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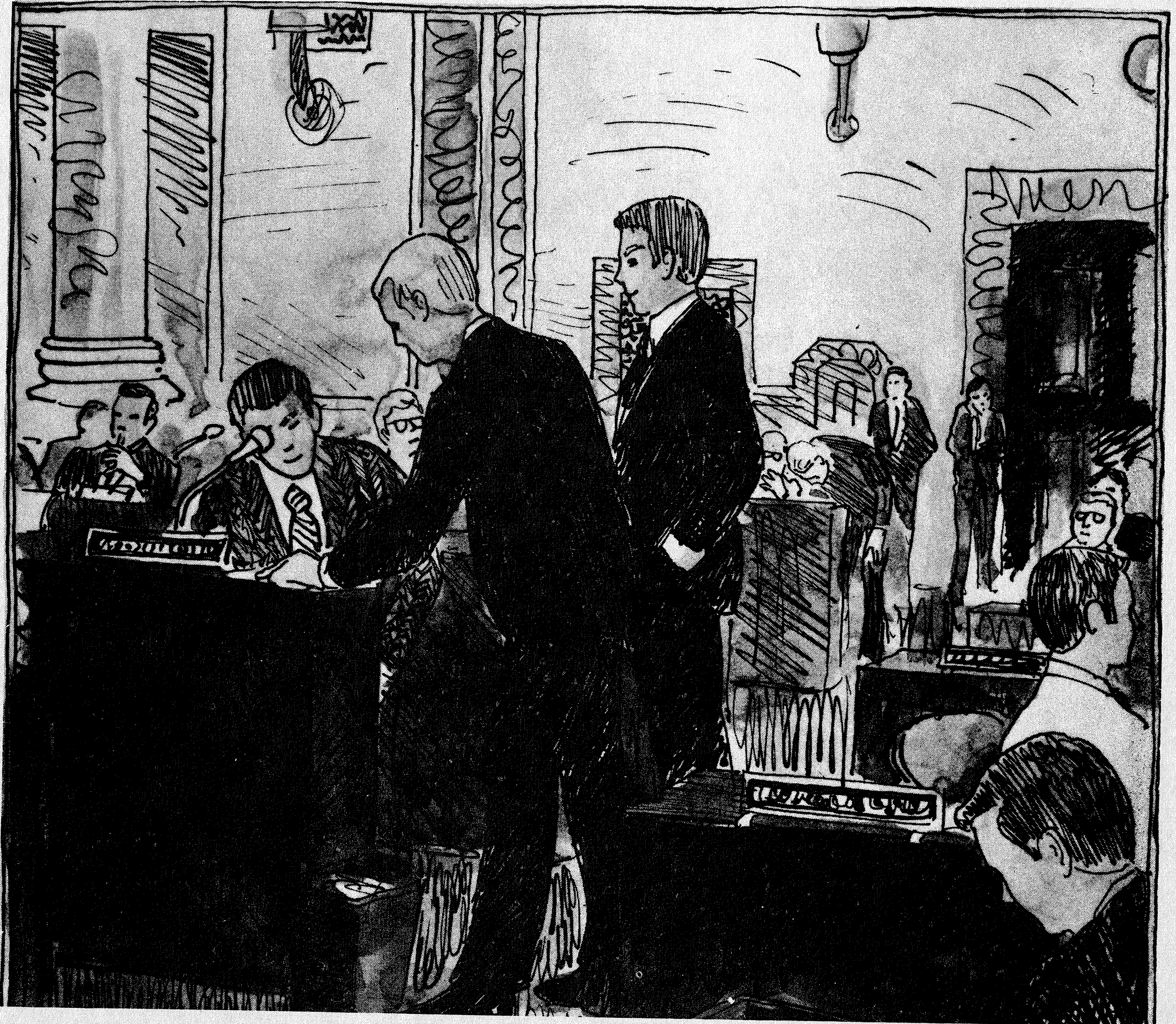
ISSUES CONFRONTING THE 1976 GENERAL ASSEMBLY



LEGISLATIVE RESEARCH COMMISSION
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Informational Bulletin No. 110

LEGISLATIVE RESEARCH COMMISSION

Frankfort, Kentucky

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* * * * * *

The Kentucky Legislative Research Commission is a joint legislative committee of the General Assembly serving primarily as a fact-finding and service agency both during and between sessions. Membership includes the leaders of both political parties.

The Commission by statute has the responsibility for legislative research, statute revision including annotations, bill drafting, and for maintaining a legislative reference library. Another service is the compiling and publishing of administrative regulations. Also its professional staff (1) compiles, edits, publishes and distributes the legislative journals, the session acts, and the daily record of legislative activity during sessions; (2) maintains custody of all General Assembly property and records between sessions; and (3) furnishes the services and conducts the studies which the General Assembly requests and those which, in the opinion of the Commission, will facilitate the work of the Legislature.

Other Commission functions are to review the Constitution and to act as Kentucky's Commission on Interstate Cooperation.

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ISSUES CONFRONTING THE 1976 GENERAL ASSEMBLY

Prepared by

Members of the Legislative Research Commission Staff

Edited by

Gary W. Luhr

Informational Bulletin No. 110

Legislative Research Commission
Frankfort, Kentucky
November, 1975

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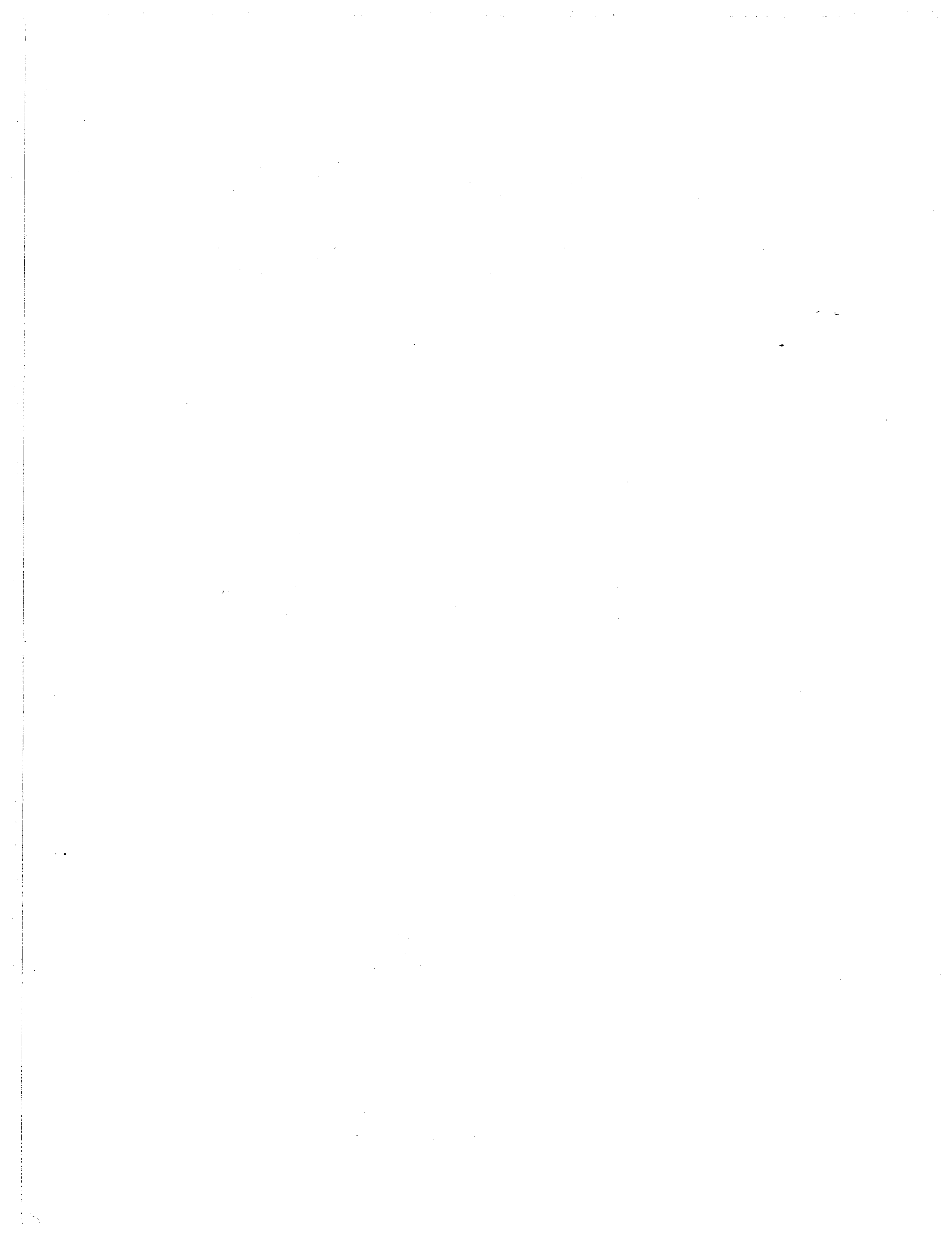


FOREWORD

The General Assembly, under our representative form of government, mirrors the society it serves, both in composition and in the issues it must attempt to resolve.

This collection of background reports, prepared by members of the Legislative Research Commission staff, attempts to focus on some of the issues that will confront the 1976 General Assembly.

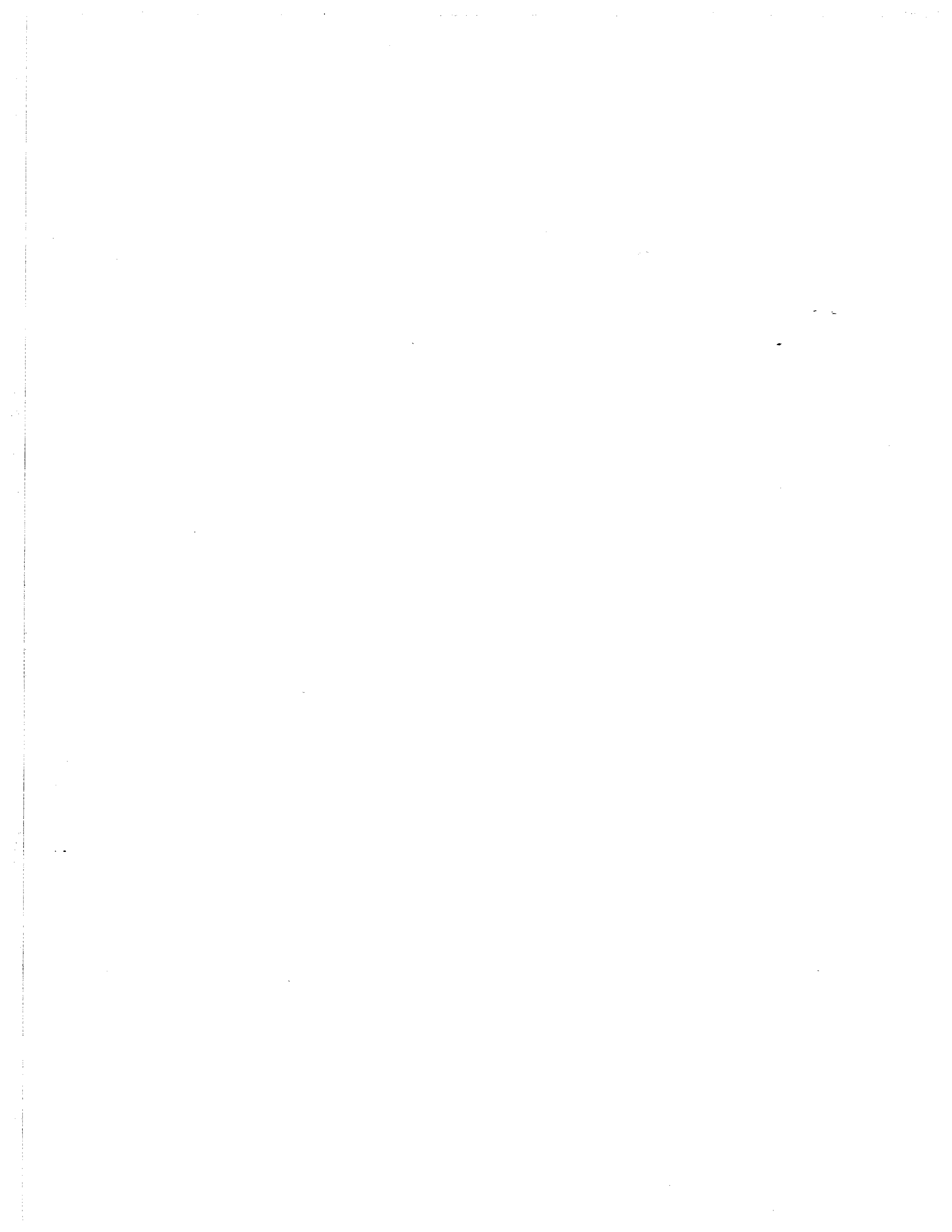
Every effort has been made to present the issues objectively and unemotionally, in as much detail as a publication of this nature allows. The contents by no means exhaust the list of important issues facing the legislature. They represent, merely, some of the issues which have received attention since the last session of the General Assembly. No particular meaning is placed on the order in which they are presented.

The staff members who prepared the reports were selected for the assignment based on their knowledge of the subjects and their work with the issues during the 1974-75 interim. Most of the staff members worked closely with legislative committees which studied the issues and helped draft much of the legislation discussed in the reports.

Gary Luhr's position as LRC's public information officer gave him an overview of the issues discussed here, enabling him to do an outstanding job of coordinating the compilation of this informational bulletin. Jane Johnson provided invaluable service in typing the final reports for publication.

PHILIP W. CONN
Director

The Capitol
Frankfort, Kentucky
November, 1975



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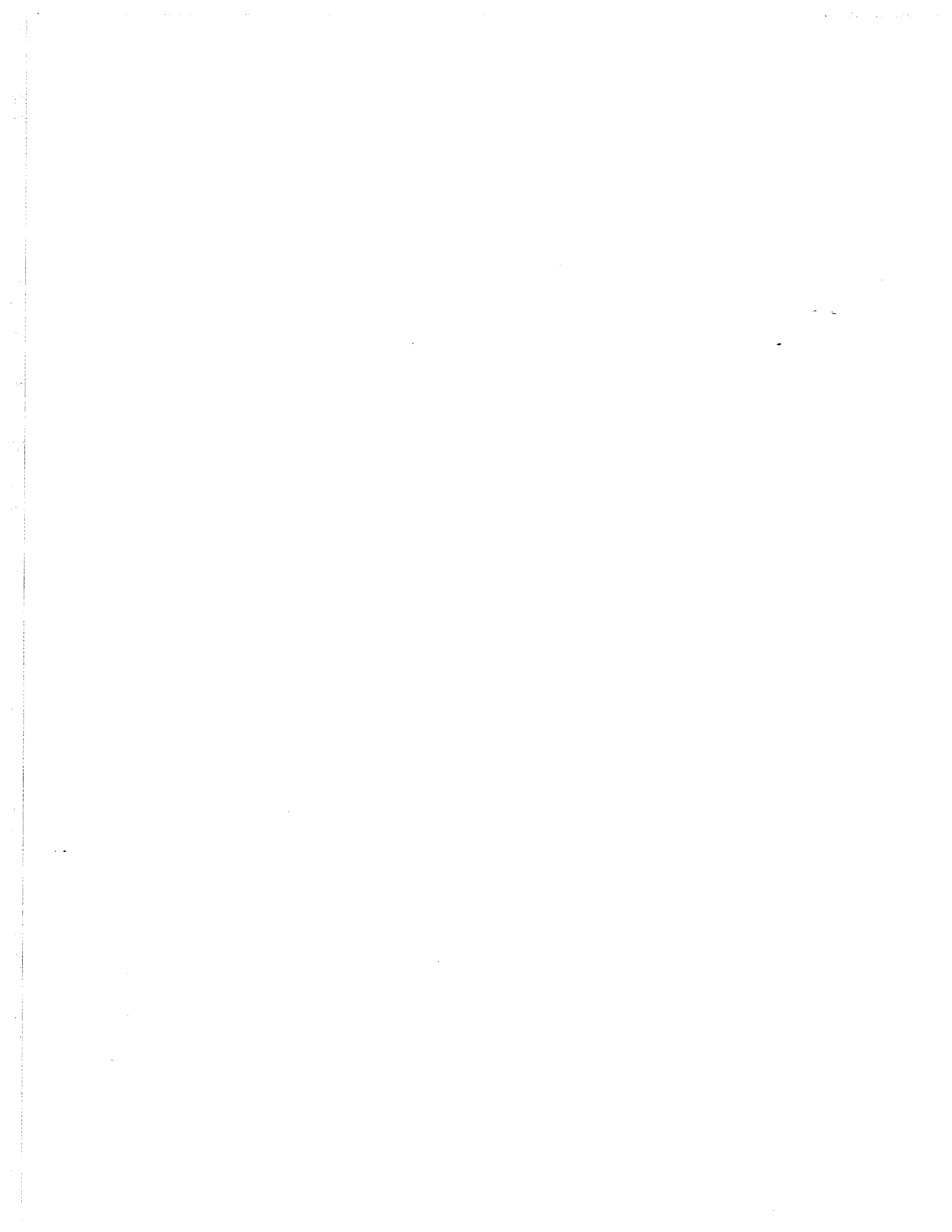

Implementing the Judicial Article

Pat Hopkins

In November, 1975, the voters of Kentucky approved the Judicial Article, a state constitutional amendment to replace completely a judicial system which had existed since 1891. The system had served the citizens well for many years and had many good points. Litigants generally were afforded a speedy trial of both civil and criminal cases. The judges, almost without exception, were persons of integrity and ability in whom Kentuckians could place their confidence. The courts had simplified rules of procedure that allowed cases to be decided essentially on merit rather than technical or procedural grounds.

Through the years, however, problems arose, due largely to population growth and an increase in the various phases of modern life that required government regulation. The number of courts which were adequate for the administration of justice in 1891 became bogged down in a sea of litigation by 1975. Caseloads doubled and redoubled as the courts encountered the automobile, with its accompanying accidents spawning personal injury and property damage suits. Eminent domain litigation was a natural outgrowth of Kentucky's highway construction program. As divorce laws became less complicated, domestic relations cases came to take up as much as half the time of some circuit courts.

Add to these demands the enforcement of statutes regulating workmen's compensation, wages and hours and environmental and consumer protection, plus a growing crime rate, and one begins to comprehend the problems of the judiciary. Judges faced a backlog of cases and "speedy trial" was becoming merely a constitutional phrase, something to be desired but less and less often attainable.

The Kentucky Plan

The "Kentucky Plan", as the new, unified court system has been called, can be understood by comparing it to the old system.

Old System	Kentucky Plan
1. Court of Appeals (7 Justices)	1. Supreme Court (7 Justices)
	2. Court of Appeals (14 Justices)

Old System	Kentucky Plan
2. Circuit Court (86 Judges)	3. Circuit Court (86 Judges)
3. Lower Courts County - (120 Judges) Quarterly - (120 Judges) Police - (Approx. 360 Judges) Magistrate - (Approx. 600 Judges)	4. District Court (Minimum 120 Judges.)
(Magistrates, quarterly and police court judges and county judges were not required to be lawyers.)	(All judges must be lawyers.)

The Supreme Court will have appellate jurisdiction only, limited to certain criminal cases and such cases as its rules shall provide.

The Court of Appeals will have appellate jurisdiction as provided by the General Assembly.

The Circuit Court will have original jurisdiction of all causes not vested in some other court; and may have appellate jurisdiction as provided by the General Assembly.

The District Court will have limited original jurisdiction as provided by the General Assembly.

Portions of the amendment become effective at separate times. Those provisions pertaining to the Supreme Court, the Court of Appeals and the circuit courts become operational in January 1976. On the first Monday in January, justices of the Court of Appeals as of January 1, will become justices of the Supreme Court. The 14 justices of the new Court of Appeals, who are to be appointed by the Governor, also will commence their terms of office on that date. In subsequent years, justices of the new court will be elected, as will the judges of all other courts.

Quarterly, police and magistrate courts and county courts as judicial bodies will exist until the first Monday in January 1978. At that time the district courts will take over the duties of these lower courts.

The General Assembly must include money in the next state budget for funding the entire court system. To do so, the legislature first must

determine an adequate compensation for the judges. The present salary of a justice of the Court of Appeals is $31,500 per year. The salary of a circuit judge is presently $26,000 per year.

These salaries must be reviewed and salaries must be set for justices of the new Supreme Court and for the new District Court judges. Since all judges under the new system will devote full time to their offices, their salaries must be sufficient to compensate them for giving up private law practice. Experience has shown that an adequate salary is necessary to attract qualified people to serve as judges.

The General Assembly also must make adequate provision for court expenses. A committee appointed by the Legislative Research Commission to study the cost of implementing the Judicial Article estimated the cost of the present judicial system at $13,517,615. Of this total, $6,962,100 is paid with state funds, $4,783,920 with county funds and $1,771,594 with municipal funds.[1]

Local Revenue Losses

A major concern of many people, as a result of the amendment, is the potential loss to counties and cities of revenue derived from fines, fees, and forfeitures in the present local courts. In this particular instance, the General Assembly will have time to carefully consider various solutions to the problem. One alternative would be to return a percentage of these funds to the various local governments in return for services, such as housing, provided to the new court system.

A Timetable

A initial look at the work involved in implementing the Judicial Article has led many to conclude that the job can't be completed during the regular session of the 1976 General Assembly. In a letter to Chief Justice Scott Reed, dated November 7, 1975, Governor Julian Carroll said he intended to recommend that the legislators "limit their consideration during the 1976 Regular Session to those portions of the amendment affecting the Circuit Court, the new Court of Appeals, and the Supreme Court." The Governor said he would call a special session prior to January 31, 1977, to consider legislation establishing the District Courts and defining their duties and responsibilities. Since the terms of the judges of these courts will not commence until January 1978, action on this part of the amendment can be delayed while the legislature and others examine and plan for the needs of the District Courts.

The Judicial Council's Office of Judicial Planning has compiled considerable information to use in the planning. The Governor has said he will appoint an advisory committee to assist in this effort. It will include representatives from the Kentucky Bar Association, Kentucky Association of County Officials, Kentucky Municipal League, Legislative Research Commission (LRC), Office of Local Government, Department for Finance and Administration, Justice Cabinet, County Attorneys Association, Commonwealth Attorneys Association, Office of Public Defender, Circuit Clerks' Association, and County Clerks Association, and other appropriate citizen groups.

A separate committee authorized by the LRC, meanwhile, will assist in planning for implementing those portions of the amendment which will take effect almost immediately.

A legislative timetable, then, might be as follows:

During the 1976 Regular Session, authorize appropriations and make statutory changes required to activate the Supreme Court, Court of Appeals and Circuit Courts.

Receive information and suggestions from all sources that wish to contribute on setting up the District Court system.

Prepare a bill implementing the amendment as it concerns the District Courts.

During a special session, approve the District Court bill.

Footnotes

[1] Moloney, Martha and Tom Hampton, "Legislative Research Commission Staff Memorandum No. 387: The Fiscal Impact of the Proposed Judicial Article," October 14, 1975.

