make appointments to executive boards and commissions solely from lists submitted by the LRC, and the LRC may not make appointments to certain boards and commissions; (3) the General Assembly may require each branch of government to develop, submit and execute plans for reducing expenditures in the event of a revenue shortfall, and an interim committee may review and suspend implementation of interpretations of provisions of appropriation acts by the various branches of government

until the interpretation is amended to conform to that of the committee or the branch notifies the committee of its intention not to agree with the committee and explains its reason for noncompliance; (4) the General Assembly may not delegate to the LRC final approval authority over the content and submission of applications for federal block grants by state agencies; (5) the General Assembly may not empower the LRC to “approve” actions by the Governor to reorganize the executive department before the actions become effective; and (6) the General Assembly may not confer upon the LRC the authority to block, until the next regular session of the legislature, administrative regulations promulgated by the executive branch of government.

*LRC v. Brown* resulted in the judicial repeal of a number of statutes bearing upon the issues decided in the case. By the conclusion of the next regular session of the General Assembly in 1986, several statutes had been rewritten to conform to the court’s decision. Today, *LRC v. Brown* still stands as the standard for judging legislative actions affecting the relationship between the legislative and executive branches of Kentucky’s government.

### **Code of Legislative Ethics**

The current Kentucky Code of Legislative Ethics (KRS 6.601 to 6.849)<sup>19</sup> was enacted in special session in February 1993, replacing the legislative code of ethical behavior enacted in 1976 and the all-legislator Board of Ethics. The code generally establishes standards of conduct for members of the General Assembly; requires financial disclosure statements from legislators, legislative candidates, and certain legislative staff; requires registration of legislative agents (lobbyists) and their employers; requires filing of statements of lobbying expenditures and certain financial transactions by legislative agents and their employers; and creates an independent Legislative Ethics Commission with jurisdiction over legislators, legislative agents, and employers of legislative agents, to administer the code and enforce prescribed civil penalties.

Additional governmental ethics provisions are scattered throughout the statutes. These apply to a broader group of public servants, including legislators, legislative agents, and employers of legislative agents, and include such statutes as KRS 45A.340 of the Model Procurement Code (Conflicts of interest of public officers and employees), KRS Chapter 521 (Bribery and Corrupt Influences), and KRS Chapter 522 (Abuse of Public Office). The *Constitution of Kentucky* also contains ethics provisions for legislators, including such provisions as §39 (Powers of each House as to rules and conduct of members—Contempt—Bribery), §43 (Privileges from arrest and from questioning as to speech or debate), §44 (Ineligibility of members to civil office created or given increased compensation during term), §57 (Member having personal interest to make disclosure and not vote), and §165 (Incompatible offices and employments).

The current Code of Legislative Ethics explains the foundation and purpose of its standards of conduct for legislators by affirming that the proper operation of democratic government requires a public official to be independent and impartial, to not use public office to obtain private benefits, and to avoid an action that creates the appearance of using public office to obtain a benefit. The code also states that a democratic government

requires that government policy and decisions be made through established processes and that the public have confidence in the integrity of its government and public officials.

The Kentucky Legislative Ethics Commission is established as an “independent authority” consisting of nine citizen members appointed by the President of the Senate, the Speaker of the House, and the Legislative Research Commission. A member of the Commission cannot be a public servant, a candidate for any public office, a legislative agent or an employer of a legislative agent, or a spouse or child of any of those individuals; and, for two years prior to his appointment, a member shall not have served as a fundraiser for a candidate for Governor or the General Assembly. Commission members are prohibited from serving as a fundraiser for certain state-wide candidates or a candidate for the General Assembly, contributing to the campaign funds of certain state-wide candidates or candidates for the General Assembly, serving as an officer in a political party, or participating in the operation of a political campaign.

The Commission has jurisdiction over the administration of the code, enforcement of the civil penalties prescribed by the code, and the disposition of complaints filed with the Commission. Other responsibilities of the Commission include rendering advisory opinions; establishing and supervising a program of ethics education; registering legislative agents and their employers; receiving and reviewing the statements of expenditures and reports of financial transactions filed by legislative agents and their employers; and receiving and reviewing the financial disclosure statements filed by members of the General Assembly, candidates for the legislature, and major management personnel of the Legislative Research Commission.

The current code prohibits a legislator from such actions as (1) using influence in any matter which involves a substantial conflict between the legislator’s personal interest and duties in the public interest; (2) using the official position or office to obtain financial gain for himself or herself, family members, or business associates; (3) using the official position to secure privileges for himself or herself or others in direct contravention of the public interest; (4) using public funds, time, or personnel for his or her private gain or that of another; (5) using public funds, time, or personnel for partisan political campaign activity, unless the use is authorized by law; (6) using official legislative stationery to solicit a vote or a contribution for a campaign for election to public office; (7) becoming intoxicated while in the discharge of the duties of office; (8) intentionally disclosing confidential information acquired in the course of official duties to further his or her own economic interest or that of another person; (9) holding with a state agency a non-competitive contract valued at \$100 or more; (10) selling or leasing real property to a state agency; (11) influencing a state agency in direct contravention of the public interest at large; (12) appearing before a state agency for compensation as an expert witness; (13) representing a client, for compensation, in negotiations with a state agency on certain matters; (14) representing the Commonwealth or a state agency for compensation; (15) accepting honoraria for activities related to the position of legislator; (16) knowingly accepting compensation, other than that provided by law, for performance of legislative duties; or (17) serving as a legislative agent (lobbyist). A former legislator is prohibited from employment as a legislative agent, other than for a public agency, for a period of two years following the cessation of service in the General Assembly.



Members of a legislator's family may not be employed in the legislative branch of state government, and a legislator is prohibited from advocating the employment of a family member in the executive branch of government.

A legislator is barred from participating in a discussion in committee or on the floor of the General Assembly on a question in which the legislator, a family member, or a business associate has a significant financial interest. A legislator who has a personal or private interest in a bill before the General Assembly is required to disclose that interest and refrain from voting on it. Incompatible offices provisions prohibit a legislator from serving as an officer or employee of the Commonwealth or any state agency, or as a member of the governing body of any entity which has the statutory authority to levy taxes or to set rates.

Relationships between legislator and legislative agent (lobbyist) are restricted by rules prohibiting a member of the General Assembly, or a candidate for the General Assembly, from accepting a campaign contribution from a legislative agent, or from accepting "anything of value" (defined in KRS 6.611) from a legislative agent or an employer of a legislative agent.

Violations of the code range from ethical misconduct, carrying a civil penalty ranging from a cease and desist order to a fine of \$2000, to a Class D felony, carrying a criminal penalty of one to five years imprisonment in the state penitentiary, or a fine of \$1,000 to \$10,000 if probation is granted. Legislators or former legislators convicted of a felony relating to their duties as a legislator must forfeit retirement benefits earned after September 16, 1993. Criminal violations may be referred by the Legislative Ethics Commission to the Attorney General, county attorney, or Commonwealth's attorney of the appropriate jurisdiction for prosecution. Any person found by the Commission to have violated a provision of the code may appeal the action to the Franklin Circuit Court.

### **Legislative Lobbying**

The code also includes requirements governing the conduct of legislative lobbyists, termed "legislative agents" in the code. A legislative agent is defined as a person who is employed or retained for compensation to lobby as one of his official responsibilities or as a legislative liaison of an association, coalition, or public interest entity formed for the purpose of promoting or otherwise influencing legislation. A private citizen who receives no compensation and who expresses personal opinions, any person limiting lobbying to appearing before public meetings, and a public servant acting in his fiduciary capacity are not legislative agents under the code.

The General Assembly explains its basis for the lobbying provisions of the code by declaring that the operation of open and responsible government requires that the people be given the fullest opportunity to petition their government for the redress of grievances and to express their opinions on executive and legislative action. It also declares that, in order to preserve and maintain the integrity of government, those persons who attempt to influence executive and legislative actions, and the expenditures they use to do so, should be publicly identified and regulated.

Accordingly, legislative agents and their employers are required to register with the Legislative Ethics Commission, providing certain information about themselves, the

entity for which they lobby, the real party in interest if different from the employer, and the bill or action for which they are engaged to lobby. They are also required to file (1) a statement of expenditures, providing information about their lobbying expenses; and (2) a statement of financial transactions, providing information about any financial transaction they have had with or for the benefit of any member of the General Assembly, the Governor, a cabinet secretary, or any staff member of those officials.

The code prohibits certain conduct by legislative agents and their employers. For example, they are prohibited from (1) serving as a fundraiser or campaign treasurer for a legislator or candidate; (2) making a campaign contribution to a legislator, a candidate, or his campaign committee; (3) spending more than \$100 per year on food or beverages for each legislator and his immediate family; (4) knowingly offering or giving anything of value to a legislator, his spouse, or child; (5) going upon the floor of either the Senate or the House while the chamber is in session; or (6) accepting employment to lobby in exchange for compensation that is contingent upon the passage or defeat of legislation.

Penalties for violations of the code range from ethical misconduct to a Class D felony. Provisions are included for resolving any dispute arising between any legislator or legislative staff and an employer or legislative agent regarding an expenditure or financial transaction alleged in a filed statement.

## NOTES

<sup>1</sup> The Council of State Governments, *The Book of the States 2000-01 Edition*, Volume 33 (Lexington, Kentucky, 2000), p. 65.

<sup>2</sup> *Ibid.*, p. 70.

<sup>3</sup> National Conference of State Legislatures, “Term Limited States by Year Enacted and Year of Impact” *NCSL.org 2002*. <http://www.ncsl.org/programs/legman/about/states.htm> (September 13, 2002).

<sup>4</sup> The Council of State Governments, *op. cit.*

<sup>5</sup> *Ragland v. Anderson*, 125 KY. 141 (1907)

<sup>6</sup> Jewell, Malcolm E., “Legislative Reapportionment—The Kentucky Legal Context,” *Kentucky Law Journal*, Volume 51, No. 4 (1963), pp. 726-7.

<sup>7</sup> 369 U.S. 186 (1962).

<sup>8</sup> National Municipal League, *Apportionment in the Nineteen Sixties* (New York, National Municipal League, August, 1967), Part I, p. a

<sup>9</sup> *Ibid.*, pp. Ky 3-7 and Legislative Research Commission, *Kentucky Government*, Seventh Edition, Informational Bulletin No. 96 (1973), p.35.

<sup>10</sup> *Upton v. Begley* (Docket No. 346, Eastern District of Kentucky at Frankfort).

<sup>11</sup> *Fischer v. State Board of Elections*, Ky., 879 S.W. 2d 475 (1994); *Fischer v. State Board of Elections*, Ky., 910 S.W. 2d 245; and *Jensen v. Kentucky State Board of Elections*, Ky., 959 S.W. 2d 771 (1997).

<sup>12</sup> *J. Scott Wantland, et. al. v. Ky. State Board of Elections and Secretary of State*, Franklin Circuit Court, Case No. 02-CI-569.

<sup>13</sup> The Council of State Governments, pp. 66-69.

<sup>14</sup> *Ibid.*

<sup>15</sup> Data provided by Legislative Research Commission Business Office, September 12, 2002.

<sup>16</sup> Legislative Research Commission, *Legislative Record*, Volume 26, No. 69, 2002 Regular Session (April 30, 2002) p. 1.

<sup>17</sup> The Council of State Governments, pp. 108-9.

<sup>18</sup> *The Legislative Research Commission, by and through Joseph W. Prather, Senator, and Bobby H. Richardson, Representative, Kentucky General Assembly, individually and as Co-Chairmen of the Legislative Research Commission, Appellants, v. John Y. Brown, Jr., Governor, Commonwealth of Kentucky, and Steven L. Beshear, Attorney General, Commonwealth of Kentucky, Appellees*, Ky., 665 S.W. 2d 907.

<sup>19</sup> The full text of cited provisions of the Kentucky Revised Statutes and the *Constitution of Kentucky* can be found on the web site of the Kentucky Legislature, <http://www.lrc.state.ky.us>.



## **CHAPTER VI LEGISLATIVE SERVICES**

Although the state legislative branches in our system of democratic government are closer to the will of the people than the executive and judicial branches, it is apparent that this has not always been the case. Early state constitutions characteristically gave great power to the legislative branch of government. The people in the early American colonies feared and resented the dictatorial powers of the British crown and such feelings translated into restrictions on the executive branch of government in the framing of the new state constitutions.

The citizens of the new United States appeared to recognize the state legislature as the most direct representation of the people's will in government, even though legislators generally represent smaller areas, both in geography and population, than the Governor or other statewide elected officials. Yet most citizens considered their state senator or representative to be only a part-time official. The limited sessions and scant compensations directed by many state constitutions resulted in most legislators' having to earn a livelihood through some other profession, trade, or business.

On the other hand, most of their constituents have always felt free to call upon their elected representatives for political services, favors, and advice pertaining to lawmaking and legal procedures at any time during their terms of office. In effect, the average state legislator in most districts is truly a "public servant," subject to demands upon his time from his constituents far beyond the remuneration he or she receives from "per diem" (per day compensation) provided in most constitutions. This was not a great handicap in the early history of this country, especially in rural districts with a small population and in a relatively simple agrarian economy. But the work of legislators became increasingly complex and difficult after the Civil War and the Industrial Revolution. As states became more industrialized, commerce boomed and big business corporations, particularly railroads, increased their influence, and the job of the state legislator became more demanding.

In contrast to the state legislators, able to devote only part of their time to public affairs, because of low salaries and the need for other means of livelihood, Governors had the benefit of administrative and professional staffs of ever increasing size and specialization. Consequently, the relative power and prestige of the chief executives became greater. It gradually became obvious that state legislators needed services not envisioned by the framers of those constitutions near the turn of the century.

Actually some forms of legislative service have always existed. The offices of clerk and secretary are the oldest of legislative staff positions. Such officials perform certain formal functions in the passage of law, including roll calls, reading of the bills, enrolling and engrossing of bills, and even serving at times as parliamentarians. Usually clerks and secretaries were formally elected by their respective legislative bodies. In many instances these positions were full-time only during and immediately following the session until the completion of the legislative journals and the publication of the new laws. Most were partisan selections by the majority party or through appointment tied to the tenure of a particular leader.

It should also be pointed out that the latter part of the 19<sup>th</sup> century also saw the rise of the Populist and Greenback political parties, which, in general, opposed the growing economic and political power of industry. During this period, many states, through constitutional revision, limited the activity of state government, endeavoring to reserve as much authority as possible for the people, with the hope of curbing the power of corporate industry.

That Kentucky was no exception to this trend is indicated by the limiting provisions of the Constitutional Convention of 1891. The unfortunate effect of such restrictions was that the performance of legislative functions in an increasingly complex society became even more difficult. The beginning of the 20<sup>th</sup> century saw a change, and the pendulum began to swing in the opposite direction.

### **Emergence of Legislative Services**

Recognizing the importance of sound legislation to deal with the complicated problems of this age, states began in this century to provide information and services that would assist state legislators in performing their constitutional duties. Some states recognized that legislators needed to have some reliable source of information and facts before attempting to solve the many problems they faced.

The oldest form of these services is that usually referred to as legislative reference. This type of assistance to legislators consists of specialized library collections and perhaps the preparation of brief, factual reports on a variety of subjects for the members. New York and Massachusetts formed special legislative reference units in their respective state libraries before the turn of the century. During a session, one or more librarians were designated not only to develop the special collections but also to serve as reference librarians for legislators. The state of Wisconsin, in 1901, established the first permanent agency providing such services to legislators by creating a separate legislative reference library. Today legislative reference services are provided in all states, although the structural organization or agency providing these services varies from state to state.

Legislators also found early in the century that they needed some specialized and technical assistance in bill drafting. The bill drafting manual of Kentucky's legislative service agency points out that:

The legislative power of the Commonwealth is vested in the General Assembly, which has the exclusive power to create, amend and repeal statutes. The quality of the legislative product depends not only upon the substance of laws, but upon their form and style. Inaccurate or careless drafting may produce bad laws, or even invalidate a measure entirely. It is essential to legislators, administrators, courts, and to the public that bills and resolutions be written in clear, correct, and unambiguous style.<sup>1</sup>

Not only is the bill drafting function important to legislators, but the proper codification of these laws after enactment is essential to all branches of government and to the legal profession. Over the years, with each new legislative session, old laws have

been amended or repealed and new laws have changed certain parts of old laws. Necessary to this process is the research of many volumes of legislative acts, in order to prevent statutory inconsistencies or conflicts. Legal research can be time consuming and bewildering for attorneys, government officials and lay people as well. Today forty-nine states have an official agency responsible for statute revision. Although Delaware has no official agency performing this function, the revision of statutes and codification of the laws is performed by private individuals under contract to the company selected for publication of the Delaware state laws. In the same year in which its Legislative Reference Library was created, incidentally, the state of Wisconsin also established the first position of “reviser of statutes” on a permanent basis. The present century has also seen the inauguration of a number of small but important legislative services by legislative reference agencies and bill drafting staffs translating legislative decisions into proper statutory language; codification programs have made the body of the law more accessible and more manageable.

As the twentieth century has progressed, however, modern conditions have posed questions of such magnitude that legislators meeting briefly for either annual or biennial sessions, have found that the existing services were inadequate. The number of bills introduced, as well as those enacted, have increased greatly during this period of time. Under these conditions, legislators in various states became convinced of the need for a continuing review of legislative problems during the periods between legislative sessions, and for a staff of competent professions to conduct such review. In 1933 the legislature of the state of Kansas established the first agency known as a legislative council. Essentially such agencies are permanent, bipartisan, legislative committees which meet regularly between sessions, considering a variety of legislative problems and developing possible or alternative solutions. The so-called “legislative council movement” caught on rapidly following the lead of Kansas. Kentucky created a legislative council in 1936, as part of the State Government Reorganization Act of that year. Virginia created an “Advisory Legislative Council” that same year. Oklahoma and Rhode Island did the same in 1939. Most states now have such agencies, although functions and names vary.

### **The Legislative Council**

The original Legislative Council (1936) in the Commonwealth of Kentucky was composed of fifteen members, including five representatives appointed by the Speaker of the House, and five administrative officials appointed by the Governor. All of the provisions necessary for the establishment of an effective legislative research agency were included in the legislation creating the Council. There was, however, some criticism at the time that the council was dominated by the appointees of the Governor from their powerful executive positions. These department heads had large staffs which could be relied upon to provide much information to the council members and the General Assembly.

On the other hand, the actual staff of the Council was very small and, as time passed, insufficient appropriations, the lack of a full-time director and staff, and the conflict between the executive appointees and legislative members, all hindered the effectiveness of the Council. This was particularly the case during the period from 1943

to 1947, when a Republican Governor was responsible for naming five members representing the executive branch while the Democratic party had the majority in the General Assembly. In fact, the Kentucky Legislative Council was never very effective and became especially ineffective during and after World War II, although some legislators<sup>2</sup> were endeavoring to repeal the original law and enact new legislation to provide a strong, effective legislative service agency. The legislators were generally cognizant and quite critical of the fact that they were largely dependent upon Council members appointed from the executive branch to provide much of the factual data that they believed should come from a non-partisan staff or agency.

### **Emergence of the LRC**

The basic ineffectiveness of the Legislative Council's inadequate staff, the lack of sufficient financial support, and other conflicts made the time conducive to a change in concept, especially should a Governor be elected with a view point like that of most Kentucky legislators. This alignment occurred with the election of Earl C. Clements in November 1947. Governor Clements had previously served as majority leader of the Kentucky Senate and had also represented his district in Congress. He recognized the need of the General Assembly for objective information provided by a non-partisan, specialized staff, selected and controlled by the legislative branch of government. Prior to his inauguration in December he sent a personal emissary (who later became the first Director of the LRC) to the Council of State Governments (then located in Chicago) to study the objectives, structure, and organization of legislative service agencies and to determine which agencies might serve as models.

On the basis of this study and the laws creating the state legislative service agencies, and upon input from experienced leaders of the Kentucky General Assembly, a bill drafted for introduction in the 1948 Regular Session included most of the best provisions from the legislative council acts of Kansas, Missouri, and Illinois. This bill repealed the 1936 act which originally created the Kentucky Council, enacted an entirely new law to become effective September 1, 1948, established an ex officio Legislative Research Commission of seven members, appropriated sufficient funds for the biennium to make the agency independent of financial support from the executive branch, broadened the concept, and expanded the scope and type of services of the new agency.

The designated seven ex officio members of the Commission included the Governor as chair (or he could name the Lieutenant Governor, constitutionally the President and presiding officer of the Senate, to serve as chair), the President Pro Tempore of the Senate, the Speaker of the House, and the majority and minority leaders of both the House and the Senate. The question of the propriety of a Governor or Lieutenant Governor, elected to the executive branch, serving as chair of the newly created commission was discussed. Several competent attorneys, well versed in constitutional law, and also leaders in the General Assembly, maintained that, under the Kentucky Constitution, this was a necessary provision, if the commission were to operate legally in the interim between sessions. The Constitution provides that the General Assembly, upon adjournment after sixty legislative days, no longer functions as a legislative body, unless called into extraordinary session by the Governor. It therefore



appeared that a joint interim legislative committee, convening to transact legislative business, might have questionable legality, particularly if paid per diem and travel expenses, without some direct joint effort with the executive branch, which had no such calendar limitations.

Following the first session of the newly created Legislative Research Commission, which took place on September 1, 1948, the day the new law became effective, Governor Clements designated the Lieutenant Governor (at that time Lawrence Wetherby) to chair the new agency. The Commission appointed a director and began to employ the necessary staff people to provide a new era of legislative services in Kentucky. Meetings of the commission were to be called by the chair or on written request of any three members. For attending meetings members received their necessary and legal travel expenses plus the legal *per diem* permitted under law for legislative service during a session.

Stipulations regarding membership, size and organization have changed over the years. Today, the commission consists of sixteen members, comprised of eight Senate and eight House members, all *ex officio*. The Senate delegation consists of the President and President Pro Tempore and the majority and minority floor leaders, caucus chair and whips. The House membership includes the Speaker and Speaker Pro Tempore, and the majority and minority floor leaders, caucus chair and whips. The lieutenant Governor is no longer a member and the chair is jointly shared by the President of the Senate and the Speaker of the House.

Although the act of 1948 has been amended from time to time, usually in the direction of expanding the services and composition of the Legislative Research Commission, the services provided are essentially as described below.

### **Legislative Publications**

The commission is responsible for editing and publishing the journals of the two houses and the legislative acts after each session of the General Assembly. The staff also prepares indices to these publications to facilitate their use.

During each session, the commission prepares and publishes a daily record of the action of the General Assembly. This publication, known as the *Legislative Record*,<sup>3</sup> is available to all members prior to convening each legislative day and reflects the status of all bills which have been introduced.

### **Legislative Research**

The Commission is directed by law to make investigations into legislation, governmental agencies and institutions, and matters of public policy that will aid the General Assembly in performing its duties in the most efficient and economical manner. It may also undertake research on its own initiative.

In accordance with this mandate, the Commission is authorized access to the records of all state agencies or institutions, or any private agency or institution which has been the recipient of public funds, with subpoena power if necessary.

During an interim, the staff may conduct 15 or more major research assignments, in addition to providing spot research as requested by interim and standing committees of the General Assembly, individual legislators, other state agencies, and the public.

### **Reference Library**

The Commission maintains a reference library in the basement of the Capitol Annex. The library serves as a repository of documents and publications relating to the General Assembly and interim committee activity. In addition, there is a collection of general reference books and public affairs publications. The library has computer online searching capability and an active interlibrary loan program. LRC library holdings and services are available to legislators and support the research and ongoing committee work of LRC staff.

### **Statute Revision**

The Legislative Research Commission is responsible for executing plans and methods for the codification and correction of the Kentucky Revised Statutes.

### **Bill Drafting and Prefiling**

The Legislative Research Commission affords to any member of the General Assembly or any committee of either house the information and assistance necessary in the preparation of bills, memorials, resolutions, amendments, alterations and changes thereto, and revisions and substitutes proposed to be introduced in the General Assembly. Further, the Commission advises and assists the members of the General Assembly in the preparation and revision of legislation and related matters. Legislators may make a request through the Director of the Legislative Research Commission for assistance in bill drafting at any time. A staff person is assigned to work on a particular draft and will confer with the sponsor to be sure the draft accomplishes what the sponsor intends. All bill draft requests are confidential, and staff will work with parties other than the sponsor only at the specific direction of the sponsor.

Members are authorized to prefile with the Legislative Research Commission bills and resolutions for an ensuing session. The Commission receives these, assigns numbers in sequence, refers them to the appropriate interim joint committee, and arranges for immediate printing and distribution to the members and the public. These prefiled bills are then introduced on the first legislative day of the next regular session.

### **Administrative Regulations**

Each state administrative body exercising its prerogative to adopt or amend regulations implementing its legally assigned functions must submit to the Legislative Research Commission the original and five copies of each proposed regulation. Administrative regulations must comply with drafting standards, deadlines, notice, and other requirements imposed by KRS Chapter 13A. All regulations, except those of an emergency nature, become effective after review by the Administrative Regulations Review Subcommittee and upon adjournment of a subsequently assigned interim joint committee, which may also conduct a review. Emergency regulations become effective upon filing with the LRC and expire 170 days after publication in the Administrative Register of Kentucky, or when the same matter filed as an ordinary administrative regulation is adopted, whichever comes first.

Each month, the LRC compiles, prints, and distributes administrative regulations (filed by the 15th of the previous month) in the Administrative Register of Kentucky, offered on a subscription basis. Annually, the LRC compiles, prints, and distributes the

Kentucky Administrative Regulations Service. The Service constitutes the official state publication of administrative regulations and contains all administrative regulations filed with the Commission.

### **Budget Review**

The Legislative Research Commission has assumed its budget review function as a method of providing the Committee on Appropriations and Revenue adequate knowledge of budget matters pertaining to all agencies of state government. Each branch is required by law to submit to the Commission an annual Program and Financial Report, indicating actual budgetary operations and accomplishment of activities and services in comparison with enacted budgets and planned program services.

