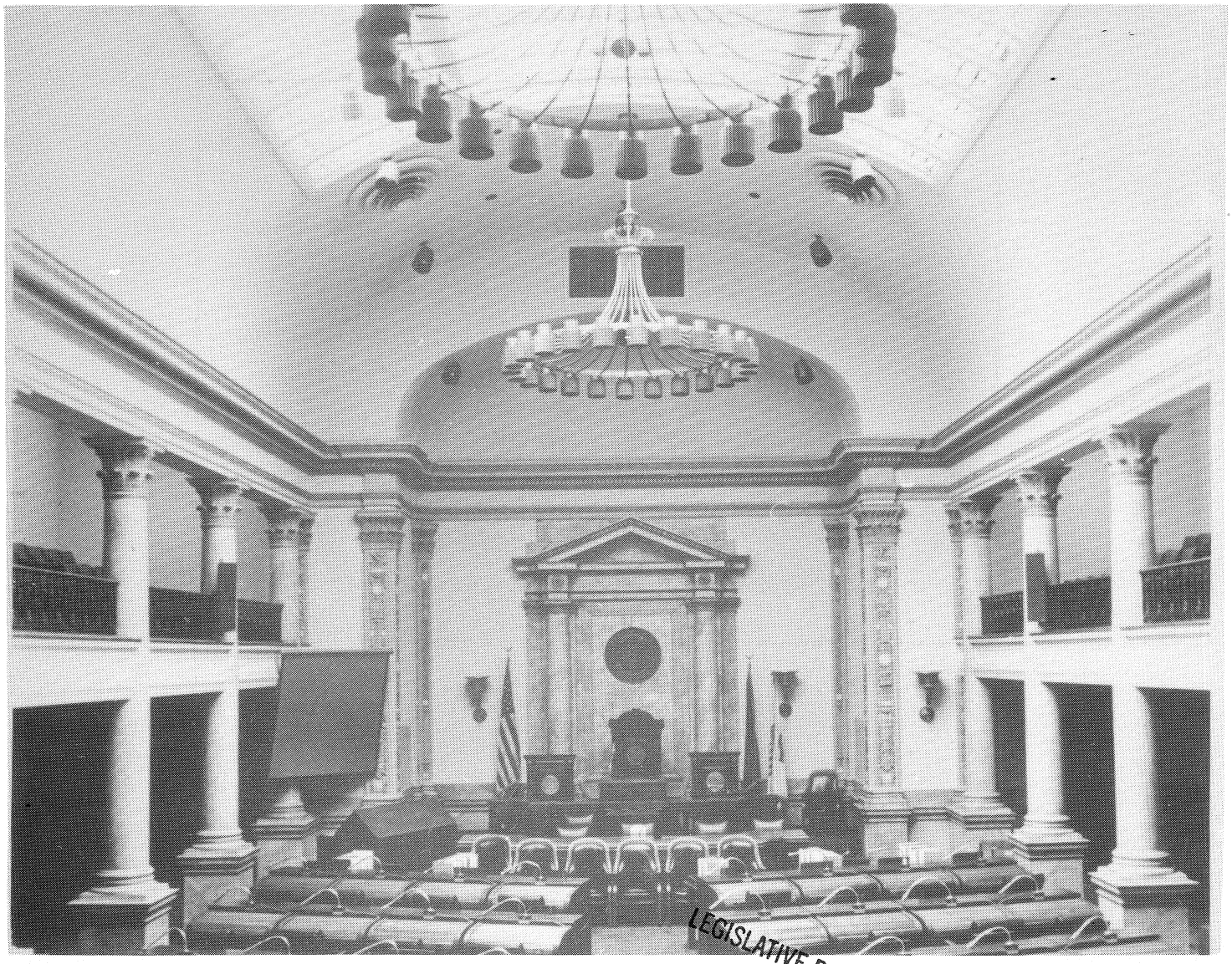
ISSUES CONFRONTING THE 1996 GENERAL ASSEMBLY

A Supplement



Informational Bulletin No. 195

LEGISLATIVE RESEARCH COMMISSION

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 is also 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.

ISSUES CONFRONTING THE 1996 GENERAL ASSEMBLY

A Supplement

Prepared by

Members of the
Legislative Research Commission Staff

Edited by
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MEMORANDUM

TO: Members of the General Assembly

FROM: Don Cetrulo

SUBJECT: Supplement to *Issues Confronting the 1996 General Assembly*

DATE: December, 1995

This collection of issue briefs, prepared by members of the Legislative Research Commission staff, is a supplement to *Issues Confronting the 1996 General Assembly* (Informational Bulletin 193), which you received in August. Some of these issues are updated versions of issues discussed in the original publication. Others are new issues that were not discussed previously.

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APPROPRIATIONS AND REVENUE

COMPREHENSIVE TAX REFORM

Issue

Is Kentucky's tax system in need of a comprehensive overhaul?

Background

Kentucky's tax system has been in the news a lot lately and most of the news has not been good. In nine of the last twelve years, between-session budget cuts have been made to address revenue shortfalls totaling hundreds of millions of dollars. Lawsuits have been filed challenging different aspects of various taxes. The legislature has been under increased pressure from businesses and individuals to provide exemptions from one tax or another. There has been a series of newspaper articles questioning the long-term wisdom of tax credits offered as a part of Kentucky's economic development efforts. Private citizens groups have repeatedly called for the repeal of the inheritance tax and the intangibles tax, claiming that these taxes cause Kentucky to lose valuable citizens. Businesses threaten to leave Kentucky because of the tax system. Each year, the list of problems with the tax system and proposed solutions to remedy budget woes grows longer.

Kentucky is not alone in its fiscal problems. On a national level, groups such as the National Conference of State Legislatures, the National Governors Association, the Federation of Tax Administrators, the Multistate Tax Commission, and the National Association of State Budget Officers have grappled with tax-related issues. They've looked at how the changes in the overall economy, population shifts, and federal tax policy have undermined the traditional bases of state tax systems. These groups have determined that the changing circumstances in the United States and in the world have caused state tax systems in the main to be unresponsive, inequitable, and difficult to manage.

Discussion

The problems with Kentucky's tax system have been discussed, analyzed and debated by many groups over the years. There are numerous studies, plans and proposals available that identify problems and propose solutions. At various times, the legislature has addressed one problem or another. However, there has never been a comprehensive effort at tax reform that considers all of the problems and all of the solutions, to create a comprehensive system that meets the existing needs of Kentucky, while insuring that the tax base will grow as the needs of the state grow.

Some of the problems with Kentucky's tax system that have been consistently identified over the years are as follows:

- **The Sales and Use Tax** - The sales and use tax was enacted when manufacturing was the mainstay of the economy. It primarily taxes the sale of goods. In today's world, services have supplanted manufacturing as the backbone of the economy. Business has become more global, and the fastest growing sector in the economy is the information-based industry. Because Kentucky does not tax the growing sectors of the economy, it is impossible for the sales and use tax to keep pace with the growing needs of the state.