Public Employe Collective Bargaining

Henry S. Vance

The advent of public employe collective bargaining has been described as the most significant development in the industrial relations field in the last 30 years. Many states, in the last few years, have developed new legislation in this turbulent area, and much of this legislation is causing extensive changes in the political and economic atmosphere of these states.

Since public employment involves an estimated 150,000 persons in Kentucky, any new legislation in this area could have considerable impact on all levels of government and the services they provide to the citizens of the state.

In McLaughlin v. Tilendis (1968), the U.S. Seventh Circuit Court of Appeals noted that the First Amendment to the U.S. Constitution gives public employes the right to join a union, "unless there is some illegal intent" on their part. The court also stated that collective bargaining as a union process has not been demonstrated to inherently violate the interests of public policy.

Support for bargaining legislation has come mainly from employe organizations which believe public workers should have the same rights and privileges as those in the private sector. Opposition has come largely from government officials, school administrators and certain private interest groups including some business and farm organizations. Much of the opposition has been based on the effect collective bargaining could have on state and local budget-making processes.

History

Public employes began in the 1830's to actively seek representation in unions which existed for workers employed by private industry. One of their first demands was for a shorter work day.

State and local government employes found relative success in their union activity. Public employes, however, remained secondary characters in the labor movement. Most of the benefits they secured came only after labor unions in the private sector gained such benefits.

In the late 1800's, a number of public employe organizations were formed. These organizations, which were called associations, were formed primarily for

benevolent purposes. They therefore did not join in the militant labor movement which asserted itself in the late 19th century.

During this period, state and local government employes began to show strong interest in affiliating with unions in the private sector. This pattern ended however, in 1919, with the Boston police strike. The public opposition which, resulted from that strike stemmed the drive for public employe unionization for several years.

With the labor movement upsurge of the 1930's, public workers began to show new interest in labor organizations. Strong unions of all types were formed in the private sector, but public unionization progressed slowly until the 1960's. During this period, many states passed laws prohibiting strikes or other job actions by state and local government employes. In most cases severe penalties were imposed statutorily for employes who violated the prohibitions.

Wisconsin enacted the first public employe recognition and bargaining law in 1959. Since then, 37 states have enacted some type of public labor relations legislation. The laws are not identical. Eighteen states have comprehensive laws which mandate collective bargaining between employer and employe. The remaining states either allow bargaining by local option or have "meet and confer" provisions. The laws also differ on what matters may be negotiated and what rights are reserved for employers.

Current Trends

Activity by the states in the area of collective bargaining for public employes has increased significantly in the last several years. Fifteen states, including Kentucky, analyzed the need for legislation in 1975. As a result, new laws were enacted in five states granting collective bargaining rights to 200,000 workers.

Provisions of the new laws vary because the employe organizations which sought them differ in purpose, policy, membership, national affiliation and the level of government at which they operate.

Although patterns among laws may be difficult to perceive, it is likely that public bargaining legislation and employe unionization will continue to increase. Several bills have been introduced in the last two sessions of Congress to mandate a national policy for public labor relations. Action on these bills is not expected until the U. S. Supreme Court rules on the constitutionality of Congress extending the Fair Labor Standards Act in 1974 to state and local governments.

In the last two years, new legislation was enacted in Connecticut, Indiana, Iowa, New Hampshire, Maine, Montana, Florida, Virginia, and Utah. In each state the legislation was different in form and effect.

In Alaska, the Governor has requested that a two-year-old bargaining law in that state be repealed.

Only a few states--Alaska, Hawaii, Minnesota, Montana, Oregon, Pennsylvania, and Vermont--grant public employes a full limited right to strike. Nevertheless, public employe strikes have increased more than 800 per cent since 1965.

Kentucky Law

Kentucky at present has no comprehensive law regulating public labor relations. While bargaining rights are mandated for certain policemen and firemen, other state and local government employes are covered by legislation that is solely permissive.

State employes are regulated by a Memorandum and Statement of Policy adopted by the state Personnel Board in 1966. It recognizes the right of state employes "to join employe associations and labor unions," but stipulates that no department or agency of state government will recognize or bargain with any third party agent. No binding agreements with employe associations or unions are permitted, and the right to strike or conduct any type of slowdown or job action is prohibited.[1]

The 1972 General Assembly authorized collective bargaining for policemen in any county with a population of 300,000 or more which had a merit system for its employes. The law (KRS 78.470 and 78.480), which currently applies only to Jefferson County, enumerates proper subjects for bargaining. It does not include the right to strike.

A more comprehensive statute (KRS 345.010 through 345.130) mandating collective bargaining for firemen was enacted by the General Assembly in 1972. It affords coverage to firemen in any city with a population of at least 300,000 or any city that petitions the Commissioner of Labor to be included under its provisions. Under this statute, the duty to bargain is enumerated, unfair labor practices are defined, a process is created to elect an exclusive employe representative, a procedure is established to resolve an impasse when negotiations break down, deduction of union dues from an employe's paycheck is authorized, a State Labor Relations Board is created and the right to strike is prohibited.

The Attorney General has concluded that, with the absence of any prohibitory statute or regulation, "teachers and other employe groups may legally

organize and bargain in a collective manner with their employer, the Board of Education (OAG65-84)." Separate opinions, however, recognized the right of boards of education to unilaterally decide whether to bargain with its employes (OAG 65-84 and OAG 75-126).

In Jefferson County Teachers Association v. Board of Education of Jefferson County, in 1970, the Kentucky Court of Appeals ruled that teachers may not conduct a strike or any other type of illegal action which might result in serious and irreparable impairment of the school system. The court, in deciding this case, said there was a distinguishable difference between private and public employes and that to treat them differently does not violate the equal protection clause of the 14th Amendment to the U. S. Constitution.

There is no statutory or case law in Kentucky that addresses the question of local government units entering into bargaining agreements with employe associations or unions. While there is no authority granting cities and counties the power to enter into such agreements, the Attorney General has concluded that an agreement between a government and a union may be entered into in much the same manner that a government would contract for construction of a hospital or delivery of fire department vehicles (OAG64-591).

The opinion stated that any contract executed with respect to wages, grievances, working conditions, etc., would not be enforceable against the city. This interpretation, however, is not universally accepted. In Wheatly v. City of Covington, in 1972, the Kenton County Circuit Court ruled that a salary contract between an employe union and the city was binding and enforceable.

In other states without bargaining laws courts have ruled both ways on whether public employes may bargain in the absence of a statute.

Legislative Study and Recommendations

A committee of seven legislators was appointed by the Legislative Research Commission in the fall of 1974, and charged with conducting an intensive study of public employe collective bargaining. The committee held five public hearings and received testimony from over 165 individuals representing public employers and employes as well as private interests.

Based upon information gathered at the hearings and the research of individual members, a majority of the committee recommended that the 1976 General Assembly not enact legislation mandating public employe collective bargaining. The majority also recommended that the 1976 General Assembly not enact legislation establishing a procedure to be followed in the event a local government or governmental body and its employes voluntarily entered into an agreement.

Two members of the committee presented a minority opinion in which they stated a belief that public employe collective bargaining eventually would become a reality in Kentucky. They said that enacting legislation would be "the most realistic and orderly approach toward that reality in order that proper direction and guidance could be given."

Although a majority of the committee recommended enacting no legislation, the committee recommended certain guidelines to be followed in the event legislation were to be introduced in the 1976 session.

The entire committee recommended that a "no-strike" clause be included in any legislation and that a striking employe have deducted from his wages an amount equal to twice his daily rate of pay for each day or part day in which he engaged in a strike. The committee also recommended granting employers the authority to discharge any employe who engaged in a strike.

In an attempt to afford the electorate the opportunity to observe the good faith efforts of both parties, the committee recommended that the public be allowed to attend, though not participate in, bargaining sessions.

The entire committee opposed any provision requiring an agency or union shop for public employes. (Agency shops require employes to pay dues to a recognized bargaining agent whether or not they are members of a union. Union shops require employes to join a union as a condition of their employment.)

A majority of the committee believed that tenure, civil service and merit system protection were incompatible with collective bargaining, that employes who desired to collectively bargain should negotiate all matters. Two members of the committee, however, felt that the aforementioned job protections were basic rights and should not be forfeited.

All but one member of the committee recommended a four-step impasse procedure, relying on the progressive use of a conciliator, mediator, fact-finder, and circuit judge, rather than a traditional compulsory arbitration system. The judge's decision would be final.

Conclusion

The controversy over collective bargaining for public employes is not confined to the question of authorization alone. It also arises over the many issues with which such legislation would deal. Nevertheless, employe unionization and collective bargaining are a reality on the state and local level, and it is reasonable to assume that their existence will be dramatically felt in the future.

Footnote

[1] "Statement of Policy by State Personnel Board," Department of Personnel, Commonwealth of Kentucky (December 20, 1966).

The Equal Rights Amendment

Mary Helen Wilson

The Equal Rights Amendment (ERA), the proposed 27th Amendment to the United States Constitution, was ratified in Kentucky during a Special Session of the General Assembly in June 1972. Subsequently, an effort to rescind ratification emerged, one which increased in organization and intensity during the interim following the 1974 regular session.

The Equal Rights Amendment reads as follows:

> "Section 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.
>
> "Section 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.
>
> "Section 3. This amendment shall take effect two years after the date of ratification."

Kentucky was the 19th state to ratify the amendment, which has been approved by 34 state legislatures. Thirty-eight states must do likewise by March 1979 in order for the ERA to become part of the Constitution.

Two states, Tennessee and Nebraska, have voted to rescind their ratification. The legality of their action is uncertain at this time.

During the 1974 Session of the General Assembly, resolutions to rescind Kentucky's ratification of the ERA were introduced in the Senate and the House of Representatives. The Senate resolution remained in committee. The House Committee on Elections and Constitutional Amendments reported its rescind resolution favorably, but the House Rules Committee recommitted it in the last days of the Session.

The ERA had been introduced in Congress every session since 1923. The amendment was first debated in 1946 and again in 1950, 1953, 1970 and 1971 before being passed in March 1972.

The Legality of Rescission

Nebraska passed a rescission resolution in 1973, and Tennessee did so in 1974. Rescission efforts have been active and growing in a number of states which have approved the amendment.

The legality of rescission is widely debated. The U. S. Constitution makes provisions for states to ratify amendments, but it does not provide for later rejections. The Supreme Court, in Coleman v. Miller, 1939, held that recission was a political question to be determined by Congress. Congress refused to recognize recission by Ohio and New Jersey for the 14th Amendment in 1868 and by New York for the 15th Amendment in 1870.

The Kentucky Court of Appeals, in Wise v. Chandler, 1937, ruled that the General Assembly could not reconsider its vote on a constitutional amendment, whether the vote was negative or affirmative, unless the amendment was resubmitted by Congress. An Attorney General's Opinion in Idaho, dated January 1973, states that once a state acts through its legislative process to ratify a proposed amendment to the U. S. Constitution it has cast its one vote and exhausted its power to affect the course of the proposed amendment.

The Attorney General's Office in Kentucky issued an opinion, dated August 13, 1973, which states, "...any attempt by the Kentucky General Assembly to repeal or rescind its approval of the Equal Rights Amendment would be futile. In view of Congress' previous actions in response to a state legislature's passing repeal resolutions, it appears that such a resolution, if adopted by the General Assembly, would simply be ignored by the Congress."

There are prominent constitutional lawyers who refute these arguments, however. Yale University Law Professor Charles L. Black, Jr., a proponent of the ERA, has stated, nevertheless, that he believes any state may validly rescind its ratification of any amendment prior to ratification by the requisite three-fourths of the states. Black further states that the 14th Amendment precedent is special, very narrow and, in any case, not binding because no Congress has the power to bind a subsequent Congress. Congressional precedent is considered, but it is not binding.

Former United States Senator Sam Ervin, a recognized constitutional authority, also believes that states have the right to rescind prior ratification of a constitutional amendment until it has been ratified by the required number of states. The legality of rescission probably will not be brought before the courts or Congress until the required 38 states have ratified the amendment. Then, the question of accepting recission by states will have to be decided.

In Kentucky

Interest in rescinding Kentucky's ratification of the ERA has grown significantly over the last several months. Members of the General Assembly and the Legislative Research Commission have received petitions and correspondence on both sides of this issue. Pro-rescission forces sent the Interim Joint Committee on Elections and Constitutional Amendments petitions containing over 25,000 names and over 1,000 letters. The volume of mail from proponents of ERA has been considerably less, but the proponents maintain strong opposition to rescission.

On July 7, 1975, both sides had an opportunity to speak at a public hearing in the House Chamber of the State Capitol. Approximately 600 people attended this hearing, which lasted more than three hours. Each side had an hour in which to present its opinions and 20 minutes to rebut those offered by the other side.

Arguments Presented Against ERA

Some of the arguments presented at the hearing against the ERA included the following:

> The amendment is stated in such language that interpretation by the courts will endanger women's "traditional role" in society. Those opposed to the amendment argue that family support laws would be changed and the family unit threatened.
>
> Women's rights can be guaranteed better through specific legislation. Many inequities have been corrected through federal legislation, such as the Civil Rights Act of 1964, the Equal Employment Act of 1972, and the Education Act of 1972.
>
> Kentucky passed legislation in 1972 and 1974 to correct inequities to women in many areas, including business and property. As a result Kentucky women do not need the ERA.
>
> The federal government would have the power to enforce this amendment, and this would take important rights away from the states.
>
> Women would be drafted for military service on the same basis as men and separate rest room and sleeping facilities would be prohibited.
>
> The ERA would cause a revision of rape laws. Statutory rape would be abolished.

Arguments Presented in Favor of ERA

Some of the arguments presented at the hearing in favor of the ERA included the following:

> Laws relating to women would be uniform nationally. There is presently a wide variance in women's legal rights in the 50 states.
>
> A constitutionally guaranteed right **cannot** be taken away easily, whereas state and federal laws can be changed. Thus, gains for women through legislation are not necessarily permanent.
>
> Protective legislation for women has prevented women from obtaining the higher-paying jobs in industry. Women who are physically capable of handling these jobs and desire them have been frustrated by protective labor laws.
>
> The Equal Rights Amendment pertains to legal rights. It would not dictate social customs, and individuals would maintain the right to choose their own life styles.
>
> The Supreme Court has ruled that a person's right to privacy is guaranteed in the Constitution. The Equal Rights Amendment would not nullify this right.
>
> The ERA provides for a two-year delay after ratification to allow time for legislative action. There would not be a chaotic change in laws.

Other Effects

Men also would be affected by the ERA through changes in laws which make distinctions in treatment of men and women. For example, property tax laws with exemptions for widows only would have to be revised to make them apply equally to both sexes. The courts, in divorce settlements, would base alimony, support payments and child custody on the financial assets and earning power of each spouse. (This is currently the practice in more than one-third of the states.)

Protective labor legislation which benefits one sex would have to extend the benefit to both sexes or be eliminated. Social security and pension benefits would have to be available equally for both sexes.

Lobbying, Ethics and Conflict of Interest

Joyce S. Honaker

The basic aim of lobbying and conflict of interest laws is to assure that government policies are made and administered in an ethical, even-handed manner, without regard to the private interests of those making or administering policies or the special interests of individuals who may attempt to influence their actions. An objective of both types of laws is to strengthen public confidence in the integrity of government.

The lobbying and conflict of interest issues facing the 1976 General Assembly are sufficiently different to warrant separate discussion. Both issues, however, pose the same general questions:

> Is it possible to effectively legislate morality?
>
> How can ethical decision-making in government be assured while preserving individual rights to privacy, freedom of speech and freedom to petition the government for redress of grievances?
>
> How can unwanted biases in governmental decision-making be prohibited while assuring that expertise needed to make public decisions is available and that citizen access to decision-makers is not unduly restricted?

LOBBYING

Kentucky's current lobbying law, enacted in 1916, relates only to those lobbyists who are compensated for attempting to influence legislation that may affect private financial interests as opposed to the interest of the general public.[1] Each lobbyist covered by the law must register with the Attorney General and must file a written authorization from his employer to represent him. Within 30 days after the end of each General Assembly session, registered lobbyists and their employers must file a statement of expenses paid and incurred for lobbying activities. Registration and expenditure information is open to public inspection.

The current law also imposes several restrictions on lobbying activities. A lobbyist's compensation may not be based on whether the General Assembly, its houses or its committees take, or fail to take, any particular action, such as passage or defeat of a bill. No person may

lobby other than by appearing before committees and "doing work properly incident thereto."[2] No lobbyist may go into either house while it is in session unless he is invited by the members of the house. Finally, no lobbyist may attempt to influence the official actions of a General Assembly member or officer by trying to coerce, intimidate or offer anything of value to him, including offering election support.[3]

The current lobbying law penalizes both lobbyists and their employers for violations of the registration and reporting requirements. A lobbyist who violates any provision of the law is to be fined a maximum of $5,000, confined in the penitentiary for up to five years or both. KRS 6.250-6.320 do not state how the law is to be enforced. The Attorney General has customarily referred suspected violations of the disclosure requirements to the commonwealth's attorney and circuit court judge of Franklin County.[4]

While no documents specify the 1916 General Assembly's objectives in enacting the current lobbying law, its apparent purposes were to provide the General Assembly and the public with information on the identities and expenditures of lobbyists employed to further special interests in legislation, and to prevent lobbyists from engaging in activities which the legislature considered corrupt or disruptive of the legislative process.[5] The lack of enforcement and prosecution of persons under the law suggests that the law is not needed, is effective as a preventive measure or is not enforceable. There is little information on whether or to what extent corrupt or disruptive lobbying has occurred in Kentucky. Compliance with the law's disclosure requirements appears to be incomplete, however; and recent terms of the Franklin County Grand Jury have failed to indict alleged violators of the registration or reporting requirements on grounds that the law is too ambiguous to be justly or feasibly enforced.[6]

Shortcomings

Persons who have reviewed the lobbying law generally have suggested its major shortcomings to be the ambiguous definition of "lobbyist" in KRS 6.250, the lack of clear enforcement mechanisms and the fact that its penalty provisions do not distinguish between major and minor violations.[7] Others have suggested that the law's coverage should be expanded to include additional lobbyists, additional activities of government or both.[8]

The problem most often cited with the current definition of "lobbyist" is the difficulty, in practice, of distinguishing between persons lobbying for "private pecuniary" interests and those lobbying in the public interest, on the one hand; and between persons employed to lobby and others, particularly those whose job may include but is not limited to lobbying. The current law, in effect, requires each individual to determine whether he must register as a lobbyist and be subject to the law's restrictions and disclosure requirements.

Although the Attorney General maintains information on lobbyists, his power to enforce the lobbying law isn't specified in the law and is greatly restricted by general Kentucky law. Under KRS 15.190-15.200, the commonwealth's attorney, circuit court, grand jury and others may request the Attorney General to participate in criminal investigations or proceedings but the Attorney General may not do so on his own initiative. Two proposals for revising the current lobbying law would remove record-keeping functions from the Attorney General's Office and assign him enforcement duties and powers.[9]

The major shortcoming identified by critics of the current lobbying law regarding penalties is the law's treatment of all lobbyist violations of KRS 6.250-6.320 as felonies. Although the current penalty provisions permit courts some latitude in assessing the severity of a violation and imposing a penalty, the statutes do not distinguish between violations. Attempted coercion or bribery isn't distinguished from the late filing of an employer's authorization of a person to act as his lobbyist, for example. Entering a house chamber without invitation is penalized statutorily as severely as failing to register or to report expenditures. Three recent proposals to change the current law suggest that the penalties be refined to reflect variations in the severity of offenses.[10]

An additional issue concerning Kentucky's lobbying law is whether current identification and financial reporting requirements are adequate. With an aim toward providing more complete and timely information on lobbying activities, several legislators and others have proposed that:

> Lobbyists be required to wear name tags identifying themselves and their interests;
>
> A directory of lobbyists, similar to the biennial directory of General Assembly members, be published;
>
> Lobbying expenditure reports be required periodically while the legislature is in session, to reveal lobbying efforts while public decisions are being made as well as after they are made; and,
>
> Lobbying expenditure reports be independently audited for accuracy and thoroughness.

Proponents of additional identification requirements generally argue that the requirements would facilitate communication between lobbyists and decision-makers by making clearly known who were lobbyists and whom they represented. Greater identification also might aid enforcement by more readily identifying which lobbyists were complying with the law.[11]

Because lobbying laws in Kentucky and other states do not apply to everyone who may attempt to influence government decision-making, objections to additional identification and reporting requirements often contend that they single out only a portion of people who lobby. A second objection to more detailed or frequent disclosure requirements is that they impose additional record-keeping burdens on lobbyists in an effort to reveal infrequent cases of improper lobbying.[12]

Proposed Changes

Recent suggestions for expanding, as well as clarifying, the coverage of Kentucky's lobbying law include proposals to:

> Apply the law to most persons who spend or are paid more than a specified sum on lobbying activities;
>
> Cover non-compensated lobbyists and lobbying organizations, regardless of the amount of money they spend, if they make more than a specified number of contacts with policy-makers; and,
>
> Require disclosure of efforts to influence decision-making in the executive branch as well as legislative decisions.[13]

The amount of money spent or received for lobbying has traditionally been the predominant factor used by states to differentiate between lobbyists who must register and report and those who need not. This monetary distinction is probably based on assumptions that expenditures or compensation indicate greater than average lobbying efforts and may affect a lobbyist's degree of influence.[14] A recent proposal to revise Kentucky's lobbying law retains the monetary distinction, but also would require persons or organizations lobbying on more than seven days during a legislative session to register and report any expenditures.[15] This proposal reflects the assumption that amount of time, as well as amount of money, spent on lobbying may represent a greater than average effort and may result in greater influence.

Lobbying the Executive Branch

In recent years, a number of states have expanded coverage of their lobbying laws to include efforts to influence executive branch decisions. The majority of states' laws, however, still reflect the traditional viewpoint that, "the legislature is the natural habitat of political interest groups."[16] Eighteen states' laws apply to efforts to influence a governor's action on legislation, while 10 states require disclosure of lobbying directed toward

other executive branch actions.[17]

Proponents of extending coverage to lobbying of administrative officials note that executive agencies play a major policy-making role through promulgating regulations, inspecting, licensing, deciding whether to authorize utility rate increases, and so forth. Although the actual extent of lobbying directed toward administrative agencies is not known, one writer has suggested that "currently, ...the natural habitat (of political interest groups) may be in the executive branch of government..."[18]

One issue raised in assessing proposals to expand lobbying law coverage in this manner is the effect it would have on effective lobbying regulation. Given the number and complexity of executive policy making processes, would attempts to monitor efforts to influence them strengthen or dilute overall lobbying regulation efforts?

