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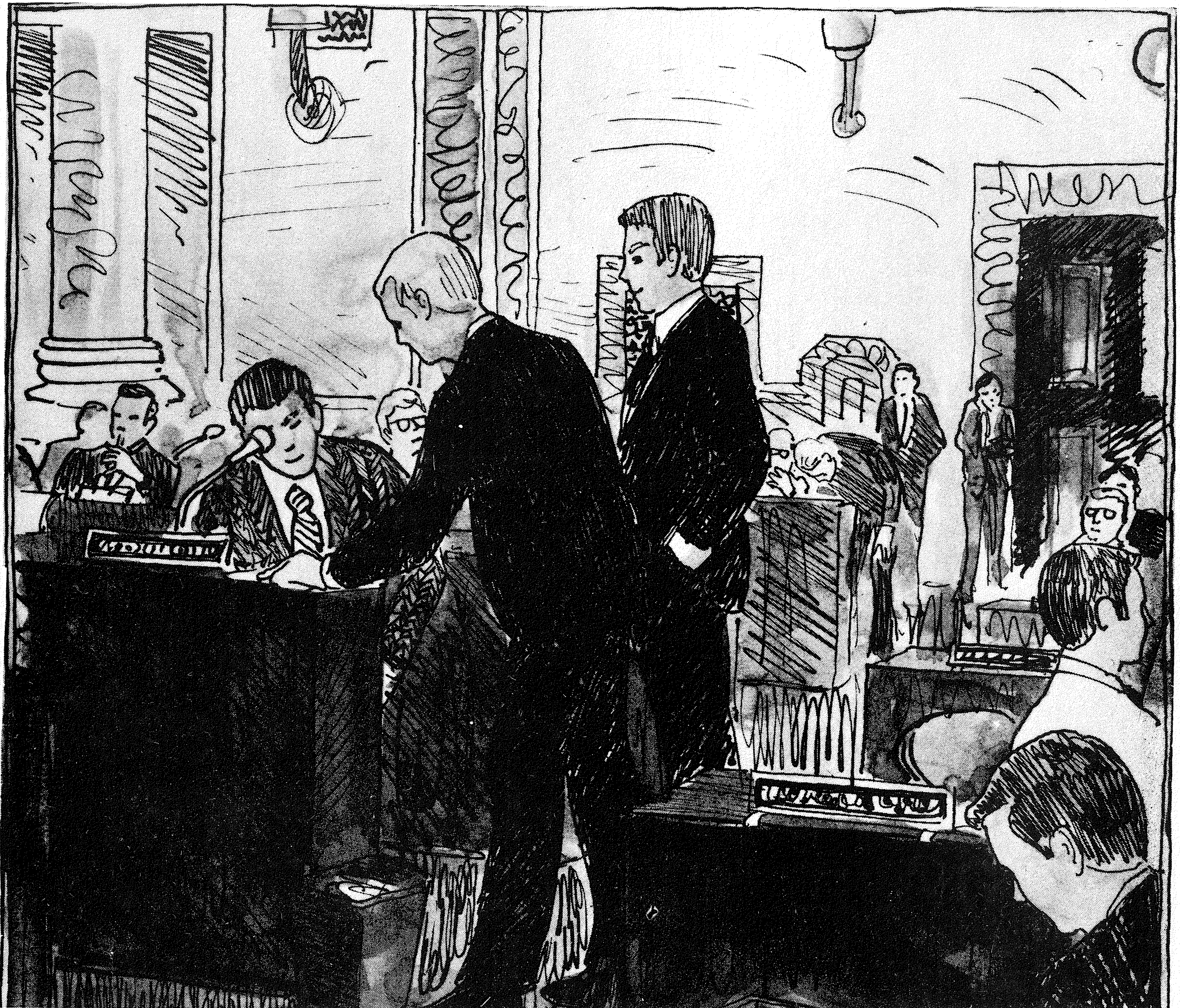
ISSUES CONFRONTING THE 1978 GENERAL ASSEMBLY



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Frankfort, Kentucky

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* * * * * *

The Kentucky Legislative Research Commission is a sixteen-member committee, comprised of the majority and minority leadership of the Kentucky Senate and House of Representatives. Under Chapter 7 of the Kentucky Revised Statutes, the Commission constitutes the administrative office for the Kentucky General Assembly. Its director serves as chief administrative officer of the legislature when it is not in session.

The Commission and its staff, by law and by practice, perform numerous fact-finding and service functions for members of the General Assembly. The Commission provides professional, clerical and other employees required by legislators when the General Assembly is in session and during the interim period between sessions. These employees, in turn, assist committees and individual members in preparing legislation. Other services include conducting studies and investigations, organizing and staffing committee meetings and public hearings, maintaining official legislative records and other reference materials, furnishing information about the legislature to the public, compiling and publishing administrative regulations, administering a legislative intern program, conducting a pre-session orientation conference for legislators, and publishing a daily index of legislative activity during sessions of the General Assembly.

The Commission also is responsible for statute revision, publication and distribution of the **Acts** and **Journals** following sessions of the General Assembly and for maintaining furnishings, equipment and supplies for the legislature.

The Commission functions as Kentucky's Commission on Interstate Cooperation in carrying out the program of the Council of State Governments as it relates to Kentucky.

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ISSUES CONFRONTING THE 1978 GENERAL ASSEMBLY

Prepared by

Members of the Legislative Research Commission Staff

Edited by

E. Hugh Morris

Informational Bulletin No. 126

Legislative Research Commission

Frankfort, Kentucky

November, 1977

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FOREWORD

This collection of briefs, prepared by members of the Legislative Research Commission staff, attempts to bring into sharper focus some of the major issues which have received considerable legislative attention during the interim. The reports by no means exhaust the list of important issues facing the 1978 legislature. At the same time the alternatives and comments suggested are neither exclusive nor exhaustive.

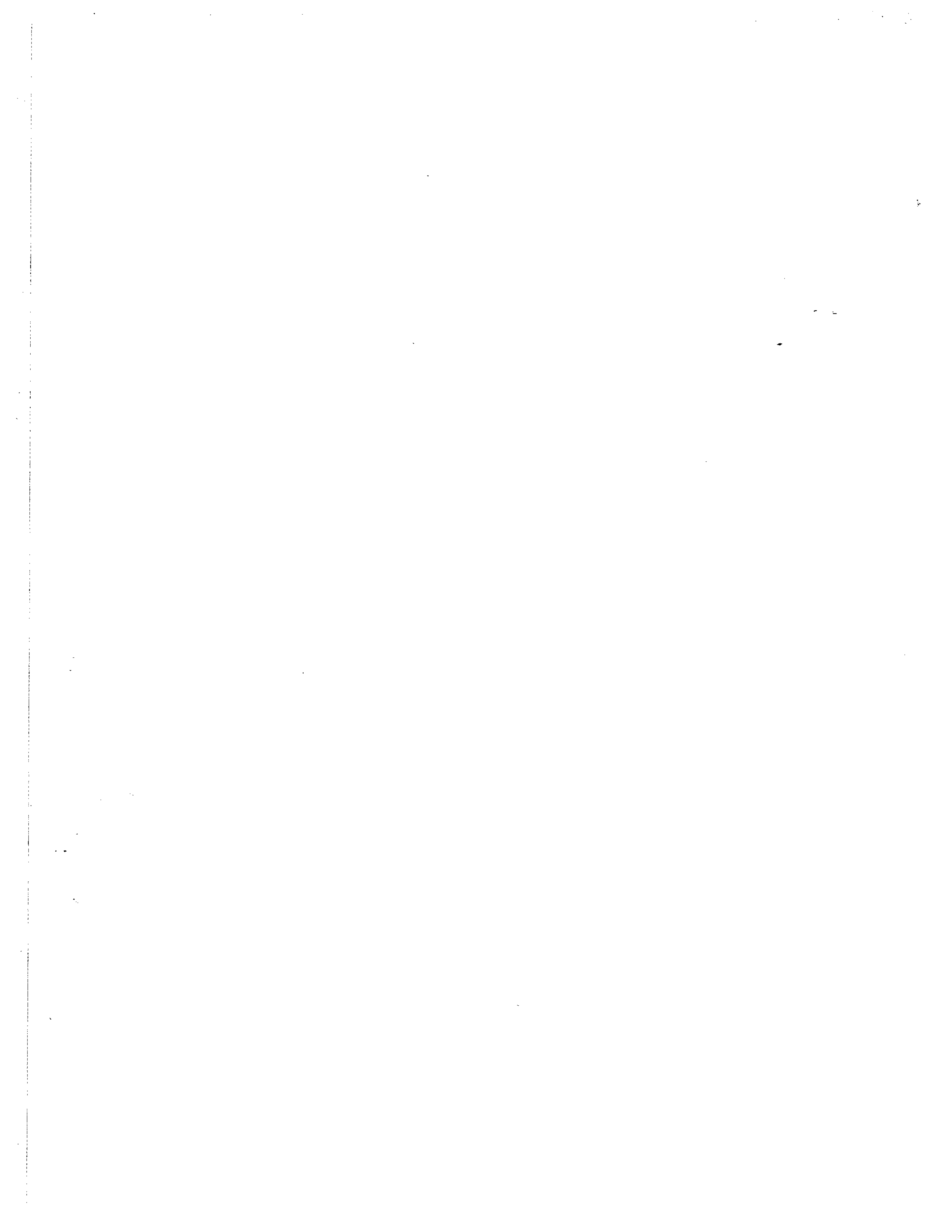
Effort has been made to present these issues objectively, unemotionally, and in as concise a form as the complexity of the subject matter allows. They are grouped for the convenience of the reader into a number of categories and no particular meaning is placed upon the order in which they are presented.

Staff members who prepared the reports were selected on the basis of their knowledge of the subject matter and their work with the issues during the 1976-77 interim. Most of the staff has worked closely with the interim legislative committees which studied the issues and helped draft some of the proposed legislation.

It is hoped that this publication will be of benefit to all members of the 1978 General Assembly and be particularly useful to those who will be serving their first terms.

VIC HELLARD, JR.
Director

Frankfort, Kentucky
November, 1977



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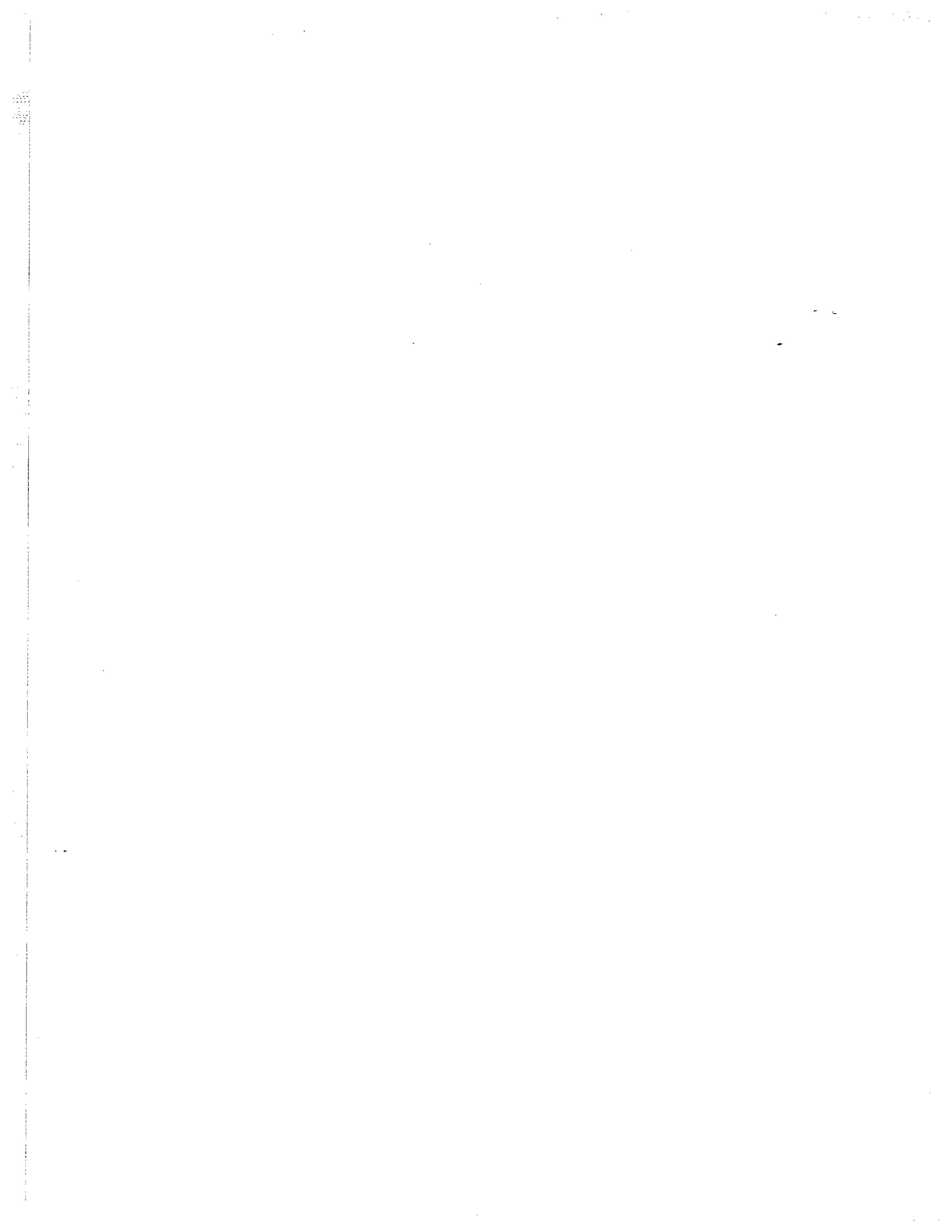


Agriculture

Grain Storage And Transportation

Peggy Hyland

Background

The production of grain in Kentucky has doubled since 1969. Commercial and on-the-farm grain storage has not kept pace with this increased production. The problem is compounded by the fact that most of the grain is exported for processing and rail transportation has not been adequate at peak marketing times. Estimates of grain production for the future indicate that these marketing problems will continue to grow more serious.

Issue

What can be done at the state level to help alleviate the grain storage and transportation problem?

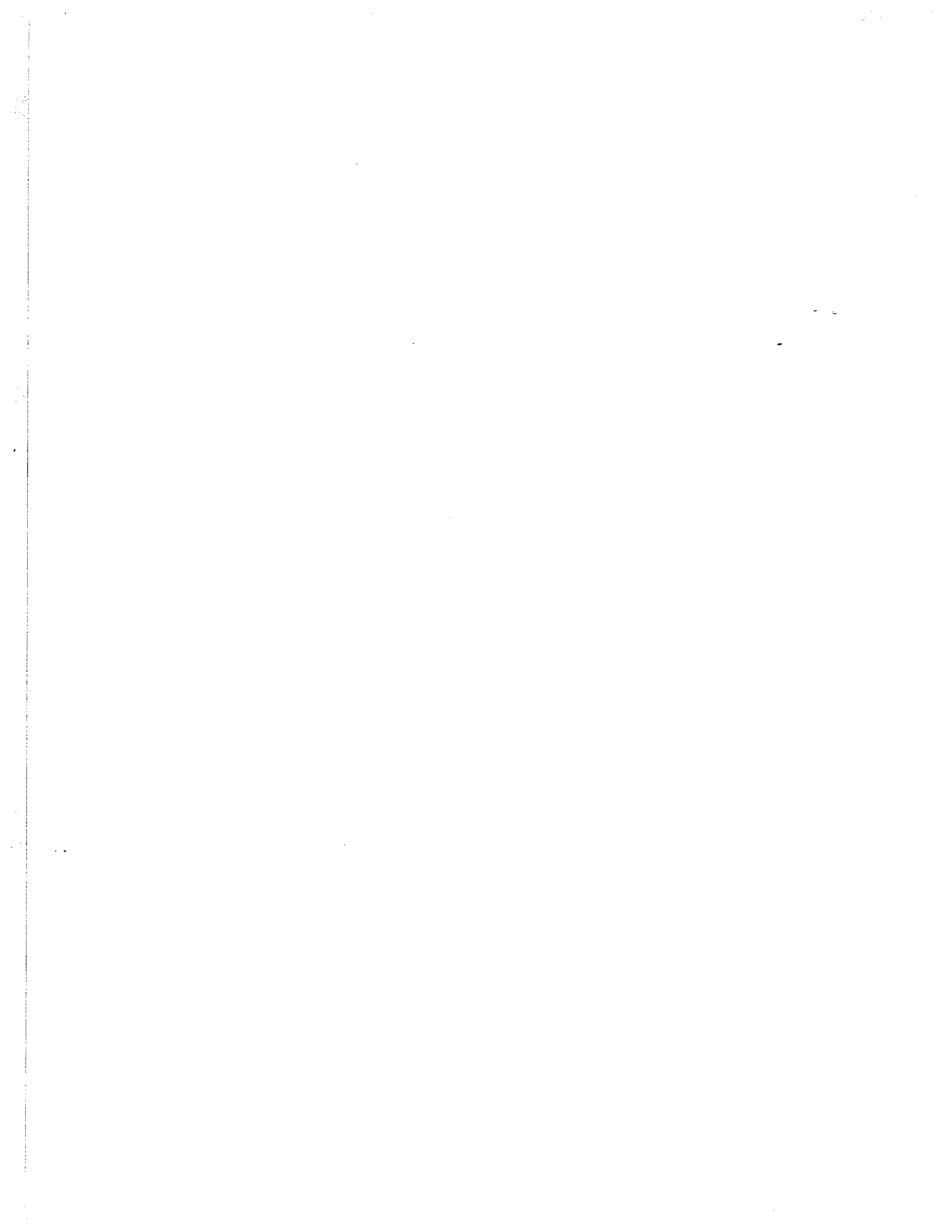
Alternatives

It is estimated that on-the-farm storage will need to double in the next eight years. Presently grain storage facilities on-the-farm are subject to the state sales and use tax. According to estimates from the Kentucky Department of Revenue, exempting grain storage and handling facilities from the sales and use tax would involve a loss to the state of $250,000 a year based on the present rates of construction. Eliminating the sales tax could possibly provide some incentive for the construction of on-the-farm grain storage facilities.

An alternative to on-the-farm storage is to encourage the development of more centralized facilities through farm cooperatives. A low-interest state-supported loan program could be established to underwrite the construction of grain storage and drying facilities by farm cooperatives. Cooperatives would sell the grain when prices are high. The farmer would be charged a fee to pay for the service provided and to repay the state loan.

The problem of grain transportation at peak marketing times will be diminished by an increase in grain storage capacity. Some proposals have been suggested to involve the state in the purchasing of rail cars for both grain and coal transporation. Railroad companies would lease the cars from the state and over a period of time these rental fees would reimburse the state for the construction expense. There are some problems with this approach. The Internal Revenue Code sets a $5,000,000 limit on the issuance of industrial development bonds. The rail car proposal will require a $200,000,000 bond issue. There are potential problems with interference in interstate commerce should Kentucky attempt to restrict its cars to use of Kentucky grain only. Assurance would be necessary that once the cars are on line that there will actually be a net increase in the number of cars in Kentucky and that they will not be used to replace other cars.

Indirect approaches are numerous. For example, attracting grain processing industries in Kentucky would help alleviate some of the transportation problems. A review of the workmen's compensation law in Kentucky as it relates to agribusiness might provide one approach to encouraging grain processing industries to locate in Kentucky.



Repeal Of The Tobacco Rebate Law

Brooks H. Talley

Background

In 1940 the Kentucky General Assembly enacted legislation that prohibited warehousemen from granting rebates and special privileges to tobacco growers. Rebates and special privileges were used to attract growers to a particular warehouse. Under a rebate system, warehouses often retrieve the costs of these rebates and privileges by increasing the regular fees. Only one conviction has resulted since the enactment of the law 37 years ago. Enforcement efforts in the past year resulted in only one case brought to court and the warehouse was acquitted. There are two inspectors with the Kentucky Department of Agriculture working to enforce the law. Any person found guilty of violating the law is subject to a fine of not less than $200 and not more than $500.

Issue

Should the present law (KRS 248.360) prohibiting rebates and special privileges by warehousemen to tobacco growers be repealed?

Alternatives

Warehousemen who abide by the law claim that it hurts their business while those who ignore the law are not penalized. Consequently, the alternatives seem to be either stronger enforcement of the law or repeal of the law. Stronger enforcement efforts would require increased personnel and perhaps more stringent penalties. Even then, the record indicates that the law might be very difficult to enforce. The crux of the problem of repealing the law is the fate of the small farmer. It is possible that warehouse fees will rise for small growers to compensate for rebates to large growers. Others argue that an open rebate system gives the small grower the opportunity to bargain for fees. Kentucky is the only tobacco state with a rebate law. Five states, however, do set maximum warehouse charges. This serves to ensure the small grower of a reasonable fee. States which regulate maximum fees include the two burley states of North Carolina and Virginia.

Business And Labor

Item Pricing

Rosemary F. Center

Background

The computer-assisted checkout system, a system wherein items sold at retail establishments will be scanned at the checkout counter for a product code which identifies the product and records the price, has stimulated much interest in recent months within the business community and consumer groups. Retail items are currently marked individually with a retail price. However, retail stores employing computer-assisted checkout systems may choose to retain or eliminate the traditional item-pricing method and rely entirely on the computer system. The first supermarket utilizing this system in Kentucky opened on October 2, 1977, but has also retained the traditional item-pricing method.

Since merchandise will be scanned electronically, the need for item-pricing will no longer be essential. Thus, a retail item would be marked with a product code, but not necessarily with a retail price unless the retailer choses to continue item-pricing. It is feared by consumer groups, however, that retail establishments will not continue to mark individual items of merchandise because of the added savings. However, retailers counter this argument by replying that the costs which they are able to cut will be returned to the consumer through lower prices.