- **The Corporate Income Tax** - Kentucky's corporate income tax was enacted many years ago when most companies manufactured goods and sold them within the United States. Today, companies operate on a worldwide basis. They sell goods, services, tangible items, and intangible items. Since Kentucky's tax system was created to address the domestic sale of goods, it does not adequately address the international sale of goods and services. It does not adequately address income earned by service and information-based companies. The results are unintended loopholes which allow many corporations to legally avoid the payment of tax in Kentucky.

- **Property Tax** - In 1979, the Kentucky legislature passed House Bill 44, which placed limits on the overall permitted growth in property tax assessments on a statewide basis. The effect of this legislation is that the property tax base has failed to grow in proportion to the growth in the economy. In fact, statewide property tax rates have decreased each year since the enactment of House Bill 44. With the property tax shouldering less of the overall tax burden each year, the other major taxes have been relied upon to make up the difference.

- **The Inheritance and Intangibles Taxes** - The inheritance and intangibles taxes are the two taxes most often identified by those seeking to reform our tax system as being unfair, oppressive and counterproductive compared to those of other states. Opponents of these taxes claim that they cause wealthy Kentuckians to move out of state when they retire, rather than remaining in Kentucky and investing their resources here.

This issue renews itself every year in one form or another. It is a complex problem that will require an unprecedented effort and commitment on the part of the legislature, the executive branch, and the citizens of Kentucky.

HEALTH AND WELFARE

CHILD FATALITY REVIEW

Prepared by Susan Lewis Warfield

Issue

Should the General Assembly enact legislation to establish a system of child fatality review?

Background

In 1994, there were 712 child deaths (birth to 17 years of age) in Kentucky. Injuries are cited as the cause for nearly 35% (246); over 7% (54) sudden infant death syndrome (SIDS); and the remaining 58% (412) other causes. According to the 1993 *Kids Count Data Book*, published by the Annie E. Casey Foundation, Kentucky is one of only eight states that has experienced an increase in the number of child deaths between 1985 and 1990.

In Kentucky, there were nearly 25,000 children identified as victims of abuse and neglect by the Department for Social Services in Fiscal Year 1994. Of these children, 29 died as a result of the maltreatment, up from the 20 deaths identified in fiscal year 1993. These children were more likely to be white males, were just as likely to have died as a result of neglect as physical abuse, and nearly all of them were under the age of five.

Over 48 states have established panels to review data on child fatalities. By analyzing this data, intervention strategies and risk assessment measures can be developed which may prevent the deaths of other children. To formulate useful strategies, conclusions must be based on sound data. Accuracy in determining the cause of a child's death can be improved by ensuring that coroners have access to, and ask for, facts and information maintained by other agencies. Furthermore, using a multidisciplinary investigation approach at the local level can result in a more thorough scrutiny of the child's death.

Discussion

Currently there is no single agency in Kentucky required or authorized to evaluate all of the information available on child fatalities. Sources which can be used in this evaluation include death certificates, child abuse reports, autopsy reports, Uniform Crime Reports, and legal and medical records. A researcher from Transylvania University compared CHR data available in Vital Statistics with Department for Social Services information and found only one case of fatal child abuse that she was able to cross-reference in both offices. The inconsistency was attributed to different definitions used

by each department. A statewide review panel could recommend common definitions and reporting requirements.

Kentucky Cabinet for Human Resources officials indicate in a recently developed "Child Fatality Handbook" that the state death statistics probably underestimate the incidence of fatal child abuse. Some deaths may be incorrectly diagnosed and reported as SIDS, accidental injury, or a cause other than abuse. Two years after implementing a statewide system of review, Missouri officials found the number of confirmed cases of death from child abuse and neglect nearly doubled. By accurately determining the cause of death for Kentucky children, efforts to prevent future deaths can be improved. Perpetrators can be brought to justice if criminal actions are discovered and steps can be taken to protect other children, both in the home and in the community.

Improving the investigation of child fatalities is one way to increase the accuracy of the cause of death findings. Using a multidisciplinary team approach for local investigation is proving to be effective in other states. Local officials, including law enforcement, prosecutors, social services, health departments, and coroners, share information and use the expertise of each professional on the team to conduct coordinated investigations. The team approach can result in improved communication and more complete information on which to base decisions. Similar teams are being used effectively in the investigation of child sexual abuse.

For abuse and neglect fatality cases, reviewing data on each death can allow a state review panel to assess the protection system's response to child abuse and neglect situations. A profile of perpetrators can be developed and used to guide professionals in making decisions. Preventable accidents that result in a child fatality can be studied and, when trends are identified, educational and public awareness efforts can be initiated. Missouri launched a public awareness campaign after determining that 41% of the preventable accidental deaths in the state occurred when the child had no direct adult supervision.

After receiving a $20,000 grant from the U.S. Department of Health and Human Services, the Cabinet for Human Resources has taken steps to develop a method to review child fatalities. In 1993, CHR developed and distributed an investigation guide, and it continues to focus on the development of local multidisciplinary teams. A model protocol, which can be adapted by communities, has been distributed and some technical assistance is being provided by staff from the Department for Social Services.

There are eighteen teams currently functioning in Kentucky communities, including Louisville, Lexington, and Bowling Green. In addition, the Child Protective Specialists in the DSS Central Office conduct an internal review of all child fatality reports which involve families with which the department has had contact. This initiative has provided a solid foundation for further discussion of the concept of child fatality review and how such a system would benefit Kentucky children.

A proposal for implementation in this state has been developed by an interdisciplinary workgroup comprised of representatives from both state and local agencies. The members represent coroners, medical examiners, public health, social services, law enforcement, vital statistics, pediatricians, and parents of children who have died from Sudden Infant Death Syndrome.

Should the General Assembly decide to address the issue of reviewing child fatalities, in order to improve prevention and intervention initiatives, alternatives proposed by the workgroup which may be considered include:

1. Assist the coroner in the effort to accurately determine the cause and manner of the child's death by making the records and information from law enforcement agencies with local jurisdiction, the local health department, and the local office of the Department for Social Services available to the coroner. Require the coroner to contact these agencies and require the agencies to cooperate fully with the coroner.

2. Encourage the development of local child fatality response teams at the county level to promote communication, cooperation, and information sharing. The local team can also coordinate local prevention efforts.

3. Improve current efforts to collect and analyze data and information concerning child fatalities by creating a state Child Fatality Review Team to tap existing information sources and look for trends, patterns, and risk factors. Require coroners to submit a brief monthly report to the state team, if one or more child fatalities have occurred during the preceding month, to trigger a search by the state team of other data sources for information concerning the death. A variety of agencies and professions should be represented on the state team, to provide diverse expertise and experience and thus enhance the review process.

4. Evaluate the effectiveness of existing prevention programs on the basis of the trends and patterns associated with child fatalities which have been identified by the state team. The state team would report its findings and any recommendations for revision to existing laws, administrative regulations, policies, budget priorities, and prevention strategies and programs.

JUDICIARY

DOMESTIC VIOLENCE

Prepared by Norman Lawson and Susan Lewis Warfield

Issue

Should the General Assembly amend statutes relating to domestic violence?