During the interim, when an agency proposes and the State Budget Director recommends the expenditure of funds in excess of the appropriated amounts in the state/executive budget bill, the Committee on Appropriations and Revenue must review and act upon the proposed revision for conformity with the purposes of the enacted budget, other statutes, and legislative intent. If the Committee objects, the revised appropriation is not implemented, unless the State Budget Director declines to comply with the objection for a stated reason. In addition, the Committee receives information regarding budget adjustments within appropriation levels. The Committee has the statutory responsibility to review and act upon branch interpretations of provisions in the biennial budget bills.

LRC has the statutory duty to prescribe uniform forms and instructions to be used by all agencies in developing their budget estimates and requests. Additionally, the Commission receives copies of agency budget requests as they are submitted to designated officials in each branch prior to each legislative session. Coupled with the budget reports, this information enables the budget review staff and the Committee on Appropriations and Revenue to prepare for the introduction of the branch biennial budgets and give them detailed and enlightened study following their receipt by the General Assembly.

### **Education Accountability**

The Office of Education Accountability, under the direction of the Legislative Research Commission and as advised and directed by the Education Assessment and Accountability Review Subcommittee (EAARS), was established by the 1990 General Assembly's passage of the Education Reform Act. The Office is charged with the responsibility of reviewing the state's system of school finance; verifying the accuracy of school district and state performance; and investigating unresolved allegations of wrongdoing at the state, regional, or district level. In addition, with the approval of EAARS, staff are to conduct studies and analyze available data on the efficiency of the system of schools, to determine whether progress is being made toward attaining the goal of providing students with the seven capacities required by KRS 158.645. The Office of Education Accountability reports periodically to EAARS and the Legislative Research Commission, as may be directed by either, and reports annually on the implementation of the Kentucky Education Reform Act. Upon approval of EAARS, the annual report is forwarded to the Governor, the Legislative Research Commission, and the Kentucky Board of Education.

The Office has access to all public records and information on testimony given under oath and otherwise confidential records, meetings, and hearings regarding local school district personnel matters. The Office shall not disclose any information contained in or derived from these records that would permit the discovery of the identification of any individual who is the focus or subject of a personnel matter. Any state agency receiving a complaint or information which may identify a violation of the Education Reform Act is to notify the Office.

The Office maintains Education Hotlines to receive public comments and suggested improvements from teachers, parents, administrators, and citizens. Staff are also available to answer questions regarding the Education Reform Act or refer individuals to the appropriate contact in the Department of Education.

### **Capital Projects and Bond Oversight**

The Capital Projects and Bond Oversight Committee is a permanent subcommittee of the Legislative Research Commission, charged with overseeing (1) the expenditure of funds budgeted for capital projects; (2) the allotment of funds from the emergency repair, maintenance and replacement account and the capital construction and equipment purchase contingency account; (3) the state's acquisition of capital assets, including the lease of real property; and (4) the issuance of bonds or notes by the Commonwealth, and the related individual projects.

After capital projects are authorized by the General Assembly, the Committee reviews those projects for which modifications are necessitated by circumstances unforeseen at the time the projects were authorized. The Committee reviews allotments from the emergency account to finance the cost of equipment purchases and capital construction projects that result from disasters, unanticipated deterioration, mechanical or electrical breakdown, or structural defects, and which are needed to maintain government operations. Allotments from the contingency account to fund cost overruns for approved projects, feasibility studies, and audits of the capital projects program must be approved by the Committee prior to the allotment of the funds.

The Finance and Administration Cabinet is required to report to the Committee all new state real property leases with an annual cost of \$200,000 or more. Modifications in any amount to existing leases must also be reported to the Committee.

Every state agency authorized to issue bonds, except the Turnpike Authority, and every local school district must, prior to the issuance of any bonds, submit information about the proposed bond issue to the Committee for its review and/or recommendation.

The Committee also reviews development projects funded with proceeds of state bond issues. Such development projects include (1) local drinking water and wastewater infrastructure projects; and (2) economic development bond-funded projects approved for state loans or grants which have line-item authorization or are approved for funding from the authorized development bond pool.

### **Capital Planning Advisory Board**

The Capital Planning Advisory Board of the General Assembly is charged with the responsibility of developing in each biennium a comprehensive statewide six-year capital improvements plan. The capital needs of all state agencies and universities, including construction, maintenance and renovation projects, major items of equipment,

and real property leases, are identified in biennial capital planning submissions to the Board. The Board reviews these submissions, conducts hearings to receive input from agency and university representatives and the public, and considers the cross-cutting capital issues of the Commonwealth, such as space needs and a statewide communications network. The Board then develops its statewide capital improvements plan for submission to the three branch heads, as statutorily required, by November 1 of odd-numbered years. The Board's statewide capital improvements plan includes recommendations of projects to be undertaken or continued in the six-year planning period, as well as recommendations as to priority and means of funding such capital projects.

The Board was created by the 1990 General Assembly and is composed of 15 members, with five members appointed by the head of each of the three branches of state government. The Board is statutorily defined as an entity of the General Assembly, and the staff and administrative costs of the Board are financed by the Legislative Research Commission.

### **Government Contract Review**

State agencies and state universities proposing to negotiate personal service contracts are required to transmit copies of such contracts and documentation in support thereof to the Government Contract Review Subcommittee of the Legislative Research Commission. The Subcommittee reviews the contracts and may lodge any objection it has with the negotiating agency or university. The agency or university may comply with the objection or may propose no such complying action. If the agency or university chooses not to comply, the particular contract is disapproved and sent to the Secretary of the Finance and Administration Cabinet or, where applicable, the president of the university. The Secretary or university president may override the Subcommittee's objection and allow the contract to remain in effect, or uphold the Subcommittee's position and cancel the contract. The 1998 General Assembly expanded the scope of the committee to include nine categories of contracts, agreements, and amendments.

### **Program Review and Investigations**

The Legislative Program Review and Investigations Committee is a permanent statutory committee of the General Assembly with staff and support services provided by the Legislative Research Commission. This committee studies the agencies, programs, and activities of state government as to their effectiveness, efficiency, cost, and compliance with legislative intent. It reports its findings and recommendations as a result of such studies to the agency involved, the Governor, and the General Assembly. The Committee's reports may relate to whether an agency is carrying out activities and programs as directed or authorized by the General Assembly, whether it is doing so efficiently and effectively, and whether any change or reorganization is necessary to accomplish legislative intent in establishing a particular program.

### **Education Assessment and Accountability Review Subcommittee**

Pursuant to House Bill 53 enacted by the 1998 General Assembly, the Education Assessment and Accountability Review Subcommittee is empowered to review administrative regulations and advise the Kentucky Board of Education concerning the

implementation of the state system of assessment and accountability. House Concurrent Resolution 88, passed by the 2000 General Assembly, directs the subcommittee to study the issues of promotion to higher grades and the remediation rates of students entering postsecondary educational institutions. The subcommittee also advises and monitors the Office of Education Accountability.

#### **Medicaid Managed Care Oversight Advisory Committee**

Pursuant to 1998 House Bill 785, the Medicaid Managed Care Oversight Advisory Committee is directed to meet at least four times annually to monitor the implementation of Medicaid Managed Care within the Commonwealth. The Committee's jurisdiction includes access to services, utilization of services, quality of services, and cost containment.

#### **Tobacco Settlement Agreement Fund Oversight Committee**

Pursuant to House Bill 611 enacted by the 2000 General Assembly, the Tobacco Settlement Agreement Fund Oversight Committee is required to review each project being submitted to the Agricultural Development Board for funding from the Tobacco Settlement Fund. The Committee also is charged with the duty to provide findings and determinations to the Legislative Research Commission, as well as to issue an annual report.

#### **Legislative Lookout**

Legislative Lookout is a monthly Legislative Research Commission publication aimed at alerting legislators to new or emerging public and international issues and to innovative approaches to problem-solving, chiefly in other states and nations. The purpose is to identify potential problems before they become crises and to focus on opportunities before the best time to seize them has passed. Items in the publication are gleaned by participating staff members from many sources, chiefly governmental, trade, technical, business, and general-interest publications. The items are condensed for quick and easy reading, but the complete articles are kept on file for the benefit of those who may want more information.

#### **Long-Term Policy Research Center**

The Long-Term Policy Research Center was created by the 1992 General Assembly and is attached to the legislative branch for administrative purposes. The Center is not under the jurisdiction of LRC, but has its own 21-member governing board. The board is comprised of representatives from both the executive and legislative branches, as well as from universities, local governments, and the private and civic sectors. The Center was established to help incorporate a longer range perspective in government decision-making in order to provide as much lead time as possible in addressing issues, enhance the ability to devise long-term rather than short-term solutions to problems, and promote continuity in policy. The Center is directed to conduct studies of trends, prepare reports on emerging issues and issues with long-term significance, advise the Governor and the legislature on the long-term implications of policies, and hold public forums. The biennial trends report of the Center is to be used in budget preparation.

### **Intergovernmental Cooperation**

The Legislative Research Commission is directed to encourage and arrange conferences with officials of other states and of other units of government, carry forward the participation of Kentucky as a member of the Council of State Governments and the National Conference of State Legislatures, and formulate proposals for cooperation with other states. The Commission functions as Kentucky's Commission on Interstate Cooperation and designates persons to represent the Commonwealth at the National Conference of Commissioners on Uniform State Laws.

The Commission, as the Kentucky Commission on Interstate Cooperation, is required to encourage and assist the legislative, executive, and judicial officials and employees of the Commonwealth to develop and maintain personal contact with departments, agencies, officials and employees of other states, of the federal government, and of local units of government.

Pursuant to these requirements, the Commission designates various legislative members of interstate cooperative bodies (see Appendix B), and represents Kentucky on the Committee on Suggested State Legislation of the Council of State Governments.

### **Housekeeping and Records Maintenance for the General Assembly**

After each session the Commission assumes custody of all furniture, equipment, records, materials and supplies, and printed copies of bills in possession of the Senate and the House. The Commission may, when the General Assembly is not in session, authorize the expenditure of funds appropriated to the General Assembly for the purchase, repair or maintenance of furniture, equipment, materials and supplies, and contract for services needed by the General Assembly. In addition, when the General Assembly is not in session, the Commission has jurisdiction over the use of its chambers and over the allocation of all rooms it uses while in session.

In this regard, the Commission maintains a property inventory, pay and retirement records for members of the General Assembly (see Chapter 2), and arranges and controls the expenditure of General Assembly funds during the interim.

A further proviso on General Assembly records maintenance is the directive that the Commission obtain at the close of each session all of the noncurrent records of the General Assembly and of each committee thereof and transfer them to the state Archives and Record Center for preservation.

### **Provision of Statutes to the General Assembly**

By resolution, the 1972 General Assembly directed the Commission to furnish each member of the General Assembly upon request by the member a set of the Kentucky Revised Statutes if the member does not own or have reasonable access to the statutes, for his or her use while in office. The resolution directs return of the statutes upon vacation by the member of his or her seat in the General Assembly.

### **Legislator Support Services**

The Legislative Research Commission has implemented a number of services for members of the General Assembly utilizing space available in the Capitol Annex. Parking space for legislators is reserved on the second floor of the parking garage, which is connected by a tunnel to the Annex. Reception/lounge areas, offices, and committee

rooms are located in the Annex. Services are designed to assist legislators with constituent needs and provide communication links for them:

- The legislative message line, a toll-free WATS line, is operational weekdays from 8:00 a.m. to 5:00 p.m. for citizens to call legislators. The lines are for call-back messages only.
- The Bill Status WATS line is operational during regular and some special sessions for citizens to receive current information about the status of a particular bill or bills.
- A meeting information WATS line provides daily information about committee meeting dates, times, and agendas.
- The Message Center provides a central location for distribution of mail and messages, which are delivered to legislators several times daily.
- The legislative lounge/reception areas on the second, third, and fourth floors of the Capitol Annex provide legislators a relaxed atmosphere in which to study and confer with each other or with staff. Admission to these areas is limited to members of the General Assembly and their immediate families and to LRC staff on specific invitation from a legislator for legislative business only.
- Office accommodations for individual legislators are located on the second, third, and fourth floors of the Capitol Annex.
- Secretarial assistance is available for legislators in answering constituent mail and handling other legislative responsibilities. Assignments of great volume or of a long-term basis should be discussed with the supervisor. Nothing of a political nature is handled.
- Couriers are available during the session for taking legislators to meetings in other state government locations and for delivery and pick-up of materials in various state offices.
- The Commission maintains “FAX” units and telephone numbers for the electronic transmission of documents.

### **Public Information Office**

The Commission’s Public Information Office serves as a resource for the Capitol press corps, the public, and the broadcast and print media throughout the state. It is charged as well with responsibility for developing and distributing informational publications and programs to make the public more aware of the General Assembly and its members, the Legislative Research Commission, and their roles in the government of the Commonwealth. The Public Information Office also provides assistance to members in preparing speeches on legislative issues only.

The information office attempts to publicize the activities of the Kentucky legislative process by means of written releases to the press and by taped and voice releases for radio stations, using legislators whenever possible. Committee activity releases are mailed to newspapers across the state when appropriate, and a weekly digest of legislative activity is mailed to the media.

This office also contains a video and telecommunications sector, whose function is to educate and inform the public about the Legislature, its processes, activities, and current issues under study. Its staff also provides technical support for the operation of the LRC video conference center.



## **Computer Services**

The Legislative Research Commission computer system was established in 1983. The system has proven to be invaluable in managing the extraordinary flow of paperwork in the legislative process. All bills and amendments are produced in standardized format and subsequently tracked via computer application. The system allows efficient engrossing of adopted amendments into the text of bills. Much of the content of large volume publications, such as the Legislative Record, Kentucky Acts, Senate Journal, House Journal, and Kentucky Administrative Regulations, is entered and stored in the LRC computer system prior to printing and publication by the agency.

The Commission operates a local area network (LAN) comprised of personal computers (PCs). Benefits of this network include access to state-of-the-art software applications, enhanced system stability and reliability, and unlimited expansion capability. Legislators use individually assigned PC workstations as part of the LRC local area network.

## **Internet Homepage**

In April, 1995, the LRC established a homepage on the internet. The address is <http://www.Irc.state.ky.us>. Information accessible to the public via the LRC homepage includes the text of bills from the last regular session, bill summaries from previous sessions, and summaries of prefiled bills; names, addresses, e-mail addresses (where applicable), and phone numbers of legislators; toll-free phone numbers; the text of the statutes and regulations; a calendar of committee meetings and committee minutes; general information on the legislative process; and legislative publications. There is a map of Kentucky counties linked to legislators' photos, addresses, and committee assignments for citizens who want to find out who their legislators are. During a session, users have access to the current text of bills and the daily status of bills.

## **Video Conference and Satellite Downlink Capabilities**

The Legislative Research Commission established a video conference system in Room 131 of the Capitol Annex in March of 1994. The video conference system allows the General Assembly to connect with the state video network through the Division of Information Systems. This statewide network provides an interactive video link between Frankfort, Lexington, Louisville, Murray, Madisonville, Paducah, Hopkinsville, Fulton, Hickman, Bowling Green, Glasgow, Owensboro, Fort Knox, Ashland, Hazard, and Paducah, and many other sites.

The video conference system allows direct access to the resources of state and regional universities. It can enhance citizen participation in the legislative process, principally by facilitating access to committee meetings and associated activities. National and international video conferences are possible, which permit access by members of the legislature to experts on a multitude of subjects. The state video network is a shared network. It is important that video conference meetings be scheduled as early as possible, in order to confirm the date and time of network use.

The LRC also has the capability to downlink educational and training programs via satellite. The satellite dish is located in the back of the Capitol Annex.

### **Staffing of Special Committees**

In response to a specific situation, the General Assembly often creates special or temporary legislative research or advisory groups directed to return a report. In such instances, the Legislative Research Commission, as required, or by implication, becomes the staff agency for these entities. (See Chapter 2.)

### **Additional Services**

The Commission is called upon by the General Assembly for services not otherwise available to the individual members, the leadership, and the clerks. These include:

- Lists of Candidates and Members Elected-The Commission prepares a list of candidates filing for the primary election for vacancies in the General Assembly, and issues lists of successful such candidates after each primary and general election.
- Rules and Parliamentary Advice-On occasion the Commission is called upon by the legislative leadership for assistance in drafting or amending the Rules governing procedure in each chamber or in resolving parliamentary questions arising during the course of business.
- Table of Statutes Affected-For each bill or amendment offered during a legislative session, the Commission enters those KRS sections affected in a computer, which issues a cumulative table of statutes affected by particular bills.
- Session Organization Procedure-The leadership of both chambers calls upon the Commission for assistance in preparing the order of business especially applicable to the first day of legislative sessions.
- Forms and Supplies-The Commission maintains an inventory of forms used by each Clerk's Office during the session and arranges for printing and distribution of these forms.
- Journals-The journal clerks of each chamber rely upon advice by the Commission in preparation of the daily Journal. Prior to delivery for printing the Commission staff edits each day's Journal as to accuracy, and prepares a comprehensive index.

### **External Requests**

The Legislative Research Commission responds to thousands of requests for information from other state agencies and the general public.

### **Interstate Cooperation**

The Legislative Research Commission is designated as Kentucky's Commission on Interstate Cooperation. In this capacity it carries forward Kentucky's participation in the work of the Council of State Governments and in the National Conference of State Legislatures, and also designates Kentucky's members of the National Conference of Commissioners on Uniform State Laws. Through these organizations, the Commission, and consequently the General Assembly, frequently become involved in proposals concerning uniform laws, reciprocal agreements, interstate compacts or laws designed to help in relations between the Commonwealth and the federal government.

Periodically the Legislative Research Commission is directed to perform other functions as the General Assembly may direct. For example, Governor Clements, on

February 1, 1949, created by Executive Order the Constitution Review Commission, composed of seven members appointed by the Governor, for the purpose of studying the Constitution and reporting recommendations in 1950. The General Assembly in that year established the commission by statute, but in turn abolished it in the 1956 session and transferred its functions to the Legislative Research Commission.

### **Council of State Governments**

In the general area of legislative and governmental services, the Commonwealth of Kentucky and members of the General Assembly are fortunate in having located in Lexington the national headquarters office of the Council of State Governments.<sup>4</sup> This organization originally developed from action of the American Legislators' Association Board of Managers in 1933, is a non-partisan group belonging to all the state governments and supported through state appropriations. The mission of the council is to strengthen the states under the American system of federal government, and it has been described as "a research and service tool forged and shaped by the states." Founded upon the concept that state governments should have a central agency that would serve every state, the council's "mandate is to conduct research on state programs and problems; maintain an information service available to state agencies, officials, and legislators; issue publications; assist in state-federal liaison; promote regional and state-local cooperation; and provide staff for affiliated organizations." The Articles of Organization of the Council of State Governments recognize two forms of association with the council by various groups of state officials-affiliated and cooperating. Currently the council recognizes thirty-three such groups-twelve in the affiliated category and thirty-six "cooperating," or recognized by the Council's Executive Committee as organizations with which they maintain continuing cooperative arrangements.

Examples of the twelve affiliated organizations associated with the council are the National Association of State Auditors, Comptrollers and Treasurers, the Conference of Chief Justices, the National Association of Attorneys General, the National Conference of Lieutenant Governors, the National Association of State Purchasing Officials, and the Conference of State Court Administrators. The organizational structure of the council was changed in 1975 to provide greater legislative and executive representation by designating that the Governor and a legislator from each House and Senate among the fifty states be a member of the Governing Board. This board, operating through an expanded sixty-six member Executive Committee in between meetings of the Governing Board, determines policy and controls the funds and property of the council. The Governing Board also determines the schedule of contributions made by the several states financially supporting the activities of the Council.

The national headquarters of the Council of State Governments had been in Chicago until the latter part of the last decade. In 1966 the Governing Board of the council decided for various reasons that the headquarters of the council should be moved out of Chicago. A site selection committee, after studying a number of sites in various states from the east coast to the west, recommended to the Executive Committee that the national headquarters be located in Lexington. Kentucky had always been an active supporter and participant in the activities of the council and its affiliated organizations

since its initial conception. It is therefore fitting that Edward T. Breathitt, Governor of Kentucky at the time, be commended for rallying to the support of the council's need for helping to provide a suitable location on forty acres of land belonging to the University of Kentucky, and constructing a modern office building adjacent to Spindletop Research for a national headquarters. His successor, Governor Louie Nunn, offered continued support, and the council moved to this new building in Kentucky in May, 1969. The "recurring theme of the speakers at the dedication of these expanded facilities was the revitalization of state governments-one of the primary activities of the Council of State Government." The location of the headquarters enables not only legislators but also other Kentucky state officials to benefit from the accessibility of the expert staff, the research facilities, and the training courses of the council.

## NOTES

<sup>1</sup> *Bill Drafting Manual*, published by the Legislative Research Commission, Informational Bulletin No. 117, (Revised), October 1991, Frankfort, Ky.

<sup>2</sup> Speaker of the House and later Lieutenant Governor Harry Lee Waterfield spearheaded this movement.

<sup>3</sup> This superseded a comparable publication, *The Legislative Digest*, privately published and sold, under contract, to the General Assembly.

<sup>4</sup> The American Legislators' Association was founded in 1925, much later than the National Governors' Conference, formally organized in 1908, although both organizations helped in the formation and later support of its Council of State Governments.



## **CHAPTER VII**

### **THE EXECUTIVE BRANCH: OFFICE OF GOVERNOR AND ORGANIZATION OF THE EXECUTIVE BRANCH**

The person elected Governor serves as the chief executive officer of state government. In 1792, Kentucky's first chief executive, Governor Isaac Shelby, set up a government that operated on state revenues of only \$16,400.<sup>1</sup> In 2002, Governor Paul Patton operates state government with a General Fund budget of approximately \$7 billion, and a budget of total available funds amounting to more than \$18 billion. In addition, the Governor makes appointments to more than 300 boards and commissions and manages a workforce of more than 35,000 full-time executive branch employees. One of the most powerful tools a Governor possesses in managing this bureaucracy is the preparation of an executive budget that appropriates state revenues to the various state agencies and programs. The Governor shapes public policy primarily through the executive budget, but also through legislation submitted to the General Assembly, administrative regulations promulgated by agencies of the executive branch, and personal appearances. Because the structure of state government organization can impede the implementation of the Governor's policies, Governors more and more frequently make reorganization of state government a priority. Aside from his roles in the day-to-day management of state government operations, the Governor's other responsibilities include signing thousands of documents, declaring emergencies, calling the General Assembly into extraordinary session, making awards, and representing Kentucky before Congress, on out-of-state and international trips, and in negotiations and in legal disputes. The Governor also is the leader of his or her political party and retains personal roles while balancing the demands of a private person with those of the public office. The Governor must move in and out of these roles while complying with the executive branch code of ethics enacted by the 1992 General Assembly. As chief executive officer, official representative of the Commonwealth, and political party leader, the Governor possesses considerable power and maintains a strong leadership position in Kentucky governmental and political activities. One noted Kentucky historian has described the office as follows:

The office of supreme executive of the Commonwealth of Kentucky is shrouded in a rich aura of prestige and dignity and is bolstered up with an inordinate amount of power, even in the face of perennial legislative declarations of independence. This intoxicating power has on many occasions extended the reach of ordinary men beyond anything they could have attained in any other position.<sup>2</sup>

#### **The Office of Governor**

The office of Governor was unknown to common law and was created by state constitutions. The Governor of the Commonwealth of Kentucky, therefore, possesses the powers granted him or her by the Constitution of Kentucky and the statutory powers granted by the Kentucky General Assembly. The executive powers granted by the

Constitution of Kentucky to the Governor are limited by the provisions in the Constitution providing for five other executive officers to be elected independently of the Governor. The other officers are: Attorney General, Secretary of State, State Treasurer, Auditor of Public Accounts, and Commissioner of Agriculture. Prior to a 1992 amendment, the Constitution also required the independent election of the Lieutenant Governor and Superintendent of Public Instruction. The amendment requires the Governor and Lieutenant Governor to run together for election on a slate and it abolished the office of Superintendent of Public Instruction. Prior to a 2000 amendment, the Constitution required the election of three Railroad Commissioners.

### **Terms, Qualifications, Salary**

Section 69 of the Constitution of Kentucky provides: “The supreme executive power of the Commonwealth shall be vested in a Chief Magistrate, who shall be styled the ‘Governor of the Commonwealth of Kentucky’”. The Governor is elected to a term of four years as provided in Section 70. As noted above, a 1992 amendment adopted by the voters requires the Governor and Lieutenant Governor to run for election as a slate. Section 71 as amended in 1992 allows the Governor elected in 1995, and in every gubernatorial election thereafter, to run for reelection for a second consecutive term for the first time since adoption of the 1799 Constitution. Section 72 requires the Governor to be at least 30 years of age and have been a resident of Kentucky for at least 6 years preceding the election. Compensation for the Governor is required by Section 74 to be fixed at law. KRS 64.480(4) directs the Department of Local Government to compute by the second Friday in February each year beginning in 1985, an adjusted salary of the Governor by multiplying \$60,000 by the increase in the consumer price index during the period January 1, 1984, to the beginning of the then current calendar year. This formula fixed the Governor’s salary at approximately \$106,000 in 2002 and \$109,000 in 2003. In addition, the Governor receives an expense allowance of \$18,000 per year, living quarters in the Executive Mansion, and staff for the Mansion. A reasonable amount for the consumption of food and supplies by the Governor and his or her family is required by KRS 42.035 to be deducted from the salary of the Governor. Expenses for the Mansion and travel expenses are handled by the Finance and Administration Cabinet. The Governor and his or her family are provided 24-hour security by the Kentucky State Police in the Mansion and while traveling. The Governor is provided with a motor vehicle driven by a state trooper and use of state aircraft.