Consumer advocates state that if item prices are removed, the consumer's ability to compare prices while shopping and to verify accuracy will be impaired. Retailers, in opposition to legislation mandating item-pricing, cite advantages to computer-assisted checkout systems which include a more detailed receipt tape, more accuracy in pricing, faster service at checkout and better stocked shelves from computer information which indicates when products should be reordered.

Issues

Is it in the best interest of consumers that item-pricing be required by statute?

Alternatives

During the 1976 regular session of the General Assembly, House Bill 410 was introduced which would have required retail establishments to mark any consumer commodity for sale with its retail price. In the past year, the Louisville Board of Aldermen and the Jefferson County Fiscal Court have considered proposed ordinances which would have mandated item-pricing.

Spokespersons for the retailers' position contend that present pricing methods are inadequate and should be improved rather than locked in by legislation. Consumer advocates insist that alternatives to item-pricing such as better receipt tapes, comparing shelf prices with computer tapes or using grease pencils to mark items for in-store comparison are not acceptable exchanges. It is likely that the General Assembly will be presented with the issue of whether to intervene or allow the marketplace to decide, as many business and retail groups advocate.

Unemployment Insurance

Linda Bussell

Background

The unemployment insurance program in Kentucky, administered by the Bureau for Social Insurance in the Department for Human Resources, pays benefits to unemployed workers in the state. An unemployed worker must meet certain eligibility requirements to qualify for benefits.

Some of the eligibility requirements are:

1. A person must be registered for work;
2. A person must be physically and mentally able to work;
3. A person must be available for work; and
4. A person must have a monetarily valid claim.

Unemployment benefits are paid from revenue derived from a tax that is placed on each covered employer who has at least one person employed. Currently, each covered employer is required to pay a tax of 2.7% on the first $4,200 of each employe's salary.

An eligible individual will receive benefits for a maximum of 26 weeks from the state unemployment insurance program.

Certain groups of employers are not covered by the state unemployment insurance law. These employers include those engaged in agricultural and domestic employment and almost all state and local government employes.

Issue

The unemployment insurance issue confronting the 1978 General Assembly is the implementation of PL 94-566. This major legislation was enacted in October, 1976, and requires a revamping of state unemployment insurance laws. The effective date of this legislation for Kentucky is 1979. Severe penalties will be imposed on those states that do not implement this legislation.

Two major provisions of this legislation are:

1. Coverage is extended to:
   - Agricultural workers—coverage extended to agricultural labor for employers with ten or more workers in twenty weeks or who paid $20,000 or more in wages in any calendar quarter;
   - Domestic workers—coverage extended to domestic workers of employers who paid $1,000 or more in any calendar quarter;
   - Employees of state and local governments and nonprofit elementary and secondary schools—coverage extended to state and local government employes with the following exceptions: (1) elected or appointed officials; (2) members of a legislative body or the judiciary; (3) members of the State National Guard or the Air National Guard; (4) emergency employes hired in case of disaster; and (5) inmates in custodial or penal institutions.
2. The taxable wage base will be increased from $4,200 to $6,000.

Alternatives

There are no alternatives to this issue. The 1978 General Assembly must enact legislation that will put Kentucky in compliance with the federal requirements. If the federal legislation is not implemented, Kentucky stands to lose approximately $128 million annually. Currently, the federal government finances all administrative costs of the Bureau for Social Insurance for administering the unemployment insurance program. The federal government also grants tax credits to employers in the state. If Kentucky does not comply with the federal requirements, the federal money for these purposes will be withheld. This would result in double taxation on the employers in Kentucky to make up this cost.

For these reasons, it is imperative that the 1978 General Assembly enact legislation that will put Kentucky in compliance with PL 94-566.

Workmen's Compensation

Linda Bussell

Background

Kentucky's workmen's compensation law has been in effect since 1916. The purpose of workmen's compensation is to compensate employes and their dependents or survivors for injuries or death arising out of and in the course of their employment. KRS 342.630 and 342.340 require that each employer, including the Commonwealth of Kentucky, provide workmen's compensation coverage for their employes. An employer must choose one of two methods available to meet this requirement. He can either purchase workmen's compensation insurance through an insurance company, or he can qualify as a self-insurer by furnishing proof of financial ability to pay compensation directly to injured employes.

The majority of Kentucky employers maintain the required coverage of their employes by carrying workmen's compensation insurance through commercial insurance carriers. The rates charged by insurance companies in Kentucky are computed by the National Council on Compensation Insurance, a rating organization for insurance companies. Rating organizations operating in Kentucky are licensed and regulated by the Kentucky Department of Insurance. The Kentucky insurance rating law requires that rates must be adequate; that they cannot be excessive, inadequate, or unfairly discriminatory.

Rates for workmen's compensation insurance vary greatly, both by state and by industry within a state. Rates are usually expressed per $100 of payroll. Rates vary by work classification and a particular employer may have employes in several categories. For example, an automobile dealer would pay one premium rate for his salesmen, another for his mechanics, and still another for clerks and secretaries. The variation in rates by type of industry reflects the relative occupational hazard and the frequency of accidents in various industries.

Although the manual rates, calculated according to the experience of all industries of a particular type in a particular state, apply to most companies, a system of experience rating has been developed, which modifies the rate charged to a larger company to reflect its actual experience. For this reason, two companies, both engaged in exactly the same type of business, may pay quite different rates for workmen's compensation insurance. While the detailed methods of experience rating are rather complex, what it does, in effect, is weight the actual experience of a particular company with the overall experience of all companies engaged in the same type of business, the weighting depending upon the size of the company involved. A very large company pays a workmen's compensation rate based almost entirely on its own experience, while a smaller company pays a premium based in large part on the experience of its indusry.

KRS 342.340 provides that an employer can qualify as self-insured if he proves his financial ability to pay directly the compensation due under KRS Chapter 342. In this situation, the Workmen's Compensation Board requires the deposit of an acceptable surety, indemnity or bond to secure the payment of compensation liabilities as they are incurred.

Some believe that employers can realize substantial savings by being self-insured, as opposed to purchasing workmen's compensation insurance. Usually, only large employers are

self-insured. Generally, small employers have not been able to demonstrate to the Board sufficient financial ability to pay compensation directly to an injured employe. However, during the 1976 Extraordinary Session of the General Assembly, legislation was passed which allows groups of employers to join together to form group associations for the purpose of self-insurance. This was an effort to give smaller employers an opportunity to be self-insured.

Kentucky's workmen's compensation law has been the subject of much discussion in recent years.

The reason for this is that the costs of workmen's compensation have increased dramatically. Many reasons have been cited for the increased costs. A reason that is often cited is the 1972 amendments to the workmen's compensation law. Reportedly, these amendments resulted in a 39.8% increase in workmen's compensation insurance rates in January, 1973.

In 1976, two court decisions contributed to a 32.5% increase in rates.

In 1977, workmen's compensation increases totalling 28.5% have been approved. This increase resulted from two experience reviews of rates. However, current rates are 2.9% below what they were in December, 1976, as a result of HB 28 (1976 Extraordinary Session). HB 28 reversed a 1976 Supreme Court decision which contributed to a large increase in rates.

Despite the many reasons cited for the problems in workmen's compensation, employers maintain they are experiencing financial hardships and allege that economic development in the Commonwealth is being seriously threatened.

Issue

The issue is how the 1978 General Assembly will deal with the effects of the high costs of workmen's compensation on employers, insurance companies, consumers, and on economic development in Kentucky.

Alternatives

The 1978 General Assembly could consider two possible alternatives in an effort to reduce workmen's compensation costs. The first alternative is to appoint a study commission to rewrite the workmen's compensation law and the second one is to adopt a state fund for workmen's compensation.

The last time that Kentucky's workmen's compensation law underwent a major revision was in 1972. A resolution introduced in the 1970 Regular Session of the General Assembly, directed the Legislative Research Commission to make a study of the Kentucky workmen's compensation laws and report its findings and recommendations to the 1972 Regular Session of the General Assembly. A study committee was appointed and met during the 1970-1972 interim. Their efforts resulted in a major revision of Kentucky's workmen's compensation law. Two of the major changes were that eligibility requirements were liberalized and the length of time a disabled worker can receive benefits was increased from 425 weeks to the duration of the disability.

Many believe that the workmen's compensation law should be revised again. Proponents of another major revision contend that the current definition of "disability" is too broad, and, therefore, should be redefined.

It has also been suggested that the benefit structure needs to be revised so that totally

disabled workers receive greater benefits than those who are partially disabled. Another area of the law that many believe should be changed is the method of financing the special fund.

The concept of a state fund for workmen's compensation is growing in popularity throughout the state and the possibility of Kentucky adopting such a system has received much discussion.

A state workmen's compensation insurance fund is another means through which employers can cover their workmen's compensation liability.

Workmen's compensation state funds are either ''exclusive'' or ''competitive.'' When the system is exclusive, employers are required to insure their risks in the state fund and by no other means; if competitive, they may choose whether they will insure in the state fund, through a private insurance company,or qualify as self-insurers. Workmen's compensation state funds exist in 19 jurisdictions. In seven of these (Nevada, North Dakota, Ohio, Washington, West Virginia, Wyoming, and Puerto Rico), the system is exclusive, although under the laws of Ohio and West Virginia, employers are permitted to qualify as self insurers.

A major advantage often given for a workmen's compensation state fund is that it is cheaper, because workmen's compensation insurance is provided on a non-profit basis and the overhead expense ratio for a state fund is significantly lower than that of a private insurer.

Constitution And Elections

Means Of Alleviating the Crowded Ballot And The Frequency Of Elections

J. David Morris

Background

Every year is election year in Kentucky and increasingly the voter is confronted with a forbiddingly complex array of races and candidates spread out across the ballot. The burgeoning ballot is quite reasonably seen as a threat to the smooth functioning of the electoral process and as a reason for the increasing apathy on the part of the electorate.

The problem of the crowded ballot was made especially apparent to the voters of Jefferson County in the 1975 general election when paper ballots had to be used to supplement the voting machines. As a result of that situation, House Resolution 41 was passed by the 1976 General Assembly, directing that a study be made to investigate means to alleviate the crowded ballot.

The principal reason that the ballot has grown so unwieldy is that Kentuckians are called upon to elect a host of public officials on the state, county and municipal levels. There are so many elective offices because, when the present Kentucky Constitution was drafted, it was the popular conception that big business, not the people, controlled the government. In order to insulate government from corrupting influences, framers of the Constitution sought to put government back in the hands of the people by requiring most high offices to be elective. To prevent tampering by the legislature, the framers also included most of the offices in the Constitution.

The number of elective offices now pose a hindrance to responsible government. Besides the obvious problem of the crowded ballot, three other unfortunate results need to be mentioned:

1. The very number of contests to be decided confuses the average voter and distracts him from giving appropriate attention to all the races and issues on the ballot, so that most of the minor offices attract little attention and are usually decided by a minority of voters;
2. By having so many independently elective officers, the County Judge/Executive is limited in effectively running county government because he has little real control over the offices of the elected officials, even though he is perceived as being responsible for their actions; and
3. On the state level, the problem faced by the County Judge/Executive has been circumvented in many instances by removing duties and responsibilities from the Constitutional offices and transferring them to an office under the control of the Governor, leaving the Constitutional offices with less than full authority and responsibility in the areas to which they were elected.

Issue

The issue is: How may the size of the ballot be reduced? A secondary issue is: Should Kentucky continue to hold annual elections?

Alternatives

Although most elective offices are fixed in the Constitution, the General Assembly is given power to effect some elective offices, through legislation:

1. The office of Commonwealth's Attorney could be abolished, and the duties transferred to the County Attorney;
2. The offices of Sheriff and Jailer could be combined (as in Jefferson County);
3. The office of Property Valuation Administrator could be made appointive; and
4. Various municipal offices created by statute could be made appointive.

A Constitutional amendment is necessary to effect any significant reduction in the size of the ballot. Ideally, the Constitution would create only the most fundamental policy setting offices and the creation of any other offices would be left to the discretion of the legislature. The *Model State Constitution* provides only for the office of the Governor to be elective; however, in the *Report of the Constitution Review Commission*, 1950, it was suggested that the Governor, Attorney General, and Auditor of Public Accounts remain Constitutionally elective offices. By making most offices statutory instead of constitutional, flexibility would be gained, so as to make government more responsive to changing conditions.

Suggested amendments which would significantly reduce the size of the ballot include:

1. Longer terms for legislators,
2. The abolition of the vestigial Railroad Commission,
3. The election of the Governor and the Lieutenant Governor as a team,
4. The abolition of all elective officials whose duties are mainly administrative, and the substitution of positions appointed by, and responsible to the Chief Executive or the legislature.

Changes which would not necessarily shorten the ballot, but which might also be accomplished by amendment are:

1. Allow elective officials to succeed themselves,
2. Stagger the elections of representatives so that they do not all run for election in the same year.

House Resolution 41 also questioned the current practice of holding annual elections. Federal elections are held in even years. Kentucky is one of only three states which also hold elections in odd years. The advantages of biennial elections are patent. Not only would there be monetary savings, but perhaps voter fatigue and apathy would be lessened. As long as Kentucky has its surfeit of elective officials to contend with, however, biennial elections would only congest further the already crowded ballot, and concentration on national campaigns would even more seriously erode the attention paid to local campaigns.

Education

Amending the Rollback Law

Sam Sears

Background

In 1965 the Court of Appeals ruled that property tax assessments must be set at 100% of fair cash value. At that time the maximum property tax rate that could be levied without a vote of the people was $1.50 per $100 of assessed valuation and most districts' levies were at this maximum level. There were, however, wide disparities in assessment ratios. The rollback law which followed the court ruling directed that rates be established in districts which would limit the amount of revenue they could collect using the new assessments to approximately that which they had been collecting under the old assessment. An additional provision permitted a district to permissively increase its rate 10 percent in each of the following two years. Tax rates could not be increased beyond this except by referendum. As an end result, assessment ratios were substantially equalized while tax rates were disequalized. Districts which had high assessment ratios before the Court ruling realized relatively high tax rates and revenues and those with low ratios, lower rates and revenues. The rollback law, then, contributed to the wide disparity among per pupil revenues available in the state's school districts.

Issue

Should the rollback law be amended to permit school districts to raise their tax levies at their discretion so that more local revenue could be generated?

Alternatives

In considering amendment (or repeal) of the rollback law there are several alternatives which may be explored:

1. Repeal the law entirely, which would permit local school boards to raise their tax rates to the $1.50 statutory maximum at their discretion.
2. Amend the law to establish a mandatory minimum tax rate which would be applicable for all districts whose rates had not reached that minimum.
3. Amend the law so that districts could permissively raise their tax rates in order to take advantage of any Power Equalization Program funds appropriated.

Educational Accountability

Sam Sears

Background

Historically in Kentucky and throughout the nation educational accountability has been thought of in terms of easily identifiable and measurable input factors such as the number of teachers employed, course offerings, class size, number of library books, and the like. Close financial accounting has always been adhered to, especially since Kentucky's Minimum Foundation Program law was enacted in 1954. Accountability in terms of what student output measures (achievement, attitudes, and values) in relation to the resources utilized in the process, has become an issue of national, state, and local concern in the last decade largely due to the enormous sums of tax dollars expended for education. School systems are being asked to show the relationship between costs for school programs and resulting benefits in terms of student performance.

Accountability systems or parts of systems have been mandated by law in 31 states and many other states have some form of the accountability process in effect as a result of state board of education regulation. An accountability system generally consists of educational goals, learner objectives, comprehensive planning, program evaluation, management information system, assessment of student achievement, and some indication of cost (input) as related to student performance (output). Minimal competency testing and management by objectives are other accountability measures presently being utilized at state and local levels.

Issue

What accountability procedures will provide the legislature, citizens, and school systems with the most accurate information to help insure the highest quality education possible proportionate to resources utilized?

Alternatives

Kentucky presently does not have a total accountability system in operation. It does, however, have three parts of such a system planned or operating as a result of legislation, State Board of Education mandate, and state-local cooperative agreement: Educational goals are legislated as part of the Career Education Act of 1976; a Minimal Competency Testing Program is under development at the direction of the State Board of Education; and the Kentucky Educational Assessment Program is functioning as a cooperative effort of the State Department of Education in 134 school districts. These efforts are fragmented and do not form a total accountability system. They can be considered as beginning points which could be tied together with other accountability procedures to form a total system which would indicate the cost effectiveness of the educational system in Kentucky and provide districts with data for program improvement.

Possible alternatives for legislative consideration are:

1. Enact no accountability legislation and leave the further development of a complete system to the discretion of the State Board of Education to implement by regulation.

2. Enact legislation that is general in nature requiring that the Department of Education develop a comprehensive accountability system.
3. Enact legislation specifically defining the areas of a comprehensive accountability system which the Department of Education would develop.

Professional Negotiation For Teachers

Sam Sears

Background

Professional negotiation (PN) or collective bargaining between school boards and teachers is an issue which has been before the General Assembly for more than a decade. In 1972, a bill requiring school boards and teachers to negotiate if either party requested negotiations was passed by the General Assembly but was vetoed by Governor Wendell Ford. Other bills have been introduced in subsequent sessions, but none has passed. Within this one general issue, proponents have taken several alternative approaches to the question. These approaches have ranged from a very permissive stance, permitting school boards to establish by policy a formal mechanism providing for teacher input to the development of school programs and policies to mandated negotiation procedures including mediation, fact-finding, and binding arbitration.

Presently, there are no statutes which prohibit school boards and teacher representatives from bargaining in good faith if the board desires to initiate such action. A recent court decision upheld a board of education's right to institute such a process. However, there are only a few districts which have chosen to follow this course in order to elicit teacher input regarding aspects of school operation and teacher benefits.

The Kentucky School Boards Association (KSBA) and the Kentucky Association of School Administrators (KASA) have opposed mandatory PN legislation for the following major reasons: school boards are elected by the people and are responsible and accountable to them; boards would become less accountable and responsive to citizens if teacher groups were negotiated with and would become a barrier between the public and the board; PN would lead to erosion of public control of a state and locally provided service; boards levy taxes and formulate budgets through statutory requirements and limitations and bargaining on teacher benefits could reduce amounts of funds available for programming; costs of PN would come from public funds reducing amounts available for educational programs; basic reason for PN is teacher welfare benefits and not improved service; public sector is not comparable to private sector in that it has no competition for services and public cannot go elsewhere for services if a work stoppage occurs; and teachers already have state mandated benefits, including tenure and job security, which private sector employes must bargain for. The KSBA and KASA do, however, support cooperative action between boards and teachers through voluntary efforts on the part of both.

The Kentucky Education Association and various labor affiliated teacher groups support PN because: Teachers want the right to be heard in a systematized orderly manner; teachers are frustrated when they are not given the opportunity to provide input on policy and programs; tenure is an individual matter and not a collective one, and boards have statutory provisions for removing an individual teacher; teachers are professionals and have knowledge as to how and under what conditions children learn and expertise in how to provide classroom activities related to various programs; and teachers want the opportunity to provide input and not be told by someone in authority that they know better what is needed. The KEA opposes teachers being included in any collective bargaining legislation applicable to all public employes because they are professionals requiring years of study and the issues they want to ad-

dress are not solely directed at benefits alone but include overall board policy for the operation of the schools.

Issue

Should the General Assembly enact legislation which would require local boards of education to enter into professional negotiation (PN) procedures with teachers?

Alternatives

There are several alternatives for consideration of possible legislation:

1. Enact no legislation and leave the matter in the hands of local boards and teachers as the situation now exists;
2. Legislation which would mandate that each board develop policy and procedures for teacher input, leaving the content of such policies and procedures to the discretion of the board of education;
3. Legislation which would mandate PN between boards and teachers and specify the areas to be included for negotiations; and
4. Legislation which would mandate negotiation and apply to all public employes, including teachers.

Power Equalization

Sam Sears

Background

The intent of Kentucky's Foundation Program is to equalize educational opportunities of the children of the state. This intent is substantially carried out with funds encompassed by the Foundation Program. These funds now come from state revenue entirely through General Fund appropriations to the program including a state levied property tax of thirty cents in all school districts and are distributed on a equalized basis. There are, however, other funds used to support education which are not equalized. These are local funds, essentially from property taxes, in excess of the thirty-cent state levy and are leeway funds which are used by districts to enrich their programs beyond the provisions of the Foundation Program. The amount of leeway money a district has for enrichment is dependent upon the district's assessed valuation per pupil and its leeway tax rate. There are wide disparities in both of these among the districts of the state.

The District Power Equalization Program enacted by the 1976 General Assembly provides that funds appropriated for the program will be distributed at an equal rate per district and will bring equal amounts of revenue to the districts, with the state making up the difference between what that levy actually produces and what it would produce if the assessment per child were equal to that of the wealthiest district. If a district's general levy leeway rate is not at the level supported by the Power Equalization rate it can only be raised by referendum in order for the district to benefit from the program. The General Assembly appropriated $10,500,000 for the Power Equalization Program for the 1977-78 school year. This appropriation equalized leeway rates at approximately a 5-cent level.

Issue

Should the Power Equalization Program continue to be funded in increased amounts to further equalize leeway rates?