Background

The last decade in Kentucky has seen extraordinary changes in the service system for domestic violence victims and survivors. As reports of instances of domestic violence (spouse abuse, adult abuse, child abuse, child sexual abuse, and abuse of the elderly) have risen, the General Assembly has acted in each of these areas to attempt to reduce the violence and to punish perpetrators. The 1992 Kentucky General Assembly enacted landmark legislation relating to the crime of domestic violence; it has served as one of five state models used by the National Council of Juvenile and Family Court Judges to draft the Model Code on Domestic and Family Violence. Funding for shelters has increased. Model law enforcement training has been developed. Standards of care for mental health services provided in domestic violence cases have been written. A prosecutor's manual for domestic violence has been completed.

Domestic violence in the home setting now brings on domestic violence orders from the courts, with statewide registry of the orders, arrest by police for violation of the orders, and other court-related sanctions, including criminal sanctions. Child abusers and sex offenders now face mandatory imprisonment in most cases, without being paroled until they successfully complete a state-operated sexual offender treatment program. Reporting of child abuse and adult abuse incidents to the police is now mandatory. Adult abuse by persons who are in a caregiver relationship is a crime, stalking is a crime, and sentence lengths for these offenses have been increased. These initiatives have moved Kentucky far ahead of many other states, earning the Commonwealth national attention.

There has been a growing recognition in Kentucky, however, that despite the enactment of strong and progressive legislative reform, significant problems in the state's domestic violence service system remain. The tools provided by law to the professionals working in the justice system are not being applied in a uniform or consistent manner. System and professional accountability is an elusive goal. Additionally, funds for protective, support and treatment services for domestic violence victims and their families are insufficient. The number of homicide and homicide-suicide cases related to domestic violence continues to increase. Approximately every seven days in the Commonwealth, a victim of domestic violence is murdered.

Discussion

In response to these trends, the Co-Chairs of the Legislative Research Commission called for the establishment of the Legislative Task Force on Domestic Violence in August 1994. This Task Force was directed to study the causes and extent of domestic violence in Kentucky families and the implementation and enforcement of existing laws dealing with domestic violence. Members of the Task Force include legislators and representatives of the judiciary, prosecutors, law enforcement, social services, mental health, victims services, court administration, and advocates for change.

The Task Force reviewed current Kentucky statutes relating to domestic violence and invited Task Force members to identify key issues to be discussed. Early presentations explored the nature and extent of domestic violence in Kentucky and furnished a profile of both abusers and their victims, based on Kentucky and national data.

Deliberations included presentations on federal domestic violence issues. United States Attorney General Janet Reno addressed the Task Force via telephone from her Washington, D.C. office. Her remarks centered on the key provisions of the Violence Against Women Act signed into federal law in 1994. The Task Force also held a joint meeting with the Kentucky Supreme Court Gender Fairness Committee, in order to hear from Bonnie J. Campbell, Director of the Violence Against Women Office of the U.S. Department of Justice and former Iowa Attorney General. Ms. Campbell reported on the availability of federal domestic violence funding and explained the role her office will play in coordinating the national response to domestic violence crimes.

Several nationally recognized experts also addressed the Task Force including Sara Buell, Prosecutor in Quincy, Massachusetts (via teleconference); Ann Crowe, Council of State Governments; Andy Klein, Chief Probation Officer in Quincy, Massachusetts; Ted Wedel, Attorney and Research Analyst for the Missouri House of Representatives, representing the National Council of Juvenile and Family Court Judges; and Dr. Ann Ganley, concerning the experience in Washington (state) with certification of providers of court-ordered treatment for domestic violence offenders (via teleconference).

In addition, several professional associations were invited to address the Task Force, including the Kentucky Domestic Violence Association; County Attorneys Association; Commonwealth's Attorneys Association; Kentucky Sheriffs' Association; Circuit Clerks Association; Circuit Judges Association; District Judges Association; and Kentucky Medical Association. In addition, members were addressed by representatives of the Crime Victims' Compensation Board; Kentucky Parole Board; and Prosecutors' Advisory Council. Contribution to the work of the Task Force was also made by individuals responsible for responding to domestic violence on the local level. The testimony from survivors of domestic violence was a key part of Task Force deliberations.

In all, testimony before the Task Force suggested that additional training is needed by some system personnel to increase awareness of the dynamics of domestic violence, and that prevention and protection efforts should be coordinated at the state and local level by establishing interagency councils. Others suggest that what is really needed is to enforce the laws that currently exist, making certain that social services, law enforcement, prosecution, and the courts actually make the current system work.

The Legislative Task Force on Domestic Violence concluded its work by reaching a consensus on several specific and comprehensive recommendations. These recommendations relate to the creation of a state multidisciplinary authority, encouraging development of local interagency councils, and requiring special training and development of model policies for several agencies and professions. The Task Force also recommends addressing concerns regarding protective orders, revising the elements for certain crimes, revision to some aspects of warrantless arrest authority, expansion of court alternatives, and supports requiring certification for law enforcement officers. In addition, the Task Force suggests the General Assembly comply with the provisions within the Violence Against Women sections of the federal Crime Act of 1994, improve funding for victim safety, including victim advocacy, and revise the membership of the Crime Victims Compensation Board.

LOCAL GOVERNMENT

JUVENILE CURFEW ORDINANCES

Prepared by John Schaaf

Issue

Should the General Assembly authorize cities to enact curfew ordinances which would apply to juveniles?

Background

Ordinances establishing curfews for juveniles have been enacted in many Kentucky cities. However, a 1990 Supreme Court decision has made enforcement of these ordinances difficult. In *City of Covington v. Court of Justice*, Ky., 784 S.W.2d 180 (1990), the Court held that a violation of a city's juvenile curfew ordinance was not an offense recognized by Kentucky's Unified Juvenile Code, and that violators of such an ordinance cannot be prosecuted in the juvenile justice system.

Juvenile courts in each county have exclusive jurisdiction over all proceedings involving juveniles, except traffic violations. The Juvenile Code specifically excludes curfew violations from the list of "status offenses", those acts committed by juveniles which would not be crimes if committed by adults. The court decision created legal questions regarding the authority of police to enforce juvenile curfew violations. In 1992 and 1994, legislation authorizing cities to enact curfew ordinances applying to juveniles was introduced in the General Assembly, but was not enacted into law.

Juvenile crime has drawn increasing attention in recent years, and was an important issue in the 1995 gubernatorial campaign. Juvenile curfew ordinances are being used by many communities as one response to the crimes being committed by and against young people. The juvenile curfew ordinances enacted recently by Kentucky cities have focused enforcement on the parents of juveniles. It has been argued that this approach is partially effective, but that many juveniles are beyond the control of their parents.

In the past, representatives of the judicial branch of state government have opposed juvenile curfew legislation, because they said it did not state where curfew offenders would be held if they are not returned home, and did not provide funding for holding curfew offenders.

Discussion

Under the legislation introduced in prior sessions, all cities, including urban-counties, would be authorized to enact and enforce curfews which would apply to juveniles under 18 years of age. The ordinances would have to establish clear standards in precise language to apprise a juvenile and a parent of the conduct which constitutes a violation of the ordinance.