### **Constitutional Powers**

Although Kentucky has had four constitutions, 1792, 1799, 1850, and 1891, the constitutional powers of the Governor of the Commonwealth have remained basically the same since 1792. The first Constitution placed no restrictions on the number of terms a Governor could serve, provided for election of the Governor by electors of the Senate, and required only two years of residency in the state prior to election. The 1799 Constitution prohibited a Governor from succeeding himself, required election by the people, provided a six year residency requirement, and created the office of Lieutenant Governor. The 1891 Constitution removed a provision that prohibited clergymen from being elected Governor or to the General Assembly and gave the Governor the line-item veto on appropriation bills. But all four constitutions have granted the Governor supreme



executive power, deemed him commander-in-chief of the militia, given him pardoning power, authorized him to obtain information on matters of state from executive officers, empowered him to call the General Assembly into extraordinary session, given him appointive powers, required him to report on the state of the Commonwealth and to faithfully execute the laws, and required that his salary be fixed by law. The powers granted to the Governor under the Constitution of Kentucky can be categorized as administrative, judicial, and legislative.

**Administrative Powers.** Section 69 vests in the Governor the supreme executive powers. Section 81 provides that the Governor is to take care that the laws are faithfully executed. These two sections make it clear that the Governor is the chief executive of state government but are vague as to how the Governor is to function in that role. The Governor is authorized by Section 78 to require information from officers of the Executive Branch upon any subject relating to the duties of their offices. Section 75 designates the Governor as Commander-in-Chief of the militia. Section 76 empowers the Governor to fill vacancies.

**Judicial Powers.** Section 77 authorizes the Governor to “remit fines and forfeitures, commute sentences, grant reprieves and pardons, except in case of impeachment.” In case of treason, the Governor may “grant reprieves until the end of the next session of the General Assembly.”

**Legislative Powers.** Section 88 requires every bill that has passed two Houses to be presented to the Governor who has ten days to act on the bill. If the Governor signs the bill, it becomes law. He may veto the legislation and return it to the General Assembly with his objections. If a majority of the members elected to each house approve the bill, the veto is overridden and the bill becomes law. If the Governor fails to either sign or veto the bill during the ten day period, the bill becomes law without the Governor’s signature. As to appropriations bills, the Governor may exercise a line-item veto by disapproving specific sections of the bill which sections shall not become law unless overridden by the General Assembly. A vote to adjourn the General Assembly (Section 89), a state constitutional amendment (Section 256), and a tax referendum under Section 171 are not subject to the Governor’s veto.

Section 79 directs the Governor to give to the General Assembly information of the state of the Commonwealth and recommend to their consideration such measures as he may deem expedient. Section 80 authorizes the Governor to convene the General Assembly on “extraordinary occasions.” The Governor must convene the General Assembly by proclamation that states the subjects to be considered and no other subjects may be considered. If the two houses disagree as to the time of adjournment, the Governor “may adjourn them to such time as he shall think proper, not exceeding four months.”

### **Statutory Powers**

The Constitution gives the Governor administrative powers to be the chief executive of state government. Sections 69 and 81, as noted above, vest in the Governor the supreme executive power of the state and require the Governor to see that the laws are

faithfully executed. These Constitutional provisions are vague and do not specify the functions of the Governor as the administrative head of state government. It is left to the General Assembly through enactment of statutes to breathe life into these and the other broad provisions pertaining to the Governor. Take for example, Section 74 of the Constitution. It reads: “Compensation of Governor. He shall at stated times receive for his services a compensation to be fixed by law.” From this simple provision, the General Assembly has enacted laws to set the Governor’s salary, establish an expense allowance, provide for living quarters with staff, authorize use of a state vehicle and state aircraft, direct a state agency to handle expenses, and provide for 24-hour security for the Governor and his or her family. Or consider Sections 69 and 81, the two sections that are the core of the Governor’s constitutional authority to act as chief executive of state government. Section 69 reads:

The supreme executive power of the Commonwealth shall be vested in a Chief Magistrate, who shall be styled the “Governor of the Commonwealth.”

Section 81 reads:

He shall take care that the laws be faithfully executed.

It would be impossible for a Governor to administer a modern state government with only the vague powers granted by these archaic constitutional provisions. The Constitution is silent on the employment of staff by the Governor, the appointment of department heads, and fixing of salaries by the Governor. These and other administrative powers of the Governor were enacted into law by the General Assembly.

Although Isaac Shelby became Kentucky’s first Governor in 1792, the Governor’s authority to act as administrative head was not defined by the General Assembly until 1936 when it enacted the Reorganization Act of 1936. That Act authorized the Governor to appoint heads of departments to serve at the pleasure of the Governor. It also empowered the Governor to authorize a department head to establish additional divisions, change division names, merge divisions, or transfer functions and staff. At least nine of the current statutes in KRS Chapter 12 on administrative organization of the Executive Branch originated with the 1936 Reorganization Act: KRS 12.040, 12.050, 12.060, 12.070, 12.080, 12.090, 12.100, 12.110, and 12.120. Some of the administrative powers of the Governor authorized by the General Assembly in KRS Chapter 12 are:

- ☑ KRS 12.029 authorizes the Governor to appoint advisory or study committees on reorganization
- ☑ KRS 12.040 authorizes heads of departments to have control of their departments and to be appointed by the Governor for terms up to 4 years
- ☑ KRS 12.050 authorizes the appointment of deputy head of departments and directors of divisions and institutions
- ☑ KRS 12.060 authorizes heads of departments, with approval of the Secretary of Finance and Administration, to establish subordinate positions and abolish

- positions and to change duties, titles, and compensation of existing offices and positions
- ☑ KRS 12. 070 provides the requirements for appointment to administrative boards and commissions
  - ☑ KRS 12. 080 authorizes the Governor to prescribe general rules of conduct for administrative departments
  - ☑ KRS 12.100 authorizes the Governor to resolve conflicts between agencies
  - ☑ KRS 12. 110 requires the Governor to submit to the Legislative Research Commission annual reports of the finances and operations of the state.

Also codified in KRS Chapter 12 are powers granted the Governor by the General Assembly to issue executive orders to reorganize the Executive Branch between legislative sessions.

### **Executive Office of the Governor**

KRS 11.070 authorizes the Governor to “employ reputable, qualified, experienced auditors, accountants, clerks, bookkeepers and any other skilled or professional services to perform any service which the Governor deems proper and may direct.” KRS 11.110 authorizes the Governor to fix the compensation of persons employed by him. If no funds were appropriated to compensate the person, the Governor may direct that payment be made out of the Governor’s emergency fund. KRS 11.040 provides that the Governor may appoint such “persons as he deems necessary for the proper operation of his office to perform such duties as the Governor may require of them.”

The Executive Office of the Governor includes (1) the Governor’s Office; (2) the Office of Secretary of the Cabinet (KRS 11.040); (3) the Office of State Budget Director (KRS 11.068); (4) the State Planning Committee and State Planning Fund (KRS 147.070-147.120); (5) the Governor’s Executive Cabinet (KRS 11.065); (6) the Governor’s General Cabinet (KRS 11.060); and (7) the Governor’s Financial Policy Council (KRS 147B.100). The total General Fund appropriation to the Executive Office of the Governor in Fiscal Years 2002 and 2003 is \$7,651,000.

### **Gubernatorial Succession Upon Inability to Discharge Duties**

Section 84 of the Constitution as amended in 1992 provides that if the Governor is impeached and removed from office, dies, refuses to qualify, resigns, certifies that he or she is unable to discharge his or her duties, or is unable to discharge the duties of the office, the Lieutenant Governor shall exercise the power and authority of the Governor until another Governor is elected or until the Governor is able to discharge his or her duties. The Attorney General is authorized to petition the Supreme Court to have the Governor declared disabled if the Governor is unable to discharge his or her duties due to physical or mental incapacitation. If the Supreme Court certifies such disability, the Lieutenant Governor shall assume the duties of the Governor.

Prior to the 1992 amendment, the Lieutenant Governor assumed the powers of Governor for the period of time while the Governor was absent from the state. An example of what can happen under such a provision was the special session called during Governor Laffoon’s administration (1931-1935). When Governor Laffoon went to

Washington, D.C. to request \$50,000,000 for road construction, Lieutenant Governor A. B. “Happy” Chandler called a special session to pass a mandatory primary election bill to replace the system of nomination at convention. Governor Laffoon quickly returned and signed a revocation order to cancel the session. The Court of Appeals held the call was valid. It was said that Governor Laffoon believed his choice to succeed him as Governor would be nominated, while Lt. Governor Chandler felt he could win the nomination by popular vote at a primary election.<sup>3</sup> The primary election bill passed and became law in February, 1935 and Lt. Governor Chandler won the primary election and was elected Governor in November, 1935.

### **Gubernatorial Transition**

The Governor of the Commonwealth of Kentucky is elected in November and takes the oath of office only five weeks later in December. On the Tuesday after the first Monday in January, the General Assembly convenes in regular session and the Governor must present his executive budget by the fifteenth legislative day, only seven weeks after inauguration. Thus, a newly elected Governor has little time to set up operations to receive applications for staff appointments, handle phone calls and scheduling requests, and gather information to prepare a budget. The 1972 General Assembly recognized the problems inherent in such a tight time schedule and enacted into law KRS 11.210 to 11.260 on gubernatorial transition to “promote the orderly transfer of the executive power in connection with the expiration of the term of office of a Governor and the inauguration of a new Governor.”

KRS 11.230 directs the Secretary of the Finance and Administration Cabinet to provide the Governor-elect necessary services and facilities within the State Capitol complex. According to KRS 11.240, the outgoing Governor must give the Governor-elect all official documents, vital information and procedural manuals as requested. The Governor-elect, pursuant to KRS 11.250, is entitled to examine the budget request of the Executive Branch of government, to sit in on hearings, receive information upon which the Governor’s budget recommendation is made, prepare revisions and additions, and receive assistance from the budget director. Expenses of the transition shall be paid by the Finance and Administration Cabinet pursuant to KRS 11.260.

### **Power of Governor to Reorganize by Executive Order**

Courts have held that reorganization of the Executive Branch of state government is legislative in nature. The Supreme Court of Kentucky in *Brown v. Barkley*, 628 SW2d 616 (1982) stated at page 623 that “when the General Assembly has placed a function, power or duty in one place there is no authority in the Governor to move it elsewhere unless the General Assembly gives him that authority.” In *LRC v. Brown*, 664 WS 2d 907 (1984), the Court at page 930 held that:

Even though the Governor has the supreme executive power of the Commonwealth (KY. Const. Sec. 69), he cannot transfer the functions of an existing, legislatively-created executive agency or department to another without legislative authority.

The Court went on to say at page 931 that “the Governor has no inherent power to reorganize” and that “reorganization is legislative in nature.”

The Kentucky General Assembly, recognizing that changes in state government organizational structure may need to be made during the interim between legislative sessions, enacted procedures in 1962 codified in KRS Chapter 12 to enable the Governor to temporarily effect a change in the structure of the Executive Branch. The authority granted to the Governor does not extend to reorganization of an organizational unit or administrative body headed by an elected state executive officer, unless that officer has made a request in writing. An elected state executive officer other than the Governor and the Kentucky Economic Development Partnership may also temporarily effect a change in organizational structure, but only as to an organizational unit or administrative body that the officer or Partnership heads. A temporary reorganization is effected by filing an executive order with the Legislative Research Commission and the Secretary of State. The temporary reorganization plan terminates 90 days after sine die adjournment of the next regular session of the General Assembly, unless otherwise specified by the General Assembly. If the Executive Branch intends to make its reorganization continue after the session of the General Assembly, legislation must be introduced at the General Assembly session to confirm the plan. If the General Assembly fails to enact the plan, the previous organizational structure is reinstated upon termination of the temporary plan and the plan cannot be effected prior to the next succeeding session of the General Assembly.

### **Executive Branch Organization**

During the early years of this century, state governments were faced with rising costs and demands for government services. Today, state governments continue to confront those problems, but they were compounded at the turn of the twentieth century because, in most states, the Governor had not exhibited many characteristics of an executive manager. In 1917, in response to demands for a state government that could be more efficiently administered, Illinois became the first state to adopt a reorganization plan. Prior to World War II, approximately thirty states followed Illinois in enactment of reorganization plans that made most administrative agencies responsible to the Governor.

Although Kentucky didn't immediately follow Illinois and enact major reorganization legislation, Kentucky's Governors prior to the 1936 reorganization did act to change the structure of state government. In 1918, the General Assembly enacted the state's first budget system during the administration of Governor Augustus Stanley (1915-1919). In 1922, during the term of Governor Edwin Morrow (1919-1923), the Kentucky General Assembly created an efficiency commission with members appointed by the Governor and approved by the Senate. Governor Morrow in his address to the 1920 General Assembly had called for the abolition of useless offices and consolidation of commissions and boards.<sup>4</sup> The commission was charged with inquiring into all state government boards, departments, and commissions and making recommendations on “curtailment of expenses and increased efficiency.” No major reorganization of the executive branch resulted. Governor William Fields (1923-1927) presented a number of bills on organization of state government to the 1926 General Assembly. Legislation that year created the State Park Commission, the Department of Motor Transportation, the

Purchasing Commission, Securities Department, State Highway Commission, Budget Commission, Office of State Budget Officer, State Bank Examiners, and Commissioner of Pardons. In 1930, the Governor lost some authority to administer the executive branch when the General Assembly restricted the Governor's powers of appointment. A Republican, Flem Sampson, was Governor (1927-1931) while a Democrat was Lieutenant Governor. The new law, vetoed by Governor Sampson but overridden by the General Assembly, required the Governor to submit to the Senate ten days before adjournment a written list of persons appointed to office where statutes required Senate confirmation. Failure to do so meant the offices were deemed vacant and the Lieutenant Governor was authorized on adjournment of the Senate to make the appointments.

### **Administrative Reorganization Act of 1934**

By 1934, the executive branch in Kentucky consisted of sixty-nine statutory boards, offices, agencies, and commissions, in addition to the constitutional offices. Governor Ruby Laffoon (1931-1935) proposed and the General Assembly enacted in 1934 the Administrative Reorganization Act. The Executive Branch was organized under seventeen administrative departments and seven independent agencies. The Act also created the Executive Cabinet. The 1934 Reorganization has not been considered a true reorganization because most of the major departments were headed by commissions or elected officials, rather than a single person appointed by the Governor. The Department of Public Property, for example, consisted of the Governor, who acted as chairman, the Auditor, the Treasurer, the Secretary of State, the Attorney General and four other persons. The Department of Finance and Budgetary Control consisted of the Governor, Chairman of the State Tax Commission, and the Secretary of the Executive Cabinet.

### **Reorganization Act of 1936**

The Reorganization Act of 1936 was enacted at the Extraordinary Session of the General Assembly, called by Governor A.B. "Happy" Chandler in February, 1936. In his proclamation Governor Chandler (1935-1939) stated that it was essential that the "multiplicity of scattered boards, commissions, departments, and other agencies" of state government be brought together into a systematic, orderly plan. Insurance Commissioner J. Dan Talbott estimated the Reorganization Bill would save the state \$2,000,000 annually.<sup>5</sup> The Reorganization Act of 1936 largely abolished boards and commissions, except those having quasi-legislative and quasi-judicial functions. More than 50 administrative agencies were consolidated by the 1936 reorganization under ten statutory departments: finance, highways, health, welfare, mines and minerals, library and archives, conservation, business regulation, and industrial relations.

With enactment of the 1936 Reorganization Act, the General Assembly gave the Governor statutory administrative powers (KRS Chapter 12) that had been lacking to enable him to be the administrative head of state government. This came on the heels of a 1935 decision of the Court of Appeals of Kentucky, *Royster v. Brock*, 79 SW2d 707, in which the Court at page 709 stated that the Governor, an office unknown to common law, "has only such powers as the Constitution and Statutes, enacted pursuant thereto, vest in him, and those powers must be exercised in the manner and within the limitation therein prescribed." The 1936 Reorganization Act, among other things, authorized the Governor

to appoint heads of departments to serve at the pleasure of the Governor. It empowered the Governor to authorize a department head to establish an additional division or divisions, or to divide or combine existing divisions, or to change the name of a division, or transfer functions and staff from one division to another within a department. It required members of boards and commissions to be appointed by the Governor.

### **Changes Between 1936 and 1973 Reorganizations**

Governor Earle Clements made a number of organizational changes while he was Governor from 1947 to 1950. The Kentucky Agriculture and Industrial Development Board, the forerunner of the Commerce Department, was established. The Legislative Council created in 1936 was abolished and a nonpartisan Legislative Research Commission was created in 1948. The Governor served as the ex-officio chair of Legislative Research Commission from its creation in 1948 until July, 1956, when the Lieutenant Governor began serving as the chair of Legislative Research Commission pursuant to legislation enacted by the 1956 Kentucky General Assembly. The Conservation Department was reorganized. The Insurance Commission was reorganized and the entire insurance code rewritten. The Kentucky Building Commission was created and one of its first projects was the New Capitol Annex.

During the terms of Governors Simeon Willis (1943-1947), Earle Clements (1947-1950), Lawrence Weatherby (1950-1955), A.B. "Happy" Chandler (1955-1959), and Bert Combs (1959-1963), as demands for new services grew, fourteen departments were created within the executive branch. Those departments were:

- Department of Aeronautics (1948)
- Department of Alcoholic Beverage Control (1944)
- Department of Banking (1946)
- Department of Fish and Wildlife Resources (1944)
- Department of Economic Security (1948)
- Department of Economic Development (1956)
- Department of Insurance (1950)
- Department of Motor Transportation (1950)
- Department of Mental Health (1952)
- Department of Personnel (1956)
- Department of Public Relations (1956)
- Department of Public Safety (1956)
- Department of Child Welfare (1960)
- Department of Parks (1960)

By 1960, two of the ten departments established in 1936 no longer existed. In 1954, the Department of Library and Archives was abolished and in 1960 the Department of Business Regulation was eliminated. In 1962, the Department of Libraries was established, the Department of Public Relations was renamed the Department of Public Information, the Department of Economic Development was renamed the Department of Commerce, and the Department of Welfare was abolished and replaced by the Department of Corrections. In 1964, during the administration of Governor Edward Breathitt (1963-1967), the department of Conservation was renamed the Department of

Natural Resources. The Commission on Women was created in 1970 during the term of Governor Louie Nunn (1967-1971).

It was also during this period that the General Assembly enacted legislation creating a procedure that allows the Governor to change the structure of the Executive Branch between legislative sessions. As noted above, the 1962 General Assembly passed legislation that authorized the Governor to issue a temporary executive order to effect organizational changes which would be valid until the next legislative session.

### **Reorganization of 1973**

The “multiplicity of scattered boards, commissions, departments, and other agencies” that confronted Governor Chandler in 1936 were matched by others facing Governor Wendell Ford in 1972. Thirty-six years after the 1936 reorganization, there were more than sixty departments and administrative agencies and 210 boards, commissions, and committees reporting to the Governor. State revenue collections increased from \$11.5 million in 1936 to \$845 million in 1971. The expansion of public services and governmental programs led to duplication of services and inefficiency in operations.

On November 28, 1972, Governor Wendell Ford issued the Governor’s Reorganization Report No. 1, which set a framework of government that would be manageable, responsive, accountable, and flexible. The Executive Branch was to be organized, as of January 1, 1973, into six Program Cabinets: Consumer Protection and Regulation, Development, Education and the Arts, Human Resources, Safety and Justice, and Transportation. It also called for consolidation of functions of the Department of Finance and the Kentucky Program Development Office in the new Executive Department of Finance Administration. In Reorganization Report No. 2, issued on January 3, 1973, the Department of Environmental Protection, which was created by the 1972 General Assembly effective January 1, 1973, was merged by Executive Order 73-1 with the Department of Natural Resources to create the Department for Natural Resources and Environmental Protection. During 1973, the Department of Transportation was created in March, the Cabinet for Human Resources became the Department of Human Resources in August, and the Department of Justice was created in September. By October, 1973, there were three Program Cabinets (Development, Education and the Arts, and Consumer Protection and Regulation) and four additional departments (Human Resources, Justice, Natural Resources and Environmental Protection, and Transportation).

### **Reorganization Process Continues**

In 1978, a fifth department (Energy) was added during Governor Julian Carroll’s administration (1974-1979). In 1982, during Governor John Y. Brown’s administration (1979-1983), the five departments received Cabinet status, as did the Finance and Administration Department, the Bureau of Corrections, and the Department of Revenue. In 1984, during the administration of Governor Martha Layne Collins (1983-1987), the Labor Cabinet and Tourism Cabinet were added, to create a system of thirteen program cabinets. During the term of Governor Wallace Wilkinson (1987-1991), the Energy Cabinet was abolished in 1989 and the Workforce Development Cabinet was created in 1990. During the term of Governor Brereton Jones (1991-1995), the Corrections Cabinet



was merged into the Justice Cabinet in 1992, and the Education and Humanities Cabinet was renamed the Education, Humanities, and Arts Cabinet in 1994. During the terms of Governor Paul Patton (1995-1999 and 1999 to present), Executive Order 95-19 was issued on December 13, 1995, to elevate the Department of Personnel to cabinet status. Upon expiration of the order, Executive Order 96-909 was issued on July 11, 1996, to create the Personnel Cabinet, and this was confirmed by 1998 SB 139. Executive Order 95-77, issued on December 28, 1995, renamed the Tourism Cabinet the Tourism Development Cabinet. Upon expiration of Executive Order 95-77 it was confirmed by Executive Order 96-1332, issued on October 1, 1996, and confirmed by 1998 HB 341. Executive Order 95-79, issued on December 28, 1995, abolished the Cabinet for Human Resources and created the Cabinet for Health Services and the Cabinet for Families and Children. Upon expiration of the order, Executive Order 96-862 was issued on July 2, 1996, and later confirmed by 1998 HB 132.

### **Current Structure of the Executive Branch**

The Executive Branch of Kentucky state government is organized into fourteen Program Cabinets, which are each headed by a Secretary, who is appointed by the Governor. The Program Cabinets are listed in KRS 12.250 and the agencies within each Cabinet are designated in KRS 12.020. The Program Cabinets in 2002 are:

- Personnel Cabinet
- Economic Development Cabinet
- Education, Humanities, and Arts Cabinet
- Finance and Administration Cabinet
- Cabinet for Families and Children
- Cabinet for Health Services
- Justice Cabinet
- Labor Cabinet
- Natural Resources and Environmental Protection Cabinet
- Public Protection and Regulation Cabinet
- Revenue Cabinet
- Tourism Cabinet
- Transportation Cabinet
- Workforce Development Cabinet

Each Secretary acts as chairman of the related Cabinet, is a member of the Governor's Cabinet, and serves as the Governor's liaison for providing direction and coordination of the various departments, boards, and commissions. The General Assembly established the authority, powers, and duties of the Secretaries in KRS 12.270.

The Governor's General Cabinet is described in KRS 11.060. It is composed of the heads of the constitutional and statutory administrative departments and Program Cabinet Secretaries. The Governor serves as chairman of the General Cabinet, which is attached to the Office of the Governor and is not a separate department or agency.

The Governor's Executive Cabinet, as provided in KRS 11.065, consists of the Secretaries of the Program Cabinets, the Secretary of the Governor's Executive Cabinet, and the Lieutenant Governor. The cabinet meets not less than once every two months. It

is part of the Office of the Governor and is not a separate department or agency. The members of the Cabinet are “major assistants to the Governor in the administration of the state government and shall assist the Governor in the proper operation of his office and perform such other duties as the Governor may require of them.”

The Secretary to the Governor’s Executive Cabinet is an agency of state government created under KRS 11.040. The Secretary is appointed by the Governor and is “responsible for implementing all policies of the Governor, coordinating all activities of the Governor’s Executive Cabinet, and advising and consulting with the Governor on all policy matters affecting the state.”

Ten administrative bodies, under KRS 12.020, are attached to the Office of Governor rather than a Program Cabinet. They are: Council on Postsecondary Education, Department of Military Affairs, Department for Local Government, Kentucky Commission on Human Rights, Kentucky Commission on Women, Department of Veterans’ Affairs, the Kentucky Commission on Military Affairs, Governor’s Office for Technology, the Commission on Small Business Advocacy, and the Education Professional Standards Board.

Descriptions of the Constitutional offices and the Executive Branch cabinets, departments, boards, and commissions can be found in *The Executive Branch of Kentucky State Government*, Legislative Research Commission Informational Bulletin No. 171.

### **Executive Branch Ethics**

The Executive Branch Code of Ethics (KRS Chapter 11A)<sup>X</sup> was originally enacted by the 1992 General Assembly. The code covers the Governor and the other statewide elected officials, all employees in the executive branch, and executive agency lobbyists. However, only the statewide elected officials, certain major management personnel (including officers of named boards and commissions), and candidates for statewide elected office are required to file annual financial disclosure statements showing the sources, not dollar amounts, of their income and certain business interests.

The code is administered and enforced by the Executive Branch Ethics Commission, composed of five members appointed by the Governor. The Commission is charged with administration of the code and with such other duties as: investigating alleged violations upon receipt of a complaint signed under penalty of perjury or upon its own motion; issuing advisory opinions; providing ethics training programs; receiving and auditing the financial disclosure statements filed by certain public servants; receiving and auditing the registration, expenditure, and financial transaction statements filed by executive agency lobbyists, their employers, and real parties in interest; and imposing certain administrative and civil penalties not to exceed \$5,000 per violation. The Commission is required to refer evidence of a violation of KRS 11A.040 to the Attorney General for criminal prosecution as a Class D felony.