Alternatives

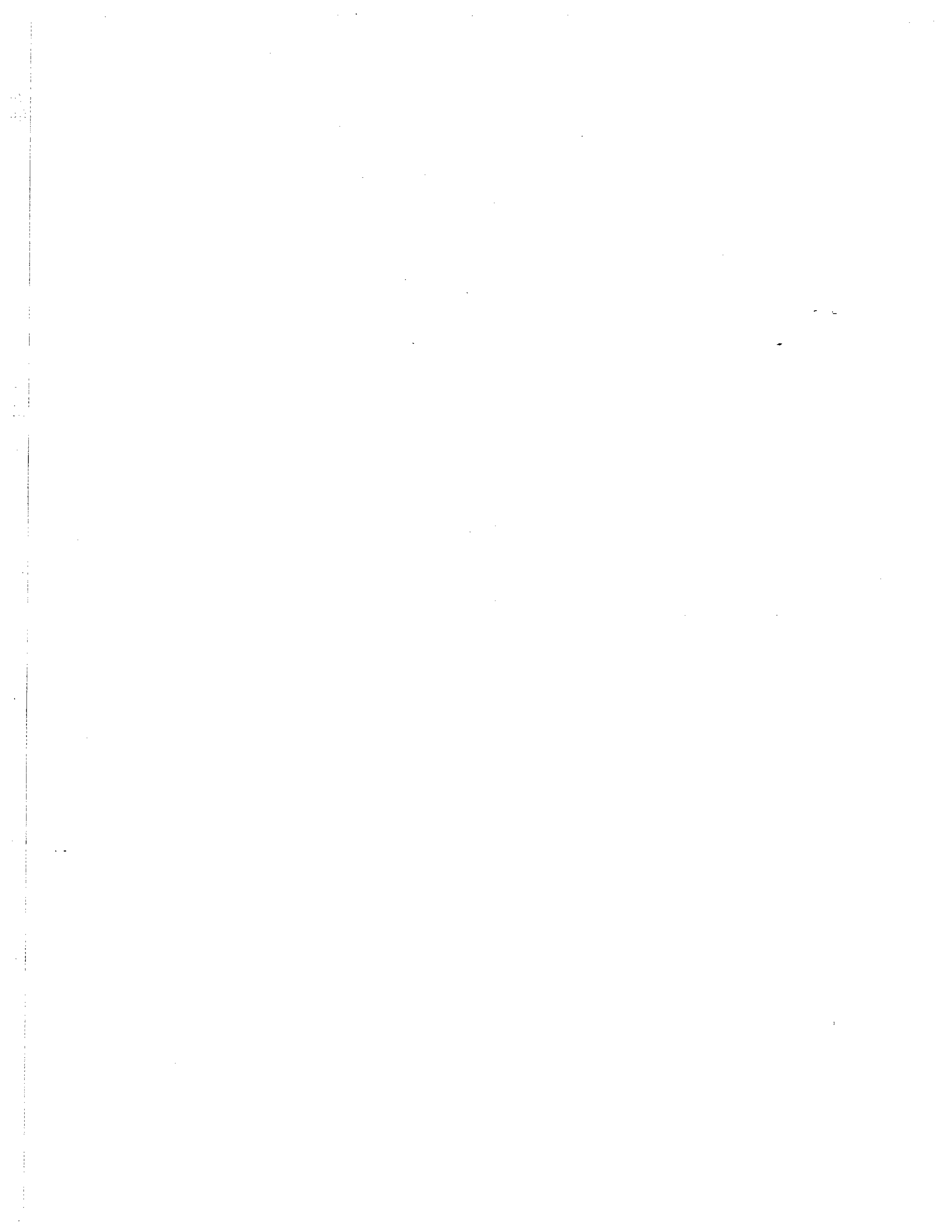
The maximum general school levy (non-voted) is statutorily set at $1.50 per $100 of assessed valuation. Prior to the 1965 Court of Appeals ruling relating to fair cash value assessment, most districts were at this limit. There were, however, wide disparities in assessment ratios among districts. The result of the Court ruling was that all assessment ratios more nearly approached the 100 percent level and became more nearly equal. But the "rollback" law which followed the Court ruling directed that compensating rates be established in districts that would limit the amount of revenue they could collect using the new assessments to approximately that which they had been collecting under the old. As a result, assessment ratios were substantially equalized while tax rates were drastically disequalized. Those districts with high assessment ratios before the Court ruling and rollback law found themselves with relatively high tax rates afterwards, and vice versa. The effect of these factors was to continue to disequalize funds available to the districts for enrichment of the Foundation Program.

The General Assembly, by enacting the Power Equalization Program, has further in-

dicated its intent to equalize the educational opportunity for every child in the state regardless of the wealth of the district in which he attends school.

Three alternatives are apparent concerning the efforts the state is making as it moves toward equalization:

1. Amend the Power Equalization Program and rollback laws to permit school districts to raise their tax rates without referendum to take advantage of funds appropriated to the program.
2. Fully fund the Power Equalization Program, with appropriate amendments of the Power Equalization Program and rollback laws, which would essentially equalize all per pupil expenditures for the state.
3. Leave the statutes as they now are written prohibiting districts not having a tax rate high enough to qualify for Power Equalization funds from increasing their tax rates except by referendum.



Environment

Radioactive Waste Disposal

Brian Kiernan

Background

Kentucky first became involved in radioactive waste disposal in 1963 when, with the assistance of the state, a commercial low level burial site was located at Maxey Flats in Fleming County. The burial site chosen was a 250-acre tract of land 10 miles north of Morehead and 53 miles northeast of Lexington.

It seemed reasonable to Kentucky's leaders at the time that a state which had a nuclear waste burial site would in all probability be an attractive location for an industrial nuclear facility. It appeared that nuclear energy in the early 60's offered a golden opportunity for the Commonwealth to become a major industrial state. It was thought that nuclear power might do for Kentucky what TVA had done for Tennessee.

A shallow land nuclear burial site is similar to a sanitary land fill. The main difference is that a sanitary land fill extends over a wide area and usually builds up over the existing land level while a nuclear burial site employs trenches. At Maxey Flats the trenches generally range from 150 to 680 feet in length, 10 to 75 feet in width, and 9 to 30 feet in depth. The method of disposal is known as "dump and roll;" the waste is dumped in the trench and the soil is rolled over it. When the trench is full a layer of soil is mounted and compacted and seeded over the top.

From 1963 to 1972 the Maxey Flats disposal site operated with little publicity or interest and indeed most citizens of the Commonwealth were probably unaware of its existence. In 1972, the Radiation Control Branch of the then Department of Health during the course of its monitoring activities, detected measured increases in the level of off-site radioactivity. These measurements set in motion a number of studies by the state and the U. S. Environmental Protection Agency, Nuclear Regulatory Commission and the U. S. Geological Survey. It was determined that there had been unsatisfactory disposal procedures carried out at the site and as a result there were major management changes implemented by the commercial operator of the site, the Nuclear Engineering Company.

The release of radiation off site in 1972 at Maxey Flats coincided with a perceptible change in public acceptance of nuclear energy. Prior to that time, the public had accepted the planned expansion of nuclear power almost without question. Since that time, there has been a general drift in public opinion away from supporting nuclear power and although today a majority of Americans are still supportive there is now strong opposition.

By 1976 serious concern was being voiced about the public health hazards of Maxey Flats. The residents of the area had formed a Radiation Protection Association with the goal of closing the site permanently. The Kentucky Environmental Quality Commission turned its view on Maxey Flats and concluded that the site should be closed until the state could assure the public that there were no health hazards. Governor Julian M. Carroll stated on CBS national news in January 1977 that he wanted to close the site. The 1976 General Assembly was sufficiently concerned about nuclear waste disposal to pass a joint resolution setting up a special advisory committee to study the matter. The committee issued its final report in October 1977 (*Research Report No. 142*, Legislative Research Commission).

Late in August 1977, the Nuclear Engineering Company informed the Kentucky Department for Human Resources that radioactivity seepage had occurred on the site. This was the first incontrovertible evidence that radioactivity could migrate in a subsurface manner. It was determined that the migration had been on-site only, and no hazard to the public health was found. By the end of September 1977, a preliminary agreement between the Commonwealth and the Nuclear Engineering Company was negotiated to close the site for two years. It was stated that the purpose of the two-year closure was to allow time for tests and monitoring to be conducted so that a determination can be made as to the long-term safety of the site.

Issues

There are two basic issues concerning the Maxey Flats nuclear disposal site: (1) Does the site currently pose a health hazard and if not will it do so in the future; and (2) if the answer to issue (1) is yes, should the Commonwealth permit the additional burial of nuclear waste at the site?

Comment

The disposal of nuclear waste is a very complex matter involving both difficult technical and political considerations. At a national level, the disposal of nuclear waste is one of the nation's most pressing problems and without a satisfactory solution it is most likely that our future energy problems will be greatly compounded.

The special advisory committee has presented to the legislature a comprehensive report with a substantial number of findings and recommendations. Perhaps its most important finding was that the decision to locate a nuclear burial site at Maxey Flats was a mistake for geological and hydrological reasons. The committee also acknowledged that eight separate studies have concluded that by current standards Maxey Flats presents no significant public health hazards to the people living in the vicinity of the site. It was, however, most disturbed by the fact that no independent expert is willing to give assurances on the potential long-range impact of radioactive contamination at Maxey Flats. The committee went on to make a number of recommendations to improve the operation and monitoring at the site.

By 1976 approximately 4½ million cubic feet of waste had been buried at the site and if burial were to continue to the maximum capacity of the site an additional 20 million cubic feet would be buried. A basic issue therefore is that, already knowing that the site location decision currently presents problems, is it reasonable and rational to continue to bury waste?

A unique factor of the radioactive waste disposal issue is that for all practical purposes there is no immediate solution to the problem. The site already contains a substantial amount of waste, some of which will remain radioactive for 250,000 years, and short of digging the entire site up and disposing of it elsewhere in the U. S. the material will remain in Kentucky. Thus, no action taken now can completely resolve the issue.

Another facet of the issue is the matter of the financial aspects of the disposal site. A recent study has estimated that an escrowed account of between $5 million and $11 million is

necessary to provide for perpetual care and maintenance of the site. Currently only $250,000 is in a fund to provide for future care. If the site is closed obviously the Commonwealth will be subjected to significant annual expenditures (approximately $100,000) through the foreseeable future, unless the federal government can be persuaded to take over responsibility for perpetual care and maintenance. In this context, it can be noted that over 99% of the waste buried at Maxey Flats was not generated within Kentucky. Thus, Kentucky has made a substantial contribution to the expansion of the nation's nuclear power program without apparently receiving any significant benefits.

Surface Mining

Brooks H. Talley

Background

On August 3, 1977, the Federal Surface Mining Control and Reclamation Act of 1977 was enacted. The new federal law regulates the surface mining of coal for the first time from the national level. Legislation similar to this law has been debated in Congress for the last decade. The federal law will have a very substantial, direct impact on Kentucky law, the coal industry, and the state's environment. The new law establishes national standards for surface coal mining and reclamation. It also provides for the reclamation of abandoned (orphan) coal mined land to be paid from a 35-cent fee per ton on surface mined coal and a 15-cent fee per ton on underground mined coal. If a state does not enforce the federal standards, the law provides for enforcement by the U. S. Department of Interior. In order to assume exclusive jurisdiction in the enforcement of the new program and to qualify for orphan land funds, Kentucky law and regulations must be made to conform with the new federal law.

Issue

What changes will be required to bring Kentucky law into compliance with the new federal legislation?

Alternatives

In order to assume exclusive jurisdiction over enforcement and qualify for orphan land funds, Kentucky's surface mining law and regulations must be as stringent as the federal law. Some changes which will be required to meet federal standards are the following:

1. Prohibit the placement of spoil over the outslope on slopes greater than 20 degrees;
2. Require restoration of the mined land to its approximate original contour, with the exception of the mountaintop removal method of mining;
3. Restore the mined land to an equal or better use;
4. Prohibit highwalls;
5. Require the segregation of topsoil;
6. Protect the existing hydrologic balance at the mine-site and associated offsite areas;
7. Require successful revegetation for five years;
8. Permit mining on prime farm lands only under specifications for soil removal, storage, replacement, and reconstruction;
9. Require a planning process which will designate those areas unsuitable for surface mining;
10. Control coal waste piles in accordance with the Corps of Engineers' standards; and
11. Require insurance to provide for personal injury and property damage protection.

Solid And Hazardous Waste

Peggy Hyland

Background

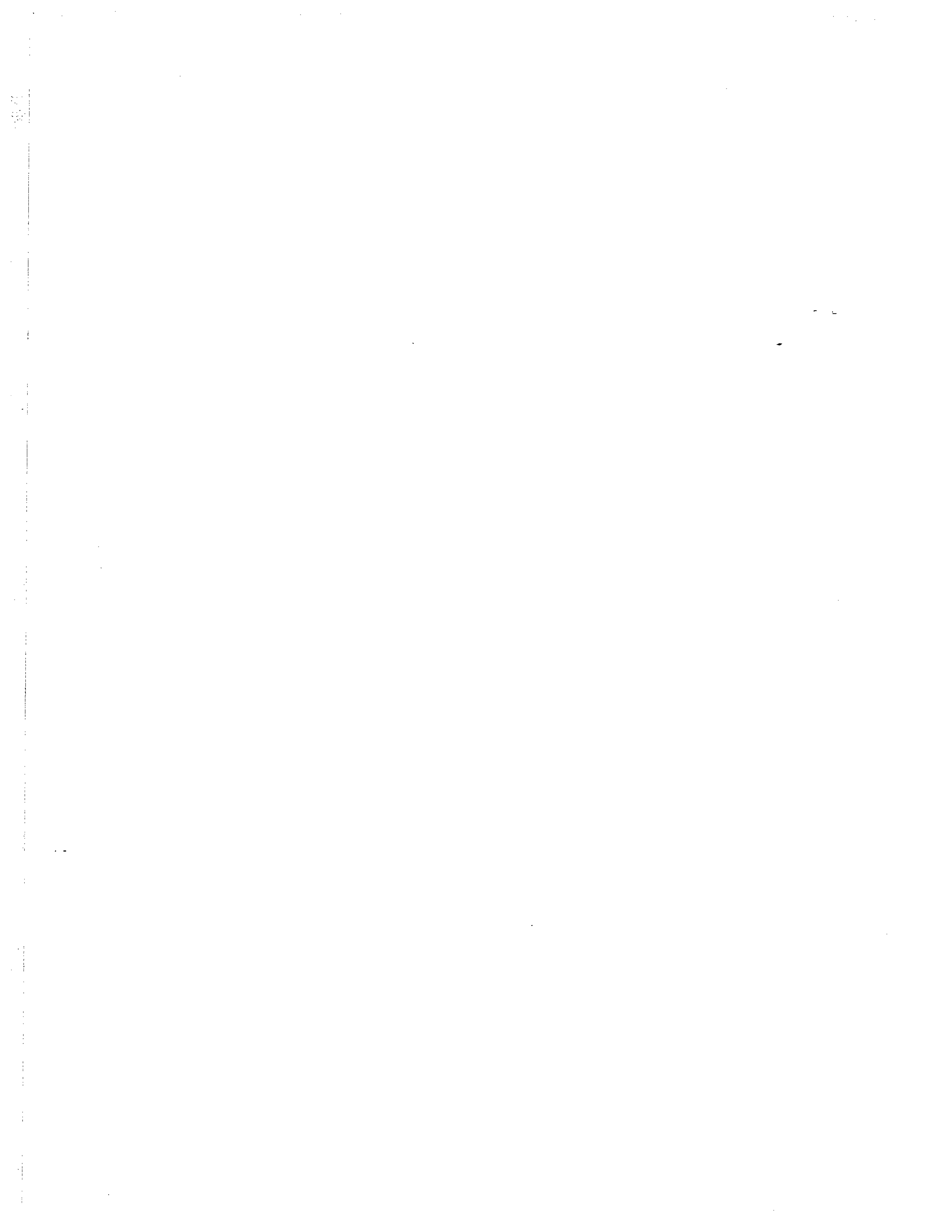
The problems of solid waste and hazardous waste are of local, state and national concern. The federal Resource Conservation and Recovery Act of 1976 (PL 94-580) has mandated the development of solid waste management plans by the states. In addition PL 94-580 sets up a procedure by which the states can assume administration of the program for regulating the production, transportation, storage, treatment, and disposal of hazardous wastes. In light of some of these needs, and with impetus from the legislative branch, the Governor established on August 2, 1977 a Commission on Solid Waste. The Commission is charged with conducting a "comprehensive study and review of the field of solid waste management and the complex ramifications therein" and to "review and submit legislation to implement any hazardous waste program" required by PL 94-580 or promulgated by EPA.

Issue

What statutory additions or changes are necessary to allow for implementation of a comprehensive solid waste progam for Kentucky in the future and for the administration of a hazardous waste program?

Alternatives

The Commission on Solid Waste has constituted four subcommittees to look at these phases of a solid waste program: collection, transportation and facility siting; resource recovery facility operations; litter abatement; and education and enforcement. The role of public works programs as integral parts of a solid waste management plan is also being considered. Recommendations as to state alternatives in these areas will very likely be presented to the General Assembly. Legislative needs relative to the administration of a hazardous waste program will include the following: authority to permit the generation, transportation, storage, treatment, and disposal of hazardous substances (authority to require self monitoring by those agents involved with hazardous substances); authority to require performance bonds; mechanisms for spill prevention and accurate reporting of spills; and provisions for civil and criminal penalties.



Health And Welfare

Abortion

D. W. Swain

Background

The recent United States Supreme Court rulings (rendered June 20, 1977) pertaining to abortion affect the role of the states in the funding of abortions under State Medicaid programs. These rulings held:

1. States may participate in the Medicaid program, under Title XIX of the Social Security Act, and pay for expenses incident to childbirth while not reimbursing for non-therapeutic abortion *(Beal v. Doe; Maher v. Roe).*
2. A city may elect to use public funds for childbirth without also providing for non-therapeutic abortions *(Poelker v. Doe).*

On October 1, 1976, Judge John Dooling of the Federal District Court, Brooklyn, New York granted an injunction against the U. S. Department of Health, Education, and Welfare, preventing the enforcement of the Hyde Amendment to the 1976 Labor-HEW Appropriations Act. The Amendment prohibited the use of federal funds for abortion unless the pregnant woman's life was endangered. When the U. S. Supreme Court rendered the *Beal v. Doe* and *Maher v. Roe* decisions it vacated Judge Dooling's order and on August 4, 1977 Judge Dooling dissolved the injunction. On the same day, the U. S. Department of Health, Education, and Welfare transmitted by mailgram to all state agencies the following information:

- "There will be no federal financial participation in the cost of any abortions after August 4, 1977, unless the attending physician has certified that the abortion is necessary because the life of the mother would be endangered if the fetus were carried to full term."

Kentucky's Medical Assistance Act is found in KRS 205.510 to 205.610. KRS 205.560(1) states:

- "(1) The scope of medical care for which the Department for Human Resources undertakes to pay shall be designated and limited by regulations promulgated by said Department, pursuant to the provisions thereof."

Kentucky Administrative Regulations (904 KAR 1:009 and 904 KAR 1:015) relating to Kentucky's Medical Assistance Program only specifically authorize payments for physicians and outpatient services; the Department for Human Resources has utilized these regulations since they became effective in 1975 to make payments for non-therapeutic abortions.

Kentucky's reaction to the U. S. Supreme Court decisions on abortion:

On June 24, 1977, the Secretary of the Department for Human Resources requested an opinion from the Attorney General "whether or not the department may discontinue payment under Title XIX (Medicaid) for abortion services during the first trimester of pregnancy for eligible recipients of the program?" The Attorney General's opinion issued on June 28, 1977, concluded that the Department for Human Resources could continue payments for non-therapeutic abortions under the Kentucky Medical Assistance Act, citing the rule of *Beal v. Doe*. The Attorney General's Opinion also concluded that since the Department has been making payments for non-therapeutic abortions under the Medical Assistance Act and the regula-

tions adopted thereto, and the legislature did not speak to the issue in the intervening sessions, "whether such payments should be discontinued is a decision properly addressed to the General Assembly to be resolved in a legislative enactment."

The Kentucky agency ceased Medicaid payments for elective abortions for indigent women in August, 1977, due to the directive from the U. S. Department of Health, Education, and Welfare. A letter, dated August 15, 1977, to doctors, hospitals, and family planning clinics throughout Kentucky and signed by the Commissioner of the Bureau for Social Insurance and the Director of the Medical Assistance Program stated:

- "No abortion procedures performed on (Medicaid) recipients after August 4, 1977, will be reimbursed with federal monies by the Kentucky Medical Assistance Program, unless documented and certified by a physician that the procedure was necessary to prevent endangerment to the life of the mother."

On July 27, 1977, the Interim Joint Committee on Health and Welfare adopted a resolution calling upon the Governor and the Secretary for Human Resources to direct that the use of public funds for abortions, other than those medically indicated as being required to save the life of the expectant mother or where a pregnancy was the result of rape or incest, be prohibited at once.

On September 30, 1977, the 1976 Hyde Amendment expired. As of this writing, the use of federal funds to pay for abortions remains unresolved in Congress. The House of Representatives voted to prohibit the use of federal funds to pay for abortions except when the mother's life is in danger, while the Senate has voted to bar the use of federal funds for abortion except to save the life of a pregnant woman, or where medically necessary, or for the treatment of rape or incest. The Senate has twice rejected the House version and the House has rejected the Senate version once.

Issue

What are the limits of utilizing public funds to pay for abortion?

Alternatives

In accordance with the Department of Health, Education and Welfare directive, the Kentucky Medical Assistance Program does not make payments for abortion procedures except where the life of the mother would be endangered if the fetus were carried to full term.

Any action taken by the Congress in this area would, of course, impact on the state's options.