The prior legislation also specified that a juvenile curfew ordinance could not authorize a police officer to detain a juvenile for a violation of the ordinance for any period longer than reasonably necessary to issue a warning citation and obtain information to allow the officer to contact the juvenile's parent, and the ordinance could not impose a penalty on the juvenile. The 1994 legislation provided that upon a third or subsequent warning citation to a juvenile for violation of a curfew ordinance, a status offense complaint could be filed against the juvenile and the juvenile would be dealt with in accordance with the Unified Juvenile Code.

STATE GOVERNMENT

STATE LEGISLATIVE REDISTRICTING

Prepared by Clint Newman and Joyce Honaker

Issue

How should Kentucky's state legislative district boundary lines be redrawn in order to comply with the Kentucky Supreme Court decision in *Joseph M. Fischer v. State Board of Elections, et al*?

Background

In December, 1991, the Kentucky General Assembly, in its Second Extraordinary Session, undertook the task of redistricting legislative district boundaries based on the population counts of the 1990 U. S. Census. Using a sophisticated computer-based geographic information system, the General Assembly created Senate districts with a population deviation range of -3.26% to +3.09% from the ideal population of 96,981. House districts were created with a population deviation range of -4.97% to +4.94% from an ideal population of 36,853. The Senate plan divided 19 counties, and the House plan divided 48 counties.

The plaintiff in the above cited case successfully challenged the constitutionality of the 1991 legislative redistricting, arguing that the redistricting plan unnecessarily violated Section 33 of the Kentucky Constitution. While requiring population equality, Section 33 prohibits the dividing of counties in legislative redistricting.

In a 5 - 2 decision, the Kentucky Supreme Court ruled, in essence, that population equality requirements and preservation of county integrity requirements should be better balanced in a redistricting plan and that fewer counties should be divided. The court found that the splitting of counties could be significantly reduced by adopting population variation limits of -5% to +5% from an ideal legislative district.

The Supreme Court permanently enjoined the conduct of any election pursuant to the 1991 legislative district boundaries after January 3, 1995.

The Kentucky General Assembly was convened in Extraordinary Session on July 31, 1995, for the purpose of redrawing legislative district boundaries. The General Assembly passed Senate Bill 6, which divided six counties, with a population deviation range of - 4.77% to +4.81%, and House Bill 3, which divided 44 counties, with a population range of -4.97% to +12.67%, the latter deviation reflecting the loss of significant on-base population in the Hardin County portion of Ft. Knox, located in the 27th Representative District.

The Governor vetoed House Bill 3 on the grounds that he believed it was unconstitutional. The constitutionality of Senate Bill 6 is currently a subject of litigation. Campbell Circuit Court found the Senate plan unconstitutional on the grounds that it was not accompanied by a House plan and was therefore incomplete. In addition, the Campbell Circuit Court barred a special election to fill a vacant Jefferson County House seat until a new redistricting plan is enacted. The special election ruling was appealed to the Kentucky Supreme Court, which upheld the Campbell Circuit Court's ruling and reaffirmed its 1994 decision.

Discussion

As the legislative election filing deadline of January 28, 1996, approaches, the need to enact legislation establishing boundaries that will pass constitutional muster becomes crucial. Additional vacancies in the 1996 House of Representatives will be created by the November 7 election of an incumbent to statewide office and by the appointment of another as the Governor's legislative liaison to the House of Representatives.

UNIFORM ADMINISTRATIVE HEARING PROCEDURES

Prepared by Joyce Honaker and Michael Greer

Issue

What action will be proposed to the 1996 General Assembly regarding conforming amendments to implement 1994 legislation establishing uniform administrative hearing procedures for state agencies?

Background

The 1994 General Assembly enacted HB 334, which establishes a uniform procedure for hearings conducted by state administrative agencies. The bill contains an effective date of July, 1996, and outlines a procedure for preparing conforming amendments to current hearings laws. The uniform law, codified as KRS Chapter 13B, affects over 400 types of hearing processes in about 700 existing statutes.

Agencies are to prepare conforming amendments and may request exemptions of hearings from the uniform procedure. The LRC and a newly created Division of Administrative Hearings in the Office of the Attorney General are overseeing the process. The Interim Joint Committee on State Government, and ultimately the 1996 Regular Session of the General Assembly, will review the conforming amendments and requests for exemption and take appropriate action.

Discussion

In 1994, the Attorney General appointed a chief hearing officer, and state agencies designated liaisons to work with the Attorney General's Office and LRC in preparing information and drafts for legislative consideration. In May, 1995, the Interim Joint Committee on State Government's General Government Subcommittee held hearings on 26 state agencies' requests to exempt 118 types of hearings, or approximately 25 percent of all hearing procedures identified, from the uniform procedure. It recommended granting full exemption for 26 procedures and limited or conditional exemption for 54 procedures, with 13 requests denied. In addition, agencies withdrew petitions for 19 hearing procedures prior to or during the hearings. The Subcommittee took no action on six of the exemption petitions, after determining that the six hearing procedures did not fall under the purview of KRS Chapter 13B.

In May, 1995, the full Interim Joint Committee on State Government adopted the Subcommittee's report, in order for agencies to prepare and submit draft legislation containing conforming amendments. Legislation embodying the Subcommittee's

recommendations has been prepared for consideration by the 1996 Regular Session of the General Assembly.

LEGISLATIVE CODE OF ETHICS

Prepared by Joyce Neel Crofts

Issue

Should the General Assembly amend the Legislative Code of Ethics?

Background

In February 1993, the General Assembly in Extraordinary Session adopted a new Code of Legislative Ethics (KRS 6.601 to 6.829). The code amended statutes originally enacted in 1976 and created new statutes to establish a comprehensive, updated set of guidelines for legislators to follow if their interests as private citizens and their duties as public servants conflict. The code created an independent commission with various oversight, advisory, investigatory, and sanctioning powers to implement the code. The code addresses such issues as disclosure of certain interests and finances, acceptance of gifts, nepotism, post-term employment restrictions, conduct relating to state agencies, contracting with state agencies, ethics education, honoraria, acceptance of campaign contributions from legislative agents (lobbyists), and legislative lobbying. The code provides for advisory opinions to assist legislators in complying with the code, and it includes civil and criminal penalties for those who fail to comply. In 1994 HB 891, the General Assembly amended the code in several areas.

Five legal challenges to the code have been initiated in Franklin Circuit Court:

1. *Associated Industries of Kentucky v. Commonwealth of Kentucky* challenged both the legislative ethics code and the executive branch ethics code on a variety of issues relating to lobbyists. Franklin Circuit Court upheld the registration, disclosure, and reporting requirements; found the prohibition against contingency fee lobbying constitutional; did not rule on whether certain penalties violate the First Amendment rights of association and petition; did not rule on the prohibition against lobbyists making campaign contributions; and found that the state's compelling interest in "maintaining the proper operation of democratic processes, including deterring corruption and the appearance of corruption, overbalances" any difference in treatment between paid lobbyists and unpaid lobbyists. A.I.K. appealed the judgment and asked that the case be transferred directly to the Supreme Court of Kentucky. The Supreme Court granted the transfer. Oral arguments were made before the Court on October 11, 1995.