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ETHICS AND CONFLICT OF INTEREST

Conflict of interest laws attempt to insure that public officers and employes will, when faced with a conflict between their private interests and the public welfare, act in the public interest. While interest in governmental ethics and conflict of interest problems may have grown in the post-Watergate era, state conflict of interest legislation long predates current events. Kentucky's Constitution, adopted in 1891, contains several sections which prohibit public officers from using their official powers for private gain.[19]

Major considerations in developing and analyzing conflict of interest legislation include: the method or methods used to regulate conflicts of interest; the scope of coverage and degree of uniformity in regulating the behavior of public officers and employees; and the mechanisms for administering and enforcing the laws.

Current conflict of interest laws in Kentucky and other states use three general methods in regulating conflicts of interest:

> Prohibitions against certain actions, accompanied by penalties for their violations of the prohibition;
>
> Disclosure of public officials' private interests, either in particular circumstances or in periodic reports of private financial interests, or both; and,

Guidelines for ethical conduct which public officers and employes are expected to use in resolving particular conflict of interest questions. Guidelines are supplemented occasionally by provisions permitting or requiring public officials to seek advisory opinions when faced with a possible conflict of interest problem.

Prohibitions usually are reserved for conduct that is clearly and generally considered to be unethical, such as taking a bribe. They often are included in state criminal codes.[20] Disclosure, guidelines and advisory opinions are the methods usually employed in dealing with less clear-cut problems. Disclosure requirements and guidelines recognize that conflicts between a public decision-maker's private interests and his public duties often are unavoidable. Guidelines assist an official in resolving such conflicts, while disclosure provisions are designed to reveal his private interests to those who have the power to remove him from office or otherwise discipline him if he violates ethics laws or standards.

The particular issues facing the 1976 General Assembly are whether to revise current laws relating to legislative ethics and whether to undertake a comprehensive analysis of Kentucky's conflict of interest laws for state and local public officers. As authorized by the 1974 General Assembly, the legislature's Board of Ethics has drafted legislation to revise and reorganize Kentucky's laws relating to legislative conduct in a code of legislative ethics.[21] The Interim Joint Committee on State Government's Subcommittee on Lobbying and Conflict of Interest, meanwhile, has recommended that the General Assembly direct the Legislative Research Commission to analyze and suggest any needed revisions in Kentucky's more than 400 state conflict of interest laws.[22]

Code of Ethics

The proposed code of ethics retains many sections of law applicable to General Assembly members. The code, which would apply to both members and members-elect, includes provisions to implement Kentucky's Constitutional prohibition against a legislator voting on matters which affect his personal or private interests. It also would change the composition of the Board of Ethics to include a majority of non-legislators.

Section 57 of Kentucky's Constitution states that, "A member who has a personal or private interest in any measure or bill proposed or pending before the General Assembly, shall disclose the fact to the House of which he is a member, and shall not vote thereon upon pain of expulsion." This provision

like similar laws in other states, is not self-enforcing but requires each legislator to assess the nature and extent of his personal and private interests relative to each piece of pending legislation.

Given the fact that legislators are part-time public officials with outside interests common to all citizens or to members of their professions, and the fact that Kentucky's Constitution generally prohibits the General Assembly from enacting special or local legislation, conflicts of interest frequently are not clear-cut or simple to resolve. In addition, legislators are elected to represent the interests of their constituents, which they may share but which may vary from those of the general public.

The Kentucky Court of Appeals recognized these problems in rejecting a contention that legislators who were armed services veterans unconstitutionally voted on a proposal involving a veterans' bonus. The court said:

> "Under almost any act of the legislature, each member of the General Assembly would stand to benefit or suffer a detriment depending upon whether or not he fell within the class of those persons affected. The wheels of government would stop if legislators could not vote on matters in which they necessarily have a remote personal interest by reason of being a member of the public. . .
> We believe. . . that Section 57 must be construed as restricting the right to vote only to those members who have a peculiar special interest in legislation which would affect them in a manner differently from the public or a proper classification of members of the public."[23]

Current Kentucky law provides members of the General Assembly little guidance in assessing whether their personal or private interests are affected by pending legislation. The Board of Ethics' code would define general circumstances in which private interests may warrant disqualification and permit General Assembly members to seek advisory assistance from the Board in resolving conflict questions. The code also would specify how the constitutionally required disclosure of a personal or private interest in legislation must be made, once an individual legislator determined such disclosure was warranted.

Neither Kentucky's Constitution, current law, nor the proposed code prohibit a legislator from introducing a measure in which he may have a personal or private interest. This is due principally to concern that such a prohibition would unduly restrict a legislator from presenting his con-

stituents' concerns to the General Assembly. The code, however, would require a legislator who had a personal or private interest in a bill which he introduced to disclose that fact and the disclosure to be printed on the bill.

Limited prohibitions supplemented by guidelines and disclosure requirements generally are favored as the most practical means of dealing with less clear-cut conflict of interest problems while preserving the representative function of the citizen-legislator. The primary criticism of legislative conflict of interest laws is that their effectiveness usually depends on legislators' definitions of what constitutes a conflict of interest and on self-policing of compliance with the standards established.[24]

The proposed code of ethics would preserve the General Assembly's power to define general ethical standards for legislative conduct and what constitutes a violation of such standards.[25] It would, however, alter investigation and enforcement provisions of the current law by providing for more involvement by non-legislators in monitoring compliance with the ethics laws. Failure to comply with the prohibition against voting on a measure in which a legislator has a personal or private interest would be punishable by both General Assembly discipline (the only enforcement mechanism at present) and criminal penalties enforced through the courts.

Conflicts Outside the Legislative Branch

Most Kentucky laws dealing with conflicts of interest outside the legislative branch pre-date the 1970's and are scattered throughout the statutes. The Subcommittee on Lobbying and Conflict of Interest noted that, "many current conflict of interest laws, having been enacted during different periods of time and being related to specific officers and employes, are in need of review to assess their consistency with other laws and their relevance to actual conflict of interest problems."[26]

Among specific issues a comprehensive review of Kentucky's conflict of interest laws might address are:

> The adequacy of current restrictions on public officers' interests in government contracts, which frequently are limited to contracts for public works and the purchase of supplies;
>
> The relevance of the numerous state laws prohibiting nepotism in government appointments;
>
> The merits of the current separate and varying treatment of conflict of interest problems in each

of the six classes of cities and among state and local officers and employes;

The adequacy of Kentucky's 1972 financial disclosure law and its partial duplication by a 1975 executive order requiring financial disclosure by some state executive branch officers;[27] and,

The adequacy of current enforcement procedures and the merits of establishing bodies, similar to the General Assembly's Board of Ethics, to administer conflict of interest laws applicable to state and local officers.

Footnotes

1. Kentucky's current lobbying law is KRS 6.250 through 6.320 and 6.990. The definition of lobbyists covered by the law is found in KRS 6.250.

2. KRS 6.260(4).

3. KRS Chapter 521 generally prohibits any person from bribing a public officer or employe, and KRS Chapter 121 regulates attempts to influence candidates for election to public office.

4. Department of Law, Regulation DL-RG-3, January 4, 1971.

5. A 1929 Kentucky Court of Appeals decision discusses the background and apparent purposes of the 1916 lobbying law. See Campbell v. Commonwealth, 229 Ky. 264, 17 S. W. (2d) 227.

6. See Reports to Honorable Henry Meigs, Judge, Franklin Circuit Court by October, 1970 term and July, 1974 term of the Franklin County Grand Jury.

7. *Ibid.* and Legislative Research Commission, Interim Joint Committee on State Government, Subcommittee on Lobbying and Conflict of Interest, Minutes of Fourth Meeting of the 1974-76 Interim, August 8, 1975.

8. Subcommittee on Lobbying and Conflict of Interest, Minutes of Third Meeting of the 1974-76 Interim, July 10, 1975.

9. 1976 Bill Request (BR) 359, drafted for the Subcommittee on Lobbying and Conflict of Interest, and 1976 BR 146, presented to the Subcommittee by state Senator Joe Graves, Lexington.

10. *Ibid.* and Report of the July, 1974 Term of the Franklin County Grand Jury.

11. Subcommittee on Lobbying and Conflict of Interest, Minutes , July 10, 1975.

12. *Ibid.*

13. 1976 BR 359, 1976 BR 146, and Common Cause, "Model Lobbying Disclosure Act", Washington, D. C., July 1, 1974.

14. Common Cause, for example, commenting on past charges of vote-buying, asserts that,"Special interest groups no longer buy entire legislatures, but they continue to spend enormous amounts of money to create good will between themselves and public officials... Gifts are seldom a *quid pro quo* for a vote, but they guarantee the lobbyist access to public officials that the average citizen does not have. Often, this access means influence." "Lobbying Law Reform in the States" (Common Cause, Washington, D. C., November 26, 1974), pp. 2-3.

15. 1976 BR 359.

16. Keef and Ogul, *The American Legislative Process: Congress and the State* (1964), p. 334, cited in John W. Smith, "Regulation of National and State Legislative Lobbying" *University of Detroit Law Review*, Volume 43 (1966), p. 664.

17. Common Cause, unpublished chart comparing the 50 states' lobbying laws, ca. 1974.

18. Smith, "Regulation of National and State Legislative Lobbying," p. 664.

19. See, for example, Kentucky Constitution Sections 57, 173, 209, 235 and 247.

20. See, for example, the offenses defined in KRS Chapter 521, "Bribery and Corrupt Influence" and KRS Chapter 522, "Abuse of Public Office".

21. 1976 BR 194, An Act relating to legislative ethics.

22. 1976 BR 419, A Joint Resolution directing the Legislative Research Commission to study conflict of interest problems and laws relating to public officers and employes.

23. Stovall v. Gartrell, Ky., 332 S. W. (2d) 256 (1960), at page 260.

24. The Council of State Governments, Ethics: State Conflict of Interest/ Financial Disclosure Legislation, 1972-75 (Lexington; Kentucky: August, 1975), p. 22.

25. Kentucky Constitution Section 60, which prohibits the General Assembly from delegating its legislative powers, probably restricts the degree to which the legislature could direct non-legislative involvement in establishing general conflict of interest laws governing legislative behavior.

26. Preamble to 1976 BR 419.

27. Governor Julian M. Carroll, Executive Order 75-211, March 4, 1975.

Medical Malpractice Insurance

William H. Raines

The limited availability and soaring cost of medical malpractice insurance has recently become a pressing problem in most states, and has assumed crisis proportions in some states. It is a problem of great complexity that is having an adverse effect upon the whole health care system.

Medical malpractice insurance is professional liability insurance which protects a health care professional against liability for improper or negligent treatment of a patient. Without it a physician cannot practice, a hospital cannot admit a patient, and other health care providers cannot function.

The cost of medical malpractice insurance increased as much as 100 per cent during 1973 and 1974, requiring physicians in high risk categories to pay up to $10,000 to $15,000 a year for coverage. This dramatic upward trend has continued and, in some areas, premiums for physicians practicing high risk specialties now frequently exceed $20,000 per year. Insurers writing liability insurance for hospitals in Kentucky have been granted rate increases of up to 150 per cent in order to continue coverage in the state.

The increases in the cost of liability insurance paid by health care providers are passed on to patients in the form of higher charges for health care. In some areas the cost of liability insurance accounts for roughly four dollars of a hospital's daily patient charge, compared to 10 cents in 1965. Patient costs are increased further by physicians practicing "defensive medicine" in an effort to guard against malpractice suits by employing every measure possible to insure that they do not treat a patient improperly. Additional tests and treatments, which ordinarily might not be considered necessary, are estimated to account for one-third of the medical charges patients must pay.

The Problem

Several possible causes have been cited for the limited availability and increased cost of medical malpractice insurance. The physician-patient relationship has become more impersonal and, with its growth, medical technology has become more complex, specialized and impersonal, making the patient less reluctant to sue when his expectations from the treatment he has received are not realized. As a result, a greater number of malpractice suits are being filed, and even higher awards are being made by the courts.

The number of malpractice suits filed in 1974 was 70 per cent higher than in 1973, and the average size of awards increased 20 per cent. One carrier reported only one claim for every 23 physicians insured in 1969, whereas it had one claim for every 10 physicians by 1974. During the same period, the average value of each claim nearly doubled.

There are indications that the pace is accelerating. Even though the patient is unsuccessful in 90 per cent of all malpractice suits filed, he is probably not put to any expense because of a contingent fee arrangement with his attorney. But it proves to be expensive litigation for the physician and his insurer, costing an average of almost $15,000, even if the suit never goes to trial, according to industry figures. [1]

Another contributing factor may have been the decline in the stock market, which had an eroding effect on the surpluses of insurance companies and depleted their reserves.

A Kentucky Medical Association survey disclosed that most physicians carry between $100,000 and $600,000 coverage. Some observers believe such large amounts may become targets for some patients.

When possible, physicians are paying the higher premiums and passing the extra cost on to their patients. Others, however, are limiting their practices or retiring early. Some physicians are switching from high-risk specialties, such as neurosurgery, to general practice. Others are seeking the relative security of employment by private corporations or the government.

The problem is particularly grave for the young physician seeking to enter private practice. Insurers are reluctant to provide him coverage and, when coverage is available, the premium can be an insurmountable obstacle. Young physicians preparing to practice in Kentucky are forced to obtain malpractice insurance by mail from companies not licensed in Kentucky.

The insurance companies' position with respect to malpractice insurance is not clear, because the cost of writing coverage is not readily available and

an evaluation of the need for higher premiums is extremely difficult. Insurers contend that malpractice insurance is a losing proposition. Some believe the risk of malpractice is uninsurable under present conditions. It is their contention that malpractice claims are increasing faster than premiums.

The companies cite the recent experience in California where, during the last seven months of 1974, verdicts in excess of $1 million were returned at the rate of one a month, and the overall increase in the average award in successful suits went from $5,000 to $8,000 in the past four years. The "long-tail" aspect of malpractice insurance, meaning that claims may be made and suits filed 10 or 20 years after the occurrence, makes it difficult to project the volume of claims in the future as is done with other types of policies. Yet such contingency is a key factor of the cost of writing the coverage.

Critics contend insurance companies overstate the difficulties and that a lower percentage of malpractice premiums is paid out than under other forms of insurance. It is suggested that a large part of companies' "losses" represent their estimation of future claims.

In Kentucky

The medical malpractice insurance problem has not yet become a crisis in Kentucky. It is estimated, however, that it will assume crisis proportions within the next two years unless a solution is found. Although premiums for physicians have increased from 60 to 120 per cent, and the base rate for hospitals has increased as much as 150 per cent, there have been no broad scale cancellations of coverage, and,with few exceptions, coverage has been available for all health care professionals and hospitals throughout the Commonwealth. Physicians have not gone on strike to protest increased premiums for malpractice insurance as they have in California and New York. Of the 456 casualty companies doing business in Kentucky, seven are writing malpractice insurance for physicians and hospitals.

In the event the situation worsens and medical malpractice insurance becomes still more expensive and more difficult to obtain, the delivery of health care will be curtailed and patients will pay more for medical care. On March 15, 1975, Governor Julian Carroll created a special advisory committee to study the problem of making malpractice insurance coverage available for Kentucky physicians and hospitals. The committee consists of the Commissioner of Insurance, an Assistant Deputy Insurance Commissioner, two citizens representing consumers, two physicians, two hospital administrators, two attorneys, two persons representing the insurance industry, two members of the General Assembly, and an Assistant Attorney General, representing the Consumer Protection Division of the Office of the Attorney General.

The committee, officially designated the "Governor's Hospital and Physicians Professional Liability Insurance Advisory Committee," has reviewed plans for dealing with the present problem from such groups as the Kentucky Medical Association, Kentucky Hospital Association and Kentucky Trial Lawyers Association.

Possible Solutions

Legislative proposals relating to medical malpractice have been introduced in the Congress. Former Secretary of Health, Education and Welfare Caspar Weinberger has testified against the legislation on the ground that the malpractice insurance situation varies so widely from state to state as to make federal law impracticable.

The states have wasted little time in facing up to the problem. Thirty-seven states have initiated studies which address the problem in general, or a specific component thereof. Twenty-three states have established, or given authority to the state insurance commissioner to establish, a joint underwriting association in the event insurance becomes substantially unavailable. Although joint underwriting associations may differ slightly, generally, they require mandatory participation of all insurance carriers writing liability insurance in the state, have a defined period of existence, have stated maximum coverage, and may operate on a "claims made" or "occurrence" basis.

Self-insurance plans or reinsurance plans to cover judgments exceeding liability limits for first-cover insurance have been initiated in 13 states. The self-insurance plans generally are financed through premium assessments on practitioners with adjustments at the end of the covered year. The plans may be on a "claims made" or "occurrence" basis. Reinsurance is generally financed through additional mandatory premiums on practitioners.

The powers of professional licensing boards have been changed by legislation enacted in 12 states. The disciplinary powers of some boards have been expanded to include professional incompetence, and authority to require mandatory re-examination and to limit the scope of practice is granted in some instances.

Legislation to establish medical review panels has been adopted by 10 states. The panels include some form of arbitration panel or pre-screening panels for malpractice cases. Most of the legislation requires a review of malpractice cases by the panels at some point. The make-up and jurisdiction of the panels vary.

At least 20 other states have made changes in their civil practice laws or rules, the most frequent revision having been in the statutes of limitation. These statutes specify how long after an occurrence one may institute legal

action for damages. While statutes of limitation usually begin from the time a wrong occurs, in medical malpractice cases the period usually does not commence until an injury is discovered. Some of the changes apply specifically to minors, who can present a special problem.

In litigation, courts have traditionally held physicians to the level of skill in their practice which is prevalent in their community. This has been known as the "locality rule." The rule has been giving way to the more stringent requirements of national standards of care now required by courts in many jurisdictions. Some states have adopted modifications of the locality rule in an effort to reduce the number of claims by broadening standards of acceptable medical practice.

The burden of proof, including the doctrine of _res ipsa loquitur_, has been the subject of revision in some states. _Res ipsa loquitur_ is a local doctrine under which liability may be established without requiring a demonstration of specific negligence. It requires showing that an injury could only have been sustained as a result of negligence and that the defendant (physician in a malpractice case) is the person who could have reasonably caused the injury. The burden of proof then shifts to the physician who must prove that he was not negligent. Members of the medical profession believe the application of the doctrine is detrimental to physicians in malpractice cases.

"Informed consent" is another area in which state legislation has been enacted. Under it a physician is required to notify a patient of the possible risks of procedures to be employed and to obtain the patient's consent. Failure to inform the patient and obtain his consent will, in most cases, make the physician liable for any adverse results.

Some states have enacted legislation to eliminate or modify the collateral source rule under which payment of a claimant's medical expense by public or private insurers cannot be taken into account in awarding malpractice damages. Some contend that this can result in a double payment, first by an insurance carrier and again in a malpractice award.

The elimination of the _ad damnum_ clause in a complaint has been prescribed in some states. It is established practice to sue for a specific amount of money, and the _ad damnum_ clause is that which states a plaintiff's monetary loss. There are those who believe that the practice results in suits being filed for amounts far in excess of what a plaintiff expects to recover and which generate unfavorable publicity for the defendant.

Legislation limiting the amount of damages that are recoverable in a malpractice suit and providing for periodic, rather than lump-sum, payments of awards has been enacted in some states in an effort to meet the malpractice problem.

Still other states have limited contingent fee arrangements, under which an attorney undertakes to prosecute a lawsuit with the understanding that he will be paid only if his client is awarded damages. The amount of the fee is agreed upon when the arrangement is entered into and may vary from 25 to 50 per cent of the amount awarded to the client. Many medical care providers believe that the contingent fee arrangement encourages the filing of frivolous suits and results in exorbitant compensation to the attorneys.

Finally, nine states have enacted statutes requiring insurers to furnish specified information on malpractice claims, judgments, and settlements, or a practitioner to report claims against him to the Board of Medical Examiners.

Constitutional Problems

A recent opinion of the Kentucky Attorney General indicates that some of the proposed solutions to the medical malpractice problem would raise constitutional questions in Kentucky. A provision for the arbitration of malpractice disputes, if compulsory, would involve Section 250 of the Constitution in particular, and also Sections 14, 54 and 241. The opinion suggests that arbitration voluntarily chosen by the parties, with any award subject to judicial review, would be constitutionally acceptable. A legislative limitation of awards in malpractice litigation inevitably would be contrary to Sections 54 and 241, unless such limitation has been effectively consented to by the claimant.

A proposal that medical malpractice disputes be submitted to a medical review panel prior to the institution of suit would appear to run afoul of Section 14, which guarantees to all citizens access to the courts without delay.

A proposed statutory amendment to have the statute of limitations in medical malpractice cases involving minors commence no later than a minor's seventh birthday would, in certain cases, violate Sections 14, 54 and 241 of the Kentucky Constitution.

Footnotes

[1] American Mutual Insurance Alliance, "Malpractice Insurance: A Medical-Legal Dilemma," Journal of American Insurance, Spring 1975, p. 16.

State Bonding and Indebtedness

Kelly Thompson

Many state governments have become concerned recently over events affecting the heretofore high reputation of municipal bonds. Rumblings from the financial world are being heard in response to the tight fiscal situation facing some states and the possibility that at least one municipality, New York City, might default on payment of its obligations. As a result, even those states in good financial condition are finding that investors are reluctant to purchase municipal bonds and notes, regardless of their relative merit. Furthermore, high interest rates needed to lure less apprehensive investors back to the market increase the cost of credit and compound the problems of states needing large amounts of capital. Because of Kentucky's continued reliance on the bond and note market for its capital needs, the situation creating turmoil in the world of municipal finance most likely will affect the state in one or more ways.

At present, Kentucky is not in danger of defaulting on its obligations, nor is its financial condition any cause for concern. However, the events now taking place in other states, in cities and in the market place have prompted an examination of Kentucky's debt and long-term financing procedures. Among questions which have been raised are:

> What is the authority behind the state's long-term debt?
>
> What are the financial instruments used to finance long-term debt?
>
> What is the state's present long-term obligation?
>
> What are the pros and cons of long-term debt?
>
> What is the legislature's role in the state's financing picture?

Sources of State Capital--Bonds

The cost of a large state construction project ordinarily cannot be financed by a one-time appropriation to the state capital construction fund without a severe cutback in other governmental services. Therefore, outside capital has to be attracted in order to finance the project and allow day-to-day state operations to continue.

Kentucky has satisfied this need for additional capital by selling bonds in the open market. Bonds are a written commitment to pay the holder a sum of money at a certain time (more than one year after issue) and at a stated rate of interest. When state bonds are sold and an obligation to pay the bonds plus interest is incurred, then the state has entered into a condition of long-term indebtedness which has been addressed by chapters 49 and 50 of the Kentucky Constitution:

> 49. The General Assembly may contract debts to meet casual deficits or failures in the revenue; but such debts, direct or contingent singly or in the aggregate, shall not at any time exceed five hundred thousand dollars, and the moneys arising from loans creating such debts shall be applied only to the purpose or purposes for which they were obtained, or to repay such debts: Provided, The General Assembly may contract debts to repel invasion, suppress insurrection, or, if hostilities are threatened, provide for the public defense (emphasis added).
>
> 50. No act of the General Assembly shall authorize any debt to be contracted on behalf of the Commonwealth except for the purposes mentioned in section 49, unless provision be made therein to levy and collect an annual tax sufficient to pay the interest stipulated, and to discharge the debt within thirty years; nor shall such act take effect until it shall have received a majority of all the votes cast for and against it: Provided, The General Assembly may contract debts by borrowing money to pay any part of the debt of the state, without submission to the people, and without making provision in the act authorizing the same for a tax to discharge the debt so contracted, or the interest thereon (emphasis added).