In the meantime the General Assembly could elect to:

1. Enact no legislation governing the use of state funds to pay for abortions under the Kentucky Medical Assistance Program since legislation is currently pending in the U. S. Congress and any legislative enactment by the General Assembly could exclude the Commonwealth in the future from receiving matching federal funds;
2. Enact legislation specifying that state funds for abortions provided under the Kentucky Medical Assistance Program could only be used if the attending physician certifies that the abortion is necessary because the life of the mother would be endangered if the fetus were carried to full term;

3. Enact legislation prohibiting the use of state funds to pay for non-therapeutic abortions under the Kentucky Medical Assistance Program; and
4. Enact legislation which would provide for reimbursement from the state general fund for abortions under any or all of the following conditions:
   - When the attending physician certifies that the abortion is necessary because the woman's medical history provides sufficient reason to conclude that a pregnancy carried to full term would jeopardize the woman's physical health.
   - When the attending physician certifies that the woman's medical history provides sufficient reason to conclude that a continued pregnancy would result in a greater than normal likelihood that the baby would be born deformed or mentally retarded.
   - When there appears to be sufficient reason to believe that the pregnancy is the result of rape or incest if the incidents are reported to authorities.
   - When the attending physician certifies that a woman's continued pregnancy would endanger her mental or physical health.

Financial Assistance For The Poor And Elderly To Pay Fuel Costs

Linda Kubala

Background

The cost of fuels for home heating and cooking—electricity, natural gas, oil, propane, coal—have increased dramatically during the past few years. These rising costs have caused concern for the plight of Kentucky's poor, and particularly the elderly poor, who are least able to absorb higher expenses. During the severe winter last year many persons on fixed incomes were unable to pay their utility bills, which in some cases exceeded their monthly income. Utilities agreed not to disconnect customers for nonpayment of bills until spring. Later in the year federal Crisis Intervention funds were provided to pay delinquent fuel bills on a one-time basis. These programs do not address the continuing problem of many on low fixed incomes who cannot afford the higher cost of heating their homes. Some form of ongoing assistance may be necessary.

Issue

Should Kentucky provide financial assistance to the poor and elderly to pay fuel costs and if so, what is the most appropriate method of providing this assistance?

Alternatives

Several methods of providing financial assistance are available, and have been tried or considered by other states.

1. Lifeline rate structures would provide a minimum quantity of gas or electricity to customers at a low rate, and charge higher rates for consumption greater than the lifeline quantity. These rates would assist frugal energy users, and would benefit many but not all low income users.
2. Energy stamps patterned along the lines of food stamps have been suggested as a means of assisting needy households. Such a program would be expensive but assistance would be limited to those in actual need.
3. Some companies offer plans whereby the customer can average his payment over the year, avoiding high winter fuel bills. President Carter's energy proposals included a requirement that all gas and electric utilities offer such a plan.
4. A currently popular idea would be to remove the sales tax from fuels and electricity for residential use. This would reduce everyone's fuel bill by 5%, but would cost the state an estimated $27 million. Alternately, the sales tax could be removed only from the bills of the elderly households which meet specified criteria.

Funding For Neonatal Intensive Care Programs

Dianna McClure

Background

Funding of Neonatal Intensive Care Programs for sick newborn infants in the Commonwealth first became an issue during the 1976 Regular Session of the General Assembly with the introduction of House Bill 613. It would have appropriated $1.5 million for each fiscal year of the 1976-78 biennium to the Neonatal Intensive Care Unit at the University of Kentucky Medical Center for the purpose of increasing the capacity of the unit from 17 beds to 45 beds. The bill was amended in the Appropriations and Revenue Committee to redefine the appropriation as an amount not to exceed $3 million for fiscal year 1977-78, from funds accruing as a result of surplus in official revenue estimates as of June 30, 1977. Although the bill, as amended, was reported favorably from Appropriations and Revenue, it was recommitted to the State Government Committee where it died.

Subsequent to the 1976 General Assembly, Governor Julian M. Carroll made a special allocation of $70,142 for equipment and renovation and U. K. made two special allocations at the governor's request totaling $653,576. These special allocations enable the Neonatal Intensive Care Unit in the University Hospital to expand its bed capacity in fiscal year 1978.

In July, 1977, representatives of the University of Cincinnati Medical Center appeared before the Interim Joint Committee on Health and Welfare to express their concerns regarding the number of sick newborn infants Cincinnati hospitals were caring for due to the shortage of beds in the eastern portion of Kentucky and primarily at the U. K. University Hospital. The physicians presented a number of problems: (1) tertiary care is currently provided for one-half of the infants requiring this care in Eastern Kentucky, with the U. K. University Hospital providing tertiary care for one-third of the infants requiring tertiary care in the region; (2) admissions from Kentucky to Intensive Care Nurseries in Cincinnati have increased to 20 percent of the total admissions; (3) the mortality rate for infants admitted from Eastern Kentucky to the Intensive Care Nurseries in Cincinnati is double that for all other infants admitted to this unit; and (4) mortality increases only slightly with increasing distance from Cincinnati but is significantly related to the travel time.

As a result of the testimony presented by the Cincinnati physicians, the Committee requested that representatives from the University of Kentucky, University of Louisville, and the Department for Human Resources appear before the Committee to discuss their efforts to resolve the problem.

In August, 1977, Representatives from the University of Kentucky and the University of Louisville in turn provided the Committee with data concerning the following major problem areas:

1. The hospitals (Louisville General, Norton-Children's, and the U. K. University Hospital) currently providing tertiary care to critically ill newborns in Kentucky

are averaging from 95 to 100 percent occupancy rates in their neonatal intensive care units.

2. There is a need for funding to establish more Intermediate (Secondary) care beds in Kentucky hospitals in order that a regional network of such beds may be available to infants who no longer need tertiary care in the three major hospitals (Louisville General, Norton-Children's and the U. K. University Hospital) providing that level of care.
3. Since precious hours may be spent in attempting to locate a hospital with bed space available for a critically ill newborn in addition to the travel time required to transport the newborn from remote Kentucky counties to the hospital, additional sophisticated life support vehicles are needed in the Commonwealth.
4. Medical care costs for families with a critically ill newborn can be enormous. Even many families with insurance cannot afford to pay for the complete cost of care. Hospitals treating critically ill newborns are incurring large "bad debts" because of the inability of most families to pay for the complete cost of care and the fact that the Kentucky Medical Assistance Program only pays for 21 days of inpatient hospitalization while many infants require inpatient stays beyond the 21 days of coverage.
5. Hospitals in the surrounding states of Ohio, Tennessee, and Indiana are frequently accepting and paying for the cost of care of sick newborns who are not admitted to Kentucky hospitals due to overcrowding in these facilities. Kentucky could have an even greater crisis if these states were to refuse to continue to care for Kentucky's sick newborns.

A representative of the Maternal and Child Health Division in the Department for Human Resources stated that the division is currently spending 45 percent of its budget on perinatal services. They plan to request $1.2 million per year for the next biennium for in-hospital intensive care. The request would include the following:

- $560,000 to support 6 outlying intermediate care centers that are already in some phase of development;
- $130,000 each for the development of two new intensive care centers in the state; and
- $780,000 for 6 additional intensive care centers.

The representative stated that the department is interested in the regional concept and is working closely with both universities. In response to a question regarding the amount of dollars needed to solve the sick newborn funding problems in the Commonwealth, the representative stated that $4 million per year would be needed.

Issue

It has been estimated that 4% of all U. S. newborn infants will require Tertiary Neonatal Intensive Care in a regional medical center. In 1976, there were 55,247 births in Kentucky. Applying the 4% formula to the number of births in 1976, it is estimated that approximately 2,200 newborns in Kentucky required Tertiary Neonatal Intensive Care services.

In Kentucky, the 1976 overall perinatal mortality rate was 19.7 per 1000 total births. The accepted U. S. overall perinatal mortality rate is 16.0 per 1000. The provision of tertiary care reduces mortality rates for the severely ill newborn and reduces morbidity rates for cerebral palsey and mental retardation. It has been estimated that a dollar spent on prenatal and neonatal care will pay off 10 to 1 in savings on programs and facilities for the handicapped.

For the first six months of 1977, the length of stay for sick newborns at the U. K. University Hospital was 18.3 days with an average cost of $220.46 per patient day. Thus, at this one facility the average cost to the family of one sick newborn was $4,034. In addition, it was estimated that 53 percent of the Neonatal Intensive Care Unit patients at U. K. were medically indigent. For the state as a whole, it has been estimated that approximately 60 percent of the sick newborns have inadequate, or no insurance, or no third party payments to cover the total cost of care.

Thus, according to testimony provided to the Interim Joint Committee on Health and Welfare, the following funding needs exist for the Commonwealth as a whole at the tertiary and intermediate care levels:

1. Payment for the cost of care provided by tertiary and intermediate care units to critically and moderately ill newborn infants who are medically indigent because they have inadequate insurance coverage, or no insurance, or are not eligible for third party payments, or have extended beyond Medicaid's 21 days of coverage for inpatient hospitalization;
2. Payment for the development of a regionalized network of intermediate (secondary) beds for moderately ill newborns; and
3. Payment for the development and maintenance of a transport system of sophisticated life support vehicles for critically ill newborns who need to be transported from their home community to a facility providing Tertiary Care.

In addition to the tertiary and intermediate care funding needs existing throughout the Commonwealth, representatives of the U. K. University Hospital provided statements of need for the renovation and expansion of neonatal and obstetric services within the University Hospital. The expansion in the number of NICU beds has seriously crowded the space available for obstetric service. Because of a 98 percent average occupancy rate in the obstetric service, on the average of twice a month the unit is closed to all admissions and once a month the unit must be closed because there are no neonatal beds to take care of the sick newborns that can be expected. In addition, there is a need to locate all beds for sick newborns on one floor of the University Hospital. The beds are currently located in four different areas of the hospital.

Alternatives

At this time, data has not been provided to the Interim Joint Committee on Health and Welfare as to the total amount of unreimbursed patient care costs for all facilities in the Commonwealth providing tertiary and secondary levels of care, or the proposed cost of developing a statewide regionalized network of intermediate care beds, or the proposed costs of developing and maintaining a statewide transport system for critically ill newborns.

However, data has been provided to the Committee as to the special funding needs of

the U. K. University Hospital as previously mentioned and the funding needs of the hospitals in Jefferson County and the western part of the state.

As a result of the testimony provided to the Committee, a motion was adopted and a letter was sent requesting Governor Carroll to fund adequately the Neonatal Intensive Care programs in the 1978-80 Executive Budget. The Governor was provided with the statements of need listed below as presented by the specified individuals.

1. University Hospital at the University of Kentucky—Dr. Otis A. Singletary, President of the University of Kentucky, in explaining plans for expanding neonatal and obstetrical services in the University Hospital:
   - "The short-term plan is to consolidate onto one floor the neonatal service. This would require renovation of existing waiting rooms, offices, etc. The estimated cost will be $317,190. This will allow more efficient use of our existing staff in the care of critically ill babies. The adequacy of space in our labor and delivery area would be temporarily solved by renovating existing space, expanding the unit to provide for two additional delivery rooms. The estimated cost to renovate and expand this area is $306,432."
   - "The longer term goal is to build an additional wing on the hospital to house inpatient and outpatient psychiatry. The estimated cost of this addition will be $6,000,000. The existing space now occupied by psychiatry would be renovated to expand our neonatal bed capacity to 50 beds and obstetrical beds to 35. The estimated cost to renovate this area is $750,000."
2. Hospitals in Jefferson County and the Western Portion of Kentucky—Mr. Wade Mountz, President, Norton-Children's Hospital declared that $1,500,000 to $2,000,000 annual financing is needed for all facets of intensive newborn care for Western Kentucky:
   - "One-half million is needed for capital expansion to accommodate a two-way network of referrals from Intermediate (Secondary) Care centers in the western part of the state to the Tertiary Care Center at Norton-Children's and to return the infants to the Intermediate Care centers when their condition has improved. Essentially, the one-half million dollars would be used for capital expansion for intermediate care beds in the western part of the state and would not be used for beds at Norton-Children's. (An agreement is currently being worked out among health care personnel to expand the number of Intermediate Care beds and facilitate the two-way network.) As of the first week in October, a line item budget should be available as to the precise number of intermediate care beds needed.
   - "The remainder of the requested funds would be used for two purposes. First, to provide care relief for all medically-indigent families with sick newborns (insured and non-insured, and Medicaid recipients who have extended past the 21 days of inpatient hospitalization coverage). Second, to pay for life support transportation vehicles required to transport the sick newborns. The precise figures as to the number and cost of these vehicles will also be available as of the first week in October."

Laetrile

Richard D. Willis

Background

Laetrile is the name that Ernst T. Krebs, Jr., gave to the chemical compound that he derived from his father's apricot extract in 1950. Since that time, Laetrile has been the subject of such a diametrical controversy that it is very difficult to ascertain any undisputed facts about the substance. The basic reason for this controversy is that Laetrile allegedly is effective in the treatment of the disease that Americans fear most: cancer.

When Krebs and his associates first used Laetrile to treat cancer, they were able to distribute and administer it legally as an experimental drug. However, the legal status of Laetrile changed with the 1962 amendments to the federal Food, Drug and Cosmetic Act. These amendments required the Food and Drug Administration (FDA) to evaluate new drug applications and to decide affirmatively that a drug is safe and effective before it is marketed or used in clinical experiments on humans. Because Laetrile had not been approved by the FDA as a new drug before these amendments became effective, its distribution in interstate commerce and its use in humans is prohibited.

The advocates of Laetrile have submitted several applications to the FDA; however, each time the applications were rejected as incomplete as the FDA concluded that they contained insufficient scientific evidence on the safety and effectiveness of the drug. After meeting repeated defeats at the federal level, the Laetrile advocates adopted a state-by-state legalization strategy. Due to our federal system, it is possible for a state to legalize a drug for intrastate commerce even though it is prohibited in interstate commerce. This approach met with limited success until this spring when Laetrile emerged as a very controversial issue in more than half of the state legislatures. At this time, a total of twelve states have legalized Laetrile and it is still a live issue in several others. Nevertheless, the FDA has remained adamant in its opposition to Laetrile and the FDA Commissioner recently concluded that it is toxic and that there is no evidence that it is effective in treating cancer.

Issue

The basic issue for the General Assembly is whether it should legalize Laetrile in Kentucky. At this time it is prohibited because the statutory responsibility of the Department for Human Resources is to follow the FDA's directives in drug regulation. Consequently, the legalization of Laetrile would require a specific statute exempting Laetrile from some or all of the existing statutes on drug regulation.

Alternatives

If the General Assembly decides to legalize Laetrile, there are several alternatives that could be pursued. Five states have adopted laws similar to Alaska's which provides protection for physicians who treat patients with Laetrile. This law only permits the prescription and administration of Laetrile, it does not legalize the manufacture, distribution, or sale of the substance. A second alternative is the approach adopted by Indiana and five other

states—legalization of the manufacture, distribution, sale, and use of Laetrile under a physician's prescription. The third alternative is being considered in Ohio: legalization of the manufacture, distribution, sale, and use of Laetrile without the prescription requirement.

The Laetrile issue is discussed in greater depth in *Information Bulletin No. 124* of the Legislative Research Commission.

Long Term Care

Bruce Simpson

Background

Long term care refers to one or more services provided on a sustained basis to individuals whose functional capacities (mentally and/or physically) are chronically impaired. Traditionally, long term care has been thought of in conjunction with our elderly population. However, there are a significant number of nonelderly persons who need long term care in the Commonwealth today.

Long term care services vary and can best be viewed along a continum of care. Long term care services range from a home delivered "meals-on-wheels" program to a skilled nursing facility that provides 24 hour a day nursing services. There are intermediate care facilities which provide nursing services to those persons who need nursing care, but not to the level which is given by skilled nursing facilities. Finally, there are residential facilities such as family and personal care homes which generally provide custodial services or not much more than room and board.

Home health agencies are an important part of the long term care continuum in that they provide skilled nursing services to people in their own homes and thereby help prevent unnecessary institutionalization. Caretaker and homemaker services similarly can be utilized to provide assistance to a person in his or her own home and also help to keep the individual out of an institutional facility.

Most health professionals in the long term care field agree that keeping people in their own homes should be the long term care service priority. Unfortunately, there are many individuals who are placed into long term care facilities (commonly referred to as nursing homes, at least at the personal, intermediate, and skilled nursing levels of care) simply because there are not sufficient and appropriate "in-home" services available or they have nowhere else to go.

During the 1976-1977 Interim, a subcommittee of the Health and Welfare Committee was created to assess the status of long term care facilities as a long term care service alternative. This subcommittee made 22 unannounced tours of nursing homes at the personal, intermediate and skilled levels of care across the state. Approximately one hour was spent in each facility visiting and talking with patients, nurses, aides, and nursing home administrators.

In addition, much time and effort was spent collecting and analyzing data that pertained to nursing homes. The research performed by this subcommittee was approved by the Legislative Research Commission to be incorporated into a study.

Issue

There are several important issues relative to long term care in Kentucky. Among the most important of them is deciding what kind of long term care services are most appropriate and should be made available to our citizens. Presently, the state's and federal government's long term care service priority is directed toward long term care facilities as opposed to helping maintain those persons who need long term care in their own homes.

There are related long term care issues. These include: (1) the adequacy of the monitoring performed by state and federal regulatory agencies over nursing homes and other long term care facilities; (2) the adequacy and reasonableness of state and federal reimbursement policies to nursing homes for those nursing homes which provide care to public assistance recipients; (3) the quality of care given by nursing homes and other long term care facilities to their residents; (4) the adequacy of the personal rights which residents of nursing homes and other long term care facilities currently have; and (5) the adequacy and reasonableness of federal and state statutes and regulations that pertain to nursing homes and other long term care facilities.

Alternatives

The Subcommittee on Long Term Care of the Interim Joint Committee on Health and Welfare arrived at several recommendations that address the present long term care service delivery system in Kentucky. Some will require administrative action by the Department for Human Resources while others will have to be acted upon by the General Assembly. Four of them are noted below:

1. The Department for Human Resources should ascertain the health care status of the residents in Kentucky's nursing homes for the purpose of collecting data to make decisions about the appropriate kinds of long term care services that are needed by these citizens of the Commonwealth. Until this is done on a statewide basis, a long term care policy for Kentucky will be almost impossible to develop.
2. The Department for Human Resources should study the feasibility of establishing an Office of Long Term Care which would have the power to coordinate all of the long term care related programs in the Commonwealth. The present organizational response of state government to long term care is fragmented and unproductive.
3. The Department for Human Resources should ascertain how many residents in nursing homes and other long term care facilities could remain in their own homes if appropriate in-home services were available.
4. The General Assembly should enact a residents' bill of rights that would be clearly defined, effective, and uniform for all levels of long term care facilities. Presently, there is no such document.

Needs of Children

Sam Sears

Background

In past years many recommendations as to how the needs of Kentucky's young children could be better met have been made by various study commissions, White House Conferences on Children, task forces on children, and legislative committees. Some of the most recurring needs reported from various study groups in recent years have been the need for statewide coordination of children's services, the need for better health services beginning with the prenatal period, the need for all families to have an adequate level of income, the need for more and better child care services for working parents, the need for increased educational opportunity, and the need to provide more support for preserving the family unit. National studies have frequently pointed out many of the same needs for children throughout the nation. Even though new programs offering services to children have been established and are functioning at the present time, most are not reaching the total population they are designed to serve and are offering no services to children who fail to meet eligibility requirements.

The House Resolution 40 Interim Study Committee on Children in its report of August 1977, which included a report of a public hearing involving citizens, professionals in child health, education, and welfare, representatives from child advocacy groups, voiced essentially the same needs and recommendations as have been expressed by groups in previous years.

Since services to children are delivered by a myriad of cabinets, bureaus, divisions, programs, and sub-programs, all of these study groups have noted that such fragmentation of services contributes to a less effective effort to serve children, causing serious gaps in service delivery. Therefore, the major recurring theme of coordination of services and the development of a comprehensive statewide plan for child development has been stressed.

Issue

What type of statewide agency or mechanism should be established to coordinate children's services and to facilitate the most efficient use of available resources?

Alternatives

Several alternative plans for the development of more efficient delivery of services to children are found in state and national reports and are stressed in the Education Commission of the States various publications produced by its Early Childhood Project.
The following are four general types of offices in operation in various states.

1. Interagency Council—A council composed of the heads of executive agencies which deliver services to children. These councils usually are responsible to the governor of the state and serve in a coordinative capacity.
2. Office of Child Development located within the governor's office and responsible to the governor or a designated staff member.
3. Office of Child Development established on a similar level with other top level executive agencies.
4. Office of Child Development located within an existing executive agency.

Offices of child development or interagency councils may vary in methods of establishment, in funding sources, and in designated functions. Offices may originally be established by executive order of the governor or by legislation, and funding sources may vary from the governor's contingency fund to combinations of state and federal sources. The most common functions are the coordination of services, the development of a statewide children's plan, child advocacy, and the provision of information and technical assistance to state and local agencies. Other functions may include review of state agency budgets and administering and/or operating programs for children.

Physician Manpower

L. Michael Greer

Background

The supply of physicians in Kentucky has improved over the past ten years. In 1967, Kentucky ranked 42nd among the states in the ratio of physicians to population. In 1975, Kentucky had advanced to 38th, but it does not appear to have gained on the national ratio.

While the supply of physicians is improving, the distribution of physicians is getting worse. The trend is for physicians to practice in urban areas, areas of high population and high per capita income, leaving many rural areas medically underserved. Recent studies show that all or parts of 103 counties are medically underserved and all or parts of 52 counties have been designated critical shortage areas by the Department of Health, Education and Welfare.

Issue

What can be done to create a better distribution of physicians and provide adequate medical services to all areas of Kentucky?

Comment

Research shows that less than 50% of Kentucky medical school graduates since 1970 are currently practicing in the state. One of the primary reasons for this is a shortage of residency positions in Kentucky. Site of residency has been recognized as possibly the most important factor in physician location with up to 80% practicing in the state in which they do their residency training. Each year at least 25% of Kentucky's graduates must go out of state for residency training.