2. *Kelsey E. Friend, Senator of the 31st Senatorial District of the Commonwealth of Kentucky v. Kentucky Legislative Ethics Commission, et al.* challenged the code as violative of "numerous provisions of the constitutions of Kentucky and the United

States." Franklin Circuit Court dismissed the case, citing lack of an actual controversy and stating that the dismissal "in no way represents a decision on the merits of the issues brought before the Court." An appeal is pending in the Kentucky Court of Appeals.

3. *Thomas J. Burch, Representative of the 30th House District of the Commonwealth of Kentucky v. Kentucky Legislative Ethics Commission* challenged the code on constitutional grounds. The case is pending in Franklin Circuit Court.

4. *Golden Rule Insurance Company v. Commonwealth of Kentucky, Kentucky Legislative Ethics Commission, et al.* challenged the Legislative Ethics Commission's authority to compel disclosure of the amount Golden Rule spent on media broadcasts to oppose the Health Care Reform Act when it was pending before the legislature. KRS 6.821(4)(a)1. and 3. require a lobbyist employer to disclose the "total amount of lobbying related expenditures made by the employer" and to list a "complete and itemized account of all other amounts expended for lobbying." To "lobby" is "to promote, advocate, or oppose the passage, modification, defeat, or executive approval or veto of any legislation by direct communication" with legislators, the Governor, a cabinet secretary, or a member of the staff of any of those officials [KRS 6.611 (26)(a)]. Lobbying does not include "news, editorial, and advertising statements" in the media [KRS 6.611 (26)(b)2.]. The Court ruled that because the media campaign was of an "indirect" or grass roots nature, and therefore did not meet the statutory definition of lobbying, the Legislative Ethics Commission lacks the authority to compel Golden Rule to disclose amounts spent for broadcasts in opposition to the Health Care Reform Act. The Legislative Ethics Commission did not appeal the decision.

5. *Kenny Rapier, Representative of the 50th House District of the Commonwealth of Kentucky v. Kentucky Legislative Ethics Commission; Chris Gorman, Attorney General of Kentucky; and the Commonwealth of Kentucky* challenges the Code as violative of the Kentucky and U. S. Constitutions. Franklin Circuit Court has been asked to declare that the Code is unconstitutional, that the Legislative Ethics Commission be abolished, and that each house of the General Assembly has the exclusive duty to discipline its members.

Under KRS 6.666(17) the Legislative Ethics Commission is required to submit a report to the Legislative Research Commission containing its recommendations for revisions in the code. The Legislative Ethics Commission formed a nine-member advisory committee, consisting of educators, newspaper publishers, legislative agents, former legislators, and a former U. S. attorney, to review the code and advise the commission regarding recommended changes. The advisory committee held six public meetings and presented its report to the Commission on May 24, 1995. On June 27, 1995, the Commission adopted its final report on recommended changes to the code and submitted the report to the Legislative Research Commission.

Discussion

Various recommendations for changes in the code have been discussed by the Legislative Ethics Commission and its advisory committee. Some of the major issues and recommendations addressed by the Commission are:

Spending Limit Reduction -- The code sets a $100 limit on the amount per year that legislative agents and their employers may spend for food and beverages consumed on the premises by each legislator and his or her immediate family [KRS 6.811(7)]; this is considered an expenditure and must be reported. The Commission proposed deleting the $100 limit from the code and recommended that the general rule prohibiting legislative agents and employers from giving, and legislators from accepting, anything of value, be extended to cover food and beverages consumed on the premises. The Commission proposed two new exceptions to the provision prohibiting legislative agents and employers from giving anything of value to a legislator: (1) That agents and employers be allowed a $3 daily spending limit (to cover such minor social courtesies as offering cigarettes or mints) which could not be accumulated and would not have to be reported; and (2) That employers of legislative agents be allowed to provide food and beverages consumed on the premises for a legislator who is an invitee or program participant at a scheduled public meeting of a bona fide association.

Legislative Agents and Campaign Activities -- KRS 6.811(6) prohibits a legislative agent from making a campaign contribution to a legislator, a candidate for the legislature, or a legislative campaign committee. The code is silent regarding other involvement in political campaigns. The Commission recommended that the code be amended to: (1) Allow legislative agents to make campaign contributions to legislative races in the agent's own district; (2) Restrict an agent's ability to be involved in the management or conduct of the campaign of a legislator or legislative candidate; and (3) Prohibit legislative agents from serving as fund-raisers (not simply registered fund-raisers) in legislative races.

Disclosure of Gifts -- KRS 6.787 requires legislators, candidates for the legislature, and major management personnel in the legislative branch to disclose the sources (not amounts) of gifts of money or property with a retail value of more than $200 received by the filer or the filer's immediate family. KRS 6.811(6) prohibits legislative agents and employers from giving "anything of value" to legislators. The definition of "employer" (KRS 6.611) refers to a person or business entity that hires a lobbyist, and excludes an individual officer, director, or employee, unless that person makes an expenditure for which he or she is reimbursed by the business entity. The Commission said there is a perception that the code allows certain business and organization representatives to give things of value to legislators even if their business or organization is an employer of a legislative agent. To counter this perception, the Commission recommended requiring filers of statements of financial disclosure to report sources of all gifts, not just money and property, of $25 or more.

Application of the Code to Legislative Lobbying Activities of Certain State and Local Government Agencies and of Colleges and Universities -- The code's definition of "legislative agent" does not apply to public servants who lobby on behalf of state agencies, local governments, and colleges and universities, unless the person engaged by a de jure municipal corporation, such as the Kentucky Lottery Corporation or the Kentucky Housing Corporation, an institution of higher learning, or a local government, has lobbying as a "primary responsibility" during legislative sessions [KRS 6.611(22)(b)]. The Commission said that executive branch state agencies have employees designated as "legislative liaisons" to represent the agencies' legislative interests. The legislative liaisons' objectives and activities "differ largely from those of the private sector" agents, but their duties to communicate with legislators are similar to those of their private sector counterparts. The Commission recommended that legislative liaisons be required to identify themselves to the Commission by name and agency but not otherwise be subject to the lobbying provisions of the code.

Likewise, state institutions of higher learning, de jure municipal corporations, and local governments utilize persons to represent their legislative interests. However, the code considers these persons legislative agents only if their "primary responsibility" during legislative sessions is to lobby. The Commission said that the term "primary responsibility" has created confusion and resulted in few of these people actually registering. The Commission proposed eliminating the word "primary," thus applying the code to all of those representatives whose responsibilities include lobbying the General Assembly. It would not, however, apply to local elected officials.

Application of the Code to Indirect, or Grass Roots, Lobbying -- The code's definition of "lobby" means to promote or otherwise influence legislation through "direct communication" with a legislator, the Governor, a cabinet secretary, or a staff member of any of those officials [KRS 6.611(26)(a)]. Indirect, or grass roots, lobbying is not covered in the code, although certain legislative agents and employers spend vast amounts of money influencing legislation through media campaigns. The Commission recommends expanding the definition of "lobby" to include indirect lobbying as well as direct lobbying. The Commission said that the code should not in any way limit indirect communication, but that amounts spent on it should be reportable. The Commission also pointed out that the code would maintain its current exemption for publications primarily designed for, and distributed to, members of bona fide associations or charitable or fraternal nonprofit corporations [KRS 6.611(26)(b)(4)]. Further, the Commission proposed a revision to clarify that news and editorial statements in the media by bona fide media representatives are not lobbying activities.