Of the many types of bonds, Kentucky has utilized two in its capital-raising efforts--general obligation bonds and revenue bonds.

General Obligation Bonds

Bonds which satisfy the provisions of the constitution are called general obligation bonds and are characterized by three major features:

Security is provided by a pledge of the full faith, credit, resources and unlimited taxing power of the Commonwealth;

Issues must be approved by the voters in a general elections; and,

Annual taxes must be levied and collected in sufficient amounts to discharge the debt in 30 years.

At June 30, 1975, Kentucky had outstanding $361,130,000 of general obligation bonds, which were approved by voters in six different packages:

	Issued	Outstanding
1. Road Bonds of 1957	$ 35,000,000	$ 29,000,000
2. Highway Bonds of 1961	90,000,000	78,100,000
3. Highway Bonds of 1965	139,000,000	127,845,000
4. Various Purpose Bonds of 1965	37,000,000	29,155,000
5. Park Bonds of 1961	10,000,000	6,510,000
6. Veterans Bonus Bonds of 1960	140,000,000	90,520,000
Total	$ 451,000,000	$ 361,130,000

Issuing general obligation bonds has proven to be time-consuming and in addition, projects financed in this manner are at the mercy of the voters. In order to circumvent these and other constitutional provisions, and to gain more flexibility, the state began issuing bonds that are known generally as revenue bonds.

Revenue Bonds

Although they also serve as a source of outside capital, revenue bonds are quite different from general obligation bonds:

Security is provided by a pledge of the revenue derived from operation of the bond-financed project;

The full faith and credit of the Commonwealth is NOT pledged as security; and,

They do not have to be approved by the voters.

The state Constitution has no authority over this method of incurring debt. Rather, authorization comes from KRS 58.020, enacted in 1946, which says:

"A governmental agency acting separately or jointly with one or more of any such agency, may acquire, construct, maintain, add to and improve any public project as defined in KRS 58.010, which public project may be located within or without or partly within and partly without the territorial limits of such governmental agency or agencies, and for the purpose of defraying the cost thereof may borrow money and issue negotiable revenue bonds. Before any department or agency of the state government shall borrow money and issue bonds under KRS 58.010 to 58.140, the head of the department or agency shall file with the secretary of state a written order, approved by the governor, the attorney general and the commissioner of finance, setting forth the proposed public project, the amount of the bonds to be issued, and the maximum rate of interest the bonds are to bear..."

This section was later affected by KRS Chapter 56, which established the State Property and Buildings Commission for the purpose of issuing bonds on behalf of state agencies but in the Commission's own name. As a result, although 13 state agencies plus the eight state universities and colleges have been given express statutory power to issue revenue bonds, only the Commission, the Department of Transportation, the Turnpike Authority and the Pollution Abatement Authority have done so.

Kentucky is not unique among states in financing much of its capital construction through what are referred to frequently as "moral obligation" bonds.

At June 30, 1975, Kentucky had outstanding $1.3 billion of revenue bonds that had been issued by five different state agencies and the state universities:

	Issued	Outstanding
1. State Property & Building Com.	$ 141,010,000	$ 122,350,000
2. Department of Transportation	43,500,000	3,071,000
3. Turnpike Authority	820,000,000	733,901,590
4. *Kentucky Housing Corp.	52,100,000	51,745,000
5. Pollution Abatement Authority	23,825,000	23,535,000
6. *Eight State Universities and Colleges	419,417,000	377,212,000
Total	$ 1,499,852,000	$ 1,311,814,000

(*Although the agency sold its own bonds, approval was first obtained from the State Property and Buildings Commission per KRS Chapter 56.)

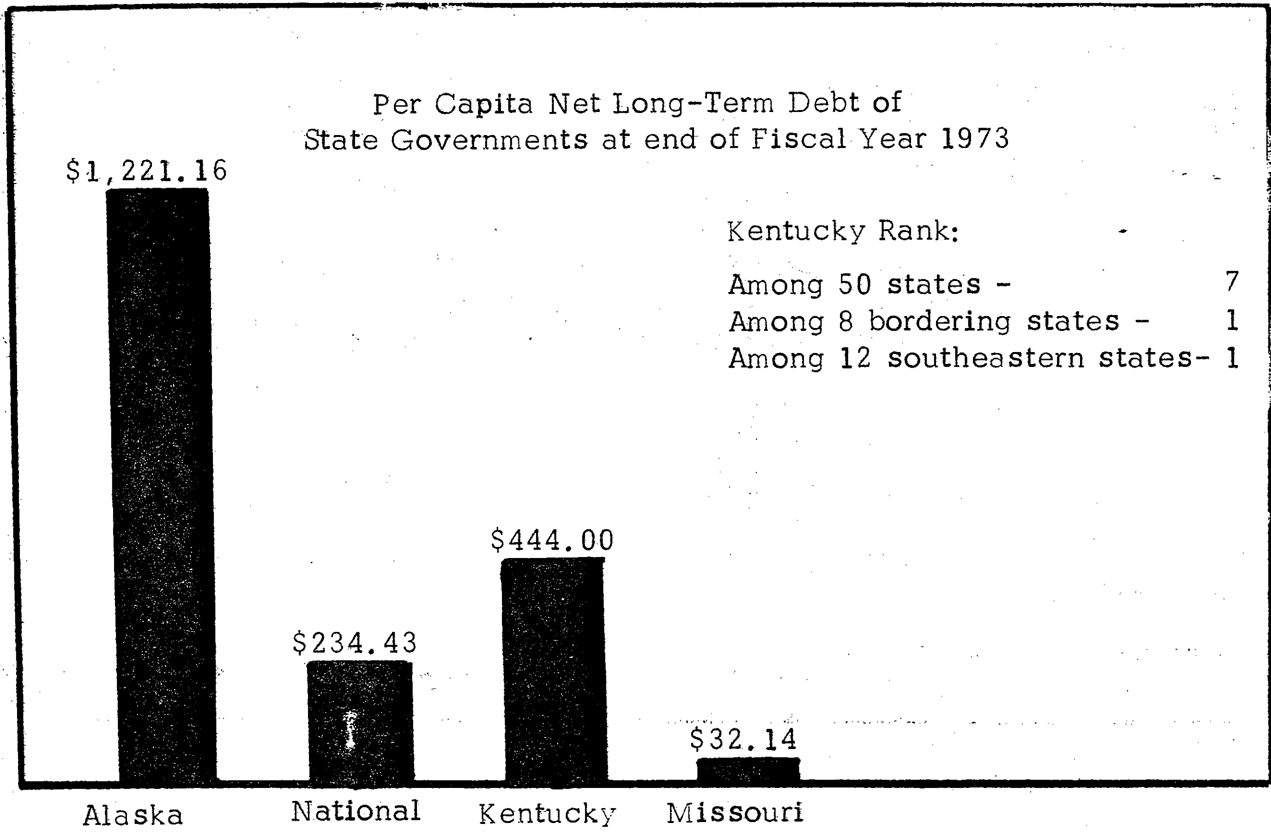
Long-Term Debt Comparison with Other States

At June 30, 1975, the total outstanding long-term debt of Kentucky was $1.7 billion:

	Issued	Outstanding
General Obligation Bonds	$ 451,000,000	$ 361,130,000
Revenue Bonds	1,499,852,000	1,311,814,590
Total	$ 1,950,852,000	$ 1,672,944,590*

(*The state presently has over $120 million in short-term bond anticipation notes and other interim financing instruments. It can be anticipated that these will be retired shortly and long-term revenue bonds issued in their place.)

This amount puts Kentucky near the top among states having long-term debt. The graph on the following page illustrates Kentucky's standing compared with the states having the largest and smallest debt, and the U. S. average.



Source: How Kentucky Ranks, 1975. KEA Research Bulletin

According to this chart, Kentucky has the highest per capita net long-term debt in the southeast and seventh highest in the nation. Considering that the state ranks 23rd in population (1974), 28th in per capita general expenditures (1973) and 25th in per capita tax revenue (1973), Kentucky is uncharacteristically high in terms of debt. Over the past 20 years, the state's debt has increased over 2000 per cent from approximately $75 million to $1.7 billion.

Long-Term Debt--Pros and Cons

Whether one looks at a particular feature of a bond financing scheme as an advantage or disadvantage often depends on the individual's position.

The following lists of advantages and disadvantages, while not all inclusive, will point out some common arguments for and against the two major forms of long-term debt.

General Obligation Bonds--Advantages

They generally have more quality appeal than revenue bonds.
They do not require protective agreements to make them appealing.
If approved, they will have the backing of the citizenry.
They are constitutionally legal.

General Obligation Bonds--Disadvantages

The length of time for approval can be prohibitive.
They contribute to the legal debt.

Revenue Bonds--Advantages

Flexibility for meeting state agency housing needs is allowed.
A large amount of funds can be raised in a relatively short period of time with repayments amortized over a period of up to 40 years.
Technically, the state is not liable for principal and interest payments.

Revenue Bonds--Disadvantages

They are a clever but potentially dangerous method for circumventing the constitution.
They are too easy to authorize and issue. As a result, bonds can be issued to the extent that appropriations for debt service become a burden.
The state is obligated for fixed payments far into the future where no one knows what the economic conditions may be.
Although the state's full faith and credit technically are not behind these bonds, if default ever occurred, the state's prestige and credit position would suffer badly.

Revenue Bonds--Comments

As indicated earlier, revenue bonds comprise approximately 78 per cent of the total outstanding state debt. Some particular and unique features of these bonds deserve a closer examination.

Types--Kentucky utilizes the lease-rental type of revenue bond more than any other. The bonds are used by a governmental entity to finance construction of a facility, which is then leased under contract to another governmental entity, which pays rents sufficient to cover the interest and amortize the principal of the bonds. For example, the state Turnpike Authority issues bonds to finance a road building project and then leases the road to the Department of Transportation for operation and maintenance.

Debt Service--Revenue bonds usually command higher interest rates than general obligation bonds because of their nature. The rating of a bond accorded by a reputable rating service also influences the interest rate. Added to these predictable factors is the unpredictable factor of market condition and demand.

All three of these factors are presently affecting Kentucky in terms of potential interest costs of future bond issues, which most likely will be of revenue bonds. Several of Kentucky's revenue bonds are rated "A" by Moody's Investors Service, Inc., a leading bond rating firm. The best rating possible is "Aaa" followed by "Aa." Each drop in a bond issue's rating results in higher interest cost.[1]

There is no single reason for Kentucky's revenue bonds (and revenue bonds in general) being rated "A" or lower. Analysis and the subsequent rating of each issue is based on a series of factors present in the issuing authorities' financial and economic condition. These factors can be grouped under four major headings:

Debt analysis--policy, structure, burden, history, etc.
Financial analysis--revenues, expenditures, history, etc.
Government--organization, services, administration, etc.
Economic--population, structure, performance, etc.

In analyzing revenue bonds emphasis isn't placed on the taxing power of government, as is the case where general obligation bonds are involved but, rather, on a revenue-producing project and its ability to support the revenue bond issue. Emphasis is placed also on the intrinsic nature of revenue bonds and, particularly, the pledge of security or "moral obligation" associated with them.[2]

The market condition for revenue bonds is not that favorable. Interest for even "AAA" bonds is higher than many states have been accustomed to paying. To illustrate how even small changes in net interest rate can affect total interest costs, consider that a rate difference of 0.5 per cent can add approxi-

mately $600,000 to a bond issue with an average outstanding balance of $10,000,000 and an average life of 12 years. Net interest rates on Kentucky's issues have gone from 3.75 per cent in 1955 to 7.087 per cent for the most recent issue in 1975. Interest costs on all issues over the next four years will average approximately $70 million per year.

State obligation to pay--As previously mentioned, revenue bonds issued by state agencies technically do not constitute a debt of the Commonwealth. For instance, KRS 56.520 (2) pertaining to the State Property and Buildings Commission, states:

> "...Neither the payment of any bond, nor the interest thereon issued under the authority of KRS Chapter 56, shall constitute an indebtedness of the Commonwealth of Kentucky, nor shall any bond or interest thereon be payable out of any fund except funds derived from rentals or other revenues derived from the operation of the properties or from revenues as are available for the purpose by law."

In Preston v. Clements, in 1950, the Kentucky Court of Appeals held that this provision was sufficient to satisfy constitutional requirements. The statute is broad enough, however, to allow "revenues as are available for the purpose (of paying the bonds) by law" to be any type of donation, gift, grant or appropriation. Therefore, regardless of the apparent lack of state liability, there are sufficient measures in the law that compel the state to insure the payment of all debt service.

The Legislature's Role

The Interim Joint Committee on Appropriations and Revenue studied the issue of long-term debt and concluded that the legislature has no authority over the issuance and sale of state revenue bonds. The Committee also found that a large portion of the debt service on outstanding bonds was not being paid by revenue produced by the bond-financed projects, but rather from General and Road Fund appropriations.

The Committee concluded that steps should be taken to insure that the legislature had a say in future revenue bond authorizations in order to provide a check on the amount of debt incurred and the means used to retire obligations.

Legislation has been prefiled which would require all state agencies, before issuing bonds, to obtain approval of the General Assembly sitting in regular or special session. The legislation would require approval to be granted by a joint resolution, which would have to identify the project to be funded as well as the source and amount of funds, and by appropriation of the first year's debt service.

Footnotes

[1] The following four classes comprise the majority of ratings assigned by Moody's Investors Service, Inc.:

Aaa

Bonds which are rated Aaa are judged to be of the best quality. They carry the smallest degree of investment risk and are generally referred to as "gilt edge." Interest payments are protected by a large or by an exceptionally stable margin and principal is secure. While the various protective elements are likely to change, such changes as can be visualized are most unlikely to impair the fundamentally strong position of such issues.

Aa

Bonds which are rated Aa are judged to be of high quality by all standards. Together with the Aaa group they comprise what are generally known as high grade bonds. They are rated lower than the best bonds because margins of protection may not be as large as in Aaa securities or fluctuation of protective elements may be of greater amplitude or there may be other elements present which make the long-term risks appear somewhat larger than in Aaa securities.

A

Bonds which are rated A possess many favorable investment attributes and are to be considered as upper medium grade obligations. Factors giving security to principal and interest are considered adequate, but elements may be present which suggest a susceptibility to impairment sometime in the future.

Baa

Bonds which are rated Baa are considered as medium grade obligations; i.e., they are neither highly protected nor poorly secured. Interest payments and principal security appear adequate for the present but certain protective elements may be lacking or may be characteristically unreliable over any great length of time. Such bonds lack outstanding investment characteristics and in fact have speculative characteristics as well.

[2] In a booklet prepared by Moody's, this subject is covered quite candidly:

"Most frequently in this case, the issuer pledges as security the revenues associated with the undertaking. Then, to strengthen the bonds, funds from another source, usually the State, are pledged in one way or another. A common way is to establish a reserve fund for the bond which the State may contribute to and presumably keep filled if necessary, thereby establishing in the beholder's mind a flow of funds from the state treasury to the bondholder. The term "moral obligation" has set down roots in these discussions that may someday prove to be unfortunate. In this regard, dictionary phraseology runs 'sanctioned by, or, operative upon one's conscience or ethical judgment; as to feel a moral obligation.'

"The question the bond analyst must ask ultimately is: Under what set of circumstances, political or economic, would meeting these commitments become a burden? The legislature clearly may or may not elect to appropriate moneys to fill the reserve once it has been drawn upon.

"On consideration that New York State's current total annual "moral commitments" alone run up to nearly 10% of its present level of expenditures for the State's current purposes, further difficult questions arise. What amount could, or should, a State add to its tax rate in time of economic stress for an unplanned debt service outlay? Could there possibly be a selection among the various programs for subsidization, if more than one were to suffer reverses at any one time?

"Because of the open-ended nature of these commitments, they are insufficient per se to warrant a high investment standing. There are too many unresolved questions. There is no control on the magnitude of debt that can be brought under this umbrella. There is a lamentable postponement of unpleasant decisions regarding tax increases to fill a deficiency, and probably such decisions would have to be made in a financially-troubled atmosphere.

"The analysis of obligations secured by revenues associated with a project must look first and primarily to those revenues. Where the issue is secondarily secured by an opinion that the State may legally appropriate to fill a reserve deficiency, that element of security can at best be regarded as a rating floor in which elements of speculation remain."

Public School Financing

C. Gilmore Dutton

The concept of "district power equalization" was first brought to the attention of the legislature during the 1972-73 interim through the Interim Joint Committee on Appropriations and Revenue's Subcommittee on Educational Finance. A bill establishing a district power equalization program was introduced on behalf of the interim committee in the 1974 General Assembly, but died in committee.

The 1974-75 Interim Joint Committee on Appropriations and Revenue picked up where the previous committee had left off, and added to the earlier bill a provision for the full state funding of the public school foundation program. After consideration throughout the interim, including the solicitation of comments from affected parties, the committee recommended for introduction in the 1976 General Assembly a bill which would establish a program of district power equalization and provide for full state funding of the foundation program.

DISTRICT POWER EQUALIZATION

District power equalization[1] is a process whereby the state guarantees that equal property tax rates[2] levied by school districts will produce equal amounts of revenue for the districts. This would be done by the state making up the difference between what a rate actually produced, based on property values in a particular school district, and what it would produce if the district's property tax assessment per child were equal to that of the wealthiest county-wide school district.

Why is it Important?

The intent of Kentucky's public school foundation program is to equalize state expenditures for elementary and secondary education, thus equalizing educational opportunities for the children of the state. This intent is substantially carried out with the funds expended through the foundation program. There are, however, other funds used to support education which are not equalized. These are local funds, derived primarily from local property taxes, which are used to supplement the educational services provided by the foundation program.[3]

Because these local "leeway" funds are so dependent upon property taxes, the amount of leeway money that a district can raise depends not only the district's tax rate, but its wealth (assessed value of property) per pupil. The per pupil wealth of Kentucky school districts ranged, in 1974-75, from $100,416 to $10,415. Thus, the district with the $100,416 assessed valuation had the "power" to raise with an identical tax rate 10 times as much money per pupil as the district with the $10,415 assessed valuation. It is this disparity in power that the proposed legislation primarily addresses.

The bill does not establish complete "fiscal neutrality"; to do so would require equalization of leeway rates at the highest rate levied.[4] A significant move toward fiscal neutrality is made, however, with equalization of rates up to 20 cents. The bill also addresses the problem of the wide disparity in leeway rates among school districts. Under the current property tax "roll back" law, school districts are essentially locked in to their existing rates. The proposed legislation would allow districts levying less than a 20-cent leeway rate to raise their rates to that level.[5] The permissive, rather than mandatory, language of the rate increase maintains the concept of "leeway" funds, i. e. locally initiated revenues used to supplement an adequate, statewide educational program.

The concept of equalizing state funds supporting local education was first advanced in the early 1900's,[6] and for decades has been a fundamental policy of all state education funding programs. The concept of equal power to raise leeway funds in support of education did not become a significant issue, however, until it was raised in a series of court decisions beginning in California in 1971.

In the first and most famous of these decisions, Serrano v. Priest, the California Supreme Court said California's school finance system was unconstitutional because state aid did not sufficiently reduce the difference in educational opportunity caused by differences in the wealth of individual school districts.

The U. S. Supreme Court entered the picture in 1973, when it ruled in a Texas case similar to Serrano. In Rodriguez v. San Antonio Independent School District, the court ruled 5-to-4 that the equal protection clause of the 14th Amendment to the U. S. Constitution did not guarantee the right of education. The court stated, however, that:

> "The consideration and initiation of fundamental reforms with respect to state taxation and education are matters reserved for the legislative processes of the various states... We hardly need add that this Court's action today is not to be viewed as placing its judicial imprimatur on the status quo."

Court cases since Rodriguez have focused on the educational provisions of state constitutions. In one of the leading cases, Robinson v. Cahill, the New Jersey Supreme Court held that New Jersey's school finance plan failed to meet that state's constitutional requirement for a "thorough and efficient education system." A similar mandate is found in Section 183 of Kentucky's Constitution.

To date, there have been no legal tests of Kentucky's school financing system. However, many observers consider Kentucky's method of raising local leeway funds vulnerable to challenge. If not corrected by the legislature, the disparity in the ability to raise local school funds may well be corrected by the courts.

How Will it Work?

The proposed district power equalization legislation would require the Superintendent of Public Instruction to calculate annually an amount which the state would distribute to local districts as a supplement to the revenue which was raised by the districts' leeway rates. The amount of supplement would equal the difference between what each district's rate produced per child, and what each district's rate would have produced per child had that rate been applied in the wealthiest countywide district in the state.

The steps that would be involved in determining the amount of state supplement for each district are as follows:

(1) Calculate the per pupil wealth in each district;

(2) Multiply each district's per pupil wealth by its leeway rate (up to 20 cents);

(3) Multiply the per pupil wealth of the wealthiest district by each district's leeway rate (up to 20 cents);

(4) Subtract the amount produced by applying each district's rate to its per pupil wealth from the amount produced by applying each district's rate to the per pupil wealth of the wealthiest district (step 4 minus step 3);

(5) Multiply the difference calculated for each district in step 4 by the number of pupils in each district. The result is the amount of state equalization money which would be given to each district.

Cost and Benefits

The annual cost to the state to equalize local leeway rates at the 20-cent level would be approximately $36 million, if every school district which currently levies less than a 20-cent leeway rate raised its rate to the 20-cent level. If no school district raised its rate, the annual cost to the state would be approximately $28 million.

Equalization support for each school district would range from $3.5 million in Jefferson County to $3,000 in Williamstown. (Southgate, an independent district which has a per pupil wealth in excess of the wealthiest countywide district, and Woodford County, the wealthiest countywide district, would receive no support.)

A complete list of the amount of equalization support which each school district would receive is available upon request from the Legislative Research Commission.

FULL STATE FUNDING OF THE FOUNDATION PROGRAM

When the 1821 General Assembly established the first state fund for support of common schools in Kentucky, privately funded and county-funded schools had been in operation for nearly a half century. Harrodsburg had had a private school since it was settled permanently in 1774, and a private school had operated in McAfee's Station, near Harrodsburg, since 1777. Some county courts had been authorized by the 1789 General Assembly to use 6,000 acres of vacant land to establish and support county academies, and the remaining counties were granted the authority in 1805.[7] The first state educational funding act, and subsequent acts, including the one establishing the current foundation program, assumed the existence of local funds and identified the state's role to be that of supplementing local money.