The 1976 General Assembly passed SB 28 which creates 76 residency positions each year to stop the exportation of physicians. For a number of reasons, SB 28 has not been implemented at its full level. There is also the question of continued funding for these positions. Other approaches to retaining physicians have been discussed. Colorado has enacted a law requiring dentists to practice in-state a year for each year they attend dental school or pay back the full cost of their education. This approach is being seriously considered for physicians in several states including Kentucky.

Research indicates that medical school graduates from a rural area are more likely to return to a rural area and practice. Yet the preponderance of medical students are from urban areas. Medical schools in other states have started giving special attention to site of prior residence on admissions. Another approach being given consideration in Kentucky is to structure admissions committees so that rural interests are adequately represented. It has also been suggested that medical schools be more aggressive in recruiting rural applicants.

Another incentive has been scholarships for medical students agreeing to practice in a rural area. Several such programs have been operational in Kentucky with varying success. The most successful programs have been those which selected recipients from rural areas only.

Recruitment of physicians to rural areas has not been generally effective. This is primarily because local communities are not well versed in recruitment techniques. There is a

need for a coordinated, statewide recruitment effort involving both local communities and the medical schools.

It must be recognized that a balanced distribution will not be achieved in a short period of time and that regardless of the efforts made, some areas will still have a shortage. Many contend that the void can be filled by the certification of paraprofessionals to provide medical services. Kentucky currently does not recognize paraprofessionals, physician assistants and nurse practitioners.

The physician manpower issue is a complex one with no singular solution. It must be addressed in many areas for effective results.

Insurance

Cancellation Or Failure To Renew Insurance Policies Because Of Age

William H. Raines

Background

At its regular monthly meeting on February 9, 1977, the Legislative Research Commission noted that automobile insurance non-renewals and cancellations had become a severe problem in Kentucky. The Commission referred the problem to the Interim Joint Committee on Banking and Insurance for consideration and possible solution.

A number of members of the Interim Joint Committee on Banking and Insurance reported they had received a significant number of complaints from citizens sixty-five years of age or older that the companies with which they carried their automobile insurance were failing to renew their policies even though they had not been involved in an accident or cited for a moving traffic violation. As a result of the companies' failure to renew, these citizens are being forced to obtain insurance through the assigned risk pool at a significantly higher premium. If they are unable to pay the higher premium, they must either not drive or drive without insurance coverage.

Issue

Should the General Assembly consider legislation to promote the availability of automobile insurance to persons sixty-five years of age or older?

Alternatives

KRS 304.20-040 governs the cancellation of automobile liability insurance policies, and enumerates permitted reasons for cancellation: for nonpayment of premiums or suspension or revocation of drivers' license or motor vehicle registration. A policy thus cannot be cancelled because of age.

The non-renewal of automobile insurance policies because of age can probably be addressed effectively through legislation prohibiting an insurer from refusing to renew a policy solely on the basis of age, requiring the insurer to notify the policyholder of its intention not to renew, and in all cases its reason for not renewing.

The General Assembly has the option of including in the legislation a provision against discriminatory rates on the basis of age. Such a provision would prevent insurers from charging older policy holders excessively high rates.

Insurance Services Office

Gary W. Luhr

Background

The Insurance Services Office of Kentucky is an industry-funded insurance organization which "rates" cities' fire protection capabilities for its member companies. The companies, in turn, use the ratings in setting fire insurance premium rates.

For more than two years the Interim Joint Committee on Cities has heard complaints from local officials about ISO. The complainants contended that ISO investigators often were arbitrary and dictatorial in evaluating cities' fire protection capabilities and in recommending improvements. The recommendations often required cities to pay for costly new equipment and facilities, the critics said.

During an investigation of ISO's Kentucky operations by a legislative subcommittee, ISO officials testified that their inspectors followed specific, published guidelines in evaluating fire protection systems. They also said that their ratings were only one of many factors used by insurance companies in setting insurance rates.

Issue

What action, if any, should the 1978 General Assembly take to alleviate local officials' complaints about ISO?

Alternatives

The Commissioner of Insurance has authority to review ISO ratings and mediate disputes between ISO and local officials, though testimony before the subcommittee indicated that this authority was rarely used. The General Assembly may wish to take steps to inform local officials of their rights under existing law.

The Cities Committee voted to prefile a bill (78 BR 84) which would establish a seven-member board appointed by the Governor to review ISO ratings and carry out duties similar to those vested currently in the Insurance Commissioner. The committee also voted to prefile a bill (78 BR 94) which would require local fire departments to report all fire calls to the Commissioner of Insurance and require the Commissioner to keep a record of all insured fire losses exceeding $500. This would provide a record, other than the loss record which insurance companies must provide, against which to judge cities' fire protection classifications and fire insurance rates.

Medical Malpractice Insurance

Bruce Simpson

Background

Medical malpractice insurance is professional liability insurance which protects a health care professional against liability for improper or negligent treatment of a patient. Obtaining adequate coverage of medical malpractice insurance at a reasonable price has been difficult for health care professionals, particularly for physicians and hospitals, over the past several years.

Many observers attribute the various problems of obtaining medical malpractice insurance to the courts. In recent years, courts have awarded exceedingly high settlements to patients and relatives of patients. These awards have been in the thousands of dollars and some in the millions of dollars. Subsequently, many insurance companies that have provided medical malpractice coverage to health care professionals have withdrawn from the market due to this high risk. Those companies continuing to write medical malpractice policies have also increased their premiums up to 200 percent in the last several years.

The 1976 General Assembly addressed the medical malpractice insurance dilemma by enacting SB 248 and SB 249. The most important provision of SB 248 was the creation of a patient's compensation fund that would: (1) provide medical malpractice insurance for all physicians and hospitals above $100,000 per occurrence and $300,000 in the aggregate for all claims in any one year up to a total of $1,000,000, or, as an alternative qualify as a self insurer; (2) require every physician and hospital to be a member of the fund and thereby pay an annual prorated assessment into the fund. All physicians and hospitals were also required to have medical malpractice insurance providing coverage for $100,000 per occurrence and $300,000 per aggregate per year; and (3) rely on the general fund of the Commonwealth as a reserve should the monies in the patient's compensation fund be exhausted.

Senate Bill 249 created a Joint Underwriting Association (JUA) which would collectively pool the funds of liability insurance carriers in the state to provide medical malpractice insurance. Under SB 249, the Commissioner of the Department of Insurance is granted the authority to establish a JUA, after appropriate hearings and investigations have determined that medical malpractice insurance cannot be made available in the voluntary market.

Almost one year after SB 248 went into effect, the Kentucky Supreme Court ruled major portions of this Act unconstitutional. The Supreme Court upheld a Franklin County Circuit Court decision which said (1) it is unconstitutional to require all physicians and hospitals in the Commonwealth to have medical malpractice insurance; and (2) the general fund of the Commonwealth cannot be used as a reserve for the patient's compensation fund should its funds be depleted. The provisions of SB 249 were not in question.

Thus, today physicians and hospitals in Kentucky must individually, if they choose, buy medical malpractice insurance above $100,000 per occurrence and $300,000 per aggregate per year. Previously, this insurance was purchased through the patient's compensation fund. Needless to say, hospitals and physicians are very much concerned about the potential costs of this coverage.

Issue

There are actually several issues which emerge in regards to medical malpractice insurance. First of all, there are many questions surrounding medical malpractice itself. Does the increase in medical malpractice suits which has occurred during the past few years indicate that physicians and hospitals are becoming more negligent in their work? Or, does it mean that patients and their families have unrealistically high expectations about the performance of physicians and hospitals?

Also at issue is whether or not society as a whole can afford the high settlements which are granted to some individuals. Physicians and hospitals freely admit that increases in their medical malpractice insurance premiums are in turn passed along to the consumer. At the same time, what right does society have to restrict victims of medical malpractice from pursuing their right to seek whatever compensation they deem justified? These are only some of the many questions which make medical malpractice a controversial and most difficult issue to resolve.

Alternatives

There have been multiple and complex proposals developed to find an equitable solution to the medical malpractice insurance problem, all of which have met with varying degrees of success and failure. Three of the most often discussed recommendations are noted below.

1. Group Self Insurance Program—This program involves a group of health care professionals (such as hospitals or doctors) voluntarily forming their own insurance company. They would pool their collective funds into a reserve fund to pay for any malpractice claims that might occur. Policies would be issued to the different members and premium rates would be based on the respective member's previous claims experience in malpractice. A major inhibiting factor of this approach is that the initial capitalization requirement to form the necessary reserve fund is often very costly to the individual members.
2. Limiting Awards in Malpractice Settlements—Some states have enacted statutes which place limitations on the amount which a plaintiff may receive in a medical malpractice claim. While this proposal would insure health care professionals of a limit to their financial liability, it would at the same time restrict a claimant's right to obtain what he or she believes to be just compensation. It would also probably be unconstitutional in Kentucky.
3. Arbitration of Disputes—This concept could involve screening panels which are pretrial devices designed to eliminate a nonmeritorious claim from the court system. Arbitration could also involve voluntary, binding agreements between the health care provider and the patient which would be entered into prior to treatment. Under this agreement, the patient would waive his right to court disposition of his complaint and agree to have the case settled by an arbitration board. The arbitration arrangement is said to be less costly to both the patient and the health care provider as a result of not going to court. However, observers have questioned whether this approach is constitutional because of due process requirements.

No-Fault Insurance

William H. Raines

Background

No-fault automobile insurance became a part of Kentucky insurance law with the enactment by the 1974 General Assembly of the Motor Vehicle Reparations Act. The Act became effective July 1, 1975. Under its provisions, any person who registers, operates, maintains or uses a motor vehicle on the public roads of Kentucky is deemed to have accepted no-fault coverage unless he files with the Department of Insurance a written rejection on a form provided for the purpose by the department. Opponents of the no-fault concept argue that a motor vehicle owner or registrant should be required to positively accept no-fault coverage rather than being deemed to have accepted it unless he executes a written rejection.

Under the Act a person who sustains personal injury as a result of an automobile accident cannot sue in tort for general damages unless his medical expenses exceed $1,000 or his injuries result in a permanent disfigurement; fracture of a weight bearing bone; a compound, comminuted displaced, or compressed fracture; loss of a body member; permanent injury within reasonable medical probability; permanent loss of a bodily function; or death. Some supporters of no-fault insurance law urge that the law be amended by increasing the dollar threshold, or by eliminating the monetary requirement and enacting a verbal threshold. Such an amendment would tend to discourage malingering and would eliminate the effect of inflation.

An owner or registrant of a motor vehicle in Kentucky is required to maintain security as defined in the Act as a prerequisite to operating or permitting the operation of the vehicle in the Commonwealth. Under the Act there are no provisions for the enforcement of the requirement, and it is reliably estimated that 40% of the vehicles in Kentucky are being operated without the security required by the Act.

Proponents of no-fault insurance argue that it provides a partial solution to problems involving the personal injury portion of automobile insurance, as a retardant to ever increasing insurance premiums for automobile insurance, and as a more efficient and more equitable system for reimbursing people injured in automobile accidents. They are of the opinion that inflation has been responsible for the increase in automobile insurance premiums.

Opponents of the no-fault concept seek to reserve the election provision by amending the law to require a vehicle owner to positively request no-fault coverage. They further maintain that no-fault insurance tends to increase, rather than reduce, automobile insurance premiums. Finally, they argue that the restrictions on an individual's right to sue in tort for personal injury is violative of the constitution.

Issue

Should Kentucky's Motor Vehicle Reparations Act be repealed or amended?

Alternatives

1. Repeal the Motor Vehicle Reparations Act and return to the fault concept.
2. Amend the existing provisions governing election, and require a motor vehicle owner or registrant to request no-fault coverage. It is contended that such a requirement would give a more accurate evaluation of the public's preference.
3. Amend the threshold requirements which must be met to entitle a person who sustains personal injury as a result of an automobile accident to sue in tort for general damages. The requirement that the injured person must have incurred medical expense in excess of $1,000 could be repealed, leaving a verbal threshold, i.e. a description of the injuries which a person must have sustained before being entitled to sue in tort. The injuries described in the present law are set out above.
4. Amend the present law by including provisions for the enforcement of the mandatory security requirements of the law.

Qualification And Licensing Of Insurance Agents

Gregory Freedman

Background

Members of the Kentucky General Assembly have been informed that some insurance agents are engaging in acts of dishonesty and incompetency. One example given was the selling of an insurance policy which the agent never delivered to the insured because the company was not authorized to sell insurance in Kentucky. Since in most cases the insurance agent is the public's only contact with the insurance company and the insured depends upon the competency of an agent to provide adequate insurance to protect him against loss, it is important that the licensing requirements for insurance agents are both effective and enforced. House Resolution 87 of the 1976 Kentucky General Assembly directed that a study be made of the qualifications and licensing of agents. LRC Research Report No. 131, *Insurance Agents: Licensing and Regulation*, was published in compliance with that directive. After the Subcommittee on Insurance reviewed the study, it submitted its report to the Interim Joint Committee on Banking and Insurance on August 18, 1977.

Issue

Should the licensing and qualification of insurance agents be upgraded?

Alternatives

The Subcommittee recommended that the qualifications and licensing of insurance agents could be upgraded by various means. The eight recommendations of the subcommittee are:

1. KRS 304.4-010(11)(f) should be amended to raise the fee for study materials for agents' examinations from $5 to $10. KRS 304.9-180 also should be amended to require that the study materials and agent exams be revised yearly if necessary and the study materials should be in looseleaf form. This recommendation is necessitated by the fact that the study manuals were published in 1971 and are outdated. For almost two years the general lines insurance manual did not explain the no-fault law to those persons who were preparing to be licensed to sell no-fault automobile insurance. The property and casualty exam is five years old and does not test the applicant on no-fault auto insurance. This recommendation would provide the Department with funds to revise the manuals and exams on their own or contract with an outside organization to provide testing services.
2. A life insurance company program of training for temporary licensees under KRS 304.9-300(1)(f) should be deemed inadequate unless 66% of its temporary licensees pass the written exam for a permanent license. A program deemed inadequate shall not be allowed to be qualified for one year. This recommendation would curtail the present abuse of the temporary license program evidenced by

the fact that during 1976 only 46% of the temporary licenses later passed the exam for a permanent license.

3. All applicants for an insurance agent's license should be required to have a high school degree or its equivalent.
4. All applicants for an agent's license should be required to successfully complete a course of study approved by the commissioner, consisting of at least 40 hours of classroom training, prior to taking a written exam.
5. A person who acts as an insurance agent without being licensed should, upon conviction, be fined not less than $100 nor more than $1,000 or imprisoned for a term not to exceed three months, or both. There should be added to the fine the amount of any insurance commission paid or received as a result of the violation or violations in question. Each transaction should be regarded as a separate offense.
6. KRS 304.9-440 should be amended to authorize the commissioner to impose the prescribed sanctions at an informal conference if the agent waives his right to a hearing and signs an agreed order.
7. An applicant for an agent's license should be required to demonstrate that he is financially responsible by (a) filing a certificate with the commissioner showing that he has a legal liability insurance policy providing coverage of $10,000 for a single occurrence and $50,000 for all occurrences within one year, or (b) depositing with the commissioner cash or cash surety bond in the sum of $10,000, or (c) having an insurance company or group of affiliated insurers file with the commissioner an agreement whereby the insurer or insurers agree to assume responsibility for the legal liability of a licensed agent for erroneous acts or failure to act in his capacity as agent in the sum of $10,000 for any single occurrence. The commissioner shall suspend the license of any agent who fails to comply with one of the three options.
8. Amend KRS 304.6-040(3)(d) so that no additional reserve would be required of a company solely for contingent liabilities which may arise under any agreement for the assumption of liability of its agents.

Law And Justice

Child Pornography

William B. Neuhaus

Background

Within the past year or so a great deal of attention has been focused on a new aspect of the multibillion dollar pornography industry—child pornography. Approximately 264 magazines, many of them produced in this country, and a great number of films as well, feature children as young as three years old in indecent poses and perfomances. The minors who participate may be the children of the magazine and film producers, or may be recruited from the estimated 1,000,000 runaways who leave American homes each year.

In response to these productions, which a prominent psychiatrist has characterized as "highly destructive to children," both the federal government and a number of states have enacted or are in the process of enacting child pornography legislation.

Issue

The chief question for legislators revolves around how tightly drawn child pornography legislation must be in order to comply with the free speech provisions of the United States Constitution.

Alternatives

Kentucky already has a number of penal statutes which address, with varying degrees of specificity and severity, the sexual exploitations of children. Also, Kentucky has a rather extensive anti-obscenity statute (KRS Chapter 531) which follows closely the U. S. Supreme Court's definitive pronouncements in the 1973 case of *Miller v. California*, 413 U. S. 15, which, essentially, permitted the states to regulate what is called "hard core"pornography. Kentucky does not, however, have a specific child pornography statute.

Recent child pornography legislation has varied from state to state. The key distinction among them is the kind of production or material in which the minor's participation is allowed. The proposed or enacted legislation of some states (such as Tennessee, Connecticut, North Carolina, South Carolina, Illinois, California and Ohio) would merely forbid the use of minors in the production of materials which reach the Supreme Court's definition of obscenity in *Miller*. Others (such as North Dakota, Rhode Island and New York) would go further and, in the name of the state's special role as guardian of minors, punish activity (such as simple nude posing) which may not amount to hard core obscenity in the *Miller* sense. This latter approach is in line with that advocated by the Odyssey Institute of New York, which has done extensive work in the area of sexual exploitation and which has produced a model statute.

Court Facilities

Pat Hopkins

Background

Beginning January 2, 1978, the entire Court of Justice, including the Supreme Court, the Court of Appeals, 56 Circuit Courts and 113 District Courts, will begin to function as a unified judicial system for purposes of operation and administration. Providing facilities for these courts is an immediate and pressing problem.

The Supreme Court and its clerk are housed in the Capitol Building. The Court of Appeals Chief Judge and clerk are housed in the Bush Building in Frankfort, along with the Administrative Office of the Courts. The 56 Circuit Courts and clerks are housed in county court houses throughout the state. The 113 District Courts are house-hunting.

The most pressing problems relate to the District Courts, although some problems also confront certain circuit courts. Section 113(1) of the Kentucky Constitution requires that district court be held in every county. Section 120 of the Constitution requires that all necessary expenses of the Court of Justice be paid out of the State Treasury. KRS 26A.100 requires that circuit and district court be held in the county courthouse; if that is impossible, then court shall be held in property owned, leased or controlled by the county. If the county determines that it cannot provide "reasonably available space," then the courts seek space from the following sources: (1) city, (2) other governmental agency, (3) the private sector.
The facilities that must be provided are:

- Courtroom or courtrooms for the circuit and the district court;
- Chambers for circuit and district judge or judges;
- Office space for the circuit and district court staffs;
- Facilities for the circuit clerk's operations;
- Jury facilities for the circuit and district courts;

Utilities, other than telephone service, and janitorial service are considered an adjunct to the provision of space (KRS 26A.100).

Issue

How to provide facilities in each county to hold court?

Alternatives

1. Publicly owned facilities. Traditionally, room has been provided in the county courthouse, or county-owned property, to hold circuit and county court. It was expected that these facilities would remain available. In some instances, these facilities have so remained. In other instances, while these facilities are available, they are inadequate—for reasons of crowded conditions, public safety or public health. For instance, in one county, there is no plumbing in the courthouse. In other counties, the courthouse has burned or been condemned. In still others, there is actually no available room for new judges. Following the statutory mandate, the courts must then attempt to find housing in facilities owned by the city or by other governmental units. So far, the availability of such facilities has

proved to be extremely limited.

2. Privately owned facilities. The courts have searched for privately owned facilities. Suitable buildings have been found in some areas, but in other areas, such as Pike County, there is literally no property available for lease.
3. Modular construction for emergency use. The AOC is seriously considering purchase of modular courtrooms for emergency use. These mobile units would be placed on state-owned property and used until permanent facilities become available. These units could then be moved to other counties for use in emergencies.
4. A long-range alternative is a plan for a State Court House Authority to evaluate and classify space and to renovate and construct proper facilities. The seed money for the program would be generated from a percentage of the filing fees. Bonds could be issued to be repaid from filing fees. Obviously, the problem here is the need for money to obtain adequate facilities in every county. The legislature must decide how much money can be appropriated for immediate needs and by what means permanent court facilities can be obtained.

Juvenile Justice

Edith Schwab

Background

According to a recent article in *Time Magazine*, more than one-half of all serious crimes in the United States are committed by youths aged ten to seventeen. These include murder, rape, aggravated assault, robbery, burglary, larceny and motor vehicle theft.

When a juvenile offender is caught, he is taken to juvenile court. In certain cases, if the child is suspected of having committed a felony, the court may, after a hearing, transfer the case to circuit court. Often, even if the child has committed a serious crime, he is placed in a correctional institution for a short period of time, usually a few months. Sometimes he is sent home before the expiration of his term. Part of the reason the juvenile is held in a correctional institution for a very short period of time is that there are insufficient funds to keep such offenders in correctional institutions for an adequate period of time.

The 1966 F.B.I. report indicates that during that year alone, 70,000 teachers were assaulted in the schools of the United States. The cost of vandalism in schools for that same year was $600 million. Due to the severity of the crimes being committed by juveniles today in terms of life and monetary values, the juvenile courts are having an increasing amount of difficulty in handling the problem.

Issue

How is society to be protected from the violent young? If a child commits what would be classified as a crime, if the act were commited by an adult, does he deserve adult treatment?

Alternatives

The Jefferson County Attorney's Office brought the seriousness of the situation to the attention of the Interim Joint Committee on Judiciary—Statutes at its final meeting. The committee chairman created a special subcommittee to consider alternatives to the present system and to make recommendations to the 1978 Regular Session of the General Assembly.