KRS 11A.020 to 11A.040 contain certain requirements and prohibited acts for members of the executive branch. The prohibitions generally focus on any acts that would be a conflict of interest between one’s private interests and his duties in the public

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<sup>X</sup> The full text of cited sections of the Kentucky Revised Statutes can be found on the web site of the Kentucky Legislature, <http://www.lrc.state.ky.us>.

interest, or would be misuse of one's official position in order to obtain financial gain for one's self or family or to obtain personal privileges or advantages in disregard of the public interest at large. For example, executive branch officials and employees are prohibited from disclosing or using confidential information acquired in the course of their official duties to further their own or another person's economic interests; directly or indirectly receiving any personal interest or profit from the use or loan of public funds; or doing business with the agency by which they are employed or which they supervise. There are also certain postemployment (also known as "revolving door") restrictions. For example, former officers and employees are restricted, for six months following termination of state employment, from doing business with the agency by which they were employed; for six months, from accepting employment, compensation, or other economic benefit from any person or business that contracts or does business with the state in matters in which they were directly involved during the last 36 months of tenure; and, for one year, from lobbying in matters in which they were directly involved during the last 36 months of tenure. In addition, an officer or employee is prohibited from accepting any gift with a value of \$25 or more from any person or business doing business with, or regulated by, the state agency for which the officer or employee works. However, a public servant in the Cabinet for Economic Development or any other public servant working directly with the cabinet on an economic incentive package is permitted to accept gifts if the gifts were not solicited, were accepted in the performance of a public servant's official duties and in compliance with established guidelines, and were not accepted under circumstances that would create a violation of KRS Chapter 521 (Bribery and Corrupt Influences).

KRS 11A.201 to 11A.246 sets forth the requirements for executive agency lobbyists, their employers, and real parties in interest, including the mandated filing of registration statements, expenditure statements, and statements of financial transactions with, or for the benefit of, an elected executive official, secretary of a cabinet, an executive agency official, or any member of the staff of any of those officials. An executive agency lobbyist is any person employed or retained to influence executive agency decisions as one of his or her main purposes.

Penalties in the code range from fines to Class D felonies, including additional penalties for certain violations such as disqualification to hold future office, forfeiture of employment or office, and withholding of salary until compliance. In addition, there is a four-year time limitation on prosecution for violation of any provision of KRS 11A.040 (Acts prohibited for public servant or officer).

## NOTES

<sup>1</sup> Sylvia Wrobel and George Grider, *Isaac Shelby Kentucky's First Governor and Hero of Three Wars*, The Cumberland Press, Danville, Ky. 1974, p. 89

<sup>2</sup> Thomas D. Clark, "The Kentucky Governorship: An Overview," an introductory essay in Lowell Harrison, *Kentucky's Governors 1792-1985*, The University Press of Kentucky, Lexington, Ky 1985, p. xxi.

<sup>3</sup> Frederick Wallis and Hambleton Tapp, *A Sesqui-Centennial History of Kentucky*, Vol. 2, The Historical Record Association, Hopkinsville, Ky, Louisville, Ky., and Little Rock, Arkansas, 1945, p. 749.

<sup>4</sup> Lowell Harrison, *Kentucky's Governors 1792-1985*, The University Press of Kentucky, Lexington, Ky. 1985, p. 130.

<sup>5</sup> Frederick Wallis and Hambleton Tapp, *A Sesqui-Centennial History of Kentucky*, Vol. 2, The Historical Record Association, Hopkinsville, Ky, Louisville, Ky., and Little Rock, Arkansas, 1945, p. 750.

<sup>6</sup> The full text of cited sections of the Kentucky Revised Statutes can be found on the web site of the Kentucky Legislature, <http://www.lrc.state.ky.us>.

## **CHAPTER VIII THE JUDICIARY**

Prior to 1792, when Kentucky became a state, its courts were merely an extension of the Virginia judicial system. The framers of the first constitution divided the new government into three departments, one of which was the judiciary. Article V, Section 1 of the first Kentucky Constitution (1792) vested the judicial authority of the state “in one Supreme Court . . . styled the Court of Appeals, and in such inferior courts as the legislature may . . . ordain and establish.” Fortunately these judicial provisions were flexible. Only the Court of Appeals had constitutional status.

The Legislature was authorized not only to provide for additional courts but also to define the details of their organization and jurisdiction. Judges of all the courts held their offices “during good behavior,” although the Governor could remove any of them for any reasonable cause upon concurrence of two-thirds of each House of the General Assembly. The Constitution (1792) required that they receive “adequate compensation,” and this amount, once fixed by law, could not be reduced while the judges were in office.

The first judicial system was largely a pattern of the Virginia system. It consisted of local trial courts of limited jurisdiction in each county, a central court with state-wide criminal jurisdiction, and the constitutionally created Supreme Court. This system lasted only three years, as the 1795 General Assembly began to experiment with changing the courts. That session of the legislature abolished the central criminal court, as well as the trial jurisdiction of the Supreme Court, reorganize the system, and created for the first time a state-wide trial court system.

### **Courts Under the 1799 Constitution**

A high degree of flexibility in the judicial system was retained in the 1799 Constitution, although that document did require a court in each county of the state. The first Constitution mandated that this county court was to co-exist with the Justices of the Peace in each county.<sup>1</sup>

Early in the 19th century, the Court of Appeals became embroiled in a controversy with their decision declaring unconstitutional the Replevin and Endorsement Act, (usually referred to as the “Relief Act”). The three-judge court declared that Act to be a violation of the right of contract guarantees contained in the federal constitution. The law had not only the support of the legislators but apparently a very vocal majority of the voters. Supporters of the Relief Act accused the court of exceeding its authority by even questioning the acts of the elected representatives of the people. The state’s voters were angered to the point that petitions poured in from all parts of the state asking that the Governor rebuke the three judges. It is perhaps fortunate that the action to rebuke the judges and reorganize the Court of Appeals failed to receive the necessary two-thirds majority vote of the General Assembly. The court, ignoring legislative threats, continued to declare acts of that body unconstitutional while popular sentiment against the court reached a fever pitch.

When the legislature convened again, there were many proposals for reducing the power of the court. Some wanted the court to be divided into three units located in different parts of the state. Others advocated a new constitutional convention for the purpose of revising the constitution with the express purpose of subjecting the court to legislative authority. This later suggestion met with violent opposition and probably defeated the calling of a new constitutional convention at that time. The House proposed reducing the judges' salaries to twenty-five cents; the Senate even discussed abolition of the court. On December 9, 1824, the Senate did vote to abolish this court, while the House, a few weeks later, approved a drastic reorganization.<sup>2</sup> The House proposal was adopted, as it required only a majority vote, and a new court, with only four judges was established. The aggregate salaries of the full court had been \$4,500; those of the new were \$8,000. The tug-of-war that ensued between the two courts became what historians have called the "Old Court-New Court Struggle," which lasted with unparalleled bitterness for two years. The new court assumed its official duties on December 12, 1825, but the bitterness continued. The clerk of the old court refused to yield its records, which had to be taken by smashing in the door of the courtroom. Advocates of the old court argued that the old court had been created by the Constitution (1792), not by the legislature, and therefore, could not be abolished by the legislature. On the other hand, the legislators maintained that they represented the will of the people and the courts should only adjudicate lawsuits rather than declaring laws enacted by the representatives of the people unconstitutional. While the new court was in session the old court continued to meet in a Frankfort church, as the meetings were held largely for the purpose of continuing the life of that court until after the August elections.<sup>3</sup> The struggle between the two tribunals for recognition lasted until the new court advocates failed to capture control of the legislature of 1826. The immediate controversy was therefore settled in favor of the constitutional court, although, it has been proposed, this may have set the stage for the third constitutional convention.

### **The Court System Under the 1850 Constitution**

The judicial article of the 1850 Constitution (Article IV) was far more restrictive than the provisions in the preceding two constitutions, although it again vested the judicial power of the Commonwealth "in one Supreme Court (to be styled the Court of Appeals); and the courts established by this Constitution." It also provided for such other inferior courts as might later be created by the General Assembly. The Supreme Court, although having appellate jurisdiction only, was given jurisdiction co-extensive with the state. It further provided that the judges, after serving staggered terms determined by lot following the first election, would be elected for terms of eight years. The court consisted of four judges, any three of whom could constitute the court for the transaction of business.

Following the adoption of the new constitution, the General Assembly was made responsible for dividing "the state, by counties, in four districts as nearly equal in voting population (as possible)"; from each district qualified voters would elect one judge of the Court of Appeals. Circuit Courts were established in each county, although the General Assembly had power to change or alter their jurisdiction. Circuit judges were to be

elected for terms of six years. Judicial districts were limited to sixteen until the population of the state should, “exceed one million, five hundred thousand” (Section 24, Article IV, third Constitution). County courts, which were established in each existing county, consisted of a presiding judge and two associate judges, although the latter positions could be abolished by the General Assembly whenever it should be deemed expedient. Each county’s judges were elected for a term of four years, with their jurisdictions to be regulated by law. The General Assembly was authorized to divide each county into districts of convenient size, from which two Justices of the Peace would be elected for terms of four years, although their jurisdiction would be co-extensive with the county boundaries.

### **Judicial Innovation**

The 1850 document not only gave the constitutional status to the Court of Appeals, the Circuit Courts, and the County Courts, but it also empowered the legislature to create any other courts it deemed necessary, as well as to define the details of organization and jurisdiction of all courts. Between that time and the adoption of the 1891 Constitution, the General Assembly made three major innovations, one at each level of the judiciary. Locally, it created a Court of Claims in each county. The functions of the court were primarily legislative and administrative, thereby making it the forerunner of present-day county Fiscal Courts. At the General Trial Court level, the state-wide concept was abandoned almost immediately following the adoption of the third constitutional document. This change was probably influenced both by the concept of Jacksonian Democracy as well as the recent bitterness of the “old court-new court struggle.” Changing the method of selecting judges from executive appointment with life tenure to popular election for a limited term of years was a tribute to the popularity of Jacksonian principles of democracy. Therefore, the Circuit Judge, being elected and responsible only to the electorate of the district, made each Circuit, in effect, an autonomous court.

The General Assembly created an intermediate Court of Appeals thirty-two years after the abandonment of the centrally coordinated trial court arrangement. The purpose of this was to aid in expediting burdensome appellate caseload. Having so many cases tried by autonomous courts without any unifying influence from a central court system undoubtedly contributed to the increased number of appeals.

The Superior Court, having been severely criticized for failing to use its authority to certify important questions to the higher Court of Appeals, was abolished by the 1891 constitutional convention. Because of the prevailing sentiment a prohibition was placed in the 1891 Constitution against the creation of any court not established by that document. The result was the creation of an overlapping system, with the Court of Appeals as the highest court (consisting of the same number of judges as the combined membership of the Court of Appeals and the Superior Court under the 1850 Constitution), Circuit Courts, County Courts, Quarterly Courts and Magisterial Courts. In summary, the flexible language found in early judicial articles, while giving great power to the legislature, failed to provide guidance in exercising this potential. Conversely, the judicial article of the fourth Constitution, with its inflexible language, presented a

strongly detailed plan with practically no legislative discretion to implement it or allow for changing social and economic circumstances.

### **The Constitution of 1891**

The 1891 Constitution provided that “the judicial power of the Commonwealth, both as to matters and equity, shall be vested in the Senate when sitting at a Court of Impeachment, and one Supreme Court (to be styled in the Court of Appeals) and the courts established by this constitution” (Section 109). It further provided that after 1894, the Court of Appeals would consist of not less than five nor more than seven judges, each at least thirty-five years of age and practicing lawyers for eight years, who had resided at least five years in the state and two in the districts from which they should be elected. The most restrictive provision is found in Section 135, which states that “no courts, save those provided for in this constitution, shall be established.”

A casual reading of the fourth Constitution might suggest that a unified and highly centralized court system had been established in Kentucky, but this is not the way it developed over the succeeding years. Lower courts were not directly subject to administrative supervision by the highest court, although the latter could issue orders to inferior courts on certain matters. Nevertheless, in view of the rather inflexible language of the judicial article, each court operated largely as an unsupervised, autonomous body, responsible only to its electorate constituents. More than a half a century later the General Assembly did provide for a Judicial Council, as well as an annual conference, to assist with the administration of the state judicial system. The Council consisted of the Chief Justice, four Circuit Judges, a Circuit Court Clerk appointed by the Chief Justices, three attorneys appointed by the Governor, and the Chair of the Judicial Committees of the House and the Senate. The Council was required to meet at least twice a year and could hold other meetings upon the call of the chair. The Judicial Conference, consisting of the Judges, Commissioners of the Court of Appeals and all Circuit Judges within the Commonwealth, was required to meet at least once a year upon the call of the Chief Justice. The Council was charged with conducting a continuous survey and study of the judicial organizations, their operations, conditions of business practice, and procedures. The Council also made recommendations on desirable rule changes, procedures, methods of administration and other matters, and reported annually before November 1 to the Judicial Conference and to the Court of Appeals on the conditions of business within the judiciary. It was also required to report biennially to the General Assembly, not only summarizing the work of the various branches of the judicial system, but also making recommendations for improvement in judicial administration, practice, and procedure.

The Judicial Conference was also directed by statute to conduct a continuous study of the judicial system and its administration and to take appropriate action on any reports and recommendations made by the Judicial Council. In 1960 the legislature created an administrative office of the courts to be staffed by a director and such other employees as the court might appoint. This office, under the supervision and direction of the Court of Appeals, performed various administrative services for the court. It supervised its clerical and administrative personnel, and acted as a fiscal officer by preparing budget estimates, and collecting statistical and other data. It maintained the



proper records on the assignment and disposition of matters submitted to the court, and was charged with carrying on a continuous survey of the organization, operation, condition of business practice and procedure of the state judicial system. The director also served as secretary of both the council and the conference.

The ultimate source of Judicial Power of the courts in Kentucky is the Constitution (1891). That document established the type and number of courts and conferred on these courts their power to hear and decide cases. On the other hand, the Constitution also empowered the legislature to enact laws that restrict and thus regulate the type of cases the courts may hear. However, when the legislature apportions jurisdiction among the several courts, all courts must be uniform throughout the state. Finally, all courts in Kentucky are courts of record, in that they meet by orders duly entered and signed in books for this purpose.

### **Changes in the Court System**

Since the adoption of the current Constitution (of 1891), many changes have occurred in Kentucky. The population has doubled while the culture and economy have gradually expanded from a rural and agricultural base to a much more urban and industrial base. The number of trial level courts, including both the circuit and lower courts, was increased to handle the load, but adjudication labored under difficulties at the appellate level.

The 1891 Constitution did not permit the creation of more appellate courts or judgeships. Court dockets were filled, legal procedures were cumbersome, and final decisions sometimes were delayed for years.

Expansion in governmental regulation at the state level, development of many new areas of business, and various economic changes also greatly expanded litigation before the courts. Although efforts during the first half of the twentieth century to procure a new constitutional convention had failed, it did become evident that a restructuring of the judicial system was imperative. If it were to be accomplished, it would have to be through the cumbersome amendment process.

As early as 1956, a committee of the Kentucky Bar Association and an advisory committee of the Legislative Research Commission carefully studied the judicial system of Kentucky and recommended some rather sweeping changes in the form of a proposed amendment. These recommendations, in addition to calling for a Court of Appeals consisting of seven members, would have granted express authority to the General Assembly to provide for Commissioners of Appeal or Associate Appellate Justice to perform such duties as the court might designate. Also the Clerk of the Court of Appeals was to be appointed by the court rather than elected. It was recommended that Circuit Courts have a chief judge and such circuit court trial commissioners as the chief judge might appoint, with approval of the higher court, and that Circuit Courts have original jurisdiction over all cases not exclusively vested in some other court. Finally, it was recommended that the General Assembly could establish additional courts, provided that the Court of Appeals certified the need for those courts.<sup>4</sup> The committee proposals were not adopted, but a decade later the Constitution Revision Assembly recommended a sweeping change that the court system be divided into four levels: A Supreme Court, a

Court of Appeals (to be organized in divisions, thereby dividing the workload), Circuit Courts, and District Courts (generally one per county), which were to combine the work of the existing county and quarterly courts, the justice of peace courts and police courts. The recommended plan for choosing justices of the Supreme Court, the Court of Appeals and for the Circuit Courts would essentially be used under the Missouri plan and in a number of other states.<sup>5</sup> Although this plan was not adopted at that time, the proposals are quite similar to those submitted to the voters later in the Constitutional amendment that was adopted.

### **The 1975 Judicial Article**

In the November 1975 election, Kentucky voters approved an amendment to the state Constitution for the purpose of re-structuring the entire judicial branch of government. Supporters of the proposed amendment contended that the new structure would meet current needs and was flexible enough to adjust to future requirements.

As a result of this constitutional amendment and its implementing legislation, the judicial power of the Commonwealth is now exclusively held by the Court of Justice. This is a unified system for the purpose of court operation and administration, consisting of two appellate levels: the Supreme Court and the new intermediate Court of Appeals, and two trial levels, the Circuit Courts and the District Courts. Changes at the appellate level were made effective on January 1, 1976, while those at the trial level became effective January 2, 1978.

### **The Supreme Court**

The adopted amendment repealed Sections 109 through 139, 141 and 143, and enacted entirely new provisions for a new constitutional judicial section. Section 110 specifies that the apex of the system is the Supreme Court, consisting of a Chief Justice and six additional Justices, which has appellate jurisdiction only, except that it has power to “issue all writs necessary in aid of its appellate jurisdiction, or the complete determination of any cause, or as may be required to exercise control of the court of justice.” Appeals from a decision of a Circuit Court imposing a sentence of either death or life imprisonment or imprisonment for twenty years or more go directly to the Supreme Court. The former Court of Appeals districts became the initial Supreme Court districts, a condition that will remain until the General Assembly, with a certificate of necessity issued by the Supreme Court, finds redistricting necessary. Each district is represented by one Justice on the Supreme Court. This court selects one of its members to serve as Chief Justice for a term of four years. The Chief Justice is the executive head of the Court of Justice, with the power to appoint necessary administrative assistants. The Chief Justice may also assign, temporarily, any justice or judge of the Commonwealth to sit in any court other than the Supreme Court, when such assignments aid the proper disposition of cases. In addition, the Chief Justice is responsible for the budget of the Court of Justice and other necessary administrative functions of the court.

## **The Court of Appeals**

Section 111 creates the Court of Appeals. It consisted initially of fourteen judges with an equal number selected from each Supreme Court district. Later, upon certification of necessity by the Supreme Court, the General Assembly may increase the number of Court of Appeals judges. The Court of Appeals has only appellate jurisdiction and it selects a member to serve as Chief Judge for a term of four years. The administrative authority and duties of the Chief Judge are prescribed by the Supreme Court. The Court of Appeals divides itself into panels of not less than three judges, with the Chief Judge making the assignment of the individuals to the panels. The Court of Appeals also prescribes the times and places in the state at which each panel shall sit to decide cases; determinations are by concurring vote of a majority of the judges. (See Figure 9.)

## **Circuit Courts**

Section 112 provides that there shall be a Circuit Court held in each county and that all districts which existed on the effective date of the amendment shall continue under the name of “Judicial Circuits.” The General Assembly has the power, upon certification of necessity by the Supreme Court, to reduce, increase, or rearrange judicial circuits. The constitutional provision further states that a judicial circuit composed of more than one county shall be as compact in form as possible, and consist of contiguous counties, and that no county shall be divided in creating a judicial circuit. The number of circuit judges in each district existing on the effective date of the amendment did not change, but the legislature, upon certification of necessity by the Supreme Court, is empowered to make such changes. Judges in judicial circuits having two or more judges shall select biennially a Chief Judge, or, upon failure to do so, the Supreme Court shall designate a Chief Judge. Chief Judges exercise the authority and perform such duties in the administration of their respective judicial circuits as may be prescribed by the Supreme Court, which also makes rules for the administration of judicial circuits by region it designates. A Circuit Court has original jurisdiction of all justifiable causes not vested in some other court, although it only has such appellate jurisdiction as may be authorized by law. (See Figure 10.)

## **District Courts**

Section 113 of the Constitution provides that a district court shall be held in each county, although the Circuit Court districts existing on the effective date of the amendment formed the basis of District Court districts, under the name of “Judicial District.” Again, the General Assembly was given the power, upon proper certification of necessity by the Supreme Court, to reduce, increase, or rearrange districts. When the judicial district consists of more than one county, it is required to be as compact in form as possible and consist of contiguous counties. Dividing a county by creating a judicial district is prohibited. All judicial districts created by the amendment initially had at least one District Judge who served as Chief Judge. The General Assembly may determine that

additional district judges are needed. Thereafter the number of district judges in each judicial district will be determined by the General Assembly only upon certification of necessity by the Supreme Court. Counties in which no district judge resides have a Trial Commissioner, appointed by the Chief Judge. (See Figure 11.) This official must be a resident of the county and a qualified attorney, if one is available. Upon certification by the Supreme Court, other trial commissioners, with like qualifications, may be appointed by the Chief Judge of any judicial district. These Commissioners have the power to perform such duties of the District Court as may be prescribed by the Supreme Court. The District Court is a court of limited jurisdiction. As of 2001, it has jurisdiction over misdemeanor violations, juvenile cases (unless the juvenile is tried in Circuit Court as a youthful offender), civil cases under \$4,000, and probate matters, and can exercise original jurisdiction only as may be authorized by the General Assembly.

Under Section 114, the Supreme Court and the Court of Appeals shall each appoint a Clerk to serve as they may determine. The Clerks of the Circuit Courts continue to be elected in the constitutional manner prescribed previously, but they will also serve as clerks of the District Court. Any court clerk may be removed from office by the Supreme Court for “good cause.”

### **Family Courts**

In 1991 a pilot Family Court Project was initiated in Jefferson County. The family court is designed to utilize the “one judge, one court” approach to case management. Family matters are presented in a single court, allowing the same judge to hear all matters relating to a particular family. A single court reduces the stress that can arise from being shuttled between district and circuit courts and different divisions of the same court in order to resolve a particular issue or matter.

Family Courts link families with a complete social service delivery system. Working directly with each Family Court Judge are a court administrator, a law clerk, a judicial secretary, a social worker, and court clerks. The staff is specially trained to attend to the needs of families through services ranging from counseling to helping families to utilize the complicated legal system.

Typical matters handled by Family Court include dissolution of a marriage, child custody, child support, spousal support, adoption, termination of parental rights, domestic violence, status offenses, truancy, paternity, dependency, neglect, and abuse. Family Courts hear only family cases and are presided over by Circuit Judges or District Judges with the qualifications of a Circuit Judge (they have practiced law for 8 years prior to becoming a judge).

Family Courts are supported by Family Court Councils which are multi-disciplinary, and may include attorneys, social service providers, judges, local officials, victim advocates, school representatives, and citizens from the local community.

Family Courts have been expanded on a temporary basis to various other areas of the state. In 2001, the General Assembly proposed a Constitutional amendment providing a permanent family court program which was endorsed by the Supreme Court of Kentucky. The amendment was approved by the voters at the regular election in 2002.

## Circuit Court Clerks

The Kentucky Circuit Court Clerk, formerly considered an elective county official, has been assigned additional duties under the judicial article establishing the Court of Justice, and becomes a state employee with a new source of compensation. As the title implies, this official has been primarily responsible for the work of the circuit court, receiving and preserving documents of all actions coming before the court. In criminal cases the circuit clerk maintains a daily record of the proceedings, records and indexes judgments of the court, collects fines imposed, compensates jurors for services and makes accounting of all these transactions. Additional duties have included such functions as filing petitions, contesting certain elections, and even being *ex officio* county law librarian.

An important duty since 1934, the effective date of the Kentucky Motor Vehicle Operations Act, has been serving as a local licensing agent for the State Tax Commission by accepting applications, issuing licenses and collecting fees in connection with the State Driver's License System. Effective January 1, 1978, the circuit clerk assumed the clerical duties of the new district court while retaining the previous responsibilities of the old circuit court, continuing to issue driver and boat licenses, and performing many other miscellaneous duties.

With the district court assuming the judicial functions formerly assigned to the justice of the peace, the county, the quarterly, the juvenile, the police and probate courts, the circuit clerk's duties have expanded over a broad jurisdiction, including the following categories: (1) traffic violations, (2) felony preliminaries, (3) misdemeanors, (4) juvenile actions, (5) violations of city ordinances, (6) probate matters, and (7) civil cases under \$4,000, and a small claims division for civil cases under \$1,500. In general, under the new court system the circuit clerk continues to be elected but has responsibility for the clerical and administrative operations of district courts, and is removable for good cause by the Supreme Court. The clerical duties of the Small Claims division of this court have also been assigned to the circuit clerks. Their duties include the filing of claims and counter-claims, notifying defendants, taking affidavits, and collecting fees. In addition the clerk serving the district courts is charged with preparation of bonds given before that court, taking affidavits in the court and maintaining court dockets and records. Also, this official is responsible for the assessing of court costs, for their collection and making of various deposits, reports and payment of these monies, including fines and forfeitures, to the state Department of Finance. The statutes further state "every clerk shall perform such additional duties as may be prescribed by statute or by court rule" (KRS 30A.140).

On January 1, 1978, the effective date of the legislation relating to the implementation of the judicial article, the dependence of the circuit court on licensing fees to operate the office increased. Monies collected began to flow directly to the State Treasurer, with the circuit clerk being paid from the treasury, according to county population. The salaries of deputies and total expenses of the clerk's office also began to be paid from the state treasury (KRS 64.055). The Administrative Office of the Courts, in consultation with the clerk, determines the number, qualification and salaries of deputy clerks. This arrangement has the effect of Circuit Court Clerks becoming dependent on the Administrative Office of the Courts for all supplies and monies to meet the expense of their respective offices (KRS 30A.080).