Early laws were concerned only with the adequacy of the state funds, which, until 1942, were distributed on a per capita basis even though local funds varied extensively among the school districts. Later laws addressed the issue of equalizing local support. The 1954 foundation program dedicated a major portion of the local funds to the state program, and redistributed those funds among the school districts on an equalized basis. But in all of the acts to fund the common schools, local funds always were assumed to be the foundation upon which a program would be built.

Full state funding of state educational programs did not become an issue until recent years, when several state supreme courts and the Supreme Court of the United States ruled that education was a state responsibility and carried with it the burden of providing an adequate and equal education program. At about this same time, many taxpayers began rebelling against high property taxes, the customary source of local education funds.

There doesn't appear to have been any magic in the use of local funds to support Kentucky's early educational finance programs. The local money was already there, however, and to have developed a fully funded state program would have required greater state expenditures (with less local expenditures) and higher state taxes (with lower local taxes). Undoubtedly the significance of continuing to rely on local funds, thereby keeping state taxes lower, was not lost upon the state's early lawmakers.

The "Roll Back" Law

A problem unique to Kentucky was created when the legislature placed a ceiling on local school tax rates through the property tax "roll back" law. The law was enacted during a special session of the General Assembly in 1965 after the Kentucky Court of Appeals ruled that all property must be assessed for tax purposes at its fair cash value. At the time of the decision, assessments throughout the state varied greatly but averaged only one-third of full value. The legislature ordered all cities, counties and school districts to adjust their tax rates so that property owners would pay no more in taxes at the revised assessment levels than they had previously.

The amount of local funds a school district must contribute to the foundation program is based on the theoretical fair cash value of property in the district. However, the district must raise its "required local effort" by applying its tax rate to the assessed (by the local Property Valuation Administrator) value of its property, which almost always has been less than the actual fair cash value, despite the 1965 court ruling. As a result, school districts have had to draw upon a portion of their leeway rates to raise the funds necessary to qualify for the state program.

Before the "roll back" law, school districts could increase their tax rates as necessary to avoid having to contribute any of their leeway funds to the foundation program. Since the "roll back" law, the amount of leeway funds a school district has fluctuates annually as its assessed value of property approaches or falls below the theoretical fair cash value. Millions of dollars in local leeway funds must be used each year to support the foundation program. Many educators consider this a "loss" of money which otherwise would be going into local educational programs. Full state funding of the foundation program would solve this problem by eliminating the required local effort, thus enabling local leeway funds to be used for the purposes for which they were intended.

Education and Property

A significant aspect of full state funding of the foundation program is the potential it holds for reducing the burden on property for financing education. Under the present system, property is taxed locally at an average rate of 30 cents per $100 of assessed valuation. The proposed legislation would

transfer the 30-cent rate from the local level to the state level. In addition to the property tax, however, the state has a number of tax alternatives not available to local jurisdictions. This gives the state an opportunity to shift burdens from one tax to another.

As long as the 30-cent rate remains a local rate, there is little probability that it will be reduced. If the rate becomes a state rate, however, that probability is increased, if the legislature decides to rely more on revenue from other taxes to support public education.

Footnotes

[1]The term "district power equalization" has been used by a number of authors to describe a variety of models, identical in concept, but differing somewhat in methodology. As used in this paper, the term refers to the specific model adopted by the Interim Joint Committee on Appropriations and Revenue in its recommended legislation.

[2]The property tax rates that are actually involved are the school districts' "leeway" rates. These are the rates which school districts levy above the rate required for participation in the state foundation program. School districts have complete discretion in the use of revenue produced by "leeway" rates (thus the term leeway), while revenue produced by the rate levied for participation in the foundation program must be used in the categories dictated by the foundation program.

[3]Jim Peyton, Equal Educational Opportunity in Kentucky, Kentucky Legislative Research Commission Research Report No. 105 (Frankfort, Kentucky, 1973), p. 52.

[4]Leeway rates in 1974-75 ranged from 76.7 cents (per $100 of assessed valuation) to 1.5 cents (per $100 of assessed valuation).

[5]In 1974-75, 105 school districts levied less than a 20 cent leeway rate; 80 levied a leeway rate of 20 cents or more.

[6]George D. Strayer and Robert Murray Haig, The Financing of Education in the State of New York, Report of the Educational Finance Inquiry Commission, vol 1 (New York: Macmillan Co., 1923).

[7]J. Peyton, p. 7-8.

Educational Accountability

Donald S. Van Fleet

Historically in America's public schools, community leaders played a major role in determining educational goals and standards. Such goals and standards were accepted generally and observed carefully by those who wished to teach in the public school systems.

In recent years, Americans have experienced many social upheavals. As a result, educators, almost exclusively, have determined the course of public education, as other pressures have demanded most citizens' attention and energy. The educators have pressed for many improvements since World War II, with the result that facilities, programs, and instruction have become more expensive.

The social upheavals of the 1960's seemed to many to be expressions of a desire for more participation in various decision-making processes. There was a demand for the educational needs of various groups within society to be met. Accountability began to be heard as a demand for proof that educational goals were relevant and appropriate for these diverse groups.

What is Accountability?

Accountability requires consensus between educators and the public concerning the desired accomplishments of education. Where agreement is reached, those responsible for education can be held accountable for its accomplishments.

Elements essential for accountability include:

> Educational objectives;
>
> Expected pupil achievement in meeting those objectives; and,
>
> Conditions under which the objectives are to be reached.

The last element requires that the cost of achieving the objectives in terms of human resources, physical resources and community support must be understood.

Professor Patricia J. Goralski says responsibility for achieving accountability in education must be shared by educators and the public. The public must make its expectations explicit by stating its educational objectives precisely. It also must make available the human and physical resources necessary for achieving those objectives and must re-examine the objectives in light of pupil achievement, resources and community support.

Educational institutions, in turn, must work with the public in determining educational objectives. They must develop methods of measuring pupil achievement, develop programs and their own professional competency to help pupils attain agreed-upon objectives and participate in ongoing self-evaluation as well as evaluating the objectives and achievement.

Pupils have a responsibility too for making the effort necessary to achieve the agreed-upon objectives and to furnish information that will help the system to function more effectively.[1]

Background

For the past two legislative sessions, advocates of improving Kentucky's relatively low position in state spending for education have asked the General Assembly to increase the funds appropriated per pupil to the average of the states bordering Kentucky. The reasons stated for requesting the additional funds, approximately $200 million,[2] are to provide quality educational programs in public elementary, secondary, and vocational education.

The Interim Joint Committees on Education and Appropriations and Revenue sought assurances that a dramatic increase in the expenditure of funds for education would ensure a dramatic increase in the quality of education received by Kentucky school children. Based on standardized achievement test results, the committees felt that for the relatively low amount expended per pupil in Kentucky, the taxpayer is getting more than could be expected. It is difficult, however, to measure educational attainment resulting from specific programs for public school pupils in Kentucky.

Twenty-nine other states have enacted legislation requiring accountability in public education. The legislation varies from state to state, but all of the laws have a common purpose. They attempt to define educational goals and responsibilities and to develop a plan for reporting progress in achieving the goals to the legislature and the public as well as to the educational community. All of the states have recognized that if there is to be accountability, demands for quality education must be translated into precisely stated educational goals understood and agreed on by pupils, society and educators.

At least one suit has been filed to require an education system to be accountable for the educational competency of its graduates.[3] The public has been made aware of some of the needs of youth in attaining survival skills for coping with a modern society. Survival skills have been determined in some school systems and parents increasingly are holding the schools responsible for developing these skills. No doubt, the demands for educational accountability have been enhanced by the movement for providing equal educational opportunity for every pupil, with appropriate attention to the needs of pupils from diverse cultural groups.

Proposed Legislation

The State Department of Education has established educational goals for Kentucky, after a number of years spent working with committees and citizen advisory groups. These eight broad goals were reported in the following statement:

> "Each student in the Commonwealth should be assured of an opportunity to realize his full potential in the following areas:
>
> General Education
> Economic Understanding
> Human Relationships
> Citizenship
> Creative, Constructive, and Critical Thinking
> Physical and Mental Well-Being
> Occupational Competence
> Cultural Appreciation"[4]

Legislation prefiled by the Interim Joint Committee on Education accepts these goals and mandates the Department to develop a plan to measure the degree of success that the public schools achieve in reaching the goals. An advisory committee would be appointed by the State Superintendent of Public Instruction to assist the Department in developing its plan. This committee would have representatives from the groups who would be affected by the bill. The intent is to allow school administrators, teachers, state education personnel, local school board members, parents, pupils, and legislators to have a voice in developing an educational accountability plan for Kentucky.

Under the bill, once a plan is developed by the advisory committee, it would be forwarded to the Interim Joint Committee on Education for its approval.

The bill also calls for an annual performance report to be presented to the Committee and the Governor.

Concerns

The proposed bill does not single out any persons, such as superintendents or teachers, to be held totally responsible for achieving the goals of education. Nor is it intended to imply merit ratings or pay provisions should be based on accountability measures.

Accountability legislation has been regarded with skepticism by educators in some of the states that have enacted such laws. Some national education organizations do not support such legislation, particularly where accountability is linked with merit pay provisions. At least two states have attempted to rescind accountability laws which are considered by some to have brought controversy but little improvement in education in those states. Other states with accountability plans, meanwhile, appear to be achieving the purposes for which the plans were created and have received acceptance of the plans from teachers.

Footnotes

[1]Patricia J. Goralski, Mankato Statement (Mankato, Minnesota: Mankato State College), 1973.

[2]Based on estimates by the Kentucky Education Association and others.

[3]Peter V. Doe vs. San Francisco Unified School District, March 9, 1973.

[4]Goals of Education in Kentucky, Kentucky Department of Education, 1973.

Career Education

John H. Alexander

Career education, in the words of Dr. Kenneth B. Hoyt, director of the U. S. Office of Career Education, "represents a response to a call for educational reform."

Career education is an instructional concept which attempts to bring together those elements of academic and social experience considered essential in preparing students for the world of work. Not a special course offered as part of a larger curriculum, career education is, rather, a framework upon which all instruction is based. It is a method by which subjects from algebra to zoology are integrated in preparing students for life beyond the classroom. As such, career education is not a new phenomenon in America public education, but a new orientation for basic education.

The Problem

Dr. Hoyt has discussed career education on the national level as a response to criticisms and concerns over the relevancy of contemporary education to the world of work a student enters after completing his formal training. The criticisms he cites may be summarized as follows:

> Too many people leave school deficient in basic skills required to make a successful transition from school to work and to adapt in today's rapidly changing society.
>
> Too many students fail to see meaningful relationships between what they are asked to learn in school and what they will do when they leave school.
>
> American education has failed to meet adequately the needs of women, minorities, the economically disadvantaged, adults seeking continuing or recurrent education and the vast majority of students who will never be college graduates.

Insufficient attention has been given to learning opportunities outside the structure of formal education.

The general public has not had an adequate role in forming educational policy. [1]

The central theme in each of these criticisms revolves around the relationship of education to the world of work.

The Program

As generally implemented in the schools, career education is divided into three major phases:

Awareness Phase--Kindergarten through grade six.
Exploration-Orientation Phase--Grades six through nine.
Preparation Phase--Grades 10 through 14.

At the "awareness level," students are introduced to the world of work through experiences designed to make them more aware of the many careers available in our society, beginning with those closest to home. What do their parents, relatives and close associates do and what do their jobs and related life styles involve?

Beyond the introductory phase, information and experiences are expanded to make students aware of the many clusters of occupations: health services (from lab technician to physician), public service (from sanitation worker to mayor and to state and national officials), construction (from apprentice laborer to contractor), manufacturing (from assembly line worker to plant manager) and so on through the major occupational categories.

The "exploration-orientation phase" includes a gradually more detailed approach to studying and understanding variations between and within each of the occupational clusters. At this level an attempt is made to relate classroom work to on-the-job application of knowledge and skills. Students visit work sites, talk with people about their jobs, and try their hands at projects in occupational areas in which they are interested.

The "preparation phase" includes experiences designed to prepare students to move into a chosen occupational field, continue formal education, or both. It is at this level that the primary distinction between career education and vocational education is most evident. Here the student utilizes his knowledge of career clusters to determine whether he will go to work, enter vocational training or continue his schooling through higher education.

Vocational education, an important part of the career education concept and program, affords the student experiences designed to give him information and skills required to enter the working world and to preform a specific job. For the student who chooses to pursue higher education, college programs provide information and skills above basic job-entry requirements or as groundwork for professional training.

At each level of the career education program the teacher, the guidance counselor and the community cooperate to develop in the student the needed understanding for making wise career choices.

Endorsements

Career education has been widely endorsed as a proper way to meet the need to reform our educational emphasis.

The United States Congress, in Public Law 93-380, established the Office of Career Education and states its intent that:

> "...each state and local education agency should carry out a program of career education which provides every child the widest variety of career education options which are designed to prepare each child for maximum employment and participation in our society according to his or her ability." [2]

The National Advisory Council on Vocational Education ended its eighth report, issued in September 1974, by calling for a national policy on career education; and stating, in part:

> "...We now need a united, cohesive effort to make career education, in which all the arts of education are integrated, a universal reality, and we need it now." [3]

The Chamber of Commerce of the United States, in offering its support of the career education concept, stated:

> "Rarely has a concept held more promise for exciting learning than has career education...There is general recognition that as we move further into a still more complex economy, the relationship between education and work becomes closer each year, and young people need more assistance in deciding on a career." [4]

The Kentucky State Advisory Council on Vocational Education, in its annual report issued December 1, 1974, also endorsed the career education concept by calling upon the State Board of Education to "...develop and expedite a plan for its implementation." [5]

The Career Education Committee of the Kentucky Department of Education, at its meeting of May 22, 1975, endorsed legislative action for career education in Kentucky. The Department is in the process of developing regulations and a state plan to implement career education, which will be presented to the State Board of Education.

In addition to these endorsements, many states have accepted the career education concept. The Education Commission of the States, in June 1975, reported the following activities:

> By the end of 1974, 25 state legislatures had appropriated funds specifically earmarked for career education and many others were considering similar action.
>
> Forty-two states and territories have designated career education coordinators, and many states have funded staffs.
>
> Five states (Arizona, Florida, Iowa, Louisiana, and Michigan) recently enacted laws requiring schools to integrate career education with regular programs. Several other states, including Colorado, Nevada, Oregon, and Wyoming, were considering laws endorsing career education.
>
> In addition to the states that have made specific appropriations for career education, many have committed funds under existing budget categories. Louisiana, for instance, appropriated $8 million for 1973-74, and Arizona has appropriated more than $10 million in the past four years.
>
> More than 5,000 local school districts, a third of the nation's total, have functional career education programs, developed over a four-year span.
>
> At least 17 colleges and universities across the nation are offering courses in career education as part of their teacher-preparation programs, while three universities offer a major in career education.[6]

Legislative Proposal for Kentucky

The 1974-75 Interim Joint Committee on Education, upon recommendation of its Subcommittee on Career Education, voted to prefile legislation relating to career education with a recommendation for its passage. The proposed legislation states that the intention of the General Assembly, in enacting the bill, would be:

> "...to emphasize the right of each student in the common schools of this state to obtain the basic knowledge and learning skills necessary for life preparation as the first priority of public education."

The legislation would require career education to be incorporated into elementary, secondary, postsecondary, and adult education programs administered by the Department of Education. The bill states that career education should include at least the areas of personal development, career and occupational awareness, economic understanding, citizenship, family life and human relations.

Under the legislation the Department of Education would work with local school districts, as well as with teacher-training institutions, to develop programs of instruction and teacher training in the area of career education. The bill also would require the Department to develop a state plan for career education and accountability measures to determine the program's achievements. The plan and accountability measures would be presented to the Governor and the General Assembly for approval.

To initiate the program, train teachers and develop the required plans and accountability measures the bill would appropriate $4.5 million to the Department of Education for the 1976-78 biennium.

Footnotes

[1] Hoyt, Kenneth B., An Introduction to Career Education: A Policy Paper of the U. S. Office of Education, (Washington: Department of Health, Education and Welfare, 1974), pp. 3-5.

[2] Public Law 93-380, United States Congress, 1974, Section 406.

[3] National Advisory Council on Vocational Education, Eighth Report, (Washington: National Advisory Council, 1974), p. 12.

[4] "Career Education: What It Is and Why We Need It," (Washington: Chamber of Commerce of the U. S. A., 1975), p. 1.

[5] Annual Report of the State Advisory Council on Vocational Education and Manpower Development and Training, (Frankfort, 1974), p. 11.

[6] Education Commission of the States. Compact, June 1975.

Open Records

L. Michael Greer

The democratic system of government is founded on the principle of citizen selection of public officials. For the system to work effectively, citizens need to know what government is doing and how it is being done in order to make intelligent selections. Many people feel this need carries with it an implied right of citizens to have access to public records as tangible evidence of government operations. President James Madison once said, "A popular government, without popular information, or the means of acquiring it, is but a prologue to a farce or tragedy; or, perhaps both."

Over the years, citizens have shown little desire to delve into public records. In the 1960's, efforts to get access to records increased as part of a broader movement for openness and accountability in government. The movement was spearheaded by news media and various public interest and student groups. These groups reasoned that because decisions of public officials affect people's lives in very fundamental ways, the officials should be held accountable for their actions.

Efforts to obtain public records generally met resistance from public officials. This seemed to erode citizen confidence in government. A 1973 poll by Louis Harris showed that 71 per cent of the public was convinced that a lot of the problems connected with government could be solved if there were not so much secrecy on the part of public officials.

On the other side, many public officials said basically they were not opposed to opening records, but were concerned about the types of records to be open. They feared that records containing personal information might be opened, thereby creating an invasion of privacy. They were concerned that sensitive national security documents might be opened, which would compromise the position of the United States in foreign affairs. Another concern was that businesses would use information contained in public records against their competitors.

Public officials also expressed apprehension over possible negative side effects on the operation of government. They felt that a great demand for records might disrupt government routine. They were concerned that broad requests might require agencies to spend considerable time in costly research for records. Finally, some public officials were concerned that disclosure of internal communications would stifle the honest exchange of ideas and opinions and pre-empt the decision-making process.

Federal Freedom of Information Act

Congress determined that the need for citizens to have access to public records outweighed potential problems, and, in 1966, passed the federal Freedom of Information Act. Since passage of the act, the problems envisioned by public officials have not materialized substantially.

While the Freedom of Information Act clearly established the right of citizens to inspect public records, federal agencies still balked at making them available. Agencies employed a number of tactics to take advantages of certain loopholes and weaknesses in the law. Tactics included long delays in answering requests, prohibitive charges for copying records and sheltering of records under broad exemptions for investigatory and national security information.

In 1974, Congress passed amendments to the Freedom of Information Act in an effort to plug the loopholes. The revisions call for in camera (in private) review by the courts of records refused on the grounds they were investigatory or national security records. Duplicating charges were limited to the actual cost of reproducing records, and agencies were required to respond to any request for records within 10 working days.

Kentucky Law

Kentucky's current open records law is found in the Library and Archives chapter of the Kentucky Revised Statutes. KRS 171.650, enacted in 1958, requires that, unless otherwise provided by law, all papers, books and other records required by law to be kept by an agency, shall be open to inspection by any interested person, subject to reasonable rules as to time and place. It also provides that a copy of the record shall be furnished upon request.

KRS 171.650 has been given a narrow interpretation since its enactment, which has restricted public access to records. In determining who constitutes an "interested person" public officials have employed the common law definition that interest is present only when the records requested are necessary to support a law suit. Until recently, this definition was upheld by the courts. Public officials also have interpreted that "agency," as used in the statute, pertains only to a state agency and not to units of local government.

State Laws

An analysis of state laws published by the Freedom of Information Clearinghouse, a public interest group, based in Washington, D.C., shows that 44 states have some type of public records law. Of these, 23 states define "public record." Sixteen states require agencies to promulgate

procedures for making records available but only two require such procedures to be displayed publicly. Four states provide a system for administrative adjudication of cases in which records are denied, while 17 provide for judicial review. In eight states, the burden of proof in such cases is on the agencies which house the records. The remainder do not specify where the burden is placed. Seventeen states provide a penalty for violations, ranging from fines to imprisonment and removal from office. Most states classify this type of violation as a misdemeanor.

State public records laws vary tremendously from one sentence statutes to laws of considerable detail. They also vary significantly in content. Generally, those recently enacted are patterned after the federal Freedom of Information Act and emphasize public access to information. Older laws are concerned more with management and preservation of public roads. The Freedom of Information Clearinghouse considers only 14 state laws to be adequate. Generally regarded as having the most comprehensive laws in terms of access are Oregon, Washington and Texas.

House Bill 22

In the 1974 session of the General Assembly, an attempt was made to amend KRS 171.650. Sponsors of House Bill 22 had two basic objectives in mind when they drafted the legislation. One was to extend coverage to local governments to insure accessibility of records at all levels. The second was to broaden the right to inspect public records to "any member of the public" rather than limiting it to "interested persons."

House Bill 22 was passed by the General Assembly but subsequently vetoed by Governor Wendell Ford. The Governor's veto message cited absence of exemptions in the act for certain types of records he felt needed protection, specifically, school pupil records, certain tax and financial statements required of individuals and businesses and negotiation records necessary for economic development in Kentucky.

The St. Matthews Decision

On November 22, 1974, the Kentucky Court of Appeals issued an important decision in the area of open records. In a case involving the City of St. Matthews and the Voice of St. Matthews, a newspaper, the high court struck down the use of the common law definition of "interest" as a prerequisite for inspecting public records. This decision had the effect of implementing the intent of House Bill 22.

In the St. Matthews decision, the court ruled that the common law definition of "interest" was developed under a monarchic form of government and it had no valid basis in a democratic society. The court further felt that the

need to show interest was an "unwarranted impediment" in the way of citizens exercising their right to acquire information about the operation of their government.

The St. Matthews decision did not, however, grant carte blanche access to records. The court established the general policy that inspection should be for a purpose which advances "wholesome public interest or a legitimate private interest." The decision further specified that a person does not have the right to inspect records "to satisfy idle curiosity or for the purpose of creating a public scandal." In addition, the court recognized that public records can be exempted by law or by other "countervailing public policy."

Interim Activity

After the veto of House Bill 22 during the 1974 session, several members of the General Assembly still felt the need for legislation to make public records more accessible. The Interim Joint Committee on State Government, in response to this concern, appointed a subcommittee to study the matter. The subcommittee felt the St. Matthews decision did not adequately address three major questions:

> What is a "public record"? While the St. Matthews decision removed the impediment of "interest" in order to inspect public records, it did not specifically define what constitutes a "public record." Members of the subcommittee agreed that the term should be defined statutorily.
>
> What public records should be exempt from disclosure? The court identified several which currently are exempted, but its list was not, nor was it intended to be, all-inclusive. The subcommittee recognized as one of its major responsibilities drawing the fine line between those records which should be open and those which should, justifiably, be kept confidential.
>
> Under what guidelines will public officials operate in allowing citizens to inspect public records? In this regard, the St. Matthews decision said only that inspection shall be conducted at "reasonable times and places and in such manner as not to unduly interfere with the proper operations of the office of the custodian of the records." The subcommittee felt this

> was not a sufficient safeguard in light of documented attempts by federal agencies to circumvent the Freedom of Information Act. Specifically lacking in the St. Matthews decision were definite time limits, standard procedures, and an appeal process for resolving conflicts.