Other Recommendations -- Regarding other issues, the Commission recommends:

- Requiring legislative agents and employers to file reports quarterly each year, rather than six times during session years and three times during nonsession years.

- Allowing technical experts who limit their lobbying to public appearances before legislative bodies to communicate informally with legislators immediately before and after their public testimony without having to register as legislative agents.

- Resolving penalty inconsistencies between two related offenses by making both Class B misdemeanors. Under the giving and accepting "anything of value" provisions of the code, a legislative agent or employer who gives anything of value to a legislator, the legislator's spouse or child is guilty of ethical misconduct for the first violation; and the second violation is a Class D felony. On the other hand, a legislator's acceptance of anything of value is a Class B misdemeanor. The recommendation would make both violations a Class B misdemeanor.

- Clarifying an apparent discrepancy in the code by prohibiting legislative agents and employers from giving anything of value to the Governor or other executive branch officials, if the agents and employers are attempting to influence legislation through those individuals.

- Deleting KRS 6.611(2)(b)(8)(e), to clarify that legislators may not accept travel expenses from legislative agents and employers. Under KRS 6.747(2), a legislator would still be allowed to accept prepaid, or be reimbursed for, transportation, food, and lodging for out-of-state travel associated with the performance of legislative duties, if prior approval is obtained from the Legislative Research Commission.

- Amending the code to allow legislators and their children to accept benefits (e.g., meals, earned bonus vacations, even health insurance) offered by a spouse's employer, but only if the same benefits are offered to other, similarly situated employees.

- Allowing children of legislators, as well as spouses, to be employed by the employer of a legislative agent, as long as the children or spouses are not employed to lobby.

- Prohibiting legislators from accepting campaign contributions during regular sessions of the General Assembly.

- Eliminating the provision that allows the Commission to issue confidential reprimands upon a finding of probable cause after a preliminary investigation.

- Allowing Commission members to receive compensation for participating in Commission-approved activities; and changing the deadline for the Commission's annual report from February 15 to March 15.

The Commission's report states that it discussed, but made no recommendations on, the following issues: suspension of legislators who are convicted of a crime, reduced registration fee for non-profit organizations, legislators and potential conflicts of interest,

legislators' contact with state agencies, the legislator/attorney's right to practice law before state agencies, code of conduct for legislative agents, mandatory ethics training for legislative agents, and changes in the Commission's educational activities.

LEGISLATIVE COMPENSATION

Prepared by Barri Christian

Issue

Should annual salary and expense allowances of General Assembly members be adjusted?

Background

HB 737, passed by the 1994 General Assembly in regular session, reestablished the Legislative Compensation Commission for the purpose of studying and making recommendations on matters relating to legislative compensation (KRS. 6.226-6.229). Although it was originally created by the 1980 General Assembly, the provisions of the statute were never implemented and the Commission had never been activated prior to the implementation of HB 737. As a result, there is no current standard method by which to govern salary and expense adjustments for General Assembly members, should they be desirable or necessary.

Discussion

In its deliberations, the new Legislative Compensation Commission, meeting since March 1995, has studied the history of legislative compensation of Kentucky legislators from 1893 to the present; compensation data from all other states; time and expenditure data of current Kentucky legislators; and the effect of the CPI on legislative salaries and expenses.

The current salary for legislators is $100 per day while on legislative business, with members of leadership and committee chairs receiving additional pay for their additional duties. In addition, each member receives a stationery allowance of $50 for each session, a federally adjusted daily expense allowance of $74.80 during a session, an expense allowance of $950 per month during the interim, and actual travel expense reimbursement when traveling on legislative business during the interim. Mileage is reimbursed at $.25 per mile and is indexed to the federal travel rate.

The last salary increase for legislators was in 1984. The last monthly expense increase was in 1982. Since that time, some expenses not previously taxed have been deemed subject to tax withholding. For example, legislators once received the full $950 monthly expense allowance; currently the average net take-home amount is approximately $554, with reimbursement subject to documentation of actual expenditures.

While executive branch constitutional officers' salaries are adjusted according to the consumer price index, under the "rubber dollar" theory, the legislature has not participated in this method of indexing, although several Attorney General's Opinions have ruled it appropriate. Application of the annual CPI back to 1984 indicates that salaries and expenses would have increased 42.6 percent over current levels, had it been instituted at that time. If implemented today, the cost of the legislative per diem would increase the legislative biennial budget by $1.17 million.

At its September 1995, meeting, the Compensation Commission unanimously approved the following five recommendations:

1. On January 1, 1997, and each January 1 thereafter, the legislative per diem (currently $100) should be increased by the same percentage received by state employees during the same fiscal year.

2. Beginning on January 1, 1997, and each January 1 thereafter, the legislative interim monthly expense allowance should be increased by the Consumer Price Index for the previous calendar year.

3. Beginning January 1, 1997, each legislator should secure a WATS line and 800 number for constituent matters and should receive a $50 per month legislative allowance to offset the costs. Upon submission of a bill, LRC shall reimburse each member the actual cost of installation, if any.

4. Beginning January 1, 1997, each legislator should receive a mailing allowance account within the Legislative Research Commission, from which the cost of legislative-related mail may be deducted, if mailing is posted through a centralized system within LRC. The mailing allowance should be $100 per month while in session and $50 per month during nonsession months. The mailing allowance should be used only for centralized mailing, and any account balance not expended by June 30 of each year should lapse and not be carried forward.

5. Beginning January 1, 1997, each legislator should receive a stationery allowance account within the Legislative Research Commission, from which the cost of legislative stationery can be deducted, if stationery is purchased through a centralized system in LRC. The stationery allowance should be $200 per year. The stationery allowance should be used only for LRC-purchased stationery, and any account balance not expended by June 30 of each year should lapse and not be carried forward. The current $50 stationery allowance for each session should be abolished.

The report and recommendations were received and reviewed by the Legislative Research Commission on October 4, 1995, and referred, with no action, to the Appropriations and Revenue Committee.

VOTER ASSISTANCE

Prepared by Rob Williams

Issue

What changes are necessary to conform state election laws to federal law regarding voter assistance?

Background

Under Section 208 of the federal Voting Rights Act and KRS 117.255(3), a voter who requires assistance in voting because of blindness, disability, or inability to read or write English may be assisted by a person of the voter's choice, other than the voter's employer or an agent of that employer, or an officer or agent of the voter's union. However, amendments made to Kentucky law in 1994 prohibit a precinct election officer, a county clerk, or employee of a county clerk from providing assistance to a voter, and also prohibit any person from assisting more than two voters in any primary, regular, or special election. In October, 1994, a consent decree issued in a federal lawsuit challenging the restrictive provisions of Kentucky's voter assistance law found them to be invalid and unenforceable, because they unduly restricted a voter's right to have anyone of the voter's choice provide assistance, as guaranteed by federal law. Following discussions with the U. S. Department of Justice regarding permissible state restrictions on voter assistance, the State Board of Elections and the Office of the Attorney General advised county clerks and county boards of elections that even Kentucky's earlier statutory restrictions on voter assistance (as they existed prior to the 1994 amendments, requiring an election officer from each political party to render assistance when required, and setting a limitation against assisting more than two voters on election day) would violate federal law.

