

# **DUTIES OF ELECTED COUNTY OFFICIALS**

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## **FOREWORD**

The past 21 years have been a time of significant change in county government in the United States, and Kentucky has been no exception. Counties across the country have been experiencing continued growth in population as well as an increasing demand for services, some of which have not traditionally been supplied by counties. In Kentucky, the 1975 Judicial Amendment to the Constitution removed all judicial responsibilities from county government and its officers. A 1977 ruling of the Kentucky Supreme Court on the County Home Rule Act and the General Assembly's subsequent amendment of that statute granted counties increased flexibility in handling their own affairs and determining the services which they would provide their citizens. Further, the General Assembly's Committee on Counties and Special Districts worked in cooperation with several special commissions during recent interims in reviewing the structure of county government and proposing changes. These activities have had important effects on the activities and offices of county government. Virtually every county office has experienced change. Many traditional duties have been altered and many new duties have been assumed.

The purpose of this bulletin is to provide the reader with a broad overview of the duties and responsibilities of county government and elected county officials across the Commonwealth. It is not intended to supplant the original version of the statutes.

This revision was prepared by Donna Weaver and incorporates the laws passed by the 1998 General Assembly. Cheryl Walters assisted in the preparation of the manuscript.

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Frankfort, Kentucky  
December, 1998



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## I. INTRODUCTION

### Use of This Publication

This report describes the offices of ten different elected county officials and their essential powers and duties. It should be emphasized that the statutes pertaining to county officials are numerous and complex and that many details have of necessity been omitted here. For this reason, this publication should be used as a guide to and not a substitute for the *Kentucky Revised Statutes*.

Reading and understanding the *Kentucky Revised Statutes* is often a real challenge for laymen and attorneys as well, but the task will be somewhat easier if some basic points are kept in mind. The reader should be aware, for example, of the statutory definitions of the words "may" and "shall." In the context of the statutes, "may" permits while "shall" mandates. These terms and a number of others are defined in KRS Chapter 446. Chapter 446 also contains other information essential to understanding the statutes. A prospective reader of the *Kentucky Revised Statutes* is also cautioned to make sure that the law he consults is the current version by checking the pocket supplement or the latest edition of the *Acts of the General Assembly*.

Beyond the sheer number of statutes, their complexity also poses a problem. Many times there is no clear-cut meaning to a statute granting a power or assigning a duty. The law is subject to differences of opinion and continuing legal interpretation. It should therefore be clear that this bulletin cannot be taken as a substitute for legal counsel, the advice of the attorney general, or the findings of the courts.

Each year many county officials seek the written opinions of the attorney general on questions of law pertaining to their powers and duties. The attorney general's interpretations of various statutes has been cited throughout this book. While it must be remembered that such opinions are not law and are not legally binding, they are important as researched and informed views on the meaning of the statutes.

Court rulings have also been cited throughout the following pages and the rulings of the court are, of course, law until altered or overturned by another court. The reader should be advised, however, that the inclusion of court cases has been selective and does not represent an exhaustive compilation of the cases relating to each statute.

Finally, the reader is directed to a companion publication, *County Government in Kentucky*,<sup>1</sup> which focuses on the structure and activities of general purpose county government.

## **Elected County Officials**

The elected county officials in Kentucky are the county judge/executive, sheriff, county attorney, county clerk, jailer, coroner, several (from three to eight) justices of the peace (commonly called magistrates), constables, county surveyor, and property valuation administrator (Ky. *Const.*, sec. 99). Courts have held that property valuation administrators (formerly known as county tax commissioners and, prior to that designation, as tax assessors) are state officers.<sup>2</sup> A more complete discussion of this office is included in Chapter VI of this report. Fifteen counties have by referendum adopted the commissioner system of government as provided for in Section 144 of the Constitution. Commissioners are elected to serve on the fiscal court in these fifteen counties.

Some of these county officials have a wide variety of duties to perform; other offices have become outdated and retain few duties. This report summarizes the duties of each official. A chapter on each office sets forth its most important duties, as well as its powers, qualifications, compensation, and historical background.

## **The Judicial Amendment**

An amendment to the Constitution of Kentucky known as the Judicial Article was ratified by the voters in 1975. This amendment established a unified judicial system for the state and replaced the more disjointed judicial system of the 1891 Constitution. The new court system, which was fully implemented on the first Monday in January, 1978, has had a profound impact on county government. County judges became, at that time, judges/executive and lost all of their formerly numerous judicial duties; justices of the peace also lost their judicial powers. County attorneys became part of a unified statewide prosecutorial system. The quarterly courts, county courts, police courts, and justice courts ceased to function as judicial bodies, and the new district courts began to exercise jurisdiction over most of the areas that formerly were included in the judicial duties of the county judges and justices of the peace.