The subcommittee devoted its efforts to answering these questions and developing appropriate legislation. In the process, the subcommittee scrutinized open records laws from other states, the federal Freedom of Information Act, and model acts. Careful attention was given to states which had enacted comprehensive open records legislation within the past three years, particularly Oregon, Washington and Texas.

Proposed Legislation

The subcommittee's draft of an open records act was distributed for review and comment to more than 300 public officials, public interest groups, representatives of the news media, and anyone expressing an interest in open records. Responses were reviewed and suggested changes incorporated in the bill draft when the subcommittee felt the need for a proposed revision had been adequately substantiated.

Subsequently, the Interim Joint Committee on State Government voted unanimously to prefile the bill for the 1976 session and recommend its passage.

The bill is patterned after a model act drafted by the Freedom of Information Clearinghouse. It includes several provisions of the laws in Oregon, Washington and Texas, as well as those in California, Colorado, Indiana, Maryland and New York.

"Public record" is defined in the bill to mean "all books, papers, maps, photographs, cards, tapes, discs, recordings or other documentary materials regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency."

The right of any person to inspect and copy public records is statutorily affirmed. A public agency must respond to a request for information within three days and each agency is required to publish rules and regulations for administering the act. These rules must include a list of records maintained, procedures for requesting records and procedures for appealing denials, and they must be publicly displayed.

The bill exempts nine categories of public records, including those mentioned in the message accompanying the veto of House Bill 22, except for school pupil records. These were exempted from disclosure by a provision of the

federal Education Amendments of 1974. The bill allows exemption by federal law or regulation or other state statute.

The bill establishes an appeals process through which disputes over access to records can be fairly and expediently resolved. The Attorney General is designated as the administrative adjudicator and is required to report annually on all cases. In all cases the burden of proof is on the agency that denies a record. The Attorney General's decision may be appealed to circuit court and the courts are allowed in camera review of documents withheld.

Privacy Issues

The open records bill exempts records of a personal nature from disclosure so as to avoid an invasion of privacy. It also allows an individual to inspect records maintained on him or in which he is mentioned. These provisions point out a potential area of conflict between open records and individual privacy.

It was apparent to the Open Records Subcommittee that the privacy issues were too complex and sensitive to be covered extensively in the open records bill. Although the subcommittee included the provision regarding a person's own records, it deferred other privacy issues until further study could be made. The chairman of the subcommittee indicated that he would sponsor a resolution calling for a comprehensive study of privacy with an objective of drafting appropriate legislation for the 1978 General Assembly.

Support for Open Records

No major opposition to the open records bill had surfaced by the end of interim committee activities. Objections to the proposed legislation have been limited to technical points and wording, and most of these were effectively negotiated and resolved in the review and revision process. The Department of Human Resources has raised some objection to the provision allowing an individual to see his own records. The Secretary of Human Resources has expressed concern that this would allow clients to see adoption records, child abuse records and mental health records. This has the potential to become an area of major controversy.

On the other hand, the open records bill draft has received support and endorsement from several groups. Common Cause of Kentucky gave its support after the draft was reviewed and approved by its national office in Washington. The President of the Kentucky Press Association publicly announced his organization's endorsement at the August 28, 1975, meeting of the Joint Interim Committee on State Government.

Legislative Compensation

Joyce S. Honaker

Legislative compensation is an issue periodically faced by the General Assembly as a result of Kentucky's 1891 Constitution. The Constitution permits the legislature to determine how much to pay its members. Section 42 establishes an initial level, basic forms and methods of changing legislative compensation.

It has been suggested that the quality and representativeness of the General Assembly depends, in part, on who can afford to serve. The issue of legislative compensation poses several questions, including:

> How much should state legislators be paid?
>
> Should committee chairmen and other legislative leaders receive additional compensation?
>
> Should the present system of paying legislators be changed and, if so, how?
>
> Who should play a role in determining compensation and what role should they play?

In seeking an answer to the first question, several factors must be considered, including how much time a legislator spends, in session and out, in committee meetings and attending to other legislative duties; how much time he must take away from his regular job; and how much this may cost him in salary lost from his regular job.

Constitutional Limitations

Section 42 of the state Constitution provides for General Assembly members to receive $5 per day during legislative sessions and 15 cents per mile for travel to and from Frankfort. Section 42 also authorizes changes in legislative compensation by law, but specifies that no change may take effect during the session in which it is approved.

Additional sections of the Constitution may further limit answers to the four questions posed previously. Section 246 sets maximum limits on

the compensation of public officers. Section 235 prohibits changes in public officers' pay during their terms in office. Section 60 generally prohibits the General Assembly from enacting laws which would take effect on approval of anyone other than the legislature. These sections and court interpretations of them are among the important considerations that have been studied in evaluating alternative approaches to revising legislative compensation.[1]

Since 1891, the General Assembly has periodically increased the $5 in-session per diem salary established by the Constitution. It has created additional expense allowances for legislators and established pay differentials for the presiding officers of each house and for the co-chairmen of the Legislative Research Commission (LRC).

Current Compensation

Total current legislative compensation in Kentucky includes the following:

In-session per diem salary, presently $25 per day, with an additional $5 per day for presiding officers;

A 15-cent-per-mile travel allowance for one round trip each session;

An in-session expense allowance of $25 per legislative day;

A stationery allowance of $50 per session;

An expense allowance of $400 per month between legislative sessions; and,

Twenty-five dollars per day and reimbursement of travel expenses for attending interim committee meetings, with an additional $25 per day for the LRC co-chairmen for each day of interim work.

Because several elements of legislative pay are based on the number of meetings a member attends and the distance he travels to meetings and sessions, the actual compensation of each member varies from biennium to biennium and from that earned by others members of the General Assembly.

On the average, members of the 1974 General Assembly, other than the LRC co-chairmen, were paid roughly $12,500 during the 1974-76 biennium or about $6,250 per year, plus necessary travel expenses.[2]

During the past 10 years, several groups other than the General Assembly, including four citizens' groups, have addressed the questions of legislative compensation in Kentucky. Three of the groups were concerned with general issues of legislative modernization while the fourth dealt solely with compensation.[3] While their methods of study and the amount of time devoted to compensation varied, the four citizens' groups have reached the following general conclusions:

> Legislative compensation in Kentucky should be increased to reflect changes in legislative compensation in other states, changes in the cost-of-living, and increases in legislative workload in Kentucky, particularly between sessions.
>
> The extra work required of certain legislative leaders, including majority and minority leaders as well as presiding officers, warrants additional compensation for persons in these positions. In addition, the 1974-75 Citizens' Advisory Committee on Legislative Compensation recommended paying interim and standing committee chairmen an extra $5 for each meeting chaired.
>
> The current method of paying legislators should be revised to reduce the number of different elements of pay, by either establishing an annual salary or consolidating total compensation for payment in substantially equal monthly installments.
>
> A travel allowance for only one round trip per legislative session is inadequate since some members commute to Frankfort daily during sessions while the rest return to their districts nearly every weekend. Session travel allowance provisions should be established by statute.

Prior to developing its final recommendations, the 1974-75 Citizens' Advisory Committee collected and analyzed several measures of the adequacy of current legislative pay. Its recommendations for an approximate 20 per

cent increase in basic compensation plus additional pay for majority and minority leaders and committee chairmen were based on its findings that:

> Legislative pay in Kentucky has not kept pace with changes in the cost-of-living as measured by trends in the U. S. Bureau of Labor Statistics' Consumer Price Index. Since the last increase in legislative pay in 1972, the cost-of-living has increased about 30 per cent.[4]
>
> Kentucky has not maintained its ranking relative to legislative pay in other states. In 1955, Kentucky ranked 23rd among the states in legislative compensation. In 1972, the Citizens Conference on State Legislatures reported that Kentucky ranked 28th, and a recent up-date of the 1972 figures indicates that Kentucky now ranks 34th among the 50 states.[5]
>
> While legislative pay in Kentucky ranks low among the 50 states, it is about average among the 10 states whose legislatures regularly meet every two years, rather than annually.[6]
>
> Compared with the seven bordering states, legislative pay in Kentucky is higher than in West Virginia and lower than in Tennessee, Virginia, Missouri, Ohio, Indiana and Illinois.[7]
>
> Compared to full-time executive branch officers and employees in Kentucky, members of the General Assembly, who are part-time public officers, are paid at a level that is: about the same as the starting salaries of administrative secretaries; about 41 per cent of the starting salaries of middle-management positions (division directors); and about 23 percent of the maximum salary that heads of administrative agencies may be paid.[8]
>
> The 46 members of the 1974 General Assembly who responsed to a questionnaire generally felt that present compensation was inadequate. Their recommendations of what would be an adequate annual pay figure averaged about $10,200, or about $4,000 per year more than they currently receive. Seventy per cent of the legislators responding felt that legislative

floor leaders should be paid more than other members, and 52 per cent felt that committee chairmen should receive additional compensation.

While citizens' panels and a majority of legislators responding to the recent survey have favored some increase in legislative pay, there is no information on how Kentucky citizens as a whole view legislative compensation. A 1973 LRC staff study noted a general assumption that many Kentucky voters do not favor legislative pay increases. The study says, "...there is a widespread feeling that any legislator who votes to increase his own salary risks an irate electorate at home and possible defeat for re-election."[9]

Surveying recent developments in other states, Karl T. Kurtz reports that a trend toward voter approval of state executive and legislative pay increases in the states during the early 1970's waned toward the end of the 1972-73 biennium, a change the author characterized as "a reflection of general voter distrust of politicians."[10]

Method of Payment

Recent studies of the method by which legislative compensation is paid in Kentucky have criticized the present system and its effects. Many of the revisions of legislative pay in Kentucky have come through creating and increasing expense allowances, rather than increasing the constitutional per diem. One reason is that this method allows increases to take effect immediately. This practice, however, has ledto compensation being paid piecemeal, which the 1974-75 Citizens' Advisory Committee suggested was inconvenient and confusing to legislators and costly for the state to administer.[11]

The current pay system, however, has one possible advantage over the proposed alternatives of an annual salary or combined payments of substantially equal monthly amounts. Under the current system each legislator receives a major portion of his total compensation during legislative sessions, when he is incurring extra housing, food, correspondence and other costs associated with living and working away from home and while he is on leave-of-absence from his regular job.

Compensation Review

Both the 1974 General Assembly and the 1974-75 Citizens' Advisory Committee expressed concern with Kentucky's history of periodic, ad hoc examinations of legislative compensation and the lack of an objective, on-going system of reviewing compensation. Following a recent trend in other

states, the 1974 General Assembly passed a bill to establish an independent citizens' commission with the responsibilities of thoroughly studying legislative compensation, including retirement benefits,and periodically making recommendations to the General Assembly. The commission's recommendations would have become law unless rejected by the General Assembly directly or through enactment of legislation that conflicted with the commission's report. The measure, House Bill 813, was vetoed by Governor Wendell Ford on the ground that it appeared to conflict with the constitutional prohibition against delegating legislative authority.[12]

The 1974-75 Citizens' Advisory Committee, in its final report, stated:

> "The Kentucky Constitution gives members of the General Assembly full responsibility for determining their own pay, but like any human being a legislator is hesitant to place a dollar value on his own worth. Neither the Constitution nor current Kentucky law offers the legislator any tools to assist him in doing this in an objective manner." [13]

As an alternative to the present review system the Committee recommended that:

> "The Legislative Research Commission be assigned the responsibility for biennially reviewing the compensation of members of the General Assembly and for making its findings public and available to the Governor... The LRC review would examine the position of Kentucky legislative pay relative to legislative pay in other states, compensation of professional and technical personnel in the public and private sectors in Kentucky, and the cost of living. The report would note specifically any changes in legislative compensation relative to these factors over the two-year period since the last review or salary change. The purpose of the LRC review would **not** be to recommend a legislative compensation change, but to provide, on a regular basis, the necessary background information for the Governor, the General Assembly, and the public to decide whether consideration of a change is warranted." [14]

Footnotes

[1]For a discussion of several specific constitutional issues relating to legislative compensation see E. Hugh Morris, "Legislative Research Commission Staff Memorandum No. 350: Legislative Compensation," December 28, 1973.

[2]LRC interim committee meeting per diem pay data for 1974-75 indicates that the average meeting pay earned by General Assembly members, other than the LRC co-chairmen, was roughly $500 per member from the end of the 1974 session through September, 1975. This average figure is included in the $12,500 per biennium compensation estimate.

[3]See Morris, "Legislative Compensation," pp. 7-8 for a summary of the findings and recommendations of the 1967-68 Kentucky Committee on the State Legislature and the 1971 Citizens' Committee on the General Assembly. The recommendations of the third group, The Citizens Conference on State Legislatures, are discussed in the Conference's book, The Sometime Governments: A Critical Study of the 50 American State Legislatures (New York: Bantam, 1971). The findings and recommendations of the 1974-75 Citizens' Advisory Committee on Legislative Compensation are found in the Committee's Final Report to the Interim Committee on State Government, July 29, 1975.

[4]Citizens' Advisory Committee on Legislative Compensation, Final Report, p. 6.

[5]Kentucky Legislative Research Commission, The Legislative Process in Kentucky (Frankfort, Kentucky, 1955) p. 77; Rosemary Moeykens, "Report on Salaries, Expenses in 50 State Legislatures as 1973 Sessions Begin" (Kansas City, Missouri: The Citizens Conference on State Legislatures, December, 1972); and communication from Jane Van Sant, The Citizens Conference on State Legislatures, June 17, 1975.

[6]Ibid. The ten state legislatures that meet biennially are, in addition to Kentucky, those of Alabama, Arkansas, Maine, Nevada, New Hampshire, North Dakota, Oregon, Texas and Washington. See the Council of State Governments, The Book of the States, 1974-75 (Lexington, Kentucky: The Council of State Governments, 1974) pp. 82-83.

[7]The Citizens Conference on State Legislatures, December, 1972 report and June 17, 1975 communication.

[8]Based on LRC staff computation of approximate base salaries for specific grades in the state pay schedule and KRS 64.640. In response to a Citizens' Advisory Committee survey, the 46 1974 General Assembly members answering questionnaire items on time spent on legislative duties reported spending an average of 61 hours per week during sessions and 18 hours per week during the interim on legislative work.

[9] Morris, "Legislative Compensation", p. 8.

[10]Karl T. Kurtz, "The State Legislatures" in Council of State Governments, The Book of the States, 1974-75, p. 59.

[11] Citizens' Advisory Committee, *Final Report*, p. 7. For a discussion of other disadvantages of the current pay system, see Morris, "Legislative Compensation", p. 8.

[12] Kentucky General Assembly, House of Representatives, *Journal, 1974 Regular Session*, Volume II, p. 2142.

[13] Citizens Advisory Committee, *Final Report*, p. 7.

[14] *Ibid.*, pp. 10-11.

Land Use

David Nicholas

The question of whether or not we should plan ahead for the use of our land is one that will have to be addressed in the near future. Should land be considered a resource which is growing scarce and, therefore, needs to be managed and conserved in some way, or is there enough land in Kentucky to permit uncontrolled development?

Pressures on the land within our nation have grown and will continue to grow. In 1966, 66 per cent of our nation's population resided in metropolitan areas. By 1970, this figure had increased to 71 per cent, and, before the year 2000, this figure is expected to rise to about 85 per cent. This influx of population from rural areas to urban areas will create greater demands for services.

Metropolitan areas also will continue to expand. Migration from central cities to suburban fringe areas and rural areas will continue to increase. This will be accompanied by additional pressures on local governments to provide highways, schools and various other public services.

Kentucky is one state where the "crunch" of development is just beginning to be felt. To this time, problems relating to development and expansion have been of a fairly small scale. Industrial development is **increasing,** however, particularly in the coal industry because of the energy crisis.

Many people have misconceptions about the meaning of the phrase "land use planning." In its simplest form it means establishing guidelines for the use of land based on predictions of population trends and the needs and services they will generate. It also means, in some cases, attempting to balance existing uses of land with its optimum use.

Much opposition to land use planning centers around constitutional rights contained in the 5th and 14th Amendments to the U. S. Constitution. The 5th Amendment states that, "No person shall..be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation." The 14th Amendment guarantees the same rights to persons in relation to state governments.

A frequent misconception is that planning and zoning are synonymous. Zoning is one means of implementing a land use plan. It involves a dividing of territory within which certain uses of land are permitted. Zoning regulations also may be used to control the size of buildings, protect areas of special interest and regulate the density of development. Zoning may be used in conjunction with planning, but it is not necessary that all plans include restrictive zoning.

Another tool which is used to implement land use planning is the regulation of subdivisions. These regulations basically are concerned with the size and location of new residential districts. They can be used to channel new residential developments into areas where public services can be provided readily. Subdivision regulations frequently are administered by local planning commissions.

Building and housing codes are tools which can be used to encourage developments which will be consistent with land use plans. The character of an area can be maintained by the qualifications that must be met by builders and developers.

Easements and official maps are two other tools which can be used to carry out a general plan. Easements are agreements between land owners and local governments which restrict the use of a parcel of land in order to maintain its historic, scenic or open-space character. Official maps show future plans for highway, recreational and other kinds of public developments. They are used to avoid development of areas which will be used later for some public purpose.

In order to assess the need for planning, one must look carefully at the various participants in the planning process. One also must consider how the actions of each participant will affect the end product.

Local Planning

Traditionally the greatest amount of planning activity and responsibility has rested with local governing bodies, whether they be a city planning commission, a fiscal court or a joint city-county planning board. At present in Kentucky, nearly all of the statutory authority for planning rests in the hands of local governing bodies.

Local planning and zoning legislation, located in Chapter 100 of the Kentucky Revised Statutes, generally takes the form of enabling legislation. It gives cities and counties the authority to plan if they choose to do so. General guidelines for the composition of comprehensive plans are provided along with criteria on zoning and subdivision regulation. Local governments are not required to plan under state law, but often are forced to plan in order to qualify for federal grants.

One alternative for extending planning responsibility at the local level would be some form of county-wide review of comprehensive plans, zoning ordinance and subdivision regulations. This could be done in an advisory capacity or coupled with power to veto and redirect. Such a course would serve to increase the compatability of comprehensive plans throughout a county but might inhibit the flexibility of cities within the county.

Another alternative would be to require formation of a joint city-county planning units and county-wide comprehensive planning. This would tend to insure the coordination of planning efforts throughout a county but, again, might impede the efforts of cities within the county.

Local governments often lack the professional expertise to predict growth patterns and future development pressures. Additional funds might be necessary to properly initiate and administer these planning processes.

Regional Planning

The most notable regional planning activities in Kentucky are conducted by the Area Development Districts(ADD's)throughout the state. Under KRS Chapter 147A, ADD's have the authority to "provide upon request basic administrative, research and planning services for any planning and development body located within the district; ... They also are authorized to act as the regional clearinghouse for acquiring funds under federal programs. As statutorily defined, the ADD's are not planning bodies but agencies that assist local planning units.

An alternative for expanding planning activities at the regional level would be to initiate review of local plans within a given area. This could be done on an advisory basis or with the power to change and recommend. This would serve to coordinate local planning efforts throughout a region but could infringe upon the authority of the local planning bodies.

A stronger alternative would be to require the formation of regional planning units and the adoption of regional comprehensive plans. This would tend to insure the coordination of local plans with the goals and objective of the region.

There are several drawbacks to the concept of regional planning. One is that the powers of regional authorities in Kentucky is limited. Another drawback is the difficulty of avoiding conflicts between municipalties and rural areas when planning for an entire region.

State Planning

At the present time, there is no state agency with specific land use planning authority. Various state agencies are responsible for different types of land use and engage in activities that affect the use of land. There is, however, no central agency with either planning or coordination responsibility.

The role which state government should assume in the area of land use planning is one which continues to puzzle politicians, study groups, qualified planners and the citizens at large. The controversy centers on how much responsibility a state land use agency should have, what duties it should perform and where it should be located.

One level of state envolvement in land use could be offering monitary incentives and planning assistance to local governments who wish to plan. Planning could be left entirely in the hands of local governments, who would choose the goals and directions for their communities. A staff of professional planners also could be available to assist and advise local planners in predicting growth and development trends. This might induce communities to engage in planning efforts, but would offer little in the way of coordinated planning between adjacent communities.

A second alternative could involve the creation of a state agency for coordinating and guiding but lacking authority to actually draft a state land use plan. The bulk of planning activities under such a scheme could take place at the local or regional levels. The functions of the state agency could include:

> Preparing general planning goals and guidelines to be followed by local or regional planning entitities. This would provide for some degree of uniformity and coordination of planning efforts.
>
> Assisting in efforts to receive monitary grants to initiate planning. A coordination of this effort with the Office for Local Government and the Area Development Districts could provide federal and state funds for local or regional planning.
>
> Establishing areas of critical concern which cannot be controlled by local governments. This would insure protection of areas which are of vital importance to a large section of the state or the state at large.

Coordinating activities of local, regional and state agencies which affect the use of land. Often, the division of land use activities creates planning problems for local governments.

These functions, along with others, could improve cooperation and insure a coordination of land use planning efforts throughout the state. Planning authority could be centered at any of the three levels of government.

A third alternative could involve the creation of an agency to draw up a land use plan for the entire state and use the tools discussed earlier to implement it. This alternative has rarely been used in this country, an exception being in Hawaii.

Legislation

Several proposed bills related to land use have been prefiled for the 1976 General Assembly.

The Interim Joint Committee on Cities prefiled Senate Bill 5 which would amend several sections of KRS Chapter 100. The bill would require all research for a comprehensive plan to be completed before the plan could be implemented. It would require comprehensive plans to be reviewed every five years and changed if the population fluctuated by 5 per cent in five years. The bill also would revise various aspects of the hearing procedure for zoning changes.

Senate Bill 6, also prefiled by the Interim Joint Committee on Cities, would create a new zoning classification for planned unit developments (PUD's) and establishes guidelines for their development. The bill would allow developers to incorporate single-family dwellings, multi-family dwellings, shops, offices, industries and open space land in a single development, with a single zoning allowance, rather than having to obtain separate zoning approval for each lot.

The Interim Joint Committee on Counties and Special Districts prefiled House Bill 65, which would permit referenda on zoning changes if requested by 25 per cent of the persons in an affected district who voted in the last election.

The committee also prefiled Senate Bill 14, a comprehensive land use planning bill. The bill would establish a state Land Conservation and Development Commission which would:

Establish statewide planning goals and guidelines consistent with regional and local government concerns;

Issue permits for activities of statewide significance;

Prepare inventories of land uses;

Review local comprehensive plans for conformance with statewide planning goals;

Coordinate the planning efforts of state agencies with statewide planning goals and city and county comprehensive plans;

Prepare model zoning, subdivision and other regulations to guide state agencies and governments in the promulgation of their regulations; and,

Designate areas of critical state concern during the interim period between sessions of the General Assembly.