Some of the recommendations being considered are amendments to the juvenile code to exclude serious juvenile offenders from the jurisdiction of juvenile court (since the juvenile court would have no jurisdiction, there would be no waiver hearing problem); to allow the county attorney's office discretion as to whether a case should be transferred from juvenile court to circuit court; and to determinate sentencing for juveniles being tried as adults.

Transfer of Issuance Of Drivers' Licenses

Pat Hopkins

Background

Since 1934, circuit clerks have acted as licensing agents for the state-administered system of regulation of motor vehicle operators. The clerk collects a fee for each license issued. He retains part of the fee and returns the rest to the state.

The judicial article and implementing legislation have increased the duties of the circuit clerk immensely. The circuit clerk becomes a state employe, paid wholly from state funds, within the Court of Justice under the administrative control of the Chief Justice. At the same time, the office of the county clerk will have a reduced workload due to withdrawal of all judicial functions from the county judge. The county clerk presently issues all other state licenses which are locally issued.

Issue

From which local office should motor vehicle operators' licenses be issued?

Alternatives

1. Leave licensing with circuit clerk;
2. Transfer issuance to county clerk.

If transfer to county clerk is made, centralization of all state licensing in one county office would result in added convenience to the public. Administrative advantages include the reduction of the cost of implementing a planned computer-based licensing system and greater flexibility in administering licensing programs. Under the present fee structure, most counties would gain excess fees, since licensing has been a revenue-producing function and most county clerks already produce excess fees.

Other effects of such transfer include the fact that circuit clerks would lose their primary access to the public other than through their court related functions. Also, the transfer would necessitate training of county clerks to issue drivers' licenses and might require additional personnel. On the other hand, personnel for the circuit clerk's office could be lessened, thus reducing the state payroll.

Uniform Accident Reporting

James R. Roberts

Background

The Kentucky General Assembly passed a Uniform Accident Reporting Law during the 1974 regular session. The statute requires that all law enforcement agencies report accidents in their jurisdiction to the Department of Justice in Frankfort. The statute also places the responsibility of maintaining a reporting system with the Bureau of State Police. A problem has developed due to a number of other agencies not reporting information accurately or not reporting information at all. The information generated by this accident reporting system is used also by the Kentucky Department of Transportation enabling them to analyze accidents and assess the need for and priority of road improvements.

Issue

Should the Uniform Accident Reporting Law be amended to insure the availability of accident data and promote coordination on the use of this information by the Bureau of State Police and the Department of Transportation?

Comment

The implementation of the Uniform Accident Reporting Law remains a problem due to reporting requirements and the lack of solid coordination between uses of this information. Obtaining accurate information from the local offices responsible for reporting accidents also has been a persistent problem. Data analysis and reporting techniques is a program introduced by the Arizona Department of Transportation designed to aid in analyzing and evaluating state accident data.

Local Government

Failure To Properly Enforce Safety Laws Of The Kentucky General Assembly (Beverly Hills Supper Club Fire)

Gary W. Luhr

Background

On May 28, 1977, fire destroyed the Beverly Hills Supper Club in Southgate, Kentucky. One hundred and sixty-four people died as a result of the fire and many more were injured.

A State Police investigation into the cause of the fire revealed numerous violations of state and local fire safety codes including overcrowding, improper construction and a faulty electrical system. The investigation also revealed a haphazard record of inspections at the club by state and local officials; poor communication among state officials, between state and local officials, and between public and private officials concerning safety factors at the Beverly Hills; and, missing records in the state Fire Marshal's Office.

Issue

What action can the 1978 General Assembly take to prevent a similar tragedy from occcurring in the future? What action can the General Assembly take to insure proper administration of laws which it mandates?

Alternatives

To the extent that the Beverly Hills fire resulted from improper enforcement of existing laws the General Assembly may be limited in its actions. The legislature could, however, review the qualifications required of inspectors and key administrators in the Fire Marshal's Office to insure that competent people are hired to administer fire safety laws and regulations. A clearer relationship between state and local inspectors and between public and private inspectors would also tend to improve enforcement. The official investigative report on the Beverly Hills fire revealed confusion over who was responsible for inspections. It also found that private inspectors aren't required to report violations to the Fire Marshal.

At a November 4 news conference Governor Julian Carroll announced his intention to transfer the Fire Marshal's Office, by executive order, from the Department of Insurance to a new Department of Buildings, Housing and Construction. He announced the creation of 38 new positions including 30 field positions, mainly inspectors, and the hiring of legal counsel for the Fire Marshal's Office. He further reported plans to amend the rules and procedures of Kentucky's FAIR (Fair Access to Insurance Requirements) Plan for high-risk customers to forbid coverage under the plan for any commerical building which violates applicable life safety codes, and to require transmittal to the Fire Marshal's Office of all inspection reports on commercial buildings prepared under the plan. The legislature will be asked to make these changes statutory.

Other areas which may warrant attention include training of local inspectors; record keeping requirements; requirements for state and local officials to share information; the responsibility of architects, electricians, contractors, and the like to see that their construction plans are properly implemented and meet all safety requirements; and, the authority of state and local inspectors to act when violations are discovered. Inspectors do not have explicit authority to close facilities at present.

Financial Aid For Public Transportation

James R. Roberts

Background

Public transportation issues have been before the Kentucky General Assembly since 1970. Various types of legislation have been introduced and passed through the years on public transportation. During the 1976 special session, Senate Resolution 13 was passed asking the Legislative Research Commission to study the possibility of state involvement in public transportation operations. The public transportation problems have developed due to years of a decreasing number of passengers, escalating costs and the inability of cities operating the transit system to provide sufficient financial relief.

The federal government provides funds for a portion of the capital and operating costs in most Kentucky cities. The localities and revenue passengers must bear the rest of the financial burden. The Kentucky General Assembly has also provided a method by which the three transit authorities in Kentucky can earmark tax revenues for public transportation purposes.

Issues

Should the state become directly involved in providing financial relief for municipal transportation systems? Are other methods of relief more feasible than a direct state appropriation?

Comment

The Subcommittee on Transportation of the Interim Joint Committee on Public Utilities and Transportation held several meetings to examine the merits of this issue. Municipal public transportation systems are not the sole providers of transportation sources in the state or in a single municipality. Other providers include taxicabs, community action transportation programs, car pool and van pool programs, and elderly and handicapped transportation programs. The Committee concluded that the type of program which might be established should consider other transportation modes in an effort to coordinate rather than duplicate transportation services.

Building Codes

William N. Wiley

Background

Building codes, commonly written by model code agencies servicing many governmental and private sector code users on a regional basis, provide structural guidelines for the construction or remodeling of buildings designed for human habitation. They are vital to the construction of safe durable buildings, and therefore vital to any modern society. While there is a vast number of codes relevant to specific materials and types of construction, there are basically four model codes which governments can adopt for their building regulations programs. These are the Uniform Building Code, predominant in the west; the Basic Building Code, predominant in the north and east; the Standard Code, predominant in the south; and the National Building Code, written by the American Insurance Association, and not predominant in any region. Kentucky is surrounded by states which have adopted the Uniform, Basic and Standard codes. Kentucky has adopted the National Code, but for the purposes of fire safety only.

Uniformity of building codes within a given geographic area is of obvious utility. The alternative is to subject the architect, engineer, contractor or home builder to the extreme and unnecessary difficulty of complying with conflicting codes simultaneously. The confusion which results causes delay, higher costs and difficulty in enforcement.

The problem facing Kentucky is that Kentucky does not have a uniform state building code. Instead, it has a confusing network of differing local building codes and state building requirements with no statutory guidelines for coordination of state and local efforts or reconciliation of codes. Kentucky, therefore, is a victim of the confusion noted above. Consumers pay the costs of unnecessary construction delays and suffer the results of uneven enforcement.

The State Fire Marshal has adopted the National Building Code as part of the "standards of safety" which provide statewide fire safety guidelines. But the "standards of safety" are only a minimum requirement for local governments. They can adopt more stringent regulations. At the same time, all local governments, pursuant to their general governmental powers, can adopt building codes which need not be the same as that adopted by the Fire Marshal. As a consequence, many cities in Kentucky have adopted codes other than the National Building Code. Louisville and Lexington have adopted the Basic Code. Frankfort and many other medium and small size cities have adopted the Standard Code. Achieving uniformity in the absence of a state law which requires it seems impossible. Many cities refuse to adopt the National Code because it is not written through a democratic process and does not offer field services. Furthermore, it averages nine to ten years between revisions, while the other codes are amended annually and revised every three years. The Fire Marshal has shown no indication that he will relinquish the National Code in favor of another model code.

In addition to the problem of conflicting codes, there is no state agency to administer a state building code, and agencies which do review building plans are scattered throughout state government. For example, the State Fire Marshal is in the Department of Insurance; the Division of Plumbing is in the Department for Natural Resources and Environmental Protection. Plans are also reviewed by the Bureau for Health Services in the Department for Human

Resources, and by the Office of the Superintendent of Public Instruction. Architects, engineers, contractors and builders in Kentucky are often confused about where they must send blueprints for review.

Issue

The issue facing the General Assembly is what action it should take to ensure uniformity of building code administration in Kentucky. Important facets of this basic question are the method of selecting a code, and the proper organization of state government to effectively coordinate state and local building code programs.

Alternatives

Thus far, the principal alternative to the uncoordinated situation described above has been 78 BR 191, approved by the Interim Cities Subcommittee on Facilities and Services and the Interim Counties Subcommittee on Facilities and Services. BR 191 would create a department of buildings, housing and construction, and a board of buildings, housing and construction. The board would adopt and promulgate a mandatory and uniform state building code to be used by all state and local governments in Kentucky. No other codes would be permissible, although the Fire Marshal could supplement the code with fire safety regulations. Local governments could unite to enforce the code on a county or regional basis if they desired. Local governments would enforce the code for residential and small commercial and industrial structures. The new state department would enforce the code for larger structures and places of assembly or high hazard.

Regulation of the building industry would be centralized in the department of buildings, housing and construction. Only this department would review plans at the state level for compliance with the uniform state building code. Other departments, such as Human Resources or Education would review plans only for functional reasons, such as patient space in hospitals or design for educational purposes in schools. The Division of Plumbing and the State Fire Marshal would be moved into the new department. The newly appointed commissioner of buildings, housing and construction would be responsible for coordinating and expediting the review of plans among the Fire Marshal, Division of Plumbing and uniform state building code personnel. The creation of a uniform state code, a single department of state government to administer it, and the clear delineation of responsibility and authority between state and local governments would eliminate all confusion about what code standards were applicable. Hopefully this action would also alleviate present confusion among members of the building industry about whom they must deal with in state government when seeking plan reviews.

City Employee Pensions

William N. Wiley

Background

State and local pensions for public employees have been granted over the years as a benefit for public service, often designed to compensate for wage levels below those found in the private sector. Often these pension benefits have been extended with little real attention to their ultimate cost. Commonly, public pension plans have been inadequately funded. Financial liabilities have increased each year while contributions necessary to pay those liabilities have not been made.

In addition to these financial problems, it is common in most states to find a multiplicity of pension plans; some small, some large, some applicable to a certain class of employee, some applicable to an entire unit of government. Such a variety of pension plans is usually characterized by inconsistency in the nature and level of benefits offered. Sometimes benefits offered are too little, sometimes they are adequate and reasonable, and sometimes they are unreasonably generous.

Kentucky suffers from most of the problems described above. It has at least 52 locally administered city pension systems governed by 11 different state statutes. The benefits offered pursuant to these statutes and local ordinances are uneven, ranging from the inadequate to the excessive. As pension systems mature and employees retire, many Kentucky cities are having difficulty funding their pension systems, and in certain cases their financial difficulties are severe.

Kentucky's city pension systems are basically of two varieties: those governing police and firemen, and those applicable to non-uniformed employees. In the case of police and firemen, with the exception of those in Louisville, the state statutes set out explicitly what their benefit levels will be. The responsibility to fund those benefits is left to the cities. In the case of pension systems for non-uniformed employees, the statutes are generally permissive. The cities are free to design their own plans.

There is a general inconsistency in benefit levels given to police and firemen in second class cities and urban county governments as opposed to those given to police and firemen in third and fourth class cities. It is difficult to say whether the employees in the second class cities and urban county governments are better off than their counterparts in third and fourth class cities, because required retirement ages differ. It can safely be said, however, that all police and firemen in Kentucky enjoy generous pension benefits. Dependent and disability benefits are in some cases inadequate in third and fourth class cities.

Because all second class cities and urban county governments have had actuarial evaluations performed, they have a rough idea of where they stand financially. None are in imminent danger of bankruptcy, but all have large unfunded liabilities. Several are regressing rather than progressing financially, and in all cases the percentage of the city budget which either is or should be devoted to pensions is significant.

Actuarial evaluations are not required of third and fourth class city police and firemen pension plans. Therefore many cities do not know where they stand financially. This is a very

uncomfortable position to be in, for ignorance of financial liabilities does not make them go away. Someday pensions must be paid.

Some cities have planned their non-uniformed employee pension plans well and are in very good financial shape. Others have financial difficulties, and some have reached the point of near bankruptcy. Pension obligations have accrued which these cities can meet only with extreme difficulty. As opposed to the police and firemen pension benefits which are mandated by state statute, the cities have incurred pension obligations toward their non-uniformed employees by their own actions.

Issue

The issue facing the General Assembly has a dual nature. First, what action can it take to insure that pension plans for city employees will provide adequate but not excessive benefit levels? Second, what action can it take to insure that pension obligations incurred by cities in the past, and to be incurred in the future, will actually be paid?

Alternatives

Alternative courses of action for the General Assembly are complex, because pension problems are complex. One alternative already exists in the statutes. This is to close the locally administered pension system to new employees and to place them in the state administered County Employees Retirement System. This option insures professional pension system management and adequate benefit levels. In recent years five cities have exercised this option for their non-uniformed employees, and another is currently taking this step.

Other options can be categorized in two areas: administration and financial management, and benefit levels. The General Assembly can choose many discreet alternatives within these basic areas. Administration and financial management alternatives include uniform requirements for audit and actuarial evaluations, uniform funding requirements, uniform criteria for the determination and monitoring of disability, and uniform requirements for reports to the city and the employee on pension system benefits and financial status. Alternatives in the area of benefit levels might include mandating minimum retirement ages for non-uniformed employees, raising retirement ages for police and firemen, providing uniform and equitable retirement and dependent benefit formulas for all police and firemen, requiring uniformly that workmen's compensation benefits be offset against pension disability benefits, requiring that all nonvested employees have their pension system contributions returned with interest upon termination, and providing for the integration of social security and pension benefits in the event that all public employees are forced into the social security system. Given the complexity of the pension question, a more detailed discussion of alternatives is difficult.

Home Rule For County Governments

William N. Wiley

Background

Until the recent past, the role of county government commonly was limited to the performance of essentially state governmental services at the local level. Roads were paved, taxes were collected, licenses were issued, records were kept, laws were enforced, and limited judicial functions were performed. With the movement of an increasing percentage of the population to unincorporated areas, the demands upon county govenments have increased. The provision of urban services such as water, sewer lines, solid waste disposal and health services in counties is no longer unusual. Planning, subdivision regulations and sometimes zoning are becoming characteristic of county government. Increased population sometimes leads to the formation of a county police force. Public recreation facilities are often demanded by the population. In short, the service demands upon county government become more like the service demands upon municipalities.

Increased demands for service upon county govenment call for increased flexibility and capability to provide services. In 1972 the General Assembly passed what is popularly known as "county home rule," codified as KRS 67.083. This statute provides that county governments are authorized to exercise any power necessary for the health, education, safety, welfare and convenience of the citizens which is not denied to county government by statute or Constitution. The General Assembly retains the right to limit county powers at any time by the enactment of legislation.

Despite the potential for creative approaches to government inherent in KRS 67.083, few county governments have acted pursuant to this statute to provide governmental services. Reasons given for this reticence on the part of counties to use KRS 67.083 to their advantage include uncertainty as to what "county home rule" really means, and confusion surrounding a multitude of statutes granting counties permissive powers. These statutes seemingly should have been repealed when "home rule" was granted.

Issue

The issue facing the General Assembly is what action does it desire to take and what action can it take to encourage and facilitate the provision of needed services by county governments?

Alternatives

The Interim Joint Committee on Counties and Special Districts and the County Statute Revision Commission, working in concert, set about to clarify county powers and encourage the use of KRS 67.083 through the preparation of three bill drafts, subsequently prefiled by the Counties and Special Districts Committee. The bills are BR 123, 124, and 125. BR 123 defines the powers and responsibilities of fiscal courts along functional lines and clarifies the power of a county ordinance with respect to incorporated areas of a county. BR 124 outlines form and content of a county administrative code, and strengthens the roles of the fiscal court

and county judge/executive with respect to the county budget. BR 125 clarifies the responsibilities and powers of the county judge/executive and fiscal court with respect to powers inherent in KRS 67.083 by repealing 174 existing statutory provisions which grant permissive powers to counties.

After the Interim Joint Committee on Counties and Special Districts prefiled BRs 123, 124, and 125, they were confronted on September 16, by a Kentucky Supreme Court decision in the case of *Fiscal Court of Jefferson County, Kentucky, v. City of Louisville* which declared KRS 67.083 to be unconstitutional. The decision was based on the court's opinion that KRS 67.083 involves the delegation of the General Assembly's legislative power to the county, and that Constitution §29 prohibits such delegation.

The future action of the General Assembly on ''home rule'' is apparently contingent upon future action of the Supreme Court. Jefferson County has filed a motion for a rehearing in the case of *Fiscal Court of Jefferson County v. City of Louisville*. The Legislative Research Commission will file a motion for permission to file an amicus curiae brief. In present form, BRs 123 and 125 may conflict with the court's interpretation of county powers. If the court, upon rehearing, modifies or clarifies its decision, BRs 123 and 125 may stand as written. If the court does not modify or clarify, a different and perhaps more detailed legislative approach to the functions of county government may be required. A constitutional amendment granting greater power to county governments also may be proposed.

Special Districts

Prentice A. Harvey

Background

Special districts, which may be defined as political subdivisions of a state other than cities, counties, or school districts, that are created to perform a limited number of functions within a prescribed area of jurisdiction, have commonly been utilized in the United States to bridge the gap between needed services and the ability of local government to furnish these services. When local government has been unwilling or unable, due to debt or tax limitations to provide desired services, special districts have been established to perform specific services within a specific geographical area. While most observers agree that special districts have been a necessary means of providing services, it has been frequently noted that the excessive use of special districts has detrimental effects on local government.

Critics point out that special districts contribute to an inevitable fragmentation and an increase in the complexity of local government. As separate districts are created to perform one or a few functions in an area, the number of governmental units rises accordingly so that one area may be served by several separate units. Problems of coordinating the efforts of government often follow as each unit develops its own plan for sevice provision and budget, and raises revenue through taxation or special assessments. Further, the lack of accountability and responsiveness of special districts is often cited by government officials and the public.

Kentucky, like other states, has found it necessary to supplement the service provision efforts of cities and counties with special districts, and the General Assembly has, over the years, enacted legislation authorizing the creation of special districts to provide various services including: fire protection, water, sewerage systems, hospitals, garbage collection, libraries, and other services. A review of the Kentucky Revised Statutes reveals that there are more than 20 types of special districts, each with its own set of authorizing statutes. The complexity of law relating to special districts is compounded by the fact that the provisions dealing with the creation, operation, powers, and oversight of districts is inconsistent from one type of district to another.

The accountability of special districts has, in some instances, become a particularly sensitive issue for local officials. Although some special districts are required to publish annual reports and others operate under the watchful eye of a state agency, some special districts operate autonomously with little of no independent oversight. Thus when complaints are made concerning the operations of a district, elected local officials can often do little more than refer the caller to districts that the citizen did not know existed.

The lack of accountability of special districts in Kentucky is further witnessed by the inavailability of reliable figures on the number of districts in the state. KRS 65.005 requires all districts to file with the county clerk and the state-local finance officer, yet many have failed to comply. It is estimated that more than 500 special districts presently exist in the state.

The complexity and inconsistancy of law relating to special districts and the lack of accountability of special districts has been questioned by some state and local officials. These officials have called for a revision of existing statutes which would simplify law pertaining to

special districts and make special districts more accountable to the elected officials of general purpose local government.