## **County Home Rule**

Shortly before the 1978 Session of the General Assembly, the Kentucky Supreme Court handed down a ruling on KRS 67.083, the County Home Rule Statute. In the case of *Fiscal Court of Jefferson County v. City of Louisville*, the court held that the County Home Rule Statute, with the exception of the grant of taxing power, was an overly broad delegation of legislative power.<sup>3</sup> During the 1978 session, the General Assembly amended KRS 67.083, reflecting this

objection and significantly strengthening the legislative authority of the fiscal court. The current powers of the county under KRS 67.083 are discussed in Chapter III of this bulletin.

### **Sources of Officials' Power**

Counties and county offices are created by the state and they exist and act only under authority delegated by the state. Most county offices in Kentucky were established by the Constitution, but their duties are derived from laws enacted by the state legislature.

In assigning duties and powers to counties and county officers, the legislature sometimes speaks in terms of a mandate or command; at other times it speaks in terms of permission and discretion. The chapters that follow distinguish between mandatory and permissive powers. They also indicate the statutes that are applicable to some but not all of our 120 counties. Some laws apply only to counties containing an urban-county government, others only to a county containing a city of the first class, second class, or having a specified minimum population (such as 70,000 or over). The following sections of this introduction explain the constitutional provisions applicable to the officials discussed and a few statutes which apply to more than one official.

### **Required County Officials**

Section 99 of the Kentucky Constitution requires each county to elect, "a Judge of the County Court, a County Clerk, a County Attorney, a Sheriff, a Jailer, a Coroner, a Surveyor, and an Assessor, and in each Justice's District one Justice of the Peace and one Constable." Other Kentucky constitutional provisions authorize the legislature to take certain action affecting the county officials named in Section 99.

The General Assembly may consolidate the offices of sheriff and jailer in any county. In such cases the office of sheriff is retained, and the duties of the jailer are assumed by the sheriff (Ky. *Const.*, sec. 105). The offices of sheriff and jailer have been consolidated in Jefferson County. The office of jailer is discussed in Chapter VIII of this report.

The legislature may abolish the office of assessor and provide for the assessment of property by other officials (Ky. *Const.*, sec. 104). The 1968 General Assembly replaced the office of tax assessor with the office of property valuation administrator (KRS 132.370). Section 107 authorizes the creation of additional elective county offices, but none have been created. Section 101 requires the jurisdictions of constables and sheriffs "to be co-extensive with the counties in which they reside." Section 144 requires counties to have a fiscal court composed of justices of the peace (magistrates) or commissioners.

## **Terms of Office and Qualifications**

The county judge/executive, county clerk, county attorney, sheriff, jailer, coroner, surveyor, constables, justices of the peace, county commissioners, and property valuation administrator are elected for terms of four years (Ky. *Const.*, secs. 99, 144; KRS 132.370). These officials may be elected to an unlimited number of consecutive terms (Ky. *Const.*, sec. 99). No person is eligible for any of these positions unless he meets the age and residence qualifications prescribed by the Constitution in Section 100. County attorneys must also meet the legal qualifications set forth by Section 100. Section 100 also enumerates special qualifications for county clerks. The age, residence and special qualifications for each official are discussed in the chapters which follow.

The power of the General Assembly to add to the qualifications stated in the Constitution is negligible, if existent at all. The Kentucky Court of Appeals in *Broughton v. Pursifull* has held that it is "incompetent for the Legislature to prescribe additional disqualifications not recognized by the Constitution."<sup>4</sup> In this case the court cites several authorities which hold that constitutional qualifications for public officials restrict the legislature's power to prescribe additional qualifications.

## **Candidates for County Office**

Chapter 118 of the Kentucky Revised Statutes governs the conduct of primary and general elections. The usual method of selection of candidates for county office is through a primary election (see KRS 118.305 and 118.315 for exceptions). Persons seeking to have their names placed on the ballot for nomination for county offices must file notification and declaration forms with the county clerk not earlier than the first Wednesday after the first Monday in November of the year preceding the year the office will appear on the ballot and not later than the last Tuesday in January preceding the day fixed by law for holding the primary election (KRS 118.125 and 118.165). Primary elections in Kentucky are held on the first Tuesday after the fourth Monday in May of each year (KRS 118.025(3)).