Under the new constitutional provisions, justices of the Supreme Court and judges of the Court of Appeals, Circuit and District Courts are elected on a non-partisan basis, as may be provided by law. Justices of the Supreme Court, as well as judges of the Court of Appeals and Circuit courts, are selected for terms of eight years, while judges of the District Court are elected for terms of four years. Another innovation of the new constitutional provisions pertains to filling of vacancies on the court. Section 113 established a Judicial Nominating Commission for the purpose of supplying the Governor with nominees, from which the Governor chooses one person to fill a vacancy in a judicial office. There is a commission for the Supreme Court and for the Court of Appeals, a commission for each judicial circuit, and a separate commission for each judicial district, if the District Court boundaries are different from those of the Circuit Court.

### **The Grand Jury**

Kentucky law provides for a Grand Jury in each county to inquire into all law violations within the county and to bring indictments when it thinks there is a sufficient reason to try an alleged offender for felony charges. The Grand Jury also has a duty to visit and comment on the operation of county-operated facilities such as jails, and may make comments and recommendations upon the operations of any county office or officer.

### **The Petit Jury**

Criminal cases in the Circuit Courts are generally tried before, and with guilt being decided by a petit jury of twelve members. Criminal cases in the District Court may be tried by a jury of six members. In all criminal cases tried before a jury, the judge instructs the jury on what the applicable law in the case is and the jury then applies the facts to the law in order to determine guilt or innocence, and, if the defendant is found guilty, determines the sentence at a separate hearing, at which the prior record of the defendant may be introduced in evidence for sentencing purposes. The defendant may elect to be tried before a judge without a jury, in which case the judge determines guilt or innocence, and sets the penalty. In many other states the jury in a criminal case merely determines guilt or innocence and does not set the sentence (which is set by the trial judge).

In a civil case the jury is instructed on the law by the judge, applies the law to the facts in the case, and then renders a verdict. In a civil case, the standard for a finding of liability is a preponderance of the evidence, which is less than “beyond a reasonable doubt.” In a civil suit claiming money damages, the jury must also determine the amount of the damages. A verdict in a civil case does not have to be unanimous. Nine of twelve jurors in Circuit Court or five of six jurors in District Court is sufficient for the rendering of a verdict.

## Other Court Functions

An important change of procedure in the new system is found in the creation by Section 121 of the Retirement and Removal Commission, composed of six members, including one Judge of the Court of Appeals, one Circuit Judge and one District Judge, each chosen by their respective courts, plus one member of the Bar Association chosen by that professional group, and two individuals appointed by the Governor of the Commonwealth. This commission, upon proper required notice and hearing, may retire for disability, suspend without pay, or remove with good cause, any judge or justice. Previously, the only way a judge could be removed was by the process of impeachment. A judge may still be impeached by the General Assembly. Because of its complexity and difficulty, impeachment is rarely used.

Both the Supreme Court and the Court of Appeals now appoint clerks who are responsible for maintaining accurate and efficient records of the court's proceedings.<sup>6</sup> The clerk's office must keep track of each appeal as it is filed and record each action until final disposition. The clerk is also responsible for collecting costs on each case filed with the office. The Clerk of the Supreme Court, the court of the last resort in the state, issues certificates of good standing and provides a license to all attorneys, provides applications to and collects required fees from persons desiring to take the state bar examination, and administers the constitutional oath of office to newly admitted attorneys and to other state officials.

One innovation of the judicial article legislation is the creation of a Small Claims Division of the District Court, which, as of 2001, can handle litigation involving values up to \$1,500 in a relatively informal manner. The purpose of this change is to make the courts available to persons having small claims and to reduce court costs and attorney's fees, which in the past frequently amounted to more than the claim involved. Under the new system, small claims matters may be filed on a form supplied by a court, with a nominal filing fee of fifteen dollars. The services of an attorney are not necessary, as the individual may present his or her own case.

The appointment of Trial Commissioners in counties in which no District Judge resides will enable those counties to have a local, qualified attorney conducting the court and lightening the workload of District Judges who serve more than one county. It should be pointed out, however, that this is considered a part-time official position and a commissioner may also continue in the private practice of law. The Trial Commissioner's duties, as defined by the Supreme Court, are very limited. They include holding examination trials, setting bail, accepting pleas of guilty and imposing a sentence for any offense punishable only by a fine of one hundred dollars or less, conducting preliminary inquiries and ordering temporary custody in juvenile cases, probating wills, and appointing executors and administrators. Trial Commissioners' salaries, as of 2001, are limited to \$7,200 per year. These officials are appointed by and serve at the pleasure of the Chief District Judge. Additional Trial Commissioners may be appointed by the Chief District Judge of any district if the necessity for such appointment is certified by the Supreme Court.

As of 2002, the Judicial Budget specifies compensation of the judiciary as follows: District Judges receive \$102,242 per year, except for the Chief Regional District Judge, whose salary is \$103,242; Circuit Judges receive \$113,267, except for the Chief

Regional Circuit Judge, whose salary is \$114,267; judges of the Court of Appeals receive \$118,300, except for the Chief Judge, whose salary is \$121,300; the seven justices of the Supreme Court, final arbiters of state law, receive \$123,334 per year, except for the Chief Justice, whose salary is \$128,334.

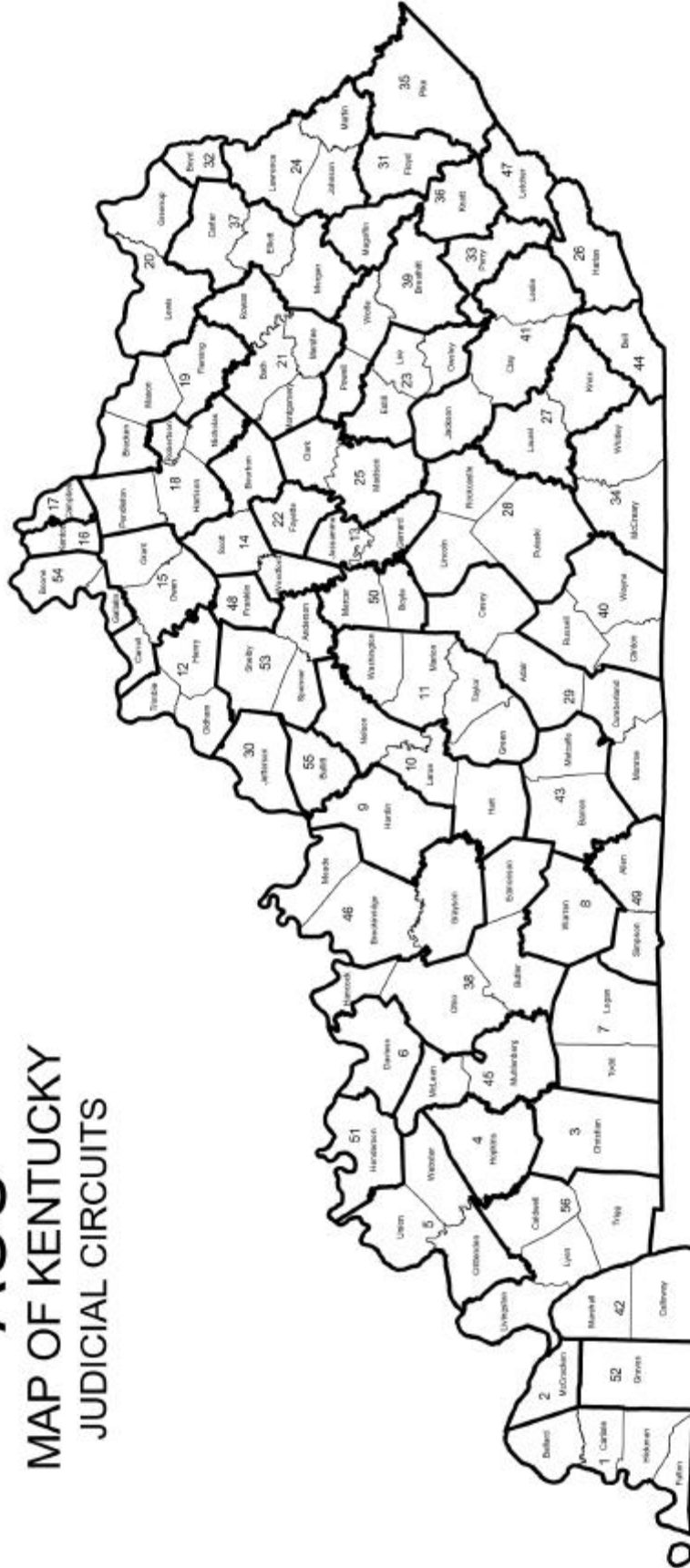


**JUDGES ANNUAL SALARIES  
1982-2002**

YEAR	DISTRICT	CIRCUIT	COURT OF APPEALS	SUPREME COURT
1981	\$40,810.08	\$47,700.00	\$49,819.92	\$51,939.96
1982	\$42,850.56	\$50,085.00	\$52,310.88	\$54,537.00
1983	\$44,521.68	\$52,038.36	\$54,351.00	\$56,664.00
1984	\$45,412.08	\$53,079.12	\$55,438.08	\$57,797.28
1985	\$46,774.44	\$54,671.52	\$57,101.28	\$59,531.16
1986	\$49,863.12	\$57,405.12	\$59,956.32	\$62,507.76
1987	\$53,106.24	\$60,275.40	\$62,954.16	\$65,633.16
1988	\$54,168.36	\$61,480.92	\$64,213.20	\$66,945.84
1989	\$56,876.76	\$64,554.96	\$67,423.92	\$70,293.12
1990	\$60,470.52	\$67,782.60	\$70,795.08	\$73,807.68
1991	\$64,244.04	\$71,171.64	\$74,334.72	\$77,498.04
1992	\$64,244.04	\$71,171.64	\$74,334.72	\$77,498.04
1993	\$64,886.40	\$71,883.24	\$75,078.00	\$78,273.00
1994	\$69,428.40	\$76,914.96	\$80,333.40	\$83,752.08
1995	\$74,288.28	\$82,299.00	\$85,956.72	\$89,614.68
1996	\$78,002.69	\$86,413.95	\$90,254.56	\$94,095.41
1997	\$81,902.76	\$90,734.64	\$94,767.24	\$98,800.08
1998	\$85,997.88	\$95,271.24	\$99,505.56	\$103,740.00
1999	\$90,297.72	\$100,034.76	\$104,480.76	\$108,927.00
2000	\$94,812.72	\$105,036.49	\$109,704.96	\$114,373.44
2001	\$99,553.08	\$110,288.28	\$115,189.92	\$120,091.92
2002	\$102,242.00	\$113,267.00	\$118,300.00	\$123,334.00
	Chief Regional District Judge \$1,000	Chief Regional Circuit Judge \$1,000	Chief Judge \$3,000 Extra	Chief Justice \$5,000 Extra

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## MAP OF KENTUCKY JUDICIAL CIRCUITS

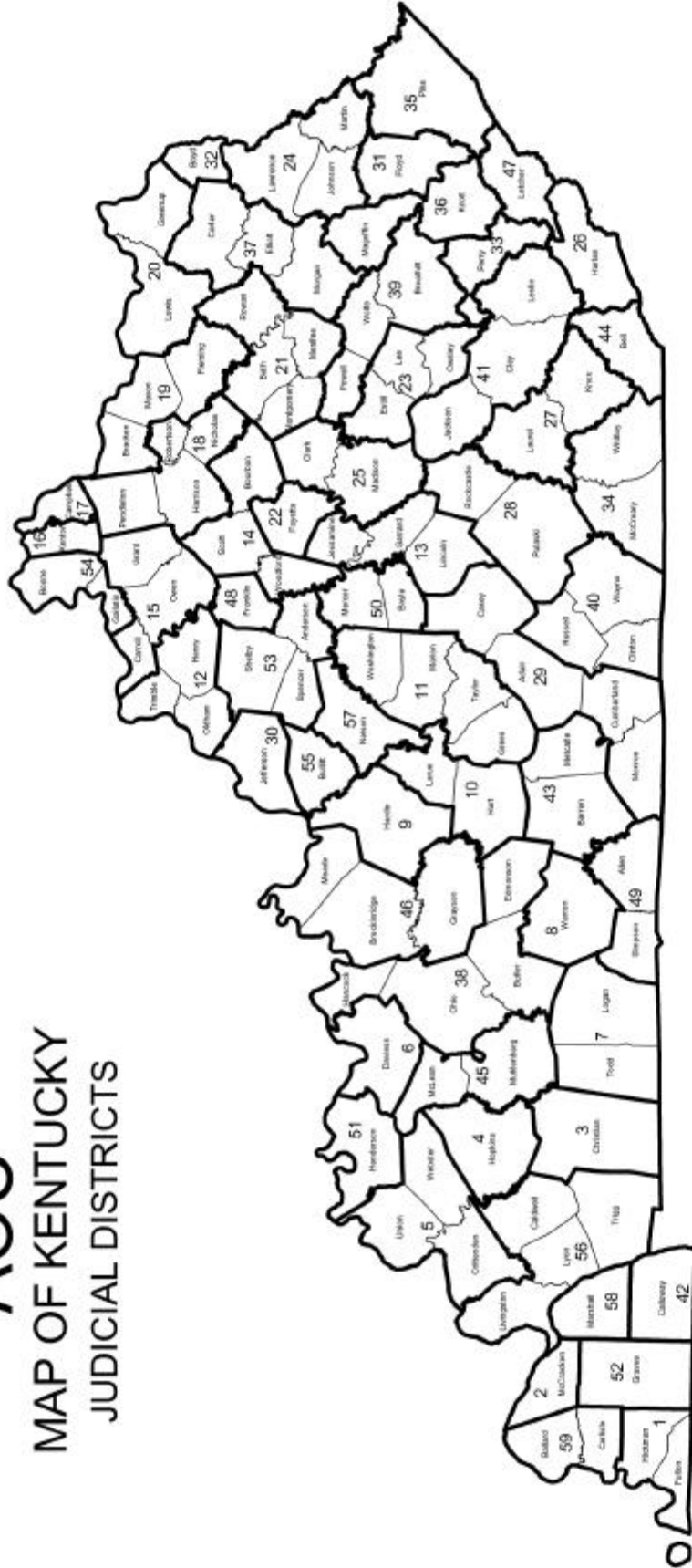


## JUDICIAL CIRCUITS

1. Ballard, Carlisle, Fulton, Hickman
2. McCracken
3. Christian
4. Hopkins
5. Crittenden, Union, Webster
6. Daviess
7. Logan, Todd
8. Warren
9. Hardin
10. Hart, Larue, Nelson
11. Green, Marion, Taylor, Washington
12. Henry, Oldham, Trimble
13. Garrard, Jessamine
14. Bourbon, Scott, Woodford
15. Carroll, Grant, Owen
16. Kenton
17. Campbell
18. Harrison, Nicholas, Pendleton, Robertson
19. Bracken, Fleming, Mason
20. Greenup, Lewis
21. Bath, Menifee, Montgomery, Rowan
22. Fayette
23. Estill, Lee, Owsley
24. Johnson, Lawrence, Martin
25. Clark, Madison
26. Harlan
27. Knox, Laurel
28. Lincoln, Pulaski, Rockcastle
29. Adair, Casey, Cumberland, Monroe
30. Jefferson
31. Floyd
32. Boyd
33. Perry
34. McCreary, Whitley
35. Pike
36. Knott, Magoffin
37. Carter, Elliott, Morgan
38. Butler, Edmonson, Hancock, Ohio
39. Breathitt, Powell, Wolfe
40. Clinton, Russell, Wayne
41. Clay, Jackson, Leslie
42. Calloway, Marshall
43. Barren, Metcalfe
44. Bell
45. McLean, Muhlenberg
46. Breckinridge, Grayson, Meade
47. Letcher
48. Franklin
49. Allen, Simpson
50. Boyle, Mercer
51. Henderson
52. Graves
53. Anderson, Spencer, Shelby
54. Boone, Gallatin
55. Bullitt
56. Caldwell, Livingston, Lyon, Trigg

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## MAP OF KENTUCKY JUDICIAL DISTRICTS



## JUDICIAL DISTRICTS

1. Fulton, Hickman
2. McCracken
3. Christian
4. Hopkins
5. Crittenden, Union, Webster
6. Daviess
7. Logan, Todd
8. Warren
9. Hardin
10. Hart, Larue
11. Green, Marion, Taylor, Washington
12. Henry, Oldham, Trimble
13. Garrard, Jessamine, Lincoln
14. Bourbon, Scott, Woodford
15. Carroll, Grant, Owen
16. Kenton
17. Campbell
18. Harrison, Nicholas, Pendleton, Robertson
19. Bracken, Fleming, Mason
20. Greenup, Lewis
21. Bath, Menifee, Montgomery, Rowan
22. Fayette
23. Estill, Lee, Owsley
24. Johnson, Lawrence, Martin
25. Clark, Madison
26. Harlan
27. Knox, Laurel
28. Pulaski, Rockcastle
29. Adair, Casey, Cumberland, Monroe
30. Jefferson
31. Floyd
32. Boyd
33. Perry
34. McCreary, Whitley
35. Pike
36. Knott, Mogoffin
37. Carter, Elliott, Morgan
38. Butler, Edmonson, Hancock, Ohio
39. Breathitt, Powell, Wolfe
40. Clinton, Russell, Wayne
41. Clay, Jackson, Leslie
42. Calloway
43. Barren, Metcalfe
44. Bell
45. McLean, Muhlenberg
46. Breckenridge, Grayson, Meade
47. Letcher
48. Franklin
49. Allen, Simpson
50. Boyle, Mercer
51. Henderson
52. Graves
53. Anderson, Spencer, Shelby
54. Boone, Gallatin
55. Bullitt
56. Caldwell, Livingston, Lyon, Trigg
57. Nelson
58. Marshall
59. Ballard, Carlisle



## NOTES

<sup>1</sup> William E. Bivin, “The Historical Development of Kentucky Courts” 47 *Kentucky Law Journal* 465 (1959).

<sup>2</sup> Thomas D. Clark, *A History of Kentucky*, pp. 142-144.

<sup>3</sup> Clark, p. 145.

<sup>4</sup> Advisory Committee on the Judicial Department, *A Tentative Draft of Proposed Judicial Article* (Frankfort: Legislative Research Commission, 1957) pp. 1-2

<sup>5</sup> Legislative Research Commission, *Proposed Revision of the Constitution of the Commonwealth of Kentucky* (Constitution Revision Assembly Document, Frankfort, 1966) Article VI.

<sup>6</sup> Previously the Clerk of the Court of Appeals, then Kentucky’s highest court, was elected by popular statewide vote at the same time as the gubernatorial election.





## **CHAPTER IX INTERGOVERNMENTAL RELATIONS**

“Intergovernmental relations” is the term applied to the relationship between one unit of government (such as a state or a city) and others. It is generally used to refer to relationships among governmental units within a nation, in contrast to “international relations” among nation-states. For our purposes, “intergovernmental relations” means the relationships among the U.S. national government, state governments (and particularly Kentucky’s state government), and cities, counties, and other units of local government within each state. The relationship described may be vertical (between “layers” of government, e.g. “federal-state,” or “state-local” relations) or horizontal (among governments of the same level, that is, “interstate” or “interlocal” relations).

### **Constitutional Structure of Intergovernmental Relations**

The fundamental legal structure of intergovernmental relations in the United States of America is established by the United States (or “federal”) Constitution and the constitution of each of the fifty states. The U. S. Constitution defines the legal relationship between the national and state governments and among the governments of the fifty states. Each state’s constitution provides the legal framework for state-local relations within that particular state.

### **United States Constitution**

The Constitution of the United States, ratified in 1789, establishes a federal system of government. Such a system distributes political power between the central, or national, government, and self-governing states. It is a system of shared power.

The framers of the U.S. Constitution believed that a few well-defined powers should be delegated to the national government, with more numerous and indefinite powers reserved for the state governments. The Tenth Amendment to the U.S. Constitution, a part of the Bill of Rights adopted in 1791, expressly states that “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the states respectively, or to the people.” Article I, Section 10 lists powers denied to the states by the national Constitution. Among them is a provision that “[n]o state shall, without the consent of the Congress,.... enter into any agreement or compact with another state.”

The federal Constitution makes the national government supreme in those areas in which power is delegated to it. Article VI, Section 2 says, “This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges of every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding.”

Article I, Section 8 of the federal Constitution enumerates the various powers of the federal legislative, or law-making, body, the U.S. Congress. Two of its enumerated powers which have a major impact on federal-state relations include the powers “to regulate commerce ... among the several states” and “to make all laws which shall be necessary and proper for carrying [the federal government’s powers] into execution.” International relations and national defense are other major policy areas assigned to the federal government. Section 9 contains a list of powers denied to the Congress.

Some of the amendments to the Constitution further limit or expand the power of the states and the national government. Examples are Amendments XIII, XIV, and XV, adopted after the Civil War, abolishing slavery and establishing voting rights and the principles of due process and equal protection of the laws for all citizens; Amendment XVI, empowering Congress to establish an income tax; Amendment XIX, prohibiting the denial of voting rights on the basis of sex; and Amendment XXVI, guaranteeing voting rights to persons eighteen years of age or older.

Under a federal system, it is inevitable that conflicts and disagreements arise between federal and state authorities. The framers of the Constitution made the Supreme Court of the United States the arbiter in such matters by giving it the ultimate responsibility for the interpretation of the U.S. Constitution. Article III of the Constitution also gives the Supreme Court the power to decide controversies between two or more states.

States are given a role in the process of amending the U.S. Constitution. Article V provides that Congress shall call a national convention to amend the Constitution when requested by the legislatures of two-thirds of the states. Proposed amendments to the Constitution become valid when ratified by three-fourths of the state legislatures or by conventions in three-fourths of the states.

### **The State Constitution**

While the constitutional relationship between the national and state governments is one of shared power, “[1] local governments are, constitutionally speaking, mere conveniences of the state. They are created by state government, their institutional structures are defined by state government, and their powers of legislation and taxation are derived from state government. As such, local governments do not enjoy sovereignty, apart from that granted by the state. Thus, this relationship is unitary rather than federal, since it is not concluded between independent sovereigns.”<sup>1</sup>

As discussed more fully in Chapters X and XI, the constitutional framework for state and local relations in Kentucky has evolved from a system in which the General Assembly of the 1800’s passed many special and local laws governing individual cities and counties, to the current constitution’s prohibition against special and local legislation and its requirement that state legislation govern cities by classes, or groups, based on their population. In addition, the General Assembly enacted laws in the 1970’s and 1980’s that granted broader, “home rule” (or self-government) powers to cities and counties. In November, 1994, voters passed a constitutional amendment providing a clearer constitutional basis for city and county “home rule,” and permitting state legislation to govern groups of cities based on factors besides their population.

## **The Dynamics of Intergovernmental Relations**

Thus far, we have described the intergovernmental system in the United States as though it were composed of different layers or boxes that only relate to one another under established, rarely changing, constitutional rules. This formal view ignores the dynamics of the actual, day-to-day relationships among the national, state and local governments in the United States. The intergovernmental system is a constantly developing pattern of cooperation and conflict among units of government, their officials, and their citizens. The elements of the system do not always gather in neat, clearly separated “layers” of government but, as Martin Grodzins has noted, frequently interact in ways that more closely resemble a “marble cake” of shared roles and responsibilities.<sup>2</sup>

### **Conflict and Cooperation: The Politics of Intergovernmental Relations**

The foundation document of the United States, its Constitution, is a product of conflict, compromise, and cooperation among proponents of a strong federal government and those favoring strong, independent states. The politics of intergovernmental relations have continued to be characterized by conflict and cooperation among national, state, and local governments, as illustrated in the development of fiscal federalism and the current issues of federal-state, federal-local and state-local regulation, mandates, preemption and devolution.

### **Fiscal Federalism**

The post-Civil War history of federal-state-local fiscal relations began with important, but relatively modest, federal programs of aid for specific state and locally operated public services prior to the Great Depression of the 1930's and World War II. As early as 1862, under the Morrill Act, the federal government provided states with grants of land for the purpose of establishing agricultural and mechanical colleges, including the institution that became the University of Kentucky.<sup>3</sup> Beginning in 1916, programs of federal aid for highway construction led to the development of a nationwide system of primary roads, including a Kentucky primary system of about 12,000 miles in use by 1950.<sup>4</sup> The depression and two world wars had a major impact on fiscal federalism, both in the total amount of spending by governments and in the relationship between federal and state budgets. Between 1913 and 1948, expenditures by all governments in the United States increased from \$3 billion to \$70 billion. “At the beginning of the period, the national budget was less than half as large as the combined state and local I budgets; at the end it was six times larger.”<sup>5</sup>

The growth and institution of major federal grants-in-aid and entitlement programs administered through states and localities characterized the 1950's and 1960's, with the greatest growth in the mid to late 1960's. In 1956, the Federal-Aid Highway Act funded the interstate highway system, a program in which the federal government provided ninety-percent of the cost of a major system of state-constructed,

transcontinental roads. While the funding of the interstate system represented a major new federal investment, the enabling legislation justified the federal role in traditional, constitutional terms. The official name of the interstate program was the “National System of Interstate and Defense Highways,” which Congress declared “of primary importance to the national defense.”<sup>6</sup>

Beginning in 1965, during the administration of President Lyndon Johnson, a significant increase in federal grants-in-aid to states and local governments included introduction of federal health, housing assistance, and urban redevelopment programs.

In just two years, ... Congress increased the number of separate grant-in-aid authorizations from 221 to 379 ... Although federal grants-in-aid were a well-established feature of the U.S. government, they had historically been confined to a few specific areas. As late as 1965 the two major functional categories receiving assistance, transportation (highways) and income security (public assistance), together accounted for about two-thirds of all federal aid dollars. By 1969, the proportion of federal aid dollars assigned to highways and public assistance had ... decreased to one-third of a much-expanded aid package.<sup>7</sup>

These narrow-purpose, or “categorical,” methods of financing public programs provided states and communities with the resources to improve the economic prosperity, health, and welfare of many Americans. However, they were criticized for being too restrictive to permit policy innovations suited to local needs and preferences, and for a lack of policy coordination among different federal grant-administering agencies and their state counterparts.