Issue

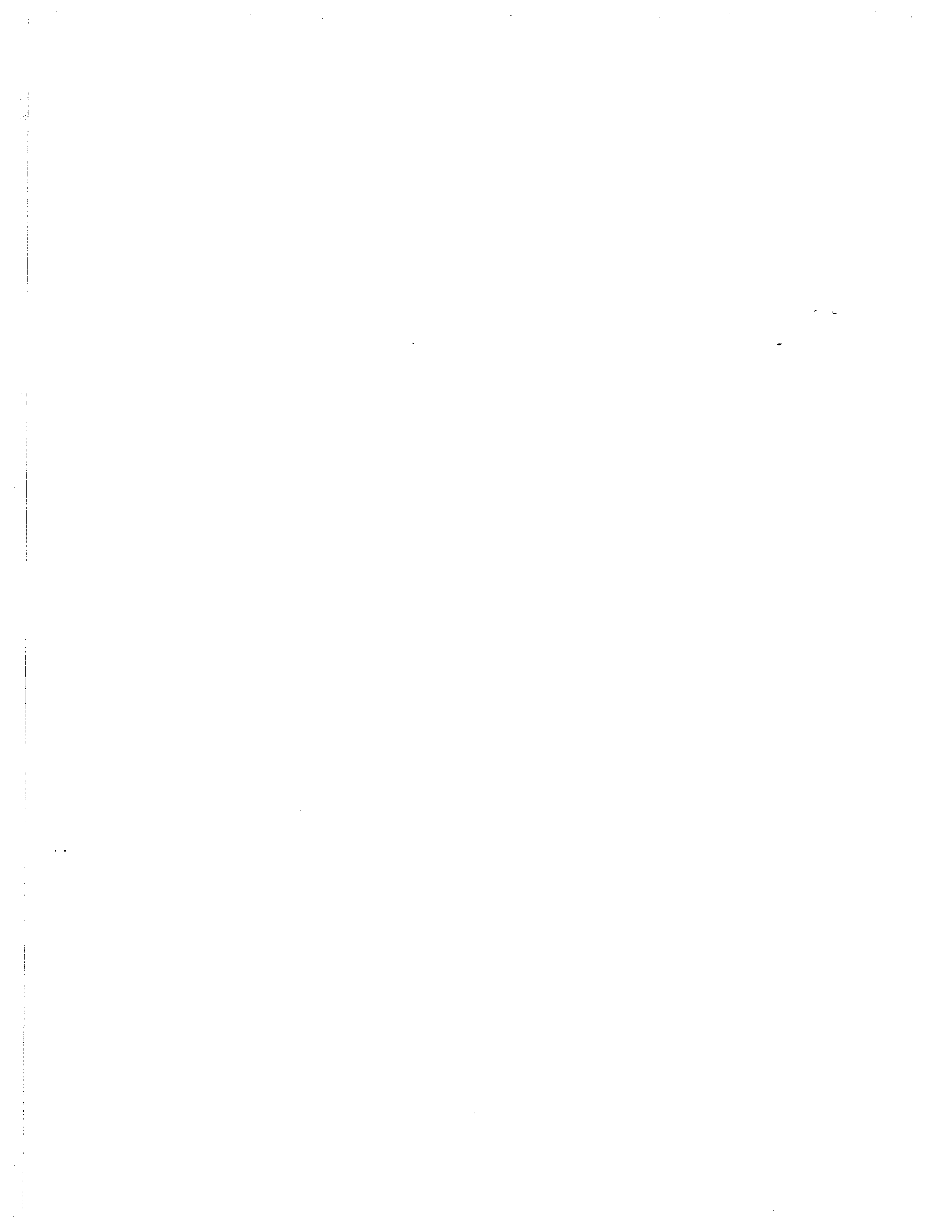
Should a uniform statutory framework, which would strengthen the oversight powers of local government, be established for special districts? To what degree should special districts be made accountable to the officials of general purpose local government?

Alternatives

The Subcommittee on Special Districts of the Interim Joint Committee on Counties and Special Districts and the Task Group on Special Districts of the County Statute Revision Commission have reviewed the statutory authorization of special districts and the relationship between special districts and general purpose local government. These groups concluded that the confusion surrounding special districts could be reduced by establishing a uniform statutory framework for the authorization and administration of special districts and that the necessity for special districts could be diminished by strengthening the ability of local govenrment to provide services. Two specific legislative proposals were prepared for submission to the Interim Joint Committee on Counties and Special Districts.

The creation of a uniform framework for special districts is addressed in 78 BR 122, which has been prefiled with a recommendation for passage by the Committee on Counties. This bill would establish uniform procedures to govern the administration of special districts. The accountability of districts would be increased by requiring publication of budgets, annual audits, and fiscal court review—and in some cases approval of various aspects of a district's operation. Numerous existing statutes would be amended or repealed to conform with the provisions of the bill.

A second legislative proposal, 78 BR 87, would permit the fiscal court, upon receipt of a petition signed by a majority of the voters in an area, to create a service district and to levy and collect taxes in accordance with the services rendered by county government. Thus, services could be tailored to fit the needs and demands of an area without the creation of a special district. This bill has also been prefiled by the Committee on Counties with a recommendation for passage.



Revenue And Taxation

Exempting Utility Sales From The Sales Tax

C. Gilmore Dutton

Background

The sale of utilities such as water, electricity, natural gas, and telephone service in Kentucky is subject to a tax of 5% of the sales price. When the Sales and Use Tax Law was enacted in 1960, utility costs, while significant, did not represent a major item in the average consumer's monthly budget. In recent years, however, because of unprecedented price increases, utility costs have exceeded many citizen's expenditures for food, clothing or transportation. Some economists predict that in the not too distant future the average monthly utility bill will be larger than the average monthly mortgage payment. Commensurate with the increase in utility costs, taxpayers have experienced an increase in the tax on utility sales.

The 1976 Session of the General Assembly saw the first efforts toward exemption of utility sales from the sales tax. Nine bills were introduced in that session, proposing the exemption of from one selected utility to all utilities. One of the major political parties has recommended exemption of utilities as a campaign issue for its members in this year's Kentucky legislative races, thus insuring that it will be an issue in the upcoming session of the General Assembly.

The legislation proposed in 1976 singled out water or electricity for exemption, and in one case, would have exempted telephone service together with all other utilities; but the most frequently proposed exemption was for fuel for residential use for heating, water heating, cooking, lighting and other household power. Fuel was defined to include natural gas, electricity, fuel oil, bottle gas, coal, coke, and wood.

Sales and use tax receipts remitted by individual utility companies represent sales of various utilities; that is, one company's receipts may represent water and electricity sales, another's, electricity and natural gas. Because of the lack of a separate record system for each utility, the exact revenues derived from the sale of individual utilities is not available. However, reasonable estimates can be made from information about the proportion of the total sales represented by each utility.

Water sales represent 5% of total utility sales, electricity sales are 2½ times the sales of natural gas, and residential sales represent half of all sales. Based upon total utility sales (exclusive of telephone and telegraph) of $46.7 million for fiscal year 1976-77, estimates of individual utility revenues from residential sales are as follows:

Water	$ 1,175,000
Electricity	15,875,000
Gas	6,350,000

The cost in tax revenue of exempting fuels other than natural gas, electricity, and coal (coal for home use was exempted by the 1976 Session of the General Assembly) is estimated to be $4,500,000.

Substitution for the revenue loss from the exemption of utility sales, an important item for consideration when dealing with losses in the magnitude of those listed above, is discussed in another section of this report.

Issue

The issue is whether utility sales should be exempted from the sales tax.

Alternatives

If the decision is made to exempt utility sales from the sales tax, exemptions may be made for all or only for selected utilities. It is generally agreed that water and fuel costs should be exempted. Since electricity is a primary source of power for heat, cooking and light, it should probably be included in the exemption. Telephone service could be included in the exempted services. This item was generally not included in the exempted utilities in the proposed 1976 legislation.

Replacing Loss In Sales Tax Revenue If Utility Sales Are Exempt

C. Gilmore Dutton

Background

The revenue loss from an exemption of natural gas, electricity, and other residential fuel sales from the sales tax would approximate $27 million, if the exemption were in effect for fiscal year 1977-78, and would approach $30 million for the first full fiscal year affected by 1978 legislation, 1978-79. An exemption of water sales would add $1.2 million and $1.3 million each year, respectively. Assuming that a loss to the General Fund of that magnitute could not be tolerated, consideration would have to be given to an adequate revenue substitute.

Issue

Should the General Assembly decide to remove the sales and use tax from utilities for home consumption and not curtail state services, which tax or taxes should be used as a revenue substitute?

Alternatives

In selecting a tax to use as a revenue substitute, or offset, two criteria predominate. First, the tax selected should not have the same economic incidence as the tax being replaced. That is, the substitute tax should not bear upon the same taxpayers for whom relief is being sought.

Second, the substitute tax should have the same growth potential, or longitudinal effect, as the replaced tax. Sales tax receipts from natural gas, water, and electricity sales have averaged an annual increase of 12% since fiscal year 1968-69, the first full year at the 5% tax rate.

Application of the first criteria would rule out use of a sales tax broadened to tax general personal services. Similarly unsuitable would be an increase or expansion of the individual income tax.

On the other hand, the excise taxes, cigarette, alcoholic beverage, racing, etc., satisfy the first requirement, but they do not have the growth required to meet the recurring loss from a utility exemption.

Business taxes satisfy the non-duplication requirement and, in many cases, the adequacy requirement. Business taxes also offer the potential of "exporting" some of the tax burden. Some potential substitutes are as follows:

1. Corporation income tax—corporation income tax receipts for fiscal year 1976-77 were $131 million. An increase in the present 4% (of the first $25 thousand taxable net income) and 5.8% (of excess above $25 thousand) rates in an amount sufficient to produce an additional 25% in receipts, would more than adequately substitute for the revenue loss.
2. Mineral severance tax—an increase in the coal severance tax rate, from 4½ % to

5%, and an expansion of the tax to include all other minerals and oil, would produce additional revenues of approximately $30 million in fiscal year 1978-79.

3. Coal production tax—there are five points in the coal production cycle at which "value is added:"
   - At the point of extraction from the ground;
   - Coal just severed and royalties paid;
   - Coal taken from the mine to a rail siding, crushed, and otherwise prepared for shipment;
   - Coal prepared for shipment and taxes on production paid; and
   - Coal hauled by rail to consumer.

Kentucky taxes coal only at the first point. Most other major mineral producing states tax coal or other minerals at two or three points. The points are selected to avoid duplication of taxpayers.

An amount sufficient to offset the utility exemption loss could be raised by new taxation at one of a couple of points and by new taxation at any two points.

To date, the legislation which has been proposed and the discussions which have ensued regarding the exemption of utility sales from the sales tax, have assumed relief, without distinction, for taxpayers at all income levels. In other words, ability (or the lack thereof) to pay has not been a consideration.

If the policy were to provide relief only to lower income taxpayers, then the revenue loss would be substantially reduced and the potential sources for substitution would be substantially increased.

The cost of providing relief for taxpayers in the $5,000 or less gross income class would be about half the cost of providing relief to all taxpayers. Relief could be granted by allowing a credit for individual income taxes. A negative tax credit would provide a refund to those who had no tax liability. This method has some obvious drawbacks: very low income persons or persons with only tax free income (social security, etc.) who are not required to file a state income tax return would be less likely to take advantage of the refund provisions than those in the low income brackets who are required to file; and administrative costs would be increased as a result of the refund applications.

The cost of providing relief for taxpayers in the $10,000 or less gross income class would be about three fourths the total cost.

Sources which would provide a $15 million offset, and not violate the duplication of tax rule for low income taxpayers would include:

1. An expansion of the individual income tax rate structure;
2. Expansion of the sales tax to include selected personal services;
3. A ½ % increase in the coal severance tax;
4. A mineral severance tax; or
5. A 12½ % increase in the corporation income tax.

Distribution Of Coal Severance Tax Revenues

C. Gilmore Dutton

Background

Kentucky's Coal Severance Tax Law was enacted in the 1972 regular session of the General Assembly. The 30 cents per ton, or 4% of gross value, tax rate was selected to produce revenues sufficient to offset a loss to the General Fund occasioned by the exemption of food for home consumption from the sales tax. (The 1976 regular session increased the tax to 50 cents per ton or 4½ % of gross value.)

The 1974 session of the General Assembly decided to return a part of the severance tax receipts to the counties of production. The question arose again in the 1976 regular session, and it promises to be a significant issue in 1978. That the coal producing counties have some claim to the revenues is not the point of contention, rather, it is the size of the claim that is so vigorously argued.

The "mountain caucus" in 1974 successfully promoted legislation to return to the coal producing counties half of any severance tax surplus realized during fiscal years 1973-74 and 1974-75. "Surplus" was defined as any amount above the official coal severance tax revenue estimate made by the Department of Revenue for the two fiscal years.

An unprecedented demand for coal resulted in record production and prices during the 1974-76 biennium, and produced an unexpected windfall in severance tax receipts, benefiting both the state's general fund and the Coal Producing County Development Fund. Revenues returned to the counties totaled $6.2 milion (11% of total receipts) for 1974-75 and $27 million (27% of total receipts) for 1975-76. Revenues distributed in a fiscal year were based upon receipts from the previous fiscal year.

The 1976 General Assembly replaced the 1974 revenue sharing program with a series of programs and appropriations labeled the "coal severance tax package." Of seven programs in the "package" only three have some technical tie-in with the severance tax and just one of those represents an actual earmarking of severance tax receipts. The latter program provides for the payment of severance tax receipts to meet the debt service of bonds issued to construct "resource recovery roads." The initial project under this program, reconstruction of KY 80, incurred a $14 million annual cost, with the first payment due in fiscal year 1977-78.

A "coal severance economic aid fund" was established for capital construction projects, except roads and schools, in coal-producing counties. A general fund appropriation of $5 million a year is divided according to severance tax collections and per capita income in each county.

An "energy road fund" was established for road projects in coal producing counties. General fund appropriations of $12 million and $13 million respectively for fiscal years 1976-77 and 1977-78 are divided according to coal tonnage produced in each county.

Four programs or appropriations associated with the severance tax include:

1. A $9 million a year general fund appropriation to the workmen's compensation special fund. Coal miners' black lung benefits are paid from this fund.
2. An "area development fund" from which each of the state's fifteen area development districts will receive money for capital projects. The fund received a $6 million a year general fund appropriation.
3. A $7 million a year general fund appropriation for the construction of the Jefferson Freeway. Road fund monies were substituted for the general fund appropriation during the 1976 Extraordinary Session.
4. A "power equalization fund" from which payments will be made to local school districts to equalize the revenue-producing power of local school tax rates. A $10 million general fund appropriation was made to the fund for the fiscal year 1977-78.

The total cost of the package for the biennium is $89 million, or 38% of the expected $234 million severance tax revenues for the period. The cost of the three programs having a technical tie-in with the severance tax will be $49 million for the biennium, or 21% of the estimated revenues.

Issue

If the General Assembly decides to return a portion to the coal producing counties, how is an equitable return to be achieved? And, what is a fair return of the severance tax to the coal-producing counties?

Alternatives

Four of the other nine states which levy a coal severance tax return some fixed portion to the county of production. The percentage returned varies from 5% in North Dakota to 99% in Tennessee. Additional amounts are earmarked for local governments in two states, with allocations based upon demonstrated need. One state, Wyoming, levies a "coal impact" tax, the entire proceeds of which are returned to local governments for street, road, water and sewer projects impacted either directly or indirectly by coal production.

Four states have established trust funds with a portion of the severance tax revenues. In these states, the principal of the fund cannot be spent until it reaches a predetermined amount. Interest earned by the fund is used for capital improvements, applied to the state general fund for reclamation of strip mines, or to aid communities impacted by coal production facilities.

The solution to the problem of equitable return appears to rest in the determination of the needs of the coal-producing counties and the state, particularly the needs resulting from the production of coal. Once the needs have been ascertained, the rate of return should naturally follow.

At the direction of the Interim Joint Committee on Appropriations and Revenue, its staff prepared and presented the following proposal for the allocation of coal severance tax revenues. As yet, the Committee has not acted on the proposal. The philosophical basis of the proposal is:

1. Coal is a depletable, natural resource which should benefit all citizens of the state;

2. Coal-producing counties should be reimbursed for extraordinary expenses incurred because of the impact of coal production;
3. The state is obligated to correct problems caused by coal production which are outside the normal jurisdiction of counties; and
4. The state is obligated to plan for the eventual economic replacement of coal.

The "needs assessment" basis for the proposal is:

1. The citizens of the state have general health, welfare, education, etc. needs which must be met with the resources available to the state;
2. Coal producing counties are adversely impacted by coal production, resulting in unusual expenditures for local schools, county road and city street construction and maintenance, water and sewer facilities, garbage disposal facilities, and recreational facilities;
3. The state is adversely impacted by coal production, resulting in unusual expenditures for state maintained roads and streets, for reclamation of land, and for securing the health and safety of persons engaged in coal production; and
4. The state will eventually incur expenses to retrain, temporarily maintain and provide job replacement for those persons currently employed in the coal mining industry.

The proposal:

1. Half of all severance tax receipts would be deposited in the state's general fund to support programs for the general welfare of all Kentucky's citizens.
2. Fifteen to twenty-five percent of all severance tax receipts would be deposited to a "coal producing county impact trust fund" from which allocations would be made on a demonstrated impact basis. The amount earmarked for the fund would be flexible within the given range, and adjusted biennially to reflect demand experience. A statutorily constituted body representing the interests of the coal-producing counties would allocate the funds. Statutorily defined bodies would be empowered to submit applications in behalf of each county. Interest earned on monies deposited in the fund would accrue to the fund.
3. Twenty-five to thirty-five percent of all severance tax receipts would be deposited to the general fund, transportation fund, or special trust funds for expenditure on direct "state coal production impact" programs.

Special trust funds which would be established are:

1. A "coal industry annuity fund." One percent of all severance tax receipts would be earmarked for this fund. The principal of the fund would not be spent and would be allowed to accumulate until the balance reached some predetermined amount—$150 million at a minimum. Interest earned on fund monies would not be spent until the fund balance reached the predetermined figure, at which point interest could be used for coal economic depletion impact programs, e.g., employee retraining, unemployment benefits, industrial development.
2. A "coal industry replacement" industrial development fund. Monies would be appropriated to the fund, with expenditures limited to industrial devlopment projects benefiting the coal-producing counties. (Such projects would not

necessarily have to be located in coal-producing counties.) Emphasis would be placed on development of industries not having a reliance upon coal, except as an energy source. Both principal and interest would be expended for the projects.

The balance of the severance tax revenues identified for statewide coal related programs (the balance of the 25%—35% portion) would be appropriated for:

1. Construction, repair and maintenance of coal haul roads;
2. Coal related health programs;
3. Coal related workmen's compensation benefits; and
4. Mine safety programs.

In summary, the "plan" would:

- Allocate fifty percent of all severance tax receipts to the general fund without restriction;
- Allocate thirty to fifty percent of the remaining half (15% to 25% of all receipts) to a "coal producing county impact trust fund."
- Allocate fifty to sixty-five percent of the remaining half (25% to 35% of all receipts) to a series of coal related programs.

The "coal producing county impact trust fund" would have first call on the "2nd half" monies, up to the maximum specified.

Tax Incentives For Insulation And Solar Energy

Linda Kubala

Background

Expected fuel shortages and high fuel costs have made energy conservation a national goal. Two of the most promising methods of conserving energy in buildings appear to be the use of sufficient insulation and the increased use of solar equipment for water and space heating. Special incentives for installing both insulation and solar equipment may be desirable, although for somewhat different reasons. Solar technology is relatively new. It is thought that tax incentives will encourage buying in this early stage, which would speed up the development of lower cost mass produced components. Incentives to insulate would benefit families of moderate income in older homes, who might otherwise not invest in these improvements.

Issue

Should tax incentives be provided for home insulation and for solar energy investments?

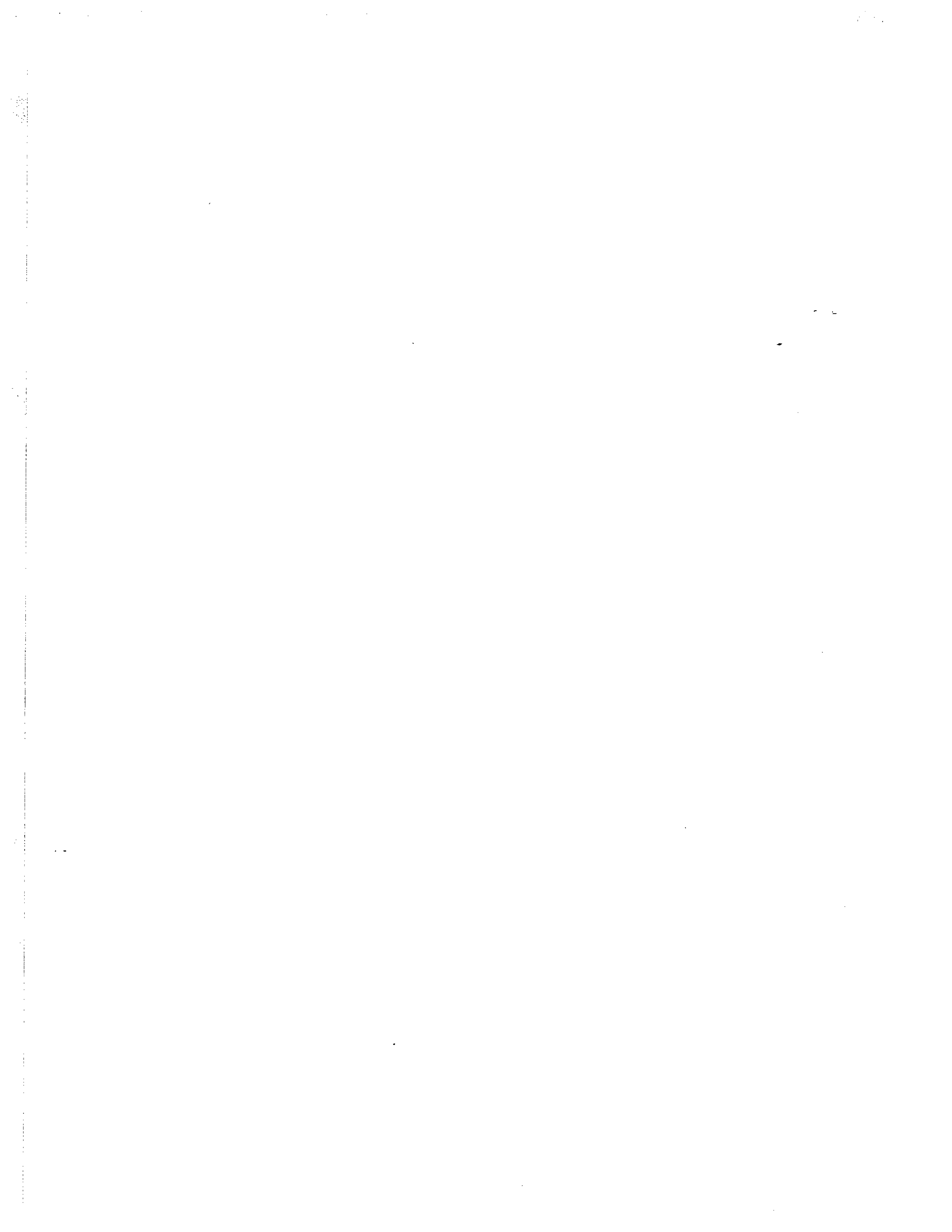
Alternatives

The National Energy Plan presently before Congress includes a 20% income tax credit on the first $2,000 of home insulation expenses and a tax credit of up to $2,150 on the first $10,000 of expenditures for solar and wind energy equipment. These provisions were approved with only minor differences by both Chambers and are likely to become law in the near future.