Candidates nominated at the primary election are entitled to have their names entered on the ballot for the regular election (KRS 118.305). Regular elections are held on the first Tuesday after the first Monday in November (KRS 118.025(4)).

In both primary and general elections, candidates must observe state law regulating various aspects of political campaigns. Candidates for all county offices must follow the directions of KRS 121.190 regarding political advertising, which requires that all political advertisements include the words

"paid for," followed by the name of the person or organization which paid for the ad. Political advertisement is defined in an all-inclusive manner, extending to all sorts of handbills, posters, billboards, magazine or newspaper ads, and radio or television advertising, with reference to the support or defeat of candidates for public office. A candidate who knowingly fails to comply with KRS 121.190 shall be guilty of a Class D felony. If the candidate knowingly fails to comply with KRS 121.190, or his campaign treasurer knowingly violates KRS 121.190 with the candidate's knowledge, then his election shall be void and his office shall be declared vacant. (KRS 121.990(3) & (4)).

Laws governing campaign finance apply to candidates for county office. (KRS Chapter 121 places limits on the amounts and kinds of contributions that may be accepted, mandate registration with the Kentucky Registry of Election Finance, and require periodic reports of expenditures and receipts. Candidates for county office are advised to contact the Kentucky Registry of Election Finance for detailed information on campaign finance procedures. Failure to comply with the law in this area can lead to prosecution for a Class D felony and forfeiture of office (KRS 121.990).

1996 legislation amended KRS 65.003 to require candidates for county elective offices, including the county judge/executive, county clerk, county attorney, sheriff, jailer, coroner, surveyor, and constable, to comply with the annual financial disclosure statements specified in that county's code of ethics.

Several specific prohibitions on campaign contributions should also be mentioned. KRS 121.025 prohibits contributions by corporations to candidates for public office. Persons who are supervised by, regulated by, or otherwise stand in a position not common to the general public in relation to a candidate, are prohibited from contributing to that candidate's political campaign (KRS 121.045). Finally, candidates for county office are prohibited from agreeing to support any particular measure, thing, or person in exchange for the vote or other support of any person (KRS 121.055).

### **Bond and Residence Requirements**

County judges/executive, clerks, sheriffs, surveyors, coroners, jailers, constables, and such other officers as the General Assembly may require must give such bond and security as prescribed by law before entering upon the duties of their offices (Ky. *Const.*, sec. 103). During their terms of office all county and district officers must reside within the county or district from which they were elected (Ky. *Const.*, sec. 234).

### **Prohibitions Against Wrongdoing**

County judges/executive, justices of the peace, sheriffs, coroners, surveyors, jailers, property valuation administrators, county attorneys and

constables are subject to indictment or prosecution for misfeasance, malfeasance, or willful neglect of duty during their terms in office. The manner of indictment and prosecution is prescribed by law (KRS 61.170; see also KRS 63.020 to 63.180). Upon conviction of an officeholder, his office becomes vacant. The property valuation administrator may be removed from office by the circuit court of his county upon petition of any taxpayer, or by the secretary of revenue for willful disobedience of any just or legal order of the Revenue Cabinet, for misfeasance or malfeasance in office or willful neglect in the discharge of his official duties, including but not limited to intentional underassessment or overassessment of properties and chronic underassessment of properties (KRS 132.370). The General Assembly is specifically authorized to provide other methods for the vacation of office or the removal from office of any sheriff, jailer, constable or peace officer for neglect of duty. The legislature may also provide for the method of reinstatement of such officials (Ky. *Const.*, sec. 227).

Other constitutional provisions deal with the wrongdoing of county officials. Section 150 disqualifies any person from holding an office of trust or profit for the term for which he has been elected if he has been convicted of procuring his election by buying votes. Section 151 requires the General Assembly to provide a suitable means for depriving any person of elective office who has procured his nomination or election by the unlawful use of money. An officeholder is also deprived of his office if he has obtained it by fraud, intimidation, bribery, or other corrupt practice. He is likewise held responsible for acts done by others with his authority or ratified by him (Ky. *Const.*, sec. 151).

All county officials are susceptible to impeachment for any misdemeanors in office (Ky. *Const.*, sec. 68). All persons who have participated in a duel are disqualified from holding county offices (Ky. *Const.*, secs. 228 and 239). It is a felony for any county official to receive directly or indirectly an interest, profit or perquisite arising from the use or loan of public funds that he is officially holding (Ky. *Const.*, sec. 173).

### **Audits of County Officials**

The state auditor of public accounts is required to audit annually the funds contained in each county's budget, and the books, accounts and papers of all county clerks and sheriffs (KRS 43.070). The state auditor may audit the books, accounts and papers of all county judges/executive, county attorneys, coroners and constables. The auditor also has separate annual audit responsibilities concerning the fees and taxes collected by county clerks relating to motor vehicles and motorboats (KRS 43.071).

Any fiscal court, county clerk or sheriff may employ a certified public accountant to audit the books, accounts, and papers of the county or the office in lieu of the audit conducted by the state auditor, if the state auditor declines to perform the audit or has failed to respond to written notice of intent to employ a certified public accountant within thirty days of receipt of the notice. (KRS 43.070 and 64.810). The fiscal court, the county clerk, or the sheriff may also employ a certified public accountant to conduct an emergency audit of the county or the office in the case of a documented emergency to which the state auditor cannot respond within the requested deadline. The state auditor must authorize the use of the certified public accountant, and the audit must be completed within the deadline originally requested of the state auditor (KRS 64.810).

The county pays for one-half of the state auditor's audit of county budget funds, and pays the entire cost of a county official audit performed by the state auditor. If a county clerk or sheriff employs a certified public accountant to perform the audit, he or she must pay for the audit from funds received or collected (KRS 43.070 and 64.810). If a fiscal court employs a certified public accountant it shall bear the full cost of the audit (KRS 64.810).

Regardless of the auditing method selected, the audit must be performed according to uniform standards and procedures prescribed by KRS 43.075 and administrative regulations issued by the auditor of public accounts. Similar reporting requirements also apply to both auditing methods. Whether the audit is carried out by the state or by an independent accountant, the audit report is submitted to various state officials and a newspaper in the county of the officeholder; the letter of transmittal accompanying the report must be published in the newspaper (KRS 43.090 and 64.810).

KRS 43.990 sets forth penalties for county officials or any others who attempt to prevent or obstruct audits. If possible illegality is revealed by an audit, the office of the attorney general may perform any necessary investigation and prosecute any violation of law (KRS 15.225).

### **Code of Ethics**

As of January 1, 1995, the governing body of each county must have adopted, by ordinance, a code of ethics covering all elected county officials, including the county judge/executive, county clerk, county attorney, sheriff, jailer, coroner, surveyor, constable, and members of the governing body. 1996 legislation amended KRS 65.003 to also require candidates for city and county elective offices specified in that statute to comply with the annual financial disclosure statement filing requirements contained in the code of ethics. The code may cover appointed officials as well. Each code must contain standards of conduct, financial disclosure requirements, a policy on nepotism, and the designation of a person or group to handle enforcement. Other provisions may

be included. Once a code has been enacted, it may be amended but may not be repealed. Cities and counties may use the Interlocal Cooperation Act to jointly develop their codes. Each county must deliver its ordinance, and any subsequent amendments, to the Department for Local Government.

The state must suspend services and payments to any county that fails to comply with these requirements (KRS 65.003).

### **County Offices Incompatible with State and Federal Offices**

No person may hold a county office and at the same time be a state officer, deputy officer or a member of the General Assembly. This prohibition does not apply to a notary public or an officer of the military (Ky. *Const.*, sec. 165). Members of Congress, persons holding an office of trust or profit under the United States, or any single state, or under any foreign power are also ineligible for county offices (Ky. *Const.*, sec. 237). KRS 61.080, enacted in accordance with these constitutional directives, provides in relevant part that:

(1) No person shall, at the same time, be a state officer, a deputy state officer or a member of the general assembly, and an officer of any county, city or other municipality, or an employee thereof.

(2) The offices of justice of the peace, county judge/executive, surveyor, sheriff, deputy sheriff, coroner, constable, jailer and county clerk or deputy court clerk, shall be incompatible, the one (1) with any of the others. The office of county judge/executive and county school superintendent are incompatible.

(3) No person shall, at the same time, fill a county office and a municipal office.

### **Vacancies**

Vacancies in county offices are filled by appointment. The statutes designate the appointing authorities. Section 152 of the Kentucky Constitution provides that if the unexpired term ends at the next annual election at which either city, town, county, district, or state officers are elected, the office is filled by appointment for the remainder of the term. When the unexpired term does not end at the next election of local officials or state officials, and three months intervene before the election, the vacancy is filled by appointment until election. If three months do not intervene between the occurrence of a vacancy and the next election for local or state officials, the vacancy is filled by appointment until the second succeeding annual election at which local or state officials are elected. If after this period of time any part of the term

remains unexpired, the office is filled by election until the regular time for the