Discussion

Federal laws regarding voter assistance preempt state laws on the subject. The restrictions on voter assistance were enacted in 1994 as a vote fraud prevention measure, since vote buyers in some parts of the state would "assist" multiple voters in casting their ballots, especially absentee ballots, to ensure that votes were cast the way the buyers wanted. In some counties, collusion between precinct election officers further aided those vote buyers who wanted assurances that votes were being cast as intended. Strictly speaking, all current statutory restrictions on voter assistance would need to be deleted to comply with the letter of the federal law. The State Board of Elections and the county board of elections that had filed the federal lawsuit last fall held further discussions with

the Department of Justice over the summer regarding Kentucky's voter assistance law, the reasons those provisions were enacted, and any possible federal injunctive action that may occur if the voter assistance law did not strictly comply with federal law. During those discussions it was pointed out that fourteen other states were not in compliance with the federal law, because they provide that a voter will be assisted by two precinct election officers of different political parties if the voter requiring assistance does not bring someone along to provide assistance. The Department of Justice acknowledged that, since the enactment of the federal voter assistance law, it had not taken action against any state whose law did not strictly comply with the federal law.

In August 1995, the State Board of Elections, the Kentucky County Clerks' Association, the Jefferson County Board of Elections, and the Jefferson County Voter Assistance Task Force presented their recommendations for legislative action during the 1996 Regular Session to the Task Force on Elections and Constitutional Amendments. The following recommendations were made regarding voter assistance:

- Delete the prohibition against a candidate providing assistance to a voter;
- Delete the prohibition against a person assisting more than two voters in any one election;
- Delete the prohibition against precinct election officers, county clerks, or employees of a county clerk providing assistance to a voter; and
- Permit a person requiring assistance to be assisted by a person accompanying the voter to the polls or by two precinct election officers of different political parties if the voter comes to the polling place alone.

The State Board of Elections also recommended that the law be amended to provide that a person who is not permanently certified as requiring assistance in voting would need to apply for certification to receive assistance on a yearly basis because of an inability to read or write English or some temporary disability that renders the voter unable to vote without assistance. If a voter requires assistance for either of those reasons but did not apply for prior certification, then only two precinct election officers of different political parties would be permitted to provide the necessary assistance, not a person the voter brings to the polling place.

PUBLIC FINANCING OF ELECTIONS

Prepared by Rob Williams

Issue

What changes should the General Assembly consider making to the law providing public financing of campaigns for Governor and Lieutenant Governor?

Background

In 1992, the General Assembly enacted legislation providing public financing of up to $1.2 million per slate of candidates for Governor and Lieutenant Governor to those who agree to abide by a spending limit of $1.8 million per election. As a further inducement to participate in the program, the law provided that slates agreeing to limit their spending could accept a maximum contribution of $500 per person, PAC, political party, or contributing organization, while slates that did not agree to the spending limit were limited to individual contributions of not more than $100. However, in January, 1995, a U. S. District Court ruled that the separate contribution limits for participating and nonparticipating slates were unconstitutional, so all slates could accept a maximum contribution of $500.

The public financing program has now been implemented for its first full election cycle and the separate contribution limits in the law, as well as a number of other issues which have arisen during the primary and regular elections, are likely to receive attention during the 1996 Regular Session. Those issues generally relate to activities involving the expenditure of funds by individuals or organizations, other than those made through the campaign account of a slate of candidates, which may nevertheless benefit a slate of candidates, in effect violating the spirit of the law by circumventing the spending limit under which slates of candidates must operate. These expenditures generally fall into three categories: independent expenditures (those made by persons not affiliated with a campaign which are made without the slate's knowledge or approval), expenditures by political parties, and donations of $100 or less per individual which are pooled to fund a major campaign-related purchase that benefits a slate of candidates. Other issues which will likely receive legislative attention concern exploratory efforts which may be undertaken to determine whether to form a slate of candidates or to determine the composition of a slate, the maximum amount that a participating slate may raise in private contributions, and coordinating the cutoff for fundraising by a slate with the schedule under which slates report their contributions and expenditures.

Discussion

Final reports of contributions received and expenditures made by slates of candidates and the political parties will not be made until December 7. However, since the major objective of the public financing program is to reduce the amount of money spent in races for Governor and Lieutenant Governor, the Registry of Election Finance has been closely monitoring the use of independent expenditures in this year's election, to determine whether they are truly independent of a campaign's direction, and thus exempt from a slate's spending limit. The Registry has also been monitoring the expenditure of political party funds, to ensure that they are made in support of the party's entire slate and do not provide a greater benefit to a slate of candidates than to the party's other candidates. This is important because if a slate is determined to have exceeded the spending limit through expenditures by individuals or organizations outside the campaign which were not truly independent expenditures, or expenditures which should count as a contribution to the slate in excess of the $500 limit, the slate is subject to a Class D felony penalty and forfeiture of office, if elected. Part of the 1992 campaign finance reform law requires advertisers and publishers to provide identifying documentation for funds they receive to produce campaign advertisements. How well that documentation effort succeeds in preventing collusion between campaigns and those who seek to help the campaign without making their expenditures part of the candidates' spending limit will be critical if the program's objectives are to be realized.

Expenditures made to benefit an all-but-announced candidate will also need to be examined, and some consideration may need to be given to establishing guidelines on exploratory efforts prospective candidates for Governor and Lieutenant Governor may make prior to filing candidate nomination papers.

The Registry presented its legislative recommendations for the upcoming Regular Session to the Task Force on Elections and Constitutional Amendments at its August, 1995 meeting, and the Task Force asked that bills be drafted to implement proposals that were complete. The recommendations related to the public financing program were:

- Delete the $100 contribution limit for slates not participating in the public financing program;

- Provide a statutory mechanism whereby potential candidates for Governor and Lieutenant Governor could conduct exploratory activities prior to filing nomination papers for a slate of candidates. Since fundraising for a slate of candidates can not begin prior to filing nomination papers, the Registry considers it advisable to permit potential candidates to raise and spend up to $90,000 (five percent of the spending limit) independently of the public financing program to help determine whether to form a slate of candidates and, if so, what the composition of the slate should be. An exploratory campaign would be subject to the same contribution limits and reporting requirements as a slate of candidates;

- Limit "bundling" of donations of $100 or less to make campaign-related expenditures. In-kind donations valued at $100 or less are not considered to be "contributions" to a slate of candidates, and supporters could pool their small donations to pay for goods of greater significance without those donations counting as contributions received by the slate and counted against its spending limit. The Registry recommends requiring a group of individuals that shares the cost associated with the purchase of or payment for goods, advertising, or services for the benefit of a slate of candidates to report to the Registry as a contributing organization and be bound by the $500 per election contribution limit;

- Limit the amount that political parties may accept from national and local party committees which may be used to benefit candidates for state office, the amount to be determined after the parties' campaign finance reports indicate what was spent on the candidates' behalf;

- Possibly limit the amount that a political party may spend in support of its candidates for statewide office. The Registry noted that a political party executive committee is limited to making a $500 contribution to a slate of candidates but may spend unlimited amounts on other party candidates. This creates a "trickle up effect" by which expenditures made on behalf of all of a party's candidates may circumvent the spirit of the public financing program by benefiting a slate of candidates without the expenditure counting against a slate's spending limit;

- Clarify that each state and county party executive committee may contribute $500 each to a slate of candidates;

- Dovetail the schedule for reporting a slate's receipts and expenditures with the cutoff date for fundraising to prevent a slate from making last minute deposits of contributions without having to report them for several days;

- Require political parties to file campaign finance reports prior to an election, instead of filing within thirty days after an election. The Registry did not recommend a specific reporting schedule, however; and

- Limit acceptance of private contributions by a slate of candidates participating in the public financing program to the maximum threshold qualifying amount of $600,000, unless an opposing slate exceeds the spending limit.