The 1970’s saw the introduction of federal revenue-sharing with state and local governments, a program that tied federal funds to broader federal policy goals and reduced the much-criticized “red-tape” associated with the narrow-purpose grant and entitlement programs. Federal block grants, which group interrelated, narrow-purpose grant programs into more closely coordinated packages, were a related development of the late 1960’s that increased under the Nixon and Ford presidencies. However, a growing federal deficit led to the end of federal revenue-sharing in the early 1980’s.

During the 1980’s and early 1990’s, fiscal federalism was characterized by the demise of federal revenue-sharing and a continuation of both categorical and block grants. A steady decline in federal grant funding from 1978 to 1990 reversed slightly in the early 1990’s, due in part to trends in Medicaid.<sup>8</sup> The trend of increasing federal grant funding for state and local governments continued through the 1990’s in terms of inflation-adjusted dollars; however, the increase in federal funds accounted for a relatively constant share of total state and local expenditures.<sup>9</sup>

Through the 1990’s, state and local governments complained of an increasing use of unfunded federal mandates through which national policies are imposed on states and localities without the funding needed to implement them. Local governments cited unfunded state mandates as an additional fiscal burden on cities and counties. At mid-decade, a policy of “devolution” in the implementation of federal programs through which states were given greater flexibility in policy formulation and implementation began to emerge.

## Regulation, Mandates, Preemption and Devolution

The 1960's and early 1970's witnessed an increasing federal role in what traditionally had been state and local policy domains through the growth in federal funding for a broad range of public programs. Federal grants, and even federal revenue-sharing, came with national policy "strings" attached to federal dollars. Some categorical grant-in-aid requirements were very specific, concerning, for example, the composition of advisory or governing boards established to administer the federally-assisted program. The Congress also furthered broad national goals, such as civil rights, in its categorical and general fiscal aid programs.

The 1960's and 1970's have also been characterized as the era of the initiation of "regulatory federalism," in which federal policies were applied to states and localities without the incentive of federal funds: "For the first time in the nation's history, federal mandates and regulations began to rival grants and subsidies in importance as federal tools for influencing the behavior of state and local governments."<sup>10</sup> The trend in federal regulation continued into the 1990's, fostered in part by the United States Supreme Court's decision in *Garcia v. San Antonio Metropolitan Transit Authority*.<sup>11</sup> In that decision, Justice Blackmun, writing for a sharply-divided Court, suggested that states would have to rely on the political process, rather than constitutional law, to limit federal interference with state functions.<sup>12</sup>

Unfunded federal mandates and regulations are one side of the coin of federal limits on state and local policy-making; the other side is the exercise of federal preemption, "the authority of federal law to displace or replace state (and local) law under the supremacy clause of the U.S. Constitution (Article VI)."<sup>13</sup> In 1992, the Advisory Commission on Intergovernmental Relations identified 439 "significant" federal preemption statutes enacted since 1789. Congress had passed 53 percent of those laws since 1969.<sup>14</sup> Preemption also takes the form of regulations issued by federal executive branch agencies in the process of implementing laws enacted by the Congress.

Specific examples of preemptive enactments listed by the ACIR include the Voting Rights Act of 1965, the Occupational Safety and Health Act of 1970, the Low-Level Radioactive Waste Policy Act of 1980, and the Americans with Disabilities Act of 1990. Many preemptive laws further widely-valued national policies. In such circumstances, the intergovernmental issue is not whether they should be implemented, but who should pay the cost of their implementation.

In the mid-1990's, in response to state and local reactions to federal requirements, the federal government began to consider proposals to account for and reduce the burdens of its regulations and mandates on state and local governments. Congress debated legislation to forge a compromise between the states' demand for an end to unfunded or underfunded federal mandates and at least equally strong demands to promote valued national policies in the face of a growing federal budget deficit. In 1994, Congress adjourned with mandate accountability measures pending in both chambers; however, the 104<sup>th</sup> Congress subsequently enacted the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). The 1995 law does not preclude enactment of unfunded mandates or the preemption of state and local laws. It does require congressional committees to identify legislation creating mandates and provide various kinds of information about the mandate. It directs the Congressional Budget Office (CBO) to provide mandate cost

estimates and information on federal financial assistance for mandates that meet a certain financial threshold. It establishes procedural barriers to legislation lacking the CBO analysis. It also directs federal executive agencies to undertake reviews and analyses of the impact of their regulations on state, local, and tribal governments. Evaluating the initial impact of the 1995 law, one observer concluded:

[T]he Unfunded Mandates Reform Act in the early stages of implementation appeared to influence congressional behavior. The new law deterred Congress from mandating in a handful of instances and prompted it to modify its behavior in others. But Congress's propensity for mandating remained strong....<sup>15</sup>

A second 1990's effort to change federal-state relations was the movement toward devolution of policy-making to the states, illustrated by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, a significant welfare reform measure which changed an entitlement program, Aid for Families with Dependent Children (AFDC), to a block grant program, Temporary Assistance to Needy Families (TANF). The measure established limits on the length of time families could receive benefits. It gave states greater flexibility in designing and allocating funds among programs to support families while emphasizing work preparation. States have used TANF funds "to reach a variety of...goals—improve school readiness, reduce teen pregnancy, promote marriage, support working families, reduce poverty, help noncustodial parents, reduce child abuse...[and] help those held back [from job opportunities] by substance abuse, learning disabilities, and limited work experience."<sup>16</sup> However, the 1996 welfare reform act constitutes a mix of federal approaches to intergovernmental relations. It "contained new federal mandates governing the maximum length of federally supported welfare benefits, stringent targets for placing welfare recipients in jobs, and intrusive child support enforcement procedures.....Although the new law dramatically altered the structure for providing cash welfare..., it did not constitute a revolution in American intergovernmental relations."<sup>17</sup>

Cities and counties, in Kentucky and elsewhere, also complain of state preemption, regulation and mandates affecting local governments. In 1982, the Kentucky General Assembly passed a law requiring preparation of information on the fiscal impact of state legislation on local governments. In 1994, the General Assembly considered, but did not pass, a bill to relieve local governments from complying with future state statutory mandates that cost money to implement and for which no source of funding is provided. As of January 2001, mandate funding and relief measures had been enacted by statute or constitutional provision in about thirty states.<sup>18</sup>

### **Mechanisms for Intergovernmental Cooperation and Conflict Resolution**

Methods of resolving intergovernmental conflicts and engaging in cooperative efforts range from informal, day-to-day working relationships among officials of different governments, through formal organizations that serve as forums for non-binding resolution of issues, to legally-binding laws and interstate compacts.

State and local governments and officials have formed various associations to further their common interests within the federal system and to identify and develop responses to shared public policy issues. In addition, federal, state, and local government officials and employees engage in formal and informal efforts to further their common public policy interests and to resolve the conflicts inherent in the federal system.

General purpose associations of state and local officials include the Conference of Chief Justices, The Council of State Governments (CSG), the National Conference of State Legislatures (NCSL), the National Governors' Association (NGA), the National Association of Counties (NACO), the National Conference of Mayors, and the National League of Cities (NLC). Kentucky officials are active in each of these associations, one of which, The Council of State Governments, is headquartered in Lexington. While their roles and interests in the federal system may vary, they typically develop positions on federal policy issues affecting their jurisdictions and maintain a Washington, DC office to promote those positions. More specialized associations of state and local officials, including, for example, correctional administrators, mental health program directors, and transportation officials, maintain regular contact with one another and their administrative counterparts in the federal government to promote common policy interests and resolve conflicts relating to the programs they jointly administer.

State governments also cooperate through the NGA, CSG, NCSL, and other joint organizations, such as the National Conference of Commissioners on Uniform State Laws (NCCUSL), to share public policy innovations with one another. The NCCUSL, composed of delegates from each state, develops proposed uniform laws for the states' consideration in areas in which a single approach by all states is advisable. The Council of State Governments' Committee on Suggested State Legislation compiles and publishes draft laws on various topics of current interest to the states. The Standing Committee of the National Conference of State Legislatures provides state legislators and their staffs a forum for discussions of common policy issues, such as services for children and families, education, and health care. Both CSG and NCSL, which are supported in part by state contributions, provide on-going policy research services to the states. As Kentucky's commission on interstate cooperation, the Legislative Research Commission works with CSG, NCSL, and the NCCUSL.

The U.S. Advisory Commission on Intergovernmental Relations, which closed in 1996, was a formal organization that served as a forum for non-binding resolution of intergovernmental conflicts. Formed in 1959 by an act of Congress, the national ACIR included representation from the federal, state, and local governments and private citizens. The organization evaluated and made recommendations to improve the performance of the U.S. federal system. As of 1990, there were twenty-six state organizations established to deal with state-local relations, twenty of which were similar to the federal ACIR. In 1996, there were twenty-one active state ACIRs.<sup>19</sup>

An older, and more binding method of interstate cooperation is the formation of interstate compacts. "An interstate compact is a legal instrument with two basic characteristics. When enacted by a state, the compact becomes a statute and also a contract between the party states."<sup>20</sup> Article I, Section 10 of the U.S. Constitution recognizes the compact device and seems to require congressional approval of all interstate compacts: It states that, "No state shall, without the consent of the Congress, . . . enter into any agreement or compact with another state . . ." However, "the United

States Supreme Court held in 1893, in *Virginia v. Tennessee*, 148 U.S. 503, that only agreements that affect the political balance within the federal system or that affect a power delegated to the national government must receive congressional consent.”<sup>21</sup> Examples of the interstate compacts that have been enacted by Kentucky are the Interstate Compact on the Placement of Children, which regulates the placing of children across state lines in foster care or institutional care for delinquent children (KRS 615.030), and the Interstate Compact on Air Pollution, which addresses an environmental problem that transcends state boundaries (KRS 224.18-200). The Council of State Governments estimates that there were 194 interstate compacts in effect in 2001.<sup>22</sup>

Interstate agreements are one way of dealing with competition and conflict among the states within the United States. Two examples of interstate competition and conflict are states’ competing efforts to recruit industry and conflict over the siting of hazardous waste disposal facilities. Through tax and non-tax incentives, a state’s economic development activities are often directed to attracting new industries or enticing existing industries to relocate, a policy that has resulted in “bidding wars” among the states. Kentucky has been both emulated and criticized for its incentive legislation.<sup>23</sup> In an interstate version of the common “not-in-my-backyard” reaction to the siting of needed, but unpopular, public projects, such as sanitary landfills, the federal and state governments have struggled with the siting of disposal facilities for low-level radioactive waste. Regional interstate compacts have been one ingredient in efforts to resolve the issue.<sup>24</sup>

### **Legal Structure of State-Local Relations in Kentucky**

The Kentucky Department of Local Government and the fifteen Area Development Districts (ADDs), established by state statute in 1971, are the general-purpose organizations linking state and local government in Kentucky. In addition, the state Auditor of Public Accounts is authorized to audit local governments and governmental officials. Special-purpose agencies, such as the state Department of Education, the State Board of Elections, and the Revenue Cabinet, assist and oversee local performance of state-local public functions, such as implementation of the Kentucky Education Reform Act of 1990 (KERA), the administration of national, state, and local elections, and the valuation of private property for purposes of taxation.

The state statutory framework for cooperation among local governments in Kentucky is formalized in the ADDs (KRS 147A.050 to 147A.140), the Interlocal Cooperation Act of 1962 (KRS 65.210 to 65.300), and statutory authorization for cities and counties to jointly establish “special districts” for particular public purposes (KRS 65.160 to 65.176). Just as cooperation among officials of different states also takes place through informal contacts and interstate organizations like NCSL, Kentucky local governments and their officials have formed associations to further their common interests, including the Kentucky League of Cities (KLC) and Kentucky Association of Counties (KACO).



## **The Global Dimension of Intergovernmental Relations**

This chapter began with the traditional definition of intergovernmental relations as relationships among units of government within a single nation. The focus of this book is state government; and the Constitution of the United States assigns to the national government the basic powers of international relations, such as the power to regulate commerce with other nations, the authority to make treaties with foreign countries, and the power to declare war. Many of the powers that Section 10 of the Constitution expressly denies to the state governments have to do with international relations.

The traditional non-involvement of state governments in the international arena is, however, giving way to the realities of contemporary economic and political developments. “State and local governments are being propelled into the novel role of developing policies for dealing with foreign entities” as they wrestle with the globalization of economic development and investment and find themselves serving as laboratories for governmental changes in other nations.<sup>25</sup>

Both the executive and legislative branches of Kentucky state government are actively involved in the global redefinition of intergovernmental relations. For example, Kentucky’s Economic Development Cabinet operates offices in Belgium, Chile, Japan and Mexico to promote the export of Kentucky products to other nations and to encourage foreign investment in Kentucky. As of 1991, 42 of the states maintained similar offices abroad; and at least 39 states had trade offices overseas in 2002.<sup>26</sup> Through cooperative efforts of organizations such as the National Conference of State Legislatures, Kentucky’s General Assembly and the legislatures of other states are engaging in exchange programs with and providing technical assistance to new and established legislatures throughout the world.

## NOTES

<sup>1</sup> Russell L. Hanson, ‘The Intergovernmental Setting of State Politics,’ Chapter 2 in Virginia Gray, Herbert Jacob, and Kenneth N. Vine, *Politics in the American States: A Comparative Analysis, Fourth Edition* (Boston: Little, Brown and Company, 1983) p. 41.

<sup>2</sup> Martin Grodzins, *The American System: A New View of Government in the United States*, edited by Daniel Elazar (Chicago: Rand McNally and Co., 1966) p. 8.

<sup>3</sup> Thomas D. Clark, *A History of Kentucky*, (Lexington, Ky.: The John Bradford Press, 1950), pp. 365-366. For federal grant programs that predated the Morrill Act, see Grodzins, pp. 31-37.

<sup>4</sup> Clark, p. 385

<sup>5</sup> Grodzins, p.48.

<sup>6</sup> 1956 *U.S. Code Congressional and Administrative News* (St. Paul, MN and Brooklyn, NY: West Publishing Company and Edward Thompson Co., 1957) pp. 433-435.

<sup>7</sup> Kenneth T. Palmer, ‘The Evolution of Grant Policies’ in Lawrence Brown, James W. Fossett, and Kenneth T. Palmer, *The Changing Politics of Federal Grants* (Washington, DC: The Brookings Institution, 1984), p. 6.

<sup>8</sup> Advisory Commission on Intergovernmental Relations (ACIR), *Significant Features of Fiscal Federalism, 1993*, Volume 2, pp. 3-4 (Washington, DC: ACIR, September, 1993).

<sup>9</sup> U.S. Bureau of the Census, *Statistical Abstract of the United States: 2000*, Table 497, p. 403 and analysis by Legislative Research Commission’s Chief Economist.

<sup>10</sup> ACIR, *Federal Regulation of State and Local Governments: The Mixed Record of the 1980’s* (Washington, DC, ACIR, July 1993) p. 1.

<sup>11</sup> 469 U.S. 528 (1985).

<sup>12</sup> See ACIR, *Federal Regulation of State and Local Governments*, pp. 73-76. The mid-1990’s seemed to witness a shift in the U.S. Supreme Court’s view. See *New York v. United States*, 505 U.S. 144 (1992), *United States v. Lopez*, 514 U.S. 549 (1995), and discussion of these and other cases in Timothy Conlan, *From New Federalism to Devolution: Twenty-Five Years of Intergovernmental Reform* (Washington, D.C.; Brookings Institution Press, 1998), pp. 310-312; and in Martha Derthick, *Keeping the Compound Republic: Essays on American Federalism* (Washington, D.C.: Brookings Institution Press, 2001), pp. 154-155.

<sup>13</sup> ACIR, *Federal Statutory Preemption of State and Local Authority: History, Inventory, and Issues* (Washington, DC: ACIR, September 1992) p. iii.

<sup>14</sup> *Ibid.*

<sup>15</sup> Timothy Conlan, p. 272. See also John Dinan, ‘State Government Influence in the National Policy Process: Lessons from the 104<sup>th</sup> Congress’ reprinted in Laurence J. O’Toole, Jr., ed., *American Intergovernmental Relations, Third Edition* (Washington, D.C.: CQ Press, 2000), pp. 137-139.

<sup>16</sup> Jack Tweedie, ‘From D.C. to Des Moines—The Progress of Welfare Reform’ in National Conference of State Legislatures, *State Legislatures*, April 2001, p. 33.

<sup>17</sup> Conlan, p. 274.

<sup>18</sup> National Conference of State Legislatures, ‘Mandate Relief for Local Government’ compiled by Judy Zelio, NCSL Fiscal Affairs Program, January, 2001 (unpublished). See Steven D. Gold, ‘Devolution Stage II’ in National Conference of State Legislatures, *State Legislatures*, April 1996, pp. 22-25.

<sup>19</sup> ACIR, *State-Local Relations Organizations: The ACIR Counterparts* (Washington, DC: ACIR, February, 1991) p.5; and Tracy Williams, *A National Survey of Advisory Commissions on Intergovernmental Relations* (Indianapolis: Indiana Advisory Commission on Intergovernmental Relations, July, 1996), pp. 10-11.

<sup>20</sup> Donna K. Smith, *Interstate Cooperation: Kentucky and the Compact*, Informational Bulletin No. 64 (Frankfort: Legislative Research Commission, 1968), p. 1.

<sup>21</sup> Benjamin J. Jones and Deborah Reuler, "Interstate Compacts and Agreements" in The Council of State Governments, *The Book of the States, 1990-91* (Lexington, Ky.: The Council of State Governments, 1990), p.565.

<sup>22</sup> The Council of State Governments, "Interstate Compacts Believed to be in Effect in 2001" <http://ssl.csg.org/compactlaws/comlistlinks.htm> (September 18, 2002).

<sup>23</sup> William Schweke, Carl Rist, and Brian Dabson, *Bidding for Business: Are Cities and States Selling Themselves Short?* (Washington, DC: Corporation for Enterprise Development, 1994), p. 15.

<sup>24</sup> Jones, Benjamin J., *Interstate Compacts and Agreements*, in The Council of State Governments, *The Book of the States, 1992-93* (Lexington, Ky.: The Council of State Governments, 1992) p. 649. But for a discussion of the failure of interstate compacts to provide facilities see United States General Accounting Office, *Low-Level Radioactive Wastes: States Are not Developing Disposal Sites*, Report to the Chairman, Committee on Energy and Natural Resources, United States Senate, Washington, D.C.: GAO/RCED-99-238, September 1999.

<sup>25</sup> John "Eck" Rose, "Foreign Relations at the State Level" in The Council of State Governments, *Journal of State Government*, Vol. 64, No. 4, Oct.-Dec., 1991, pp. 110-117. See also, ACIR, "State and Local Governments in International Affairs," in *Intergovernmental Perspective*, Vol. 20, No. 1 (Fall 1993-Winter 1994) pp. 33-37.

<sup>26</sup> Stempel, John D. "Losing It: The Decentralization of American Foreign Policy" in The Council of State Governments, p. 123; and U.S. Department of Commerce, International Trade Administration, Trade Information Center, *National Export Directory (By State): State Trade Offices*, <http://tradeinfo.doc.gov/ticwebsite/NED.NSF/63fc14b29ac2c1aa85256000006a5a10!OpenView> (September 24, 2002).



## **CHAPTER X**

### **LOCAL GOVERNMENT: COUNTIES**

Before the American Revolutionary War, what is now the Commonwealth of Kentucky (with the exception of the Jackson Purchase area), was part of Fincastle County, Virginia. It was basically a backwoods area with no incorporated towns or other local governments within its entire boundary. In 1776 Fincastle County was divided into three counties, namely Fayette, Jefferson and Lincoln, thereby constituting the original district of Kentucky.

Virginia, perhaps more than any of the other original colonies, relied upon counties as the basic unit of government. The state government delegated to the county the primary responsibilities of tax assessment and collection, law enforcement, and many other functions of local government. It also gave this western district a “degree of autonomy when it set up a special land court, a district court of appeals and a county militia system.”<sup>1</sup> During this formative period “the county organization was the local unit of government and political institution in Kentucky.”<sup>2</sup> Virginia thereby established a loose political pattern that still prevails.

Following a series of acts by the General Assembly of Virginia, beginning in 1784, the three original counties were further subdivided into nine counties that made up the state of Kentucky at the time of its admission into the Union on June 1, 1792. As one historian points out, Kentucky very early “Displayed a particular predilection for the art of count-making.”<sup>3</sup> This talent was further demonstrated by the state legislature’s increasing the number of counties to forty-three during the next eight years. By the time of the 1850 Constitution, Kentucky counties totaled one hundred. When the fourth Constitutional Convention convened in 1890 there were one hundred and nineteen. Only one has been added since that date, namely McCreary County, which was created in 1912.

The U.S. census of 1790 listed only five Kentucky towns: Lexington (with a population of 834), Washington (462), Bardstown (216), Louisville (200), and Danville (150).<sup>4</sup> The earliest Kentucky towns had been incorporated by special acts of the Virginia Legislature. The first of these was Boonesborough, created in 1799. The second was Louisville, created in 1780. Having inherited this practice of special act incorporation from Virginia, Kentucky, in its first three constitutions, continued to provide for incorporating cities through special legislative acts, with each charter and charter amendment requiring special legislation.

The first three Kentucky Constitutions contained practically no provisions relating to cities. Actually the first one made no mention whatsoever of cities and towns; the 1850 Constitution was the first to make any reference to “city” or “municipality.” It was also notable that until the Constitutional Convention of 1849-50 convened, none of the previous conventions included any delegates representing cities or towns, as all such positions were apportioned for counties. At the convention drafting the third Constitution, two provisions were made for delegates from the city of Louisville. Even that document had very few provisions relating to municipal government, although it did abolish the gubernatorial appointment of local officers and provided instead for a system of popular

election. This exclusion of provisions relating to cities vividly points out the significant role counties played in the early political development of the state.

### **Limited Powers of County Government**

In a democracy, every level of government, indirectly at least, derives its powers from the people. The popular grant of power to a national government is usually in the form of a constitution. However, the basic grants of power and authority to local units of government have been held by the courts to be contained in state laws, whether they be constitutional or statutory. This doctrine generally applies even in the case of local governments operating under so-called “home-rule” charters. The premise, that cities and municipalities are, in effect, creatures of the state, holds in Kentucky, as it does in the other states in the federal system. In other words, local governments have only delegated powers, regardless of the source of their authority or nature of their charter. They exist and act only on authority delegated by the state. Under this doctrine, generally referred to as “Dillon’s Rule,” such delegations or grants of municipal power are given a very strict and narrow interpretation.

According to Dillion:

It is a general and undisputed propositional law that a municipal corporation possesses and can exercise the following powers and no others: first, those granted in *express* words; second, those *necessarily* or *fairly implied* in or *incident* to the powers that are expressly granted; third, those *essential* to the accomplishment of the declared objects and purposes of the corporation, not simply convenient, but *indispensable*. Any fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied.<sup>5</sup>

Although the “Dillon Rule” applied only to municipal corporations, the same or similar rules of strict construction have been applied to other types of local governments in Kentucky and many other states. The Kentucky Courts have long followed the concept of restrictive interpretation of municipal powers, with applications to both cities and to special districts in the state. Actually, the application of the rule in Kentucky with respect to county powers may be said to be even more restrictive than its application to cities; certainly it is far more restrictive than the provisions which governed county powers under the first three constitutions. An example of this restrictiveness is evidenced by the following statement:

The rule universally applicable to and circumscribing the power and authority of fiscal courts and other governing authorities of counties is that they can exercise no power or authorities (sic) which is not expressly conferred upon them by the Constitution or a statute, and such implied powers as are *imperatively necessary* to execute those so expressly conferred. (Crick v. Rash, 1921, 190 KY. 820, 229 S.W. 63, p.65.)

Traditionally, counties in Kentucky have served as subordinate political divisions or as administrative subdivisions of the state. The basic structure of county government is established in the current Kentucky Constitution. Despite the great differences in size, in local conditions, in the needs and the services performed, each of Kentucky's 120 counties, with the exception of Fayette and now Jefferson, is governed under an essentially uniform organizational structure.

The Constitution contains a long list of county offices to be filled by elections and specifies their terms. The outlining of powers, functions, duties and compensation of individual county officials, however, has been left largely to the General Assembly. The same applies to the powers of the fiscal courts.<sup>6</sup>

## **Governmental Structure of Kentucky Counties**

### **The Fiscal Court**

Under Kentucky's 1891 Constitution, the fiscal court is established as the governing agency of the county. Under the guidance of the county judge/executive, it constitutes the chief administrative and policy-determining body for the conduct of county governmental activities. In those policy areas enumerated by the legislature in the statutes, it may enact ordinances and issue regulations having the force of law within the county [KRS 67.083(3)]. All counties in Kentucky, even those with an urban-county, charter county, or consolidated form of government, must have a fiscal court, which may consist of the county judge/executive and magistrates elected from districts or three commissioners elected at-large from the county.

In 1972, the regular session of the General Assembly enacted legislation, referred to as the "Home Rule" Act, which conferred extraordinarily broad legislative powers to fiscal courts in matters regarded only as administrative in nature. This legislation was declared unconstitutional in *Fiscal Court of Jefferson County v. City of Louisville, et al*, 559 S.W. (2d) 478 (Ky. 1977). The Supreme Court in that case noted that "the General Assembly must grant governmental power to fiscal courts 'with the precision of a rifle shot and not with the casualness of a shotgun blast.'"<sup>7</sup> The General Assembly revised the statute in the 1978 session to conform to the requirements of the Supreme Court by specifically listing those policy areas in which the fiscal court could enact ordinances or issue regulations (KRS 67.083 and 67.0841).

Historically, the form of the fiscal court established by the 1891 Constitution marked a departure from the established practice, since the governmental affairs of counties were previously conducted by the traditional county court. That Constitution also authorized the General Assembly to provide by law that justices of the peace in each county would sit as a court of claims and assist the county judge in determining the county tax levy and making appropriations.