Tax incentives adopted by Kentucky could include removal of the sales tax on materials and income tax credits or deductions for insulation or solar equipment expenses. Removing the sales tax would lower the price of materials only slightly; an income tax credit would provide the greatest financial incentive to middle income families. Since the severe winter last year, demand for insulating materials has been heavy. This may indicate that tax incentives are not needed at this time to encourage voluntary home weatherization. If incentives are provided for insulation, this should include weatherstripping and caulking expenses, and perhaps storm windows and doors. These items reduce air infiltration and in many cases are more effective than insulation in reducing fuel consumption.

Currently solar equipment is more expensive than conventional space and water heating systems, so incentives could be designed to help equalize this cost. In theory, incentives at this early stage will help the industry expand, which will reduce costs to the point that they are competitive with conventional systems. To be effective, incentives to install solar equipment should be substantive but temporary, remaining in effect only for a few years.

It should be emphasized that any significant tax incentive scheme adopted by the Commonwealth will have a considerable negative impact on state tax revenues. The extent of revenue loss would depend on the precise details of the tax incentive program.



Traffic Safety

Mandatory Helmet Law For Motorcyclists

James R. Roberts

Background

The National Highway Safety Act of 1966 called for the establishment of Federal Highway Safety Program Standards and required that all states adopt these standards as part of a national highway safety program. Penalties in these provisions included withholding federal funds from those states which did not require the wearing of protective headgear by motorcycle riders. Kentucky passed an act during the 1968 session placing the state in compliance.

The mandatory helmet law for motorcyclists has been repealed or amended in several states throughout the country. Currently, 26 states require that a motorcycle driver or rider under 18 years of age wear a motorcycle helmet or that no helmet should be required on the driver or rider. Position papers on this issue have been submitted by the Kentucky Department of Transportation and ABATE. These papers reflect both sides of the helmet issue.

The argument for retaining the helmet law is one based on the safety and protection of the rider. The opposing argument states that the helmet restricts vision, hearing, and should also be a matter of individual freedom for the driver and rider.

Issue

Should the mandatory helmet requirement in Kentucky be repealed?

Comment

Currently all motorcyclists are required to wear motorcycle helmets. This issue was studied during the 1977 interim by the Interim Joint Committee on Highways and Traffic Safety. Speakers on both sides of this issue made presentations and presented papers. These position papers are available from the folders of the Subcommittee on Traffic Safety meetings of September 1 and September 27.

The committee considered actions other states have taken on this issue. Twenty-six states have enacted liberalized helmet laws. Three states, California, Illinois and Nebraska, were never considered to be in compliance with the federal requirement. Six states have completely repealed their helmet laws, 16 states have an age requirement of 18 years of age and one state has a mandatory requirement for 16 year olds. Accident statistics, most of which show a reduction of fatalities after the enactment of a helmet law, have been compiled in several states. Helmet laws have been repealed too recently for sufficient accident statistics to be available to establish trends.

Moped Licensing

James R. Roberts

Background

Mopeds are pedal bicycles with a helper motor which have no more than 2-brake horsepower and are capable of a maximum speed of 30 m.p.h. Moped or motorized bicycle legislation has been passed in approximately 30 states allowing for certain exemptions from motor vehicle requirements. Some of these states have not required moped owners to register their vehicles or to purchase insurance as is required of motor vehicles and motorcycles. Some of these states have exempted operators and passengers from state helmet requirements and do not require operators to obtain an operator's license.

Issue

Should moped legislation be developed providing exemptions of some motor vehicles and motorcycle requirements?

Comment

The Interim Joint Committee on Highways and Traffic Safety dealt with the moped issue during the 1977 interim. The committee prefiled legislation which provides for the exemption of the motorized bicycle from the mandatory insurance and helmet requirements. The bill also contains provisions requiring moped registration, and a valid operator's license with a minimum age of 16.

Approaches in various states have been mixed with regard to motor vehicle requirements. Michigan recently passed a law requiring moped registration by decal and a special restricted moped license for drivers at age 15 or use of any other valid license. There is no helmet or insurance requirement. Indiana has no registration, insurance or helmet requirements and until recently had no age requirement. In May, 1977, Indiana passed legislation requiring a moped operator to obtain a license which is available at age 15. Thirty-one states have passed some type of special motorized bicycle legislation.

State Government

Administrative Regulation Review Process

Joyce S. Honaker

Background

Many of the rules that regulate public and private activities in Kentucky and nationwide, are the administrative regulations adopted by administrative agencies under their statutory authority to implement or interpret laws passed by a state legislature or the United States Congress. Over the years, the Kentucky General Assembly became increasingly concerned with the growing number of administrative regulations and with the loss of legislative control over lawmaking by regulation. In 1974, the General Assembly enacted a law terminating all existing regulations and requiring state agencies to refile any regulations they felt were needed. The law, KRS 13.080 to 13.125, also created an Administrative Regulation Review Subcommittee of the Legislative Research Commission to consist of three General Assembly members from both the majority and minority parties. The Subcommittee reviews all proposed regulations for consistency with statutory authority and legislative intent. It may object to a regulation on either or both of these grounds and return the regulation to the promulgating agency, with a statement of its objections. The agency may revise a regulation to meet the Subcommittee's objections, or return the regulation unchanged. If the regulation is returned without change, it is referred to the interim joint committee, or during sessions, to the standing committee, that has jurisdiction over the subject matter of the regulation. The committee reviews and may object to the regulation in the same manner as the Subcommittee. However, neither the Subcommittee nor the interim and standing committees may nullify a regulation, which becomes effective after the necessary review process is completed. Regulations objected to by the Subcommittee and interim joint or standing committees are transmitted to each house of the General Assembly for any action they consider appropriate.

Issue

The principal issues are: (1) Can the administrative regulation review process be revised to more effectively screen regulations, and if so, how; and (2) Can and should legislative review powers be strengthened, and, if so, in what manner?

Alternatives

Among the concerns expressed by those proposing changes in the current law are (1) the size of the Subcommittee relative to its workload; (2) the difficulty occasionally faced by the three members in reviewing complex and highly technical regulations; (3) the problem, in some instances, of determining "legislative intent;" and (4) the lack of power of the interim reviewing bodies to prohibit regulations that are contrary to statutory authority or legislative intent.

While 1976-77 interim discussions of the current law indicated a general legislative consensus that the current review process, and legislative involvement in the process, should be strengthened, the methods suggested for effecting these changes varied. Among the principal points of contention are whether the power to act upon regulations should be vested in a limited number of General Assembly members and whether proposals for an interim legislative nullification of regulations would conflict with constitutional limitations on the interim powers of the legislature.

One alternative, of course, is to leave the current administrative regulation review law unchanged. Alternatives to the current system proposed during the 1976-77 interim included:

1. Increase the size of the Subcommittee to five members.
2. Allow the Subcommittee to receive initial review assistance from the interim committee with appropriate jurisdiction.
3. Abolish the Subcommittee, transfer its initial review functions to the appropriate interim joint and standing committees, and allow these committees to reject regulations they find contrary to statutory authority or legislative intent.
4. Deem all regulations to expire on adjournment of each regular session of the General Assembly unless extended by concurrent resolution of the legislature.
5. Establish a special interim committee composed of all representatives and senators, permit a majority of the Subcommittee members to reject a regulation, and permit the special interim committee to override the Subcommittee's rejection by majority vote at quarterly meetings.
6. Require General Assembly review and approval of all regulations by requiring that regulations be enacted as statutes if they are to remain in effect.
7. Establish a "sunset" law applicable to regulations, requiring their periodic expiration unless extended by the General Assembly after interim and in-session evaluation.
8. Permit the Subcommittee or other reviewing legislative body to reconsider any existing regulation that has been approved but is later found undesirable.

Collective Bargaining For Public Employees

Joseph Hood

Background

Public employee collective bargaining has been an issue before the General Assembly for several sessions. In 1974, the Legislative Research Commission appointed an Interim Special Committee on Public Employee Collective Bargaining and charged that Committee with the responsibility of conducting an intensive study of "the many complex issues involved in public sector labor relations."

That Committee held extensive hearings, including five public hearings, and published an informative report, copies of which are available from the Legislative Research Commission upon request.

In 1976, HB 300, the "public employees collective bargaining bill" and SB 200, a teachers' collective bargaining bill, both failed to be enacted.

The 1976-77 Interim Joint Committee on Labor and Industry has prefiled a modified version of the "public employees collective bargaining bill," with the expression that it should pass.

Issue

The issue, simply put, is should public employees have the right to collective bargaining as do employees in the private sector?

Alternatives

The "Report of the 1974-75 Interim Special Committee on Public Employee Collective Bargaining" contained both a recommendation of a majority of the committee, and an opinion of a minority of the committee.

Quoting from that report:

"Based upon the information gathered at the hearings and upon the individual research of the members, a majority of the committee, Senator Walter A. Baker and Representatives E. Bruce Blythe, Kenneth C. Imes, Bobby H. Richardson and Glenn White, recommend for the committee that the 1976 General Assembly not enact legislation mandating Public Employee Collective Bargaining. In addition, the majority of the committee recommends that the 1976 General Assembly not enact legislation establishing a procedure to be followed by public employees and public employers in the event a local government or governmental body and its employees voluntarily enter into a collective bargaining agreement.

"The recommendations of the majority, speaking for the committee, are made after much consideration and study and are based upon the following rationale.

"There exist basic and substantial differences between public employee collective bargaining and collective bargaining in the private sector. In the private sector, cost increases attributable to increased benefits gained by employees through col-

lective bargaining can be passed on by the employer in the form of higher prices for its product. However, in the public sector, the cost increases attributable to benefits gained through collective bargaining must result in either a decrease in governmental services or in increased revenue being acquired by the governmental unit involved through increased taxation.

"In the private sector, economic sanctions available to employee groups, such as slow-downs or strikes, result in economic pressure being placed on the employer in an effort to effectuate a settlement of differences. In the public sector, the same type of job action results not in pressure being placed on the public employer but rather results in the recipients of governmental services, the citizenry, being denied essential governmental services and protections. Services and protections to which they are inherently entitled and for which they have already paid.

"Bargaining in the public sector also has the potential of placing a third party, one other than the citizens or the government officials, in the position of establishing tax rates, governmental priorities and governmental policies. This probability exists and so long as it exists, bargaining in the public sector must be avoided.

"The recommendation of the majority of the committee that no legislation be enacted establishing guidelines and procedures for governing voluntary collective bargaining agreements is based on the confidence of the committee in the concept of Home Rule and the disparity of prevailing conditions among the possible bargaining groups across the state.

"At this juncture, it should be stated that a minority of the committee, Senator David Karem and Senator Michael R. Moloney, are of the opinion that since public employee collective bargaining will eventually become a reality in Kentucky, enacting legislation is the most realistic and orderly approach toward that reality in order that proper direction and guidance can be given."

To further complicate the issue, Kentucky statutes, case law, and OAG's (Opinions of the Attorney General) give different rights to various types of public employees.

KRS 336.130 grants employees the right to bargain collectively. OAG 65-84 opines that teachers may organize and bargain with a local board if that board so chooses. However, the board cannot, by negotiation, tie its own hands, since to do so would rob it of its legal prerogative to have the last word . . . Also, it has been repeatedly held that public school teachers in Kentucky do not have the right to strike. *Jefferson County Teachers' Association v. Board of Education* (1970) 463 S.W. 2d 627.

OAG 72-279 opines that KRS 336.130 is inapplicable to public employees. (A distinction being made, in practice and effect, between teachers and public employees.)

KRS 78.470, with certain provisions, grants county police employees in any county with a population of 300,000 or more, the right to participate in lawful concerted activity for the purpose of collective bargaining.

KRS Chapter 345 grants collective bargaining rights to any "firefighters" (as defined

in this chapter) employed by any city containing a population of at least 300,000, or any city which petitions to be included. By KRS 345.040, the "public employer" (as defined in this chapter) has a duty to bargain collectively.

It can be easily seen that different public employees have different rights, based either on statutory law, OAG's, case law or local option.

Governmental Response To Natural Disasters

Joyce S. Honaker

Background

Victims of the April, 1977, floods in Eastern Kentucky experienced difficulties in obtaining adequate and timely assistance from governmental agencies. Although it appears that the principal problems stemmed from federal laws and procedures, the difficulties experienced by flood victims may indicate a need for improvement or expansion of state and local disaster prevention and relief efforts.

The 1974 General Assembly substantially revised Kentucky's civil defense preparedness law (KRS 39.400 to 39.460) to establish a general program for immediate response to disasters and other emergencies and to empower local governments to do the same. The 1978 General Assembly will probably be asked to consider legislation to increase Kentucky's capacity to facilitate the short and long-term recovery of disaster areas.

Issue

A principal legislative issue in improving governmental disaster relief and prevention activities is financial. New or expanded programs, such as financial relief for disaster areas, must necessarily compete with other ongoing or proposed public programs.

A second issue is constitutional. The September, 1977, Kentucky Supreme Court decision declaring the state's county home rule law unconstitutional will have a significant effect on counties that have established disaster prevention and recovery programs under that general delegation of legislative authority.

Alternatives

Alternative, but not necessarily conflicting, state-level responses to natural disasters might include various forms of financial relief for disaster areas, through existing or newly-created programs. Grants, loans and tax credits are three financial aid mechanisms employed by the state and federal governments to facilitate disaster recovery.

The Supreme Court's county home rule decision may require specific legislative authorization for county disaster prevention and recovery programs established under that general law. For example, there is presently concern that the home rule decision may invalidate some county flood plain management ordinances, which are necessary if county residents are to qualify for national flood insurance. While KRS Chapter 100 appears to permit counties, cities, or cities and counties acting jointly, to engage in flood plain planning and zoning within a more comprehensive planning and zoning program, many counties have not elected to establish the comprehensive planning program authorized by KRS Chapter 100. The General Assembly may need to consider whether counties should be authorized to engage in flood plain regulation without establishing a more comprehensive planning and zoning program.

Personal Information And Privacy

L. Michael Greer

Background

Threats to privacy through the use of personal information were not known in Colonial America. There were no drivers licenses, insurance policies, income tax, social security or credit cards. An individual's transactions with social institutions were simple and generally conducted on a face-to-face basis and recordkeeping was minimal.

All of this was changed by the technological revolution. Social institutions became more complex and face-to-face transactions were gradually replaced by information mediated transactions. As a result, a new relationship developed between individuals and institutions, a relationship weighted heavily in favor of institutional interests. Somehow in this evolution, the individual failed to be accorded any rights with regard to the management of his own information.

New methods of processing information brought about by the development of computer technology in the 1950's had a significant impact on this recordkeeping relationship. The computer, being a somewhat mysterious instrument, is often mistakenly regarded as the cause of the imbalance but the computer was not the initiator, merely the accelerator. The computer also served to enhance concerns about recordkeeping and focus public attention on the potential threats to privacy caused by institutionally-oriented recordkeeping practices.

Personal information and privacy issues were given national attention in 1966 through Congressional hearings on a proposed national data center. This precipitated a flood of investigations and studies on the subject which led to legislation to provide some protection of personal privacy in recordkeeping. The first privacy legislation to be passed was the Fair Credit Reporting Act (1970), followed by the Family Educational Rights and Privacy Act (1974) and the Privacy Act of 1974, omnibus legislation for federal records. In addition, seven (7) states have enacted omnibus privacy legislation.

Issue

Do personal recordkeeping practices pose a threat to privacy and if so, what type of regulation is necessary to protect privacy?

Alternatives

The major problem in developing legislation to protect privacy is that the concept of privacy is abstract and there is no generally accepted definition. The problem is further complicated by the fact that the courts have failed to recognize "information privacy" as a part of the right of privacy.

This dilemma has been overcome by an approach focusing not on privacy but on establishing a fair and equitable balance of interests in recordkeeping relationships. By balancing the relationship, an environment can be created within which an individual can seek his own level of privacy. The approach was first used in the Fair Credit Reporting Act but was not

effectively articulated until an HEW study commission proposed in 1973 a "Code of Fair Information Practices" which states that:

- There must be no personal data recordkeeping systems whose very existence is secret.
- There must be a way for an individual to find out what information about him is in a record and how it is used.
- There must be a way for an individual to prevent information about him that was obtained for one purpose from being used or made available for other purposes without his consent.
- There must be a way for an individual to correct or amend a record of identifiable information about him.
- Any organization creating, maintaining, using or disseminating records about identifiable personal data must assure the reliability of the data for their intended use and must take precautions to prevent misuse of the data.

All subsequent privacy legislation has been based on these principles.

A survey of personal information practices in Kentucky revealed that only 30% of the organizations responding to the survey adhered to the fair information practices. It was also revealed that those responding maintained over 16 million personal records. It may be inferred from this that privacy legislation is needed in Kentucky.

State Purchasing Procedures

William B. Neuhaus

Background

For the past several years the American Bar Association has been working with government officials and other interested persons to develop a "Model Procurement Code" for state and local governments. Kentucky has been selected as a pilot state for the project, which has now produced a second preliminary working paper.

In April, 1977, Governor Julian M. Carroll, through Executive Order 77-322, created a "Model Procurement Code Advisory Committee." The committee, chaired by Representative Mark O'Brien, has been charged with "the task of reviewing the Model Procurement Code as it relates to present Kentucky statutes on purchasing, for the purpose of making recommendations to [the governor] on a purchasing and procurement code applicable to state and local governmental entities." The advisory committee, which has been meeting regularly and is still at work, may suggest legislation to revise our state purchasing laws, adopting those portions of the Model Procurement Code that fit Kentucky's needs.

Issue

Should Kentucky amend its state purchasing laws? What viable alternative(s) may the Model Procurement Code present?

Alternatives

Obviously, the alternatives are many. The Model Procurement Code itself (a three-inch thick volume of laws and commentary) is in no sense to be considered proposed uniform legislation. It presents, in Chinese menu fashion, a number of alternatives and combinations of alternatives for interested states, as well as suggested regulations. Its three basic principles are (1) centralization of control over purchasing policy and regulations, (2) centralization of control over administration of public purchasing, and (3) the insulation of purchasing operations from political influence.

Sunset Legislation

L. Michael Greer

Background

"Sunset" legislation is a response to a general concern over the unchecked growth of government programs and an overall lack of accountability in government. Simply stated, "sunset" is a mechanism for establishing programs for a limited and specified time period. If the program can demonstrate a continuing need through a review and evaluation process, legislation is passed to allow it to continue for another cycle. If it cannot demonstrate a need, it is allowed to automatically terminate or "fade into the sunset."

In a very short time, "sunset" legislation has become very popular and its adoption is rapidly spreading. Colorado enacted the first "sunset" law in April, 1976. The Colorado proposal was developed and presented to the legislature by Common Cause, generally credited as its creator. For the remainder of 1976, three other states, Florida, Alabama, and Louisiana, enacted "sunset" laws. Already this year, 18 states have passed "sunset" legislation and there is a "sunset" bill for federal agencies, S-2, pending before Congress.

Issue

Is "sunset" a viable legislative mechanism for Kentucky, and if so, what would be the most effective approach?

Alternatives

Opponents of "sunset" say it will not strengthen the legislative system because it offers nothing legislatures don't already have. Legislatures now have the authority to create and terminate programs at their discretion. Opponents contend "sunset" will result in considerable costs with little or no advantages.

Proponents agree that legislatures have the authority to create or terminate programs but the termination power is rarely used. The nature of the legislative process requires legislators to look ahead rather than at what they have done. As a result, programs are allowed to continue without serious reconsideration. Proponents contend that "sunset" provides an "action-forcing mechanism" which requires legislators to periodically review and evaluate programs and make decisions on their continuation.

"Sunset" is a flexible concept and its application varies from state to state. The first decision a state must make concerns the proposed coverage. Six states have comprehensive "sunset" laws which pertain to virtually all programs or agencies. The rationale behind this approach is that once the initial legislation is passed, it will become increasingly difficult to pass additional "sunset" laws. Twelve states, a majority, limit "sunset" to regulatory agencies. Two states have enacted even more limited "sunset" laws as pilot projects while two states allow committees to select programs for coverage. Proponents of the limited approach contend that it allows for the testing of "sunset" on a realistic and manageable number of programs with expansion possible after refinement of the process. Common Cause endorses the limited approach and states they will actively oppose any "sunset" law which is too ambitious.

Another important decision concerns options provided for in the "sunset" mechanism. Alabama's "sunset" law allows only "yes" or "no" decisions to be made on termination. Other states are more flexible and allow for reenactment with modification. This "yes," "no," or "yes, but" approach is endorsed by Common Cause.

Responsibility for the program evaluation also must be decided. Several states have established a two-stage evaluation with the initial evaluation being conducted by a special committee such as a legislative audit committee, with review by the appropriate standing committee. A few states place the full responsibility with interim committees. Common Cause feels that the interim committees are the appropriate entities to conduct the reviews.

Other decisions must be made in developing a "sunset" law. How often will programs be reviewed and under what schedule? How long will terminated programs be given to conclude business? Should programs with bonded indebtedness be exempted?

Unfortunately, there has not been enough feedback from states which have enacted "sunset" laws to evaluate their effectiveness. Only Colorado and Alabama have actually begun to terminate programs. Other states do not begin terminations until 1978 and half have not scheduled terminations until 1979 or beyond.

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