TRANSPORTATION

GRADUATED DRIVER'S LICENSES

Prepared by Kathy A. Campbell

Issue

Should the General Assembly establish a graduated system of licensing drivers ages 16 to 21 that places additional restrictions on youthful drivers and controls their exposure to progressively more difficult driving experiences?

Background

Traffic accident studies over the years have shown that, proportionally, teenage drivers are severely over represented in automobile crashes. According to a report* issued by the National Highway Traffic Safety Administration, in conjunction with the American Association of Motor Vehicle Administrators, "drivers 16 and 17 years of age have more than twice the average number of crashes in their first year of driving, and have four times as many crashes per mile driven as do experienced adult drivers. Teenage drivers are two and one-half times as likely to be in a fatal crash in which they have been drinking as the average driver, and they are twice as likely to be in a fatal crash as the average driver."

**An Improved Driver Entry System for Young Novice Drivers: Guidelines for Motor Vehicle Administrators.*

Discussion

Since 1938, a model uniform vehicle code has proposed that states enact laws that treat young novice drivers differently from the general driving population by restricting their driving experiences. Kentucky remains relatively permissive in its provisions governing the issuance of instruction permits and driver's licenses. Kentucky is one of six jurisdictions that allows a 16 year old with a driver's license to supervise another 16 year old learner with an instruction permit.

A growing number of legislators are receiving input from constituents on both sides of this issue. The Transportation Committee discussed several bill drafts on graduated driver's licenses during the 1994-95 interim. Provisions similar in all these drafts include:

- lengthening the time a person is required to have a permit before testing for their driver's license;

- requiring a person with an instruction permit to be accompanied by another licensed driver who is at least 18 or 21 years old;

- night time curfew on driving privileges;

- reducing the blood alcohol content permissible in a driver under 21 years old from 0.10% to 0.02% which is known as zero-tolerance; and

- strengthening the penalties associated with these provisions.

A provision unique to one legislative draft considered by the committee would mandate a driver's education course be completed within one year of receiving a driver's license.

INTERNATIONAL FUEL TAX AGREEMENT (IFTA)

Prepared by Kathy A. Campbell

Issue

What provisions should the General Assembly repeal and what provisions should be expanded, in order for Kentucky to be in full compliance with the multi-jurisdictional pact known as the International Fuel Tax Agreement (IFTA)?

Background

Congress enacted the Intermodal Surface Transportation Efficiency Act (ISTEA) in 1991, which compels states to participate in IFTA by September 30, 1996. This multi-state agreement allows a trucking company to: (1) Register and pay fuel tax to its base state of operation; (2) File one report in its base state; and (3) Operate in all member jurisdictions. A motor carrier based in Kentucky would send its fuel tax report to Kentucky, which then would be responsible for distributing the tax receipts due all other jurisdictions.

Kentucky enacted general enabling legislation in 1992 that authorized the state Transportation Cabinet to join IFTA. Several statutory roadblocks, including a two-cent fuel surtax on motor carriers, continue to prohibit Kentucky's full compliance with IFTA requirements, however.

Discussion

Due to the lengthy review process, Kentucky needed to submit its formal application to IFTA no later than August 28, 1995, to meet the full participation deadline of September 30, 1996. In an attempt to meet the administrative deadline of August 28, 1995 and address legislative roadblocks at a later time, the Transportation Cabinet requested the Attorney General's Office to determine whether the federal IFTA legislation preempted the Kentucky statutes that are in noncompliance.

The Attorney General's Office issued an opinion in late August confirming that the federal IFTA legislation preempted Kentucky law. Based upon this opinion, the Transportation Cabinet submitted Kentucky's IFTA application on August 25, 1995, only three days shy of the deadline. Remedial legislation remains to be drafted and enacted.

The House and Senate Chairmen of the Transportation Committee have been working with the Transportation Cabinet, as well as representatives of the motor carrier

industry, truck-stop operators, and highway contractors, to draft IFTA legislation for the 1996 Session.

PERSONAL WATERCRAFT OPERATION

Prepared by Jeff Kell

Issue

Should the General Assembly impose restrictions on the operation of personal watercraft (PWC)?

Background

In recent years the popularity of personal watercraft, commonly known as jetskis, has soared. Over 140,000 were sold nationwide in 1994. Accidents involving these crafts have also increased dramatically. According to the United States Coast Guard, 766 more PWC were involved in accidents in 1994 than in 1993, resulting in 423 more injuries and 21 additional fatalities. Eight out of ten PWC accidents involved collisions with other vessels. The Coast Guard also reports that nearly 80 percent of all boating fatalities occur on boats where the operator had no formal boating instruction.

With each new model year, PWCs are getting faster and more powerful. Currently they are capable of speeds in excess of 50 miles per hour. Although Connecticut is currently the only state to require training before operating a PWC, many of Kentucky's neighboring states are moving toward tightening restrictions on their use. Through Labor Day of 1995, five of Kentucky's 19 boating related deaths involved personal watercraft.

Discussion

Kentucky has an abundance of water, and many tourists visit the Commonwealth to enjoy water sports. Some visitors bring their PWCs with them or rent one at public marinas. The Division of Water Patrol, within the Department of Fish and Wildlife, is responsible for regulating the public waters of the commonwealth. Aside from some general legislative boating guidelines, the statutes do not provide guidance to the Division on the subject of PWCs. The Division of Water Patrol does have authority to promulgate administrative regulations, however, and has proposed some requirements that were approved by the Fish and Wildlife Resources Commission in August 1995. These regulations are pending before the Legislative Research Commission Administrative Regulation Review Subcommittee.

Proponents of placing restrictions on the operation of personal watercraft advocate age limits be established, so that adolescents and teenagers may not operate a PWC without supervision; safety instructions or safe boating certificates be required for all

operators; PWCs not be operated at night or in a manner that may endanger human life or property; and PWCs be equipped with engine cutoff devices.

Opponents of placing restrictions on the operation of personal watercraft say that restrictions will hurt the tourism industry; boating is a healthy activity for young people and restrictions will make it more difficult for them to engage in this activity; and more regulation is inconsistent with current trends toward less government interference.