There was considerable sentiment among the delegates to the 1890 Constitutional Convention for establishing a commission form of government for all counties in the state. A compromise was reached and a provision adopted that the office of justice of peace would be continued and that there must be at least three and not more than eight in a county, with the county judge as *ex officio* presiding officer of the fiscal court. Section 144 of the Constitution permits the counties to choose either the commission or

magisterial form of local government. Prior to the adoption of the Judicial Article in 1975, members of a fiscal court composed of justices of the peace performed their traditional functions as judicial officers as well as administrative and legislative duties, whereas commissioners were elected solely for administrative and legislative service on the fiscal court. In counties operating under the commission form, justices of the peace were still elected but retained only their judicial functions. After the adoption of the Judicial Article and the creation of the District Courts, the office of justice of the peace in a county operating under the commission form became vestigial. The only function left for justices of the peace was the performance of weddings, and then only under the authorization of the county judge/executive or the Governor. Some counties no longer elect justices of the peace, and the Attorney General has advised in OAG 93-40 that when a county has adopted the commission form of fiscal court, the justices' districts shall have the same boundaries as the commissioners' districts, and thereby be limited to three in number.

In addition to the magisterial and commission forms of county government, the General Assembly also permits the merger of counties and cities for the creation of urban counties, charter counties, or consolidated local governments.

Approval of the voters in the county is required to change the form of government. A magisterial or a justice of peace form of county government may be changed to the commission form pursuant to KRS 67.050. The commission form of government has been adopted in seventeen counties including Fayette and Jefferson, which have changed to a merged form of government described later: Bath, Boone, Boyd, Campbell, Daviess, Floyd, Graves, Greenup, Johnson, Kenton, Leslie, McCracken, Marshall, Mason, and Montgomery.

A charter county may be created according to KRS 67.825 to 67.875. While no charter counties exist at the time of this publication, efforts are underway to create charter commissions in at least two counties.

The urban county form of government is authorized for local governments in KRS 67A. Currently, only Fayette County has adopted this form of government.

The 2001 General Assembly authorized the creation of another type of merged local government—a consolidated local government. The residents of Jefferson County and the City of Louisville adopted this form of local government in November 2001. The new government will become active January 3, 2003.

Even though the form of local government in a county may change, section 99 of the Kentucky Constitution still provides for the election of nine county officers: county judge/executive, county court clerk, county attorney, sheriff, jailer, coroner, surveyor, assessor, and constable (one for each magistrate's district in the county).

With the exception of surveyors, tax assessors, and jailers, all these officers are found in every one of Kentucky's 120 counties. The office of tax assessor was abolished (as permitted by Section 104 of the Constitution) and replaced first by the office of tax commissioner, then by the office of property valuation administrator. In the counties of Jefferson and Fayette, under legislation permitted by Section 105 of the Constitution, the office of jailer has been abolished and its duties assumed by the sheriff.



### **The County Judge/Executive**

The county judge/executive (formerly the county judge), as *ex officio* chair of the fiscal court, is the chief executive officer of the county and exercises administrative control over the activities of all agencies created by that body, although the fiscal affairs of the county are subject to approval by the fiscal court as a whole. The county judge/executive is also responsible for the preparation of the annual budget of the county. It is the county judge/executive's duty to present the budget to the fiscal court (KRS 68.240). The fiscal court *may* amend the budget before it is sent to the state local finance officer (KRS 68.250).

The Kentucky Revised Statutes assign many other duties to the county judge/executive, including a variety of appointive powers. For example, the county judge/executive or an appointee serves as county alcoholic beverage administrator in those counties which have such an office (KRS 241.110). Actually, county judge/executive appoints, usually with approval of the fiscal court, virtually all non-elective administrative officers to the county and members of numerous statutory county boards and commissions, plus the county representatives on any joint city-county commissions (KRS 67.710).

The statutes also direct that the county judge/executive be a member of various boards and commissions. Prior to the adoption of the judicial amendment in 1975, the county judge, although not required to be an attorney, presided over the county court and quarterly courts in a judicial capacity.<sup>8</sup>

### **County Clerk**

As a result of the Judicial Article, the county clerk no longer has any judicial responsibilities. The Judicial Article did not lessen the importance of the office; however, the county clerk is still responsible for recording and keeping permanent county records of various legal instruments (including deeds, mortgages, leases, liens and settlements of estate). KRS 67.120 provides that the county clerk may, at his or her option, act as clerk of the fiscal court in any county but Jefferson. Prior to 1979 this function was a requirement in all counties except Jefferson. In this capacity as clerk of the fiscal court, the clerk must attend all sessions of court and keep a complete record, properly indexed, of its proceedings.<sup>9</sup>

The county clerk also prepares the county tax bills for both real estate and personal property; issues hunting, fishing, and occupational licenses; sells automobile and other vehicle licenses required by state law; and issues marriage licenses and maintains records of all such licenses issued in the county. The office is also responsible for the registration of voters, and the county clerk acts as secretary of the county board of registration and purgation.

County clerks also have various duties relating to the conduct of both primary and regular elections, including the custody and maintenance of voting machines, the preparation of credentials for election officers, the providing of staff assistance for the election commission, and the receipt and processing of absentee ballots. In fact, county clerks have many other statutory duties, far too numerous to mention, that do not fit into any of the above categories.

## **County Attorney**

Another important elective county official is the County Attorney. This officer, in addition to aiding the Commonwealth's Attorney in the criminal courts and serving as prosecutor in district court, is also the legal advisor for the fiscal court. The County Attorney is to be in attendance at all sessions of the fiscal court. The County Attorney also serves as legal counsel and advisor for all county officials and handles all suits against or on behalf of county officials involving the official conduct of their respective offices. (KRS 69.210)

## **Sheriff**

The Sheriff has duties which fall into four areas: law enforcement, tax collection, services to the courts, and election duties. This elected official is the chief law enforcement officer of the county. However, a number of counties have organized county police departments, or rely primarily on the Kentucky State Police for law enforcement. When a county has a police department, or relies on the Kentucky State Police, the law enforcement authority of the sheriff is not diminished. But the fees from a sheriff's office in a small county often cannot generate the funds necessary to provide adequate law enforcement services. In these counties, the fiscal court provides additional funding for law enforcement activities. In some counties, the sheriff's activities in the law enforcement area may be sharply curtailed and the sheriff's remaining primary function is that of tax collection. The sheriff collects the property tax for the state, the county, and for numerous cities and special districts, deposits all funds collected, and distributes them to the proper agencies. The sheriff receives a fee for these services. Another duty of the sheriff is service to the state's court system. Through the sheriff and appointed deputies, legal papers, such as subpoenas and summonses issued by the various courts regarding both civil and criminal actions are served upon the proper individuals. Deputies from the sheriff's office also serve as bailiffs for the courts (KRS Chapters 23A and 24A).

Finally, the sheriff also performs duties related to elections. The sheriff serves on the county board of elections and publishes and advertises special elections. The sheriff is disqualified from election duties in the years the officeholder is a candidate.

Except in Jefferson and Fayette Counties, the jailer is one of the four elective county officials who are peace officers and possess the law enforcement powers of such offices. The others are the sheriff, the constables, and the coroner. Each county jailer has charge of the county jail and all persons in it, subject to the rule-making power of the fiscal court and the inspection powers of the county judge/executive (KRS 441.045). Any rules prescribed by the fiscal court must be consistent with minimum standards for jails established through regulation by the Department of Corrections (KRS 441.055). The jailer is responsible for receiving and keeping in the jail all persons lawfully committed to his or her custody until they are legally discharged. During their confinement, prisoners must be treated humanely and furnished with proper food and lodging. Upon the death of a prisoner, the jailer is responsible for delivering the body to relatives or friends, if requested, or for having the individual decently buried in the county. Some counties cannot afford the expense of maintaining a jail according to state standards, and therefore send their prisoners to other counties for incarceration. In this case the fiscal court may appoint the jailer as the transportation officer responsible for transporting prisoners to other jails and to the courts. If the fiscal court chooses another party as the transportation

officer, then the jailer serves as a bailiff to the Circuit and District Courts (KRS 71.050, 441.510).

### **Coroner**

The County Coroner has the full power and authority of peace officers. But the principle duty of the office is to determine the cause of death. In determining causes of death, the coroner has broad authority for conducting investigations. This authority includes entering private property, seizing evidence, interrogate persons and require productions of records, documents, or evidence. The extent of the inquiry is left to the coroner. But in attempting to determine the cause of death, the coroner may perform an investigation, order an autopsy, hold an inquest, and request the assistance of the district medical examiner and the state Medical Examiner's office.

Although not required by law, the coroner traditionally has been either a qualified medical doctor or a mortician. A coroner is required to possess a current certificate of continuing education in order to do post mortem exams. The coroner is also required to hold an inquest (an examination of the cause or causes of death) under certain conditions specified by statute. This inquest is held before a jury of six reputable citizens of the county, summoned and sworn in by the coroner. These formal inquests occur when death appears to result from any of nineteen conditions which are set out in KRS 72.025. Among these conditions are homicide, suicide, injection of drugs or poisons, fire or explosion, child abuse, drowning, accident, industrial toxins, and sudden and unexplained death. If the inquest jury returns verdicts of manslaughter, murder, or other criminal act, the coroner must arrest the named person or notify law enforcement officials.

### **County Surveyor**

The county surveyor has the primary duty of making land surveys and determining boundary lines and corners when ordered to do so by the courts or upon request of individual landowners. In addition to the usual qualification and residency requirements for local elected office, the coroner must file a certificate of competency for the performance of the duties of the office from a college or from the local circuit judge. The County Surveyor is charged with performing any work in the field of civil engineering that he or she is lawfully ordered to do by the fiscal court of the county. Duties of this official also include keeping records of plats and explanatory notes of the surveys made. The surveyor is a member of all court-appointed commissions to locate, inspect, care for and report on bridges and other public improvements. If qualified, the county surveyor may also be employed as the county road engineer or county road supervisor. Currently, not all Kentucky counties have surveyors, but the statutory authorization of reasonable compensation in lieu of an antiquated fee schedule for the office has renewed interest in the office.

### **Constable**

Constables are peace officers with broad powers of arrest and authority to serve court processes. The legislature has sought to curtail their traffic control activities however, by restricting their fee for making arrests for violations involving a motor vehicle on a public highway to \$.50 (KRS 64.190) and by allowing them to use blue lights and a siren only upon the approval of the fiscal court (KRS 189.950). Each

magisterial district elects a constable, each with county-wide authority. Constables formerly served as bailiffs in the magisterial court, but presently any and all may serve processes in their home county.

Constables, except in counties with populations of more than 250,000, receive fees for duties they perform. In counties of more than 250,000 persons, a constable is paid a monthly salary for the performances of duties of the office (KRS 64.200) not to exceed \$9,600 annually. Constables in these same counties must make reports to the county clerk listing the duties that they and their deputies have performed. They must daily deliver any fees collected and obtain receipts. These fees are turned over to the fiscal court for deposit into the county treasury.

In urban counties, the salaries of constables have been required by statute to increase at the rate of inflation since 1998. This rate is calculated annually by the Department for Local Government.

Constables are eligible also to receive mileage and expenses for taking or assisting in the transfer of prisoners. In some counties constables receive an additional stipend if they use their own car in the performance of their duties. The allowance of this stipend is at the discretion of the fiscal court.

### **Property Valuation Administrator**

This office was created by statute, although there was a previous constitutional office of county assessor, which was abolished in 1918. The property valuation administrator (PVA) is a locally elected state officer. The PVAs and their deputies and assistants are unclassified state employees (KRS 132.370). The officeholders are popularly considered, however, to be county officials, since being elected by the voters of the county makes them to some extent amenable to local control. On the other hand, the influence of the State Revenue Cabinet over this officer is great in that the department is responsible by law to issue certificates of qualification to PVAs based upon examinations “both written and oral and formulated so as to test fairly the ability and fitness of the applicant” (KRS 132.380). Having been certified and elected, the administrator, as an incumbent, has the distinct advantage over any ambitious opponent, as competitors must take an exam each time they run, while the incumbent does not have to be re-examined.

This office makes the annual assessment for ad valorem tax purposes of all real property in the county, except as may be otherwise expressly provided by law. This annual assessment is used for levying taxes not only by the county, but also by the state, special districts, and numerous cities. The city is required to pay the PVA office for use of the assessment (KRS 132.285).

### **Qualifications, Election, and Terms of Elective County Officials**

To qualify for election to any of the county offices named in the current Constitution, a candidate must be twenty-four years of age (except the clerks of the county and circuit courts, who need only to be twenty-one), a citizen of Kentucky, a resident of the state for two years, and a resident of the county and district for at least one year next preceding the election. To be eligible for the office of circuit clerk, a person must also procure a certificate from the judge of the court of appeals or a circuit judge that he or she has been examined and is qualified for the office (Section 100, Constitution). In addition, the County Surveyor must file with the County Clerk a

certificate of competency from some college or from the circuit court of his county (KRS 73.020).

Elections of county officials are held on the first Tuesday after the first Monday of November in even-numbered years. The term of each officer is four years, beginning on the first Monday in January following election (Section 99, Constitution) except for the term of the property valuation administrator, which begins on the first Monday in December following election (KRS 132.370). All incumbents may succeed themselves in office.

### **Other County Officials, Boards, and Commissions**

In addition to the elected county officials already enumerated, Kentucky law requires at least three other appointed officials in every county of the state: the county treasurer (KRS 68.010), the county road engineer—or, as an alternate, a county road supervisor (KRS 179.020)—and the county dog warden (KRS 258.195). In a county containing a city of the first class, Kentucky statutes also provide for a county purchasing agent (KRS 68.160). The fiscal court in a county containing a city of the first class may also appoint a county auditor (KRS 68.130). Any county may appoint a building inspector (KRS 67.410). In counties with a county police department (as provided under KRS 70.540) there is a further requirement that a county chief of police be appointed.

Each one of Kentucky's one hundred and twenty counties has, in addition to the several constitutional and statutory officials, one or more "independent" administrative boards or commissions with supervisory powers over certain services financed wholly or in part by county taxes. Two such boards are the county health board (KRS 212.020) and the county board of assessment appeals (KRS 133.020). Under certain circumstances a county may have a number of other boards. Among such boards might be a county police force merit board (KRS 78.410), one or more boards to administer parks or playgrounds (KRS 97.020), a county building commission (KRS 67.450), a planning commission (KRS 100.133), a county library board of trustees (KRS 173.340), a board of public utilities (KRS 96.740), a home economics and agricultural extension district board (KRS 164.630) and a county cemetery board (KRS 67.680).

## **Administering County Government**

Kentucky, as well as other states, lacks a real chief executive or administrative head of county affairs. The duties, as well as the powers, of several county officials named in the Kentucky Constitution, and, to a great degree, even in the case of statutory county officials, are outlined in detail by statute law. The county judge/executive, as chair of the fiscal court and chief executive of the county (KRS 67.710), is considered the head of the county government. Yet, neither the county judge/executive nor the fiscal court is accorded effective administrative control over a number of elected county officials, who are directly responsible to the voters and who derive administrative authority from either constitutional or statutory provisions, or both. The offices of sheriff and county clerk are two important fee offices which are independent of the county judge/executive and the fiscal court, although the fiscal court can exact some control by approving the budgets of these offices (KRS 64.530). The office of jailer used to operate on the basis of fees, but

now the jailer is a salaried officer whose budget is part of the county budget (KRS 68.240). Even so, if the jailer is incompetent, or if he or she exposes the county to liability because of his or her actions, neither the county judge/executive nor the fiscal court has the power to remove the jailer from office.

This lack of control also extends to the various county and county-city boards and commissions which, except for the appointment of their members and their financial dependence upon the county or the city, are generally considered independent agencies of local government. These conditions result in a diffusion of administrative authority which has been classified at times as “no-executive” type of local government.<sup>10</sup>

### **Compensation of County Officials**

Section 246 of Kentucky’s 1891 Constitution as originally adopted provided a maximum limit of \$5,000 per year as compensation of all officials and employees, except the Governor, including those in local government. Amendment Fourteen, adopted in 1949, repealed this \$5,000 salary limit and substituted limits of \$12,000 per year for officials with statewide jurisdiction and mayors of cities of the first class; \$8,400 for circuit judges; and \$7,200 for all other officials, which of course included those within a county. In a 1962 landmark decision, the highest court in Kentucky decided that the maximum compensation provided in the Constitution could increase as the purchasing power of the dollar decreased. In this decision the courts said in part:

The net result of our consideration is that the salary provisions of Section 246 of the Constitution may be interpreted and periodically applied to all constitutional officers in terms which will equate current salaries with the purchasing dollar in 1949 when Section 246 was adopted [*Matthew v. Allen*, Ky. 260 S.W.(2d) 135].

The Kentucky statutes provided for the implementation of this “rubber dollar” theory. KRS 64.527 directed the Department for Local Government to compute annually the increase or decrease in the consumer price index of the preceding year by using 1949 as the base year. The department then notifies each fiscal court of the annual maximum rate of compensation to which those affected county officials are entitled because of the increase in the index. The fiscal court is then permitted to set the annual compensation of these elected officials at a level no greater than that stipulated by the Department of Local Government.

As a practical matter, the salaries of magistrates and county commissioners, because they are part-time officials, are not set at the maximum level. Coroners’ compensation is also limited because coroners are part-time officers, and minimum salary levels, related to training, are set out in KRS 64.185. Jailers who do not operate a full-service jail are on a salary rather than fees. In these counties, jailers receive a minimum of \$20,000 and a maximum of \$53,364 for 2002. The amount to be set by the fiscal court. Even in those counties where the jail has been closed and the jailer does not transport prisoners, the jailer must receive the minimum of \$20,000. The jailer in these counties serves as a bailiff.

In 1998, the General Assembly made significant changes in the way county judge/executives, county clerks, sheriffs, and jailers who operate full-service jails are compensated. A salary schedule was created based on population of the county and the years of service of the office holder. In 2002, the maximum salary for these officers was \$88,941.18 and the minimum salary is \$48,917.65. Sheriffs and county clerks continue to collect fees in the performance of their duties of the office. The fees and their use are regulated by statute and are used to defray expenses of the office and salaries of the officeholders. Any excess fees are turned over to the county treasury for use in the county's general fund.

### **Liability of County Government**

In general, the rule in Kentucky is that counties, unlike cities, are immune from any tort liability for negligence in the performance of governmental functions. On the other hand, in the instance of contracts, the Court of Appeals has held that a county is amenable to suit for violation of an express contract it is authorized to make.<sup>11</sup>

## NOTES

- <sup>1</sup> Howard w. Beers, editor, *Kentucky—Designs for Her Future* (Lexington, 1954) p.
- <sup>2</sup> William Connelley and E. Merton Coulter, *History of Kentucky* (five volumes) (American Historical Society, New York, 1922) I, p. 216
- <sup>3</sup> Robert M. Ireland, *The County in Kentucky History*, p. 2.
- <sup>4</sup> Richard Collins, *History of Kentucky* (Louisville, 1877).
- <sup>5</sup> John F. Dillon, *Commentaries on the Laws of Municipal Corporations*, Fifth ed., (Boston, 1911) p. 448
- <sup>6</sup> For a very good, comprehensive, and detailed study on county government in Kentucky, consult Informational Bulletin No. 114, *Duties of Elected County Officials*, Legislative Research Commission (Frankfort, Ky.: January, 1993).
- <sup>7</sup> *Northern Kentucky Law Review* 107 (1978)
- <sup>8</sup> Changes in the judicial system under this amendment became effective at the appellate level on January 1, 1976, and at the trial level January 2, 1978. The judicial functions of the former county judges were assumed by the new district courts.
- <sup>9</sup> If a clerk other than the county clerk is appointed as clerk of the fiscal court, that body may require additional duties of that person (KRS 67.120).
- <sup>10</sup> Jewel Cas Phillips, *State and Local Government in America* (New York, 1954), P. 406.
- <sup>11</sup> *Marion County v. Rives and McChord*, 133 Ky. 477, 118, S.W. 309; *Commonwealth v. Sizemore*, 269 Ky. 722, 108 S.W. (2d) 733



## **CHAPTER XI LOCAL GOVERNMENT: CITIES**

Kentucky historically has been a predominantly rural state. Many would maintain that it retains that character even though the 1970 census, for the first time, indicated that slightly over 50 percent of the state's population resided in urban areas.

The 2000 census shows an even greater concentration of the state's population in these urban areas, defined by the U.S. Bureau of the Census as places with a population of over 2,500 persons. The 2000 census shows 55.7% of Kentuckians living in urban areas with 44.3% considered to be rural dwellers.

With a statewide population of 4,041,769 in 2000, Kentucky's largest city, Louisville, had a population of 256,231. Kentucky's largest local government designated as an "urban area" is the Lexington/Fayette Urban-County government with a population of 260,512.

### **Constitutional Provisions**

Kentucky's Constitution had provided for six classes of cities in the Commonwealth. In 1994 the voters of Kentucky approved an "omnibus" local government constitutional amendment. This amendment authorized the General Assembly to determine the organizational form and operation of Kentucky's local governments (Section 156A). The amendment also repealed Section 156 of the Constitution which established the classification system for the state's cities. But another provision in the amendment also required the current classification system to be maintained until such time the General Assembly developed an alternative to the current classification system. Since the General Assembly has not yet taken action to develop an alternative system, the classification system established in Section 156 is still in place. According to this system, a city's class is based upon its population. Actual practice allows some variation, but essentially cities are classed as follows:

<b>CLASS</b>	<b>POPULATION</b>
1 <sup>st</sup>	over 100,000
2 <sup>nd</sup>	20,000-99,999
3 <sup>rd</sup>	8,000-19,999
4 <sup>th</sup>	3,000-7,999
5 <sup>th</sup>	1,000-2,999
6 <sup>th</sup>	under 1,000

There are approximately 425 incorporated cities in Kentucky. Less than 10 percent of that total are found in the first three classes: first class (N=1), second class (N=13), and third class (N=19).

Section 156 of the Constitution also provided that the organization and powers of each of the six classes of cities shall be defined by general law, so that all "municipal corporations of the same class possess the same powers and be subject to the same

restrictions.” Kentucky’s Constitutional method of assigning cities to classes, each to be governed by applicable state laws, is commonly known as the “classified charter” method. Another method, allowing a “special charter” specific to a particular city prevailed in Kentucky until the adoption of the 1891 Constitution. However, none of these old special charters remain in force, as the Court of Appeals has held that they were automatically abrogated by Sections 156 and 166 of the Constitution, and the statutes pursuant thereto (*Mullins v. Wilson*, 282 Ky. 316, 138 S.W. (2d) 478).

While the classification system specifies the population limits for all classes of cities, the actual assignment of an individual city to a particular class is solely within the power of the General Assembly. No city may be transferred from one class to another except through an act of that legislative body. Also, when reclassifying a city, the General Assembly is not required to base such transfers on the most recent federal census if “other satisfactory information” is available. Through the years, because of positive and negative population changes in many cities, a sizable number of misclassified cities has resulted. In 1986, as a response to the concern about the sizable number of misclassified cities, the General Assembly enacted companion statutes (KRS 81.032-81-.036) which further define and regulate the classification process for cities.

### **The General Assembly and Cities**

Under Dillon’s Rule, Kentucky cities are considered to be “creatures of the legislature.” Although the General Assembly cannot by direct act incorporate a new city, the legislature does prescribe by general law the conditions and procedures for incorporation.

The 1980 General Assembly revised the procedure for municipal incorporation. The details of the two-step procedure are found in KRS 81.050 and 81.060. Essentially, a petition must be filed with the circuit clerk of the county in which the area is to be incorporated. The petition must be signed by two-thirds of the voters residing in the proposed city or by real property owners equal to the owners of at least two-thirds of the assessed value of the real property in the proposed city. The proposed city must have at least 300 residents.

The second step is the court hearing, which must be publicized and must occur not less than 20 days from the filing date of the petition. If the statute requirements of the petition, publication and other stipulations have been met, the court shall enter a judgment establishing the city. The clerk of the court will then certify a copy of the judgment to the Secretary of State.

No law requires a populated area to seek incorporation. In fact, there are areas within the state classified as urban by the U.S. Census Bureau which are not incorporated. When an area seeks incorporation, there are specific requirements to meet in order for the court to effectuate the incorporation. It must demonstrate (1) the proposed incorporated area is able to provide the necessary city services to its residents within a reasonable period after its incorporation, and (2) whether the interest of other area and adjacent governments is not unreasonably affected by the incorporation. Although the last

requirement may seem rather discretionary, it does give statutory support to the concept that the act of incorporation does affect existing governmental units.

Just as important as creating cities is the ability to dissolve those cities which no longer provide the governmental services for which they are responsible. Many cities have come and gone during the life of the Commonwealth when they ceased to provide services, collect taxes, or elect municipal officers. Dissolution occurred despite the fact that until 1980 there was no statutory procedure for this action. KRS 81.094 provides two methods for the formal dissolution of a city:

- 1) If a city “fails for one (1) year to maintain a city government by the election or appointment of officers and the levying and collection of necessary taxes, it may be dissolved by a judgment of the circuit court on petition filed by a bona fide resident of the city,” or
- 2) If a petition signed by registered voters of the city equal to 20 percent of the total number of votes cast in the last presidential election is presented to the mayor, and the city has no long-term debt, the question of dissolution shall be placed before the voters at a regular or primary election to determine the will of the citizens of that community. Any petition so filed must provide a description of the boundaries of the city and contain other relevant facts. If a city is dissolved by an election, the terms of the officers shall cease upon the certification of the election and all assets of the city shall become the property of the county in which the city is located.