The bill would allow local governments the greatest amount of planning authority. It would, however, require the formation of county planning units for each county. These units, in turn, would be required to draft comprehensive plans in accordance with statewide planning goals and guidelines. Other features of the bill include:

The formation of a Joint Legislative Committee on Land Use;

A system of public hearings for approving statewide planning goals and guidelines and local comprehensive plans; and ,

A study of ways to compensate land owners who are adversely affected by comprehensive planning.

Finally, the Interim Joint Committee on Judiciary prefiled House Bill 93, which would establish uniform condemnation procedures for all agencies that have the power of eminent domain. At present, Kentucky has 15 separate condemnation procedures scattered throughout the statutes.

The bill would require any property acquired through condemnation to be developed within five years for the purpose for which it was taken or else made available to the former landowner at the price for which it was purchased. A condemnor, however, could apply to the circuit court for an extension of the five-year deadline.

Parole

Don Paris

During the 1974-75 interim, the Interim Joint Committee on Judiciary heard repeated requests from prosecutors and grand juries for revision of Kentucky's parole system. The most frequent demands were for stricter guidelines, including the reinstatement of a requirement that prisoners serve at least one-third of their sentences before being eligible for parole.

Parole is the release of an offender under supervision after he has served a portion of his sentence. It affords deserving prisoners a chance to complete their sentences in a free community. The Department of Corrections has described as one of the objective of parole, "release of each person from confinement at the most favorable time, with appropriate consideration to the requirements of justice, expectations of subsequent behavior, and cost." [1]

The amount of time a prisoner currently must serve prior to being eligible for parole is set forth in regulations of the Kentucky Parole Board, a five-member panel which must approve all requests for parole. The regulations include the following minimum service requirements.

Time to be served toward parole review	Sentence being served
4 months	1 year
5 months	More than 1 year and less than 1 1/2 years
6 months	1 1/2 years, up to and including 2 years
7 months	More than 2 years and less than 2 1/2 years
8 months	More than 2 1/2 years and less than 3 years

(continued)

Time to be served toward parole review	Sentence being served
10 months	3 years
1 year	Over 3 years, up to and including 9 years
2 years	Over 9 years, up to and including 15 years

Reviews thereafter, as long as confinement continues, shall be at the discretion of the board.

Attention was focused on parole eligibility in April 1975, when the Parole Board increased from one to two years the time required to be served for persons with sentences of nine to 15 years.

Supporters of tough minimum service requirements argue that they deter convicted offenders and others from committing additional crimes, while having a positive psychological effect on the entire community. Opponents contend that unreasonable minimum service requirements hamper rehabilitation efforts. They argue that the system should be flexible, with the Parole Board free to evaluate each case on its merits.

The Interim Committee held a public hearing on the question at which it heard from prosecutors, judges, Parole Board members, correction personnel, defense attorneys, offender-oriented service organizations and a self-styled "career criminal". Some of the groups solidly supported the proposal to reinstitute a mandatory one-third service requirement. Other groups, such as correction personnel, members of the judiciary and members of the Parole Board presented conflicting viewpoints.

Prosecutors, claiming to speak for jurors around the state, said they were appalled to find that the sentences jurors imposed often were greatly minimized by the present parole system. They contended that the present probation and parole system was unequal and discriminatory. The prosecutors pointed out that at a trial, great effort is made to treat all defendants equally, while after trial, judges and parole boards have broad discretionary power to probate, grant shock probation or parole, subject to their own possible biases. To create equality, several prosecutors advocated legislation making it mandatory that persons convicted of a crime serve a certain portion of their sentence.

A majority of the Parole Board members stressed that a parole review does not mean automatic parole, but is merely a screening device to identify those who can be released safely. It also has the motivational effect of

encouraging those not ready for parole to work toward that goal, since parole is something they must earn and is not granted lightly, the members said.

Probation and parole officers of the Bureau of Corrections offered differing viewpoints of the present parole system. Although they agreed that each officer's case load was well over the optimum limit, some officers contended that some parolees were released prematurely, while others said they felt the present parole system and board were functioning effectively.

Representatives from offender-oriented service organizations stressed the social advantages to the present parole system, pointing out that when a parolee, under supervision, is released to employment, he can support his family and, in many cases, delete them from the welfare rolls. Parolees pay taxes and contribute to the economy of the state and nation rather than remaining a burden to the taxpaying community, they said. The groups contend that the prospects of parole, under the present system, motivate inmates to enroll in treatment, educational and vocational programs.

Prior to 1963, an inmate was required by law to serve one-third of his sentence for a given offense before being eligible for parole.

The National Council on Crime and Delinquency (NCCD) in a study of Kentucky's correctional system, completed in 1963, recommended eliminating any statutory time requirements. A special session of the General Assembly in the summer of 1963, passed legislation to implement this and other recommendations of the study. One bill required the Parole Board to file regulations with the Legislative Research Commission concerning when a person would be eligible for parole.

The NCCD study and the resulting legislation seemed to reflect a national and state change in the philosophy of how a penal system should function. It reflected an apparent belief that a penal system should be more than a warehouse for criminals and that a sound institutional treatment program, coupled with a treatment-oriented parole board, might be more beneficial and offer more protection to the public.

Following the changes, the percentage of cases in which paroles were granted rose steadily. In the past few years, however, the percentage has declined, as the following table indicates:

Year	Total Heard	Paroles Recommended	Percent
1964-65	2,361	851	36.04
1965-66	1,990	627	31.51

(continued)

Year	Total Heard	Paroles Recommended	Percent
1966-67	2,072	749	36.15
1967-68	2,118	784	37.02
1968-69	2,044	824	40.31
1969-70	2,068	994	48.07
1970-71	2,287	1,127	49.28
1971-72	2,385	1,240	51.94
1972-73	2,532	1,293	51.06
1973-74	2,655	1,319	49.67
1974-75	2,676	1,312	49.02

Source: Kentucky Bureau of Corrections.

Legislation prefiled by the Interim Joint Committee on Judiciary would restore the statutory time requirement of serving one-third of a sentence prior to being eligible for parole. Exception would be made in the cases of persons confined in a state institution for the first time, persons who had been released from incarceration for at least 10 years and those who had been released from parole or probation for at least 10 years.

Figures compiled by the Office of Statistical Information of the Kentucky Bureau of Corrections show that the average sentence for inmates at Kentucky correctional institutions is 7.68 years. The average percentage of sentence served is 33.5.

From July 1974 to July 1975, the average number of inmates on parole each month in Kentucky was 1,779. Of these, 8.3 per cent were returned by a new felony conviction. Of this number, 39.8 per cent had served one-third of their sentence while 54 per cent had served less than one-third.

Among offenders with sentences of 10 years or longer, 68 per cent received deferments at their first scheduled parole hearing. The average number of deferments per person was 1.85; the average length of each deferment was 13.67 months; and the average total time deferred was 26 months.

In July 1975, the population of all Kentucky penal institutions was 3,216. The prefiled legislation would increase this population by 1,287, based on the number of individuals released without serving one-third of their sentences and the additional time these inmates would need to serve in order to satisfy a one-third requirement.

The largest increase--897--would occur at Kentucky State Reformatory. The second largest increase--175--would be at the Kentucky State Penitentiary. This would probably be the minimum increase, because it is computed on the present penal population and does not reflect the 21.2 per cent increase in Kentucky's crime rate,[2] which logically by itself would account for an increase in the inmate population.

During the fiscal year 1972-73, it costs from $1,945 to $5,355, depending upon the institution, to incarcerate an inmate for one year. The proposed legislation would increase cost to the state by around $6.3 million per year.[3] This, however, might not be the only additional cost to the state. If the increases in inmate population exceeded maximum occupancy rates, additional correctional facilities would be needed.

Overcrowding is already a problem at Kentucky's three major institutions, with the Kentucky State Penitentiary, Kentucky State Reformatory and Kentucky Correctional Institution for Women over their rated capacity at present.[4]

The projected population increase, under the proposed bill, would bring these 35 per cent, 105 per cent and 50 per cent respectively above their rated occupancies.

A by-product of increased population at Kentucky correctional facilities could be a reduction in the quality and quantity of rehabilitation and treatment programs at the facilities. This might be caused by a gradual increase in the ratios between inmates and staff, which would mean less individualized and possibly less effective treatment for the inmates.

Overcrowded conditions have led to federal law suits in Florida, Virginia and Louisiana, where it has been argued that the conditions constituted cruel and unusual punishment in violation of the 8th Amendment to the U. S. Constitution.

At the present time, Virginia is under a federal court order which prohibits commitment to three state prisons due to overpopulation. Currently, Virginia has 1,000 felons incarcerated in local jails. As a result of federal cases the governors of Louisiana and Florida, by executive order, have prohibited commitment in state penal institutions without the release of an equal number of inmates.

Footnotes

1. "A New Parole Board for Kentucky", Department of Corrections, pp. 1-2.
2. From Federal Bureau of Investigation statistics.
3. Administrative Report No. 4, Kentucky Bureau of Corrections.
4. Ibid.

Consumer Protection

David H. Ashley and Edith C. Schwab

"Consumer protection" is a broad, relatively new label which may be applied to a great many issues affecting no single segment of society but rather the public at large. The following issues, which may be included under this general heading, are some which have been considered by various groups since the last session of the General Assembly.

Small Claims Courts

One of the foremost consumer issues is creation of a small claims division of quarterly court, where an individual could bring action to collect a relatively small sum of money without the expense of hiring an attorney and paying court costs:

Jefferson County has a small claims division, but its effectiveness has been hampered by the fact that persons bringing actions must pay court costs, which often appear excessive compared to the amount they seek to recover. Although the prevailing party recovers these costs, many persons don't have enough money to file an action.

Some opponents of small claims courts contend that in states where they exist the courts have been usurped by collection agencies, to the detriment of consumers. Legislation prefiled by the Interim Joint Committee on Judiciary provides that only a party to the transaction on which the claim is based may file and prosecute a claim in the small claims division.

The bill, requiring each county to establish a small claims court by January 1, 1977, would not allow lawyers to handle small claims except in extenuating circumstances and then only with court approval.

Jurisdiction of the court is limited, in the proposed bill, to actions where the amount of money or damages claimed does not exceed $500, excluding interest and costs. The only filing fee would be $2, to be paid at the time a claim was filed.

Holder in Due Course

A potentially far-reaching piece of proposed legislation in Kentucky is one which would abolish the so-called "holder in due course" doctrine in credit transactions.

In a typical transaction, a customer may decide to purchase a major appliance on an installment basis. The appliance dealer might contact a couple of banks and small loan companies and let the customer decide which lender shall finance the sale. The customer then executes a conditional sales contract with the dealer, subject to approval by the lending institution, which then holds the contract and receives payments directly from the purchaser. The dealer in turn, receives from the lender the purchase price of the item sold, less a percentage discount, which is the price he pays the lender for buying the sales contract.

If, in the example, the purchaser defaults by not making payments under the contract, the lender may then bring legal action to enforce its rights under the contract. If the contract is taken by the lender "with recourse", the lender, upon default, may look to the dealer for the balance of the purchase price due under the contract. The dealer must then try to collect from the purchaser. If, on the other hand, the contract is sold "without recourse", the lender must collect directly from the purchaser, and the dealer plays no role in any legal action upon default.

The holder in due course doctrine, in essence, means that the lending institution takes the sales contract free of any defenses for non-payment which a purchaser might have against a seller. Thus, should a purchaser find that merchandise is defective or that a service will not be performed, he still must pay the full contract price for the merchandise or service to the lender.

The doctrine aids dealers in goods and services by allowing credit sales in those instances in which the dealer does not have enough operating capital to finance such sales himself. It also allows a dealer to operate without getting involved in the credit business. He does not have to assume additional bookkeeping, make credit checks, etc.

Many states have seen fit to abolish the holder in due course doctrine or, in some instances, to restrict its application. The Interim Joint Committee on Labor and Industry prefiled legislation which would abolish the doctrine. The Committee heard arguments suggesting abolition would severely limit credit sales, but felt the arguments were overshadowed by a need to provide consumers a practical means of protecting themselves against unscrupulous operators or retailers.

"New Car Lemon" Bill

The Interim Joint Committee on Labor and Industry also prefiled legislation which would impose requirements on automobile dealers and manufacturers when an automobile was found to have certain major, non-correctible defects. Under such circumstances, the manufacturer would be required to refund the purchase price of the vehicle, less depreciation, or supply the owner with a new vehicle identical to the original purchase.

The so-called "new car lemon" bill defines a major, non-correctible defect as one which would cost more than 5 per cent of the vehicle purchase price to repair, and which, when repaired in the normal fashion, would substantially impair the performance or enjoyment of the vehicle. The bill further details methods and time limits for a consumer to notify a dealer or manufacturer of a defective vehicle, and under which repairs or settlement must be made.

The legislation is designed to force manufacturers and dealers to repair promptly those defects which can be repaired without great loss to the consumer or to make reparations when a defect cannot be repaired.

Opponents of the bill, principally automobile dealers, said such legislation would impose unduly harsh penalties on dealers and manufacturers and that, in fact,virtually all defects were repairable. They also indicated that consumers ultimately would bear the cost of repairs or refunds through higher purchase prices.

Generic Drugs

Generic drugs can be described as those drugs, or chemical compounds, which are manufactured and available to the public but are not sold under a manufacturer's trade name. Generally, drugs sold under a trade name are more expensive than the same compounds, often produced by the same manufacturer, and sold under their generic (chemical)name.

The 1972 General Assembly established the Kentucky Drug Formulary Council to compile a list of drug products which would be therapeutically equivalent to brand-name products. This would allow a pharmacist, unless otherwise instructed by a prescribing physician, to substitute a generic drug for a brand name drug in filling prescriptions.

The Interim Joint Committee on Health and Welfare considered, but voted not to prefile, legislation which would make Kentucky's generic drug law mandatory, rather than permissive. The proposed legislation would have required a pharmacist to dispense the lowest priced therapeutically equivalent drug in his stock, when filling a prescription, unless instructed otherwise by a purchaser or his physician.

Motor Vehicle Usage Tax

Presently, in Kentucky, a purchaser of a new motor vehicle pays a 5 per cent tax on the manufacturer's suggested retail price for the vehicle regardless of the actual selling price.

No allowance is made for trading in another vehicle, thereby reducing the selling price of the new vehicle below its "sticker" price. On a used motor vehicle, the purchaser pays a 5 per cent tax on the value of the vehicle shown in the automotive reference manual, or "blue book." If another vehicle is traded in a trade-in allowance is deducted from the "blue book" value of the vehicle purchased.

The tax is a usage tax paid for the privilege of using the highways. Revenue from it is earmarked for the state Road Fund, as opposed to the General Fund, which receives revenue from Kentucky's 5 per cent sales tax.

Many consumers have trouble distinguishing between a sales tax and a usage tax. To them, Kentucky's usage tax often appears to be a tax on an artificial value. It is sometimes difficult for a consumer to accept the fact that he must pay tax on $6000, for example, when he pays only $5000 for an automobile.

A special subcommittee of the Legislative Research Commission, created to study the taxation of motor vehicles, concluded that the tax is unfair. The subcommittee recommended that even though a change in the method of taxing motor vehicles could cost the Road Fund several million dollars in lost revenue, the law should be amended to apply the tax on the money that changes hands in the purchase of both new and used motor vehicles.[1]

Tie-in Sales

Tie-in sales are those which require a person to spend a specific amount of money or buy a particular item or service in order to purchase a particular item, usually at a reduced price. An example is when a supermarket requires a $10 purchase in order to buy an item such as sugar at a special price.

Critics of tie-in sales complain that senior citizens and persons of low income often cannot spend enough money at one time to obtain sale items at a reduced price. Merchants who use tie-in sales could be expected to defend them as a legitimate marketing technique.

The Interim Joint Committee on Judiciary failed to approve proposed legislation prohibiting tie-in sales. Several legislators, however, have indicated an interest in sponsoring such legislation in 1976.

Occupational Licensing

Under the banner of protection for consumer interests, recent criticism has been leveled at state professional and occupational licensing programs. Critics have charged that the programs function more to protect those regulated from competition than to protect the public against incompetent or unscrupulous practitioners. Various legislative committees have discussed the administration of these licensing programs, the effect of license requirements on the availability of skilled manpower throughout the state and the feasibility of alternatives to licensing, such as certification and registration programs.

A central agency has been proposed to handle administrative and clerical functions which are common to each of Kentucky's 27 licensing boards (issuing license certificates, collecting fees, maintaining board record and files, etc.). Under the proposal individual boards would continue to make policy decisions in the areas they regulate (setting standards and codes of ethics, examining applicants and disciplining recalcitrants). Proponents argue that centralizing administrative functions would reduce overall administrative expenses and bring uniformity to the administration of state licensing programs.

Another proposal would require all money collected by the boards to be deposited in the General Fund Account of the State Treasury and each board to seek an appropriation from the General Assembly to fund its operation. Boards currently deposit their receipts in special trust and agency accounts from which only they may draw. Proponents of the change contend that some boards have had to cut back on the performance of statutory functions because they do not take in enough in license fees to cover expenses, while other boards accumulate excess funds.

Still another proposal would establish a commission to screen requests for new licensing programs, while a fourth would add citizen members to each of the licensing boards. Present laws require the Governor to make many appointments from lists of candidates submitted by private professional organizations. Critics contend that, as a result, many of the boards are dominated by those being regulated.

Representatives of the licensing boards generally have opposed the ideas of a central administrative agency, depositing receipts in the General Fund Account and drastically altering the make-up of the boards. They have expressed fears that centralization would cause many of the boards to lose their independence. They also have contended that present methods of appointment assure that the boards will have the kinds of expertise needed to carry out their duties.

Consumer Education

A final consumer-related proposal considered during the most recent legislative interim has been one to require all students in the public schools to complete a semester of instruction in consumer education in order to graduate from high school.

The 1974 General Assembly passed legislation directing the Department of Education to develop a comprehensive statewide program of consumer education, to be conducted in elementary and secondary schools in conjunction with courses in any appropriate area of study. House Bill 538 also required the Department to develop a consumer education training program for public school teachers and administrators and to provide training at the district level. The bill further required each local school board to adopt by resolution a policy regarding consumer education in accordance with guidelines approved by the State Board of Education and consistent with the act.

To date, the Department has conducted some training seminars for teachers and has distributed guidelines for several pilot programs throughout the state.

Footnotes

[1] Estimates of how much the proposed change in application of the usage tax might cost range from around $5 million to more than $14 million.

Agricultural Land Assessment

Brooks H. Talley

Six years after Kentuckians voted to amend the state's Constitution to tax farm land based on its actual use, some question exists whether the intent of the amendment has been carried out.

In November 1969, the people of Kentucky approved Section 172A of the Constitution to provide for the assessment of agricultural and horticultural land for property tax purposes "according to the land's value for agricultural or horticultural use." At the time, such land was assessed at its fair cash value, the same as residential, commercial, and industrial property.

With increasing urbanization in Kentucky (from 44.5 per cent of the population in 1960 to 52.3 per cent in 1970), much farm land was purchased for suburbs, shopping centers, industrial parks, and commercial buildings. As a result the value of farm land, particularly farm land adjacent to urban and suburban areas, increased along with the value of nearby residential, commercial, and industrial property.

Increased affluence also led to inflated values of farm land in rural areas during the 1960's. People acquired farm land surrounding bodies of water for speculative purposes. Others paid high prices for farms to be used as country homes or tax shelters.

With much farm land being assessed at a fair market value that was greater than its value for farm purposes, it was feared that many farmers might be forced to sell their land because of the resulting property taxes.[1] (The net income per farm in Kentucky after taxes in 1969 was around $2,900.)

Implementing the Amendment

The amendment directed the General Assembly to provide a method of assessing agricultural and horticultural land at its value for those uses. The 1970 General Assembly passed legislation which established "representative sales prices of comparable land purchased for agricultural or horticultural use" (KRS 132.010) as the basis for assessments. Use of comparable sales long had been an accepted method of assessing real property.

However, it soon became apparent that this method was not ideal for assessing farm land because, many times, the land was sold for other uses, thereby making it difficult to assess the land strictly for farming purposes. The situation raised

questions over whether the constitutional amendment was being implemented properly.

Acceptance of preferential assessment of farm land was slow. In 1973, the third year after adoption of the amendment, farmers in only 22 counties had received preferential assessments. In 1975, almost 90 counties were accepting application for farm land assessments.

The 1974 General Assembly passed Senate Bill 122, which provided for the assessment of farm land according to its income producing capability based on "customary" farming practices in the area. However, the bill was vetoed, according to the Governor's veto message, because of administrative problems with its enforcement and because the subject matter was under litigation.

The question of which method of assessment best carries out the intention of the constitutional amendment is before the Court of Appeals in Kentucky Board of Tax Appeals, et. al. v. Jane Hamilton Gess, et. al. In that case, the Board of Tax Appeals appealed a decision of the Fayette Circuit Court, which held that assessments should be based on income producing capability or a combination of that and comparable sales. The Board maintained that basing assessments on comparable sales is a valid method.

Perceiving a need for clarification of the law on this matter, the Interim Joint Committee on Agriculture and Natural Resources' Subcommittee on Agriculture appointed a Special Subcommittee on Assessment of Agricultural Land in December 1974. This special subcommittee enlisted the assistance of knowledgeable persons from the Department of Revenue, the University of Kentucky College of Agriculture, and the Kentucky Farm Bureau Federation. The subcommittee met six times and held a public hearing.

The subcommittee decided that the best method of assessing farm land was based on its income producing capability. The most accurate method of doing this is by using soil survey maps, which locate the various types of soils within each county. Soil mapping by the state and the U. S. Soil Conservation Service has begun but won't be completed for the entire state for about 10 years.

The subcommittee decided the next best method of determining income producing capability was to derive an annual net income per acre of farm land in each county and then to capitalize it by applying the average interest rate charged on Federal Land Bank loans in the state for the previous five years. The resulting capitalized value per acre would be used by property valuation administrators (PVA's) in making assessments.

The subcommittee determined, however, that the fiscal effect of instituting this system on a statewide basis at one time would be drastic in some counties. Figures based on 1974 assessments showed, for example, the Fayette County School District would lose about $425,000 the first year. The Christian County District, on the other hand, would gain about $229,000.[2]

Legislative Proposal

The subcommittee decided not to recommend this method to the 1976 General Assembly and devised, instead, guidelines which PVA's could use in assessing farmland based on its income producing capability. These guidelines, incorporated in legislation approved for prefiling by the full Interim Committee, would have PVA's consider the following in assessing agricultural or horticultural value: degree of productivity of the soil; relative percentage of tillable land, pasture land, and woodland; row crop capability; risk of flooding; improvements to the land that relate to the production of income; accessibility to all-weather roads and markets; and factors which affect the general farm economy, such as the cost of interest, supplies and labor.

The proposed legislation would make it more difficult for nonfarm speculators to qualify for preferential assessments by instituting a graduated scale of the amount of gross income a farm would have to produce based on its size. Present law defines as agricultural land any tract of 10 or more contiguous acres (horticultural land as five or more contiguous acres) which produce a gross annual income of $1,000 from agricultural or horticultural activities.

The bill also recognizes that farming is an unpredictable business. Incomes from farms vary from year to year depending upon many factors. The bill provides that in order for the land to be considered agricultural or horticultural land the annual gross income requirements must be met in three of the five years preceding the tax year.

Enacting the proposed bill would have little effect on many counties where farm land assessments based on income producing capability would be approximately the same as those based now on comparable sales. The short-term fiscal impact on county and school district budgets in the other counties would depend largely on how PVA's began using the guidelines. As a practical matter it is likely that the fiscal impact of the proposed assessment method would be extended over several years.

The long-term fiscal effect is impossible to predict with any certainty. There could be, over time, a shifting of the property tax burden from farm land to residential, industrial and commercial property. This could happen if farm land assessments decreased substantially or if migration from farms to cities caused a significant shift in population.

In either case a shift in tax burden would occur only if farm economy continually lagged behind the state's overall economy, and long-term predictions in this area aren't feasible at this time.

Another long-term effect might be increased assessment of farm land in those counties where it is now underassessed. Separate legislation has been prefiled under which a farmer could refuse to have his land assessed as farm land if a lower assessment could be achieved by using its fair cash value.

Footnotes

[1]Differential Assessment of Farmland Near Cities; Economic Research Service, United States Department of Agriculture, Washington, D. C.; October, 1967, p. 2.

[2]From information compiled for the special subcommittee by the Legislative Research Commission staff.

Medical Care Availability

George L. Reuthebuck

A seemingly perpetual issue confronting the General Assembly is the availability of physicians throughout the state, in both urban and rural locations. Many factors affect supply and demand in the various medical disciplines. The disciplines which currently are receiving the greatest amount of attention are those involving primary care--family and general practice, general pediatrics, general internal medicine, emergency medicine, general obstetrics, and gynecology.

History

In the early 1900's, a dramatic change occurred in medical education. A comprehensive study for the Carnegie Foundation in 1910 seemed to be largely responsible for shifting the education of physicians from proprietary medical schools to university medical schools. The proprietary schools apparently accomplished education through apprenticeship, which resulted in a relatively large number but poor quality of physicians.

Through an evolutionary process, medical education seems to have reversed the trend of the early 1900's. The past two decades have been a time of specialization. Proportionately fewer doctors have been interested in becoming family physicians since the quality of education began meeting the demand for specialists and the academic community placed an aura of prestige upon the medical specialists.

Since the enactment of Medicare and Medicaid legislation in the mid-1960's, demands for medical care have dramatically increased. Medical assistance legislation has enabled individuals who previously had been unable to afford non-emergency care to pay for more medical services.

In Kentucky

Slightly more than half of the physicians in Kentucky are in primary care disciplines, including those who are retired, semi-retired or engaged in research. The problem of availability seems to raise the question of absolute numbers.

Since the proportion of primary care physicians seems relatively adequate, compared to the total number of physicians, it could be that there simply are not an adequate number of doctors in the state. Unfortunately, different yardsticks for measuring the optimal number of physicians confuse attempts to set numerical goals.

Regardless of numerical goals, one must examine the geographic distribution of physicians. There one finds a disproportionate cluster around urban areas and generally lower physician-population ratios in the rural areas. This is not to suggest that the availability of care in urban areas may not be an issue because of differences in the needs of rural and urban areas.

Programs

The government is active in many ways in dealing with the availability of health care. Most directly related to the availability of primary care in Kentucky are the Rural Kentucky Medical Scholarship Program (RKMSP), administered by the Kentucky Medical Association with state support, and the Area Health Education System (AHES), administered by the Council on Public Higher Education.

The RKMSP was established in 1946, to help finance medical education for Kentucky residents. Scholarship recipients are required to agree that upon graduation they will practice medicine in an area of critical need within the state. A year of service is required for each annual scholarship granted.

Originally the fund was supported by donations, but since 1954, substantial appropriations have been received from the General Assembly. The appropriation is currently $50,000 annually.

The AHES was created as a result of a $3.3 million appropriation by the 1974 General Assembly. Its purpose is to provide practical experience in the education of health professionals. Participating students may go to a rural area to receive exposure to community needs.

Legislation

During the 1974-75 interim, the Special Medical Care Availability Study Committee, created by the 1974 General Assembly, examined a number of areas related to availability of health care. Among them were the population's health status, health manpower needs, education and training of health care providers, methods of primary care delivery, the financing of primary

care and the personal and professional needs of the providers.

The committee found that where a physician receives his residency training seems to be the strongest indicator of where he will set up his practice. The committee also found that the number of post-graduate training positions in Kentucky is less than the number of students graduating from the state's medical schools.

In an attempt to remedy this situation, the committee prefiled legislation which would appropriate $2.6 million for 76 additional residency positions for graduates in primary care disciplines. Twenty-eight positions would be established during fiscal year 1976-77 and the remaining 48 during 1977-78.

The committee also prefiled a bill to license physician assistants in Kentucky. Such persons would be qualified to provide certain services under a doctor's supervision, thereby freeing the doctor from some of his work load.

A third prefiled bill would create a Health Occupations Credentialing Board to oversee the legal sanctioning of health personnel in fields which are not currently regulated.

Finally, the committee prefiled a resolution calling for the Department for Human Resources and the Council on Public Higher Education to coordinate their activities in providing training and supportive services related to primary care. The resolution calls for the Department to endeavor to make available facilities and services contracted with local agencies for the purpose of providing primary care. It calls for the Council to emphasize the training of primary care practitioners in state institutions of higher education.

Conceivably, other alternatives could be explored to alleviate the problems associated with the maldistribution of primary care. Establishing medical schools in Kentucky's regional universities might acclimate students more readily to underserved areas. Another alternative may be a mandatory requirement for medical students to serve for a time in underserved areas upon graduation.

A factor which tends to pre-empt discussion of improving the availability of medical care is the difficulty doctors have experienced in obtaining malpractice insurance. Unable to secure insurance protecting them from malpractice liabilities, physicians may reduce or eliminate their practices. Physicians beginning practice who are having difficulty obtaining insurance, may wait until such time as the situation is remedied.

Milk and Liquor Marketing

Thomas Dorman

Two commodities, milk and liquor, share a spotlight as the subjects of an issue which will be considered by the 1976 General Assembly. The issue concerns the effects of government resale price regulation. In Kentucky sales of milk and liquor are regulated by price maintenance laws. Milk cannot be sold below cost. Liquor cannot be sold below a minimum mark-up of 33 1/3 per cent at retail and 15 per cent at wholesale.

The effect of Kentucky's price regulation of milk and liquor perhaps has become an issue because of recent efforts by Congress and the President to reassess government involvement in the economy. Regulatory programs, which seemed like a good idea at one time, are being re-examined in light of the problems which currently characterize our economy.

Legislatures are attempting to answer such questions as:

> Do fair trade laws protect the free, competitive marketing of goods or do they stifle competition?
>
> Does price regulation encourage or discourage business innovation and efficiency?
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> To what extent does government regulation of prices contribute to inflation?

Pending before Congress is the proposed Consumer Goods Pricing Act, which would repeal states' authority to adopt fair trade laws. Under the Miller-Tydings Act of 1937 and the McGuire Act of 1952, states may permit agreements between manufacturers and retailers that stipulate retail prices for the manufacturers' products and require retailers of brand name products, who are not parties to fair trade agreements (non-signers), to abide by the fair trade price.

Kentucky has a general fair trade law with a non-signer provision, although the latter has been ruled unconstitutional. Kentucky's minimum resale prices for dairy products and liquor are regulated by state government

rather than contract and as such are not considered to be governed by true fair trade laws. Adoption of the Consumer Goods Pricing Act should have little effect on state laws which license and regulate the marketing of certain products to protect the health and safety of the public.

The power of states to regulate liquor trafficking also is guaranteed by the 21st Amendment to the U. S. Constitution, which repealed Prohibition.

The Interim Joint Committee on Judiciary prefiled and recommended the passage of legislation which would amend those protions of Kentucky's milk and liquor marketing laws that provide for resale price maintenance. Many of the arguments made concerning repeal of fair trade laws are also being applied to government regulation of milk and liquor prices.

Milk Marketing

Kentucky's Milk Marketing Act became law in 1960 without the signature of the Governor. Similar legislation had been vetoed previously. Under the act (KRS 260.675 → 260.760), processors and retailers of dairy products are licensed by a six-member Milk Marketing and Anti-Monopoly Commission. License holders are prohibited from selling dairy products below cost, discriminating in price between different marketing areas and offering secret rebates, unearned discounts or free equipment in connection with the sale of dairy products. Cost is defined as the price paid for raw milk or dairy products plus the cost of doing business.

The law does provide for instances in which a license holder may sell below cost such as "...an endeavor made in good faith to meet the legal prices of a competitor selling the same article in the same locality or trade area." License holders are required to file with the Commission schedules of the prices determined by the processor or retailer for his dairy products. Price schedules may not be amended without at least 20 days' prior notice to the Commission.

The proposed legislation would repeal the "no sales below cost" provision and the price posting requirement. It would also alter the composition of the Milk Marketing Commission by providing for the appointment of a nominee from the Consumers Association of Kentucky and two other members who have no monetary interest in the milk industry or a retail grocery store.

Critics of the present law argue that the cost price regulated by the Milk Marketing Commission has become the prevailing price for dairy products. Cost, as defined by KRS 260.680, means the price paid for the products plus the cost of doing business, which may include such factors as labor, rent,

interest on borrowed capital, selling and delivery costs, advertising, depreciation, utilities, supplies, licenses, taxes, insurance and other overhead expenses. Because such factors may be calculated differently, attempts to comply with the law have caused confusion among processors and retailers and reduced their incentive to lower prices through innovation and efficiency, critics contend. The Commission's authority to determine cost based on these factors as a minimum resale price is tantamount to setting prices which are artifically high and may be inflationary, they content. Proponents of repeal suggest that there is no reason to prevent sales below cost unless it is expected that prices generally would fall below the present minimum level.

While the small processor and retailer may be guaranteed a profit and competitive viability under the present system, the larger, more efficient operator is getting a better profit than he would get in an open market, they add.

Those who support the present milk marketing law argue that the Commission is specifically prohibited from setting prices by KRS 260.710. The Commission's function is to promote the orderly marketing of milk and milk products in the state by controlling unfair and unreasonable trade practices which tend to lessen or destroy competition, they say. Below cost sales and price discrimination are tactics which can be used to destroy competition. It is suggested the only reason for a processor to sell at a loss is to destroy competition and the only reason for a store operator to sell at a loss is to get a customer into the store to sell him other merchandise.

The absence of price controls would bring the threat of market monopolies, which could drive small operators out of business, threaten the assurance of an adequate supply of milk to the entire state and force consumers to pay inflated prices, supporters of the present law claim. Without the prohibition on below cost sales, they content, out-of-state producers with surplus milk could ship and sell their products in Kentucky long enough to force small processors out of business. If that happens, they suggest, rural areas of the state might be denied milk because the out-of-state processors might choose not to serve such markets.

Unless Kentucky producers can be assured that their milk will be purchased and processed at a price which will justify their continued production, many dairy farmers will divert their land to other uses, some people fear.

Supporters of the present law also argue that the law promotes efficiency, since cost is computed on an individual basis and greater efficiency could lead to a more competitive price.

Those who favor repeal of the milk marketing law argue that it regulates resale prices of processors and store operators, not the dairy farmer. Any effect on the producer's price, they claim, is indirect because the dairy farmer's prices are subject to federal regulation. The entire state of Kentucky is covered by the Federal Order Program, under which the dairy farmer is guaranteed a minimum price from the processor for Grade A fluid milk.

In addition, the U. S. Department of Agriculture administers a price support program, under which processors who cannot otherwise sell their products can sell cheese and other dairy products to the federal government at the support prices. This guarantees a market for the dairy farmer's ungraded manufacturing milk.

Proponents of repeal argue that these federal programs cushion the dairy farmer from competition at the processor and retail levels. They further note that Dairymen, Inc., a co-operative representing most of the dairy farmers in Kentucky, has been instrumental in negotiating prices for its members well above the federal order price. Supporters of the present law respond that the federal programs guarantee the farmer little more than a minimum wage.

Minimum Markup on Distilled Spirits and Wine

Kentucky's minimum markup law for alcoholic beverages other than beer (KRS 244.380 - 244.470) was enacted in 1946. It requires manufacturers and distributors of distilled spirits or wine to contract with a licensed wholesaler to sell their products in Kentucky. The act further provides that the contracts, which are filed with the Alcoholic Beverage Control (ABC) Board, require, upon the resale of the products, a minimum markup of 15 per cent on the wholesale price (20 per cent on wine products) and a 33 1/3 per cent on the retail price (10 per cent if sold in units of a case or more). Retail liquor dealers are subject to the markup requirements even though they are not signing parties to the contract.

The prefiled legislation relating to the marketing of distilled spirits and wine would repeal the minimum markups while retaining a minimum resale price below which products could not be sold. Under the proposal manufacturers would continue to contract with wholesalers for the sale of their products in Kentucky. The contracts would prohibit a wholesaler from reselling distilled spirits and wine at a price less than his actual purchase cost. Retailers could not sell at less than the wholesale purchase cost plus a $1.20 per case transportation cost.

The proposal would further prohibit holding more than two retail package licenses in any one county. It would require those who presently hold more than two such licenses in a county to divest themselves of one license a year until the limit is reached. The legislation also calls for the adoption of a price affirmation act, which would require manufacturers, prior to selling their products in Kentucky, to submit a statement to the ABC Board affirming that they will not sell their products in any other state at a lower price than in Kentucky. The price affirmation provision also would require manufacturers to offer to Kentucky wholesalers any quantity discount given to wholesalers in another state, if the discount price was below the price at which the product was being sold in Kentucky.

Critics of Kentucky's liquor marketing law argue that the minimum markup provisions guarantee a profit for wholesale and retail liquor dealers, a shield against competition that is enjoyed by few other businesses. They argue further that the mandatory minimum markups have kept liquor prices artificially high. Of the five states which still have a minimum markup on liquor, Kentucky's mandatory markup of 33 1/3 per cent retail and 15 per cent wholesale is the highest in the country. Some price surveys indicate that Kentuckians generally pay more for distilled spirits and wine and that many Kentucky liquor products can be purchased cheaper in other states.

Critics also suggest that any intrusion by state government into the free enterprise system should be avoided except in an emergency situation.

Those who support the present law contend that liquor prices are not necessarily lower in other states than in Kentucky and that liquor wholesalers and retailers are not guaranteed an exorbitant profit by the minimum markup. Kentucky liquor prices, they argue, are lower than or equal to those generally charged in neighboring states. While some large chain stores in large metropolitan areas may sell liquor at special prices which may be less than the minimum prices in Kentucky, such specials usually require the purchase of more than one bottle and are not offered on brand name products, the supporters claim. In addition they say, the 10 percent retail markup on case prices in Kentucky enables consumers to purchase liquor by the case for less than in most other states.

Supporters of the present law point out that a markup is not all profit, since markups are figured on cost and profit on the selling price. Federal taxes, which cannot be calculated in the markup price, reduce profit, as do the costs of doing business: rent, utilities, labor, insurance, etc. Taxes alone, it is estimated, account for around 60 per cent of the cost of liquor. Some retailers estimate their net profit margins to be around 3 per cent.

Resale price maintenance through mandatory minimum markups is supported as a means of controlling the orderly marketing of alcoholic beverages. Minimum resale prices prevent predatory price cutting and price wars, by which large high volume chain stores can drive small, independent liquor stores out of business, it is argued. The minimum markup supporters suggest is no more a special privilege to the state's liquor industry than the minimum wage is to laborers, parities to farmers or tariffs to American industry. Because the liquor industry is so tightly regulated and highly taxed, it cannot operate or respond easily to a free enterprise system without some measure of protection, supporters claim.

Supporters of the present laws contend that their repeal could have adverse consequences that should be prevented in the public interest. With repeal, they say, the pressure on small retail outlets to survive could force stores

operating on a narrow profit margin to resort to after-hour sales and sales to minors and intoxicated customers. Enforcement of the many other ABC laws would be more difficult, they add. It is also argued that encouraging price competition is directly in conflict with promoting moderation in the use of alcoholic beverages. Price wars may unduly stimulate the sale of alcoholic beverages. Lower prices may encourage people to drink. Alcohol, it is said, isn't the type of product that should be promoted at bargain prices. Because it is a product that is subject to abuse, its sale should be controlled, many people believe.

Statistics reveal no relationship between minimum markup laws and the consumption of alcoholic beverages. According to figures compiled for 1973 by the Distilled Spirits Council of the United States, an industry organization, Kentucky ranked 27th among the states in alcoholic beverage consumption. Of the seven states which showed a decrease in consumption only one, Connecticut, has a minimum markup law.

Those who favor repeal of the mandatory minimum markup argue that under the present law large retail operators have a competitive advantage over the small retailers, whom the law was meant to protect. While minimum pricing may preserve the market viability of the small operator, the large operator, who has a higher volume and thus less overhead on an individual item, realizes a greater profit. Critics contend that minimum resale prices prevent customers from buying at cheaper prices which may come about through efficient business operation. The consumer, it is argued,is forced to pay more for the product to protect the inefficient operator.

A spokesman for the liquor industry told a legislative subcommittee that without the minimum markups 15 of 30 Kentucky liquor wholesalers and 400 to 600 retailers would go out of business. These who favor repealing the minimum markups, on the other hand, cite experiences in Mississippi and Arkansas, which repealed their minimum markup laws in 1970 and 1971. In both cases, according to Department of Commerce studies and statistics from the U. S. Bureau of Census, the number of retail liquor stores and their employees increased following repeal.

Several provisions in the proposed legislation are designed to soften any possible adverse impact on small retailers. A floor price below which liquor products may not be sold is provided and, in order to prevent a concentration of the liquor market in one participant, a limit is set on the number of licenses which may be held by an individual in any one county. The small retailer is further protected by a quota system, which limits the total number of licenses in a county and would not be affected by the proposed legislation.

Veterinary Needs in Kentucky

Donald S. Van Fleet

A study of the feasibility of establishing a school of veterinary medicine at Murray State University was conducted during 1974 and 1975 by the Legislative Research Commission (LRC), as directed by House Joint Resolution 30 of the 1974 General Assembly. The resolution required all aspects of Kentucky's present and future veterinary needs to be carefully examined. This was accomplished through surveys of farmers and veterinarians.

Veterinary needs were examined by a private consulting firm and a special advisory committee appointed by the LRC to assist and advise in conducting the study. The LRC subsequently adopted a minority report of the five-member advisory committee, which did not recommend establishing a college of veterinary medicine in Kentucky. The study, nevertheless, identified serious veterinary needs in the state and the minority report attempted to provide some viable means of meeting them.

Its recommendations were as follows:

> Kentucky should take immediate steps to increase its participation in the Southern Regional Education Board program and contract with other institutions for admission of Kentucky students to existing schools of veterinary medicine in the South
>
> Steps should be taken to solve the problems of uneven geographical distribution of veterinarians in the Commonwealth.
>
> Kentucky statutes should be amended to allow for the regulated use of veterinary technicians and paraprofessionals.

Survey Findings

The major problems identified in the report were a growing shortage of veterinarians and an uneven distribution of those currently available. Plans being developed by nearby states for schools would likely provide more veterinarians, if Kentucky increased its participation in regional programs. However, the maldistribution of veterinary services may not be easily corrected by an increased number of doctors. The needs for veterinary services do not always exist exclusively where veterinarians choose to practice and live.

The farmers surveyed by the advisory committee indicated they felt present veterinary services were inadequate. Significantly more need was indicated by farmers raising swine, poultry, sheep and non-livestock animals. Beef producers expressed a need for more services, but to a lesser extent.

Farmers with smaller farms expressed significantly greater need for veterinary services than those with farms exceeding 100 acres. Farmers with land exceeding 200 acres reported generally adequate veterinary services. There is a trend in Kentucky toward fewer farmers with more acreage. The average farm in the state is currently 120 acres. Small farm owners increasingly have yielded to problems and left agriculture as a full, time livelihood.

Veterinary services were reported to be particularly inadequate in the extreme western portion of the state and in the eastern and southeastern portions.

Eighty-seven per cent of the farmers surveyed who raised horses, dairy cattle, beef and swine indicated their type of farms could financially support additional veterinary services. Farmers in some central Kentucky areas, however, indicated their areas could not support additional services. The size of the farms did not seem to be a factor in determining the ability to support additional services.

Only farmers in the southwest and northeast portions of the state reported current veterinary services to be too expensive. Others found these services to be affordable or reasonable. Again, size of farm was not a determining factor in the responses. Beef producers (56 per cent) and dairy farmers (20 per cent) indicated the greatest concern about veterinary expenses. Many of these farmers responded from those areas most isolated from veterinary services.

Many veterinarians are working long hours where services are most in demand and the number of veterinarians does not meet the need. The present ratio of veterinarians per population in Kentucky is 11 to 100,000 people. The recommended ratio is 17.5 to 100,000 people.[1] Estimates indicate a shortage of 10,000 veterinarians nationally by 1980, despite the increase of veterinary schools.

Regionally, in Kentucky, the ratio of veterinarians per population falls below 5 to 100,000 people in portions of eastern Kentucky. All areas of the state except the inner-bluegrass area of central Kentucky have ratios of less than 15 veterinarians to 100,000 people.

Residents in the eastern mountainous areas experience the greatest hardship due to the distance and difficulty involved in traveling to the nearest veterinarian. Hardships are not confined to these areas, however. The survey indicated 20 counties were without a single veterinarian to serve local farmers. Fayette County, by contrast, had 62 veterinarians.

The survey also indicated that 30 per cent of Kentucky's farmers were, on the average, 11 to 20 miles from the closest veterinarian. Twenty per cent were more than 20 miles from a veterinarian. Only 14 per cent were within five miles or less. As might be expected, farmers in the eastern mountain regions were the farthest away while those in central Kentucky were the closest.

Summary

Kentucky ranks high in the production of horses, milk cows, cattle, calves and hogs. All of these industries are predicted to expand greatly in the next several decades. In addition the population is predicted to increase proportionately, with the growth centered in present urban centers. The small animal population will increase as more people live in the state.

Present shortages of veterinary services and the lack of balanced distribution of these services will become increasingly critical unless measures are implemented to increase the number of veterinarians available and distribute their services more evenly across the state.

The present shortage not only places pressure on the veterinarian but also on the livestock producer who, mindful of economic pressures on many fronts, must prevent losses of livestock that represent precious investments. Such losses can mean financial disaster to the marginal small farm operator.

Footnote

[1] In 1961, the U. S. Senate Committee on Government Operations stated that by 1980 the nation would require 17.5 veterinarians per 100,000 population. This ratio 17.5 to 100,000 has become a nationally accepted standard for measuring the adequacy of veterinary supply.