Once incorporated and organized, a city may make changes in its boundaries only by annexation, reduction, transfer, merger, or consolidation with another city. Such changes, however, must be made in strict adherence to prescribed statutory procedures. Generally, the only way which a city may expand or reduce its boundaries on its own is through the process of annexation. The annexation statute for cities of the first class requires the city to actually provide for the extension of services into annexed areas and limits the tax rate therein to one commensurate with the services provided. For cities of the second through sixth classes, the residents of an area to be incorporated are granted the right to disapprove an annexation through a petition and referendum procedure. The statutes also prohibit any city from annexing another city, except as provided by KRS 81A.530, which allows cities of the 6<sup>th</sup> class to be annexed if approved by the residents and the affected cities as provided. Cities sharing a common boundary are permitted to transfer incorporated territory from one to the other upon the enactment of identical ordinances in each city and the submission of a petition in support of the transfer. The petition must be signed by voters in the area to be transferred as prescribed in KRS 81.500. In addition to the transfer of property by contiguous cities, cities are also permitted to merge or consolidate their governments with other cities or with their counties (KRS Chapters 67A, 67C, 67, and 81).

## Forms of City Government

The statutes provide for four forms of city government: the mayor-council plan, the mayor-alderman (limited to cities of the first class) plan; the commission plan, and the city-manager plan. In each plan there is an elected mayor and an elected legislative body. Any city may create the non-elective position of city administrative officer. Such an officer is directly responsible to the executive authority of the city (i.e., either mayor or board of commissioners).

The only method of changing from one plan of government to another is by popular vote. Any approved change must stay in effect at least five years from the effective date of the last change.

Mayors are elected to four-year terms. A mayor must be at least twenty-five years of age, a qualified voter in the city, and a resident of the city while in office. If a vacancy occurs in the office, the legislative body of the city shall appoint someone to fill the vacancy until the next regular election.

Legislative body members are to be elected on an at-large basis. (That is, the entire electorate votes on each member). Each member serves a two-year term, must be at least twenty-one years old, a qualified voter of the city and a resident of the city while in office. If vacancies occur, the remaining member(s) of the legislative body select new members. Should all seats be vacant so that no member remains, the Governor is to appoint enough qualified persons to constitute a quorum. The new appointees will then select members to fill the remaining vacancies. The Governor also may appoint a new mayor when a vacancy exists in that office and the legislative body has not filled the vacancy within 30 days.

Under the mayor-alderman plan, first class cities must have 12 council members. The mayor-council plan requires second, third, and fourth-class cities to have at least 6 and no more than 12 council members, and fifth and sixth class cities are to have 6 council members. Each city organized under the commission or city manager plan has four commissioners.

Some of the governmental plans available to cities differ significantly. The mayor-council and the mayor-alderman plans are very similar in that both are examples of a strong mayoral form of government. There is a definite separation of powers between the mayor and the city council, with the mayor possessing all executive powers and the council all legislative powers. In the commission form, there is no separation of powers. A Board of Commissioners, composed of the mayor and the four commissioners, wields all executive, legislative, and administrative powers. The mayor is little more than a figurehead but does have one of the five votes of the board of commissioners and presides over the meetings of the board. City manager plan cities are similar with all executive, legislative, and administrative authority vested in a board of commissioners, except that a city manager is appointed by the board of commissioners and charged with the administration of the city.

## **Home Rule**

Kentucky cities have only those powers granted by the Constitution and those statutes enacted by the General Assembly. This principle, called Dillon's Rule, is used by many states to outline the authority of municipal governments. In Kentucky, the Supreme Court has stated that as a "general rule . . . a city possesses only those powers . . . as are necessarily implied or incident to the expressly granted powers and which are indispensable to enable it to carry out declared objects, purposes and expressed powers."

Prior to 1980, the General Assembly granted powers to cities through very specific statutes granting a narrow range of powers to perform a specific function. Those statutes had been enacted over a period of almost 100 years and had become very obsolete, out of date, or conflicting with other statutes. It had become very difficult for cities to work with this vast body of law to determine what duties, powers and responsibilities they actually had. The 1980 General Assembly remedied this problem by repealing hundreds of these specific enabling statutes and replacing them with a single statute which grants general powers to cities. This grant was designed to give cities the broadest possible discretion in carrying out their affairs and is commonly called "home rule." The "home rule" grant for Kentucky cities is codified as KRS 82.082: "A city may exercise any power and perform any function within its boundaries, including the power of eminent domain in accordance with the provisions of the Eminent Domain Act of Kentucky, that is in furtherance of a public purpose of the city and not in conflict with a constitutional provision or statute." Since 1980, there have been only a handful of judicial challenges to this authority of cities. In each instance, the courts have upheld this statutory grant of authority to Kentucky's cities.

In 1994, the voters of Kentucky approved constitutional "home rule" when they approved the addition of Section 156b to the Kentucky Constitution. This section guarantees the right of cities to exercise the theory of "home rule".

## **Financial Management**

Each city must prepare an annual budget and submit its financial records as prescribed by statute for audit. The results of the audit are to be published locally and informational copies filed with the Department of Local Government in Frankfort. All cities are now required to maintain an accounting system on a fund basis and in accordance with generally accepted principles of governmental accounting. KRS Chapter 91A contains the primary financial requirements which are mandated for all city governments and are essential in establishing a uniform accounting and reporting procedure for local governments. Separate statutes govern the financial operations of other local government requirements which are mandated for all city governments and are essential in establishing a uniform accounting and reporting procedure for local governments. Separate statutes govern the financial operations of other local governments with all of them being required annually to complete uniform financial information reports to the Department for Local Government which in turn makes them available to the public and other governmental agencies.

## **County-City Consolidation (Background)**

Since World War II, much has been written about the problems of so-called “fragmented government.” The overlapping of jurisdictions and boundaries among a variety of local governmental units, the proliferation of such units in metropolitan areas and the resulting lack of proper coordination have all been cited as culprits. For many years, metropolitan reformers have endeavored to unify, to reorganize, to enlarge, or to consolidate local governmental jurisdictions. Their avowed goal was the creation of a more efficient, economical, and cost-effective way of handling governmental functions. Claims have been made that reorganization and consolidation would not only provide improved public services, but that such an approach would also enable metropolitan government to achieve vast economies of scale through large-scale operations and facilities. Advocates have also maintained that these economies would permit more specialized services unavailable to smaller units of government. Often cited as examples have been regional police and fire services, combined tourism efforts, volume purchasing alliances, and extensive modern communications and dispatching systems. Other arguments for unified metropolitan government have emphasized that consolidation would aid in eliminating inequalities in financial burdens in areas and clearly establish responsibility for area-wide (metropolitan) policy.

On the other side of the issue is the argument that the “fragmented” character of metropolitan government is not necessarily obsolete and, in fact, has some important material advantages. Some studies indicate that very large municipal governments are neither economical nor do they necessarily provide improved services. While some economies of scale can definitely be produced by enlarging cities of 25,000 population and under, there are indications that in cities of over a quarter of a million population, the cost of services tends to increase proportionately as size increases, while levels of services decrease.

Among the advantages most often offered in support of separate and independent local governments for the suburbs of a large city is that such an arrangement offers a variety of social, psychological and political values. Even the facing of problems in a fragmented governmental arrangement can aid citizens in developing a sense of community identity and individual involvement. The existence of a number of local governments not only provides forums for public airing of grievances but also endows individuals and citizens’ groups with a sense of effectiveness as they participate in local public affairs. Under fragmented government, a large number of groups and individuals have the opportunity to express themselves and to influence government policy. This is particularly appropriate to minorities, who may well exert considerable influence in small units of government.

One interesting method designed to solve metropolitan problems has appeared in the form of city-county consolidation. Although merger is by no means a new concept, only four such mergers were implemented before 1900 in the entire nation.

Approximately three-fourths of the metropolitan areas in the United States are contained within single counties. Obviously this situation results in the duplication of both taxes and services. It has thus frequently been advocated that county governments be given the powers of cities and that the governmental structure of the area be reorganized through consolidation of the city and county governments.

It is inevitable that such consolidation produces many new problems. Some of the more obvious questions involve the redesigning of the governmental structure—how will the offices and agencies of the old governments be combined, and consequently, how will the restructuring of the authority of certain elective offices be managed while enlarging the entire governmental operations?

### **Urban-County, Charter County, and Consolidated Local Government in Kentucky**

Until 2000, the only successful effort at city-county consolidation in Kentucky was in Fayette County, whose only city was Lexington. Previously it has been pointed out that all incorporated municipalities in Kentucky are creatures of the state and classified according to population into six groups. No legal authority had been granted for county-city consolidation until the 1970 legislative session when the General Assembly passed House Bill 543, known as the Peake-McCann Bill. As originally introduced, this bill was in the form of an enabling act permitting counties containing cities of the first and second classes to merge their city and county governments into “urban-county governments”. It passed the House in this form, but the Louisville and Jefferson County delegation in the Senate objected to the inclusion of counties containing cities of the first class, apparently fearing possible consolidation within their districts. As Jefferson was the only county containing a city of the first class at the time, the bill was amended to exclude such counties and passed both Houses as KRS Chapter 67A near the end of the session.

#### **Urban-County Government**

As established in KRS Chapter 67A, the process of merger begins with a petition signed by a number of registered voters equal to at least five percent of those voting in the preceding general election.

The fiscal court of the county and council of the largest city within the county are required to appoint a representative commission, “composed of not less than twenty (20) citizens, which shall devise a comprehensive plan of urban-county government.” The law further requires that the plan prepared by this commission “shall be advertised at least ninety (90) days before a general election at which the voters will be asked to approve or disapprove the adoption of the plan.” Following the election and the certification of its results by the County Board of Election Commissioners, if it appears that “a majority of those voting are in favor of adopting the plan, the commissioners shall enter such fact to record and shall organize the urban-county government” (KRS 67A-020). The effective date of consolidation follows the election and qualification of county officers at the next regularly scheduled election. At that time the urban-county government immediately becomes the effective government for the county and “all the debts, corporate property, franchises, and rights of any municipality within the county . . . [are] assumed by the urban-county government” (KRS 67A.030).

As previously mentioned, the first merged government created under the new law was the Lexington-Fayette Urban County Government. Since the City of Lexington was the only incorporated municipality in Fayette County, the process of merger was simplified. It should also be noted that one of the probable reasons the push for the Lexington and Fayette County merger was successful may well have been that Lexington had reached a point where the population of the city dictated that it should have been classified as a city of the first class. Since Louisville had been the only city of the first class in Kentucky, all legislation applying only to counties containing a city of the first class had been drafted and enacted solely with the city of Louisville in mind. Many of these existing laws could not have been easily adopted to solve the problems and needs of Lexington and Fayette County. Conversely, in all probability Jefferson County and the city of Louisville would not have wanted change in many of these same laws.

Although the urban-county form of government was approved for Fayette County on November 7, 1972, it could not be put into effect until January 1, 1974. The specific provision of the law is that such a merger is to become effective “upon the election and qualification of county officers at the next regularly scheduled election at which county officers shall be elected, as provided in Section 99 of the Constitution” (KRS 67A.030). This requirement was helpful, because the lapse of time allowed local officials and supporters of the merger thirteen months in which to work out the necessary details for implementing the new system of government. The time lag also provided opportunity for appellate level court decisions testing the constitutionality of the new chapter. It took no less than a 1973 Kentucky Court of Appeals (equivalent to today’s Supreme Court) decision in the case of *Holsclaw v. Stephens* to lay to rest the questions regarding the constitutionality of urban county governments. The court said in a fairly lengthy decision that the Lexington-Fayette urban-county government charter was a new and unique form of local government. The court indicated that it was “neither a city government nor a county government” but an “entirely new creature in which are combined all the powers of a county government and all the powers possessed by that class of cities to which the largest city in the county belongs.” As a footnote to this issue, it is interesting to note that it was not until the passage of a 1992 constitutional amendment on elections that the words “urban-counties” actually appeared in the Kentucky Constitution. The amendment of constitutional Sections 148 and 165, which revamped the state’s timetable for state and local elections, finally gave constitutional inference of the existence of these types of local government units.

Since the 1972 creation of the Lexington-Fayette Urban County government, at least seven other areas have gone through the process in attempting to form some type of merged or consolidated governments. The most recent being in 2000 with the success of the Louisville/Jefferson County proposal to form a consolidated local government (discussed later). Louisville and Jefferson County voters had been faced with the question of implementing forms of merged government on two previous occasions. On both occasions the proposals were defeated and left serious divisions between the various community leaders and interest groups. But one result of these failed efforts was the creation of a twelve-year city-county compact which provides for the consolidation or merger of duplicative services or agencies and the sharing of specified tax revenues by the city and county.



## **Charter County Government**

In recent years, as more and more communities have attempted to implement merger proposals, there has been increasing concern as to whether KRS Chapter 67A could ever be actually utilized by other communities. It has been argued that this chapter has been so carefully drafted to meet the specific needs of the Lexington-Fayette County government that no other community in the state will ever be able to fully meet all the requirements of this chapter. Thus, in response to this argument, the 1990 General Assembly enacted legislation which authorizes the creation of “charter county” governments (KRS 67.825-67.875). These statutes offer communities the opportunity to form merged or consolidated governments without the regulatory burdens of KRS Chapter 67A. This form of government is available in all counties except those containing cities of the first class or existing urban county governments. Currently, efforts are underway in Frankfort/Franklin County to determine the feasibility of forming a Charter county there.

## **Consolidated Local Government**

The 2000 General Assembly enacted KRS Chapter 67C which outlined a procedure for the consolidation of counties containing cities of the first class. The statutes required that a question regarding a possible city county consolidation be placed on the November 2000 ballot in all counties containing a city of the first class. Having the only city of the first class, the voters of Jefferson County went to the polls and adopted the concept of a consolidated local government which resulted in the merger of the county and the City of Louisville. The new consolidated local government became active January 3, 2003.

As mentioned before, KRS Chapter 67C required not only a vote by the public on the question of local government consolidation, it also laid out the basic structure and organization of the new government if it was adopted. This is unlike urban-counties and charter counties which allow charter or study commissions to determine the structure, organization, and function of proposed merged governments which end up on the ballot for public consideration. Legislators seemed to want to avoid some of the intense local haggling that seemed to be on-going in the Louisville/Jefferson County community regarding this subject.

According to KRS chapter 67C, the adoption of a consolidated local government (CLG) requires a city of the first class and its county to merge. It is empowered with all authority of the previously existing local governments. A CLG will have a mayor elected at-large and a legislative council composed of 26 members who are nominated and elected by district. The legislative council is also required to annually select a presiding officer by a majority vote of the council (KRS 67C.103).

A CLG is required to initially employ all employees of the previously existing city and county. These employees are to be vested with the same rights, privileges, and protections which they previously held. But the CLG may reorganize its personnel and staffing arrangements as authorized by statute and local ordinance.

Unlike the Lexington/Fayette County merger, which merged the entire county under one government, a CLG only requires the city of the first class and the county to

merge. It allows all other incorporated cities in the county to continue to operate unless dissolved according to statute. While it does prohibit the incorporation of any new cities after the date of the merger, it will grant the remaining cities in the county annexation authority after a 12-year waiting period following merger. Such annexations would require the approval of the legislative council of the CLG. Also, any city in existence after the merger could merge with other cities or the CLG or dissolve.

In addition to the continued existence of other cities within the county, all taxing districts, fire protection districts, sanitation districts, water districts, and other special taxing or service districts are required to continue in operation unless dissolved according to statute. All city and county ordinances would also continue in effect for a maximum period of five years or until amended or reenacted by the new CLG as provided by KRS 67C.115.

KRS Chapter 67C also outlines a required governmental policy of equal opportunity and an affirmative action plan for all citizens within the CLG. This was included to ensure the protection of the minority community in all aspects of the CLG including employment, appointments to boards and commissions, contracting, and purchasing. KRS Chapter 67C requires the percentage of minority representation to boards or commissions or the ranks of CLG employment to be no less than the percentage of minority citizens in the community or the percentage of minority representatives on the CLG legislative body, whichever is greater (KRS 676.117). An affirmative action plan must be prepared and implemented by the mayor (KRS 67C.119). This chapter additionally prescribes for the expiration of existing cooperative compacts in such counties, the salaries of elected officials, the hiring of their staff, the taxing authority and tax structure for the CLG, the designation of authority to make appointments, the ability of the CLG to form service districts, the annual audit of the CLG's funds by the State Auditor, and a removal process for elected CLG officers.

By 2002, it was already necessary for the General Assembly to begin "tweaking" the original language creating CLG's. Additional language was added in 2002 outlining the organization, structure, and function of a police force merit system in a CLG. There were also other additional changes to the original sections of KRS Chapter 67C and various other statutes in the omnibus 02 HB 659. Changes in that bill affected the appointment authority to boards and commissions, the name of the newly created government, the creation of a removal process for elected officials, the creation of service districts for taxing purposes, and the employment of a clerk for CLG, making statutory references to CLG's in over 200 other statutes. Like those changes made through the years to KRS Chapter 67A for the Lexington-Fayette Urban-County Government, KRS Chapter 67C already appears to be taking on a tailored-appearance with the Louisville/Jefferson County Metro Government in mind.

## APPENDIX A

### CONSTITUTIONAL AMENDMENTS ADOPTED SINCE 1891

Year Adopted	Section(s) Affected	Purpose
1903	181	Authorize the General Assembly to provide by general law for levying by cities and counties of license fees and franchise taxes based on income derived from property or other sources.
1909	157a	Permit state to give, pledge, or lend credit to counties for road purposes and permit counties to levy a tax of 20 cents per \$100 of assessed property value to pay principal and interest on voted road and bridge bonds.
1915	171	Permit classification of property for tax purposes.
1915	253	Permit use of prisoners for road work.
1917	201	Permit telephone companies, under certain conditions, to buy or lease competing companies.
1919	227	Permit removal of local law enforcement officers for neglect of duty.
1919	226A	Prohibit manufacture, sale, or transportation of alcoholic beverages.
1935	226A	Repeal prohibition.
1935	244A	Permit old age pensions.
1941	186	Permit ten percent of money appropriated by the legislature for school purposes to be used in an equalization fund, instead of being divided on a per capita basis.
1941	147	Permit the use of voting machines.
1945	147	Authorize the General Assembly to provide for absentee voting.
1945	230	Guarantee that receipts from certain tax sources shall be placed in the highway fund.
1949	246	Repeal the \$5,000 salary limit and substitute limits of \$12,000 per year for officials with statewide jurisdiction and mayors of first class cities, \$8,400 for circuit judges, and \$7,200 for all other officials.
1949	186	Changes from ninety to seventy-five the percentage of state appropriated school funds to be divided on a per capita basis.
1953	186	Repeal provisions of Section 186 which required school funds to be distributed on a per capita basis.
1955	145	Permit persons eighteen years of age or older to vote, provided they meet other qualifications, and remove the word "male" from the constitutional description of voters.
1955	170	Exempt all household goods from taxation.
1969	172A	Permit agricultural land in urban areas to be assessed for taxation at its value for agricultural purposes and permit a unit of local government to tax property at different rates, in different areas, based upon services.

1971	170	Exempt from taxation up to \$6,500 of the assessed value of a single family residence owned and occupied by a person age 65 or older.
1975	109-139, 141, 143	Restructure the state court system.
1975	170	Extend “homestead exemption” to residences other than single family dwellings.
1979	256	Increase from two to four the number of amendments to be considered at any one referendum.
1979	30, 31, 36, 42	Change from odd-year to even-year for election of members of the General Assembly.
1981	170, 172B	Provides certain property tax exemptions for residents age 65 and older and for the disabled. Permits property tax moratoriums under certain circumstances to encourage repair and renovation of properties.
1984	99	Permit sheriffs to succeed themselves.
1986	160	Permit mayors of cities of the first and second classes to run for election for three successive terms.
1988	19	Limit the mining of coal conveyed by any broadform deed to methods of coal extraction utilized in the area at the time the deed was signed.
1988	226	Permit the General Assembly to establish a Kentucky state lottery, alone or in conjunction with other states.
1990	170	Exempt from property taxation all real property owned and occupied by, and all personal property owned by, institutions of religion.
1992	226	Permits the General Assembly to establish and regulate charitable gaming.
1992	70-74, 82-87, 91, 93, 94, 95, 97, 99, 148, 167	Omnibus reform of Executive Branch and election schedule, including: succession for statewide officers; joint election of Governor and Lieutenant Governor; gubernatorial disability and absence from the state; abolition of elected Superintendent of Public Instruction; duties of Lieutenant Governor; and even-year elections for all but statewide officers.
1994	156, 156a, 156b, 157, 157b, 158	Changes methods of classifying cities, grants “home rule” to cities, relaxes limitations of local government debt capacity, and requires balanced budgets by local governments.
1996	180, 187	Removed the requirement that public schools be racially-segregated and the authority for local governments to levy a poll tax
1998	170	Permit the General Assembly to exempt motor vehicles and other personal property from property tax and extend the homestead exemption to persons classified as totally disabled by any public or private retirement system.

2000	36, 42	Provide that the General Assembly shall meet in annual session in odd-numbered years for 30 days, provide that bills raising revenue or appropriating funds in an odd-numbered year session shall be agreed to by 3/5 of all members elected to each House, adjourn each odd-numbered year session March 30.
2000	201, 209, 218	Abolish the Railroad Commission

**CONSTITUTIONAL AMENDMENTS SUBMITTED TO POPULAR VOTE  
SINCE 1891 BUT DEFEATED**

<b>Year Submitted</b>	<b>Section(s) To Have Been Affected</b>	<b>Purpose</b>
1897	181	Would have permitted municipalities to tax property on the basis of income.
1905	147	Would have required voice voting instead of secret ballot.
1907	145	Would have made payment of taxes a prerequisite to voting.
1913	171	Would have permitted to classification of property for tax purposes. *
1921	186	Would have provided that ten percent of the common school fund could be distributed on other than a per capita basis.
1921	91	Would have removed the Superintendent of Public Instruction from the list of elective officials.
1923	145	Would have permitted women to vote and hold office.
1925	246	Would have raised the \$5,000 salary limit for certain specified officials.
1927	147	Would have permitted absentee voting.
1927	246	Would have abolished the \$5,000 salary limit and substituted a provision that the General Assembly should fix reasonable compensation.
1929	256	Would have removed the two-amendment restriction.
1929	246	Would have removed the salary limit on Judges of the Court of Appeals.
1931	158	Would have raised the debt limits of cities and counties in certain cases.
1933	172	Would have permitted the General Assembly to exempt real and personal property from taxation by the state.
1937		Would have permitted the General Assembly to reorganize local government and would have permitted consolidation of cities and counties.
1937	256	Would have removed the limit on the number of constitutional amendments to be submitted at one time.
1939	145	Would have made women eligible to hold public office.**
1939		Would have authorized and directed the General Assembly to provide aid to dependent children and needy blind.**
1943	54	would have permitted the General Assembly to pass a compulsory workers' compensation law.
1943	246	Would have removed the \$5,000 salary limit.

1951	256	Would have permitted an unlimited number of amendments to be submitted at one time and changed the time and manner of voting on amendments.
1953	91 and 93	Would have removed the Secretary of State, Treasurer, Commissioner of Agriculture, Labor and Statistics, and the Superintendent of Public Instruction from the list of elective state officers.
1957	91 and 93 95 and 96	Would have abolished the elective Superintendent of Public Instruction and established in his place a Commissioner of Education appointed by a nine-member Board of Education.
1959	New	Would have established a sales tax to provide a veterans' bonus.***
1959	99	Would have made sheriffs eligible to succeed themselves.
1963	246	Would have abolished the salary limit.
1963	256	Would have permitted the submission of five amendments to be voted on at one time.
1969	42	Would have authorized the General Assembly to meet annually for sixty legislative days and described a legislative day as one on which at least one house was in session.
1973	91, 93, 95, 99, 183 and 209	Would have deleted the requirement that the Superintendent of Public Instruction be elected; allowed sheriffs to succeed themselves; established a seven-member State Board of Education; abolished the Railroad Commission.
1973	32, 36 and 42	Would have required the General Assembly to meet annually for not longer than forty-five legislative days, which need not be consecutive, nor longer than four months (six months if approved by two-thirds of the members of both houses); required legislators to have resided in their districts for two years rather than one year prior to election.
1981	71, 82, 93 and 99	Would have permitted statewide constitutional officers to serve two successive terms and would have permitted sheriffs to succeed themselves.
1986	91, 93, 95 and 183	Would have constitutionally established an appointed State Board of Education, which would have hired a state Superintendent of Public Instruction; would have abolished the constitutional office of elected Superintendent of Public Instruction.
1990	36	Would have allowed the General Assembly to call itself into extraordinary session.

1990	28	Would have allowed the General Assembly to create a system whereby it or a body it designated could reject administrative regulations promulgated by an agency of the Executive Branch.
1990	****	Would have altered the structure and powers of local government.
1992	91, 93, 94, 95, 201, 209 and 218	Would have deleted the election of the Secretary of State, Treasurer, Commissioner of Agriculture, Superintendent of Public Instruction, and Railroad Commission.
1998	36, 42	Would have required the General Assembly to meet annually in odd-numbered years for twenty-five days, would have reduced the organizational session by five days.

- \* Through error was not publicized as required by Section 256 of the Constitution and although placed on the ballot, voted upon and passed, was declared invalid. See *McCreary v. Speer*, 156 Ky. 783, 162 S.W. 99 (1914).
- \*\* Through error was not publicized as required by Section 256 of the Constitution and thus could not be placed on the ballot. See *Arnett v. Sullivan*, 279 Ky. 720, 132 S.W. 2d (1939).
- \*\*\* Although ratified by the voters, this amendment was declared invalid by the Kentucky Court of Appeals. The Court held the subject of the amendment to be one properly addressed by statute rather than by a constitutional amendment. See *Stovall v. Gartrell*, 332 S.W. 2d 256 (Ky. 1960).
- \*\*\*\* would have repealed and replaced nine sections and amended two others. See 1990 Kentucky Acts, Chapter 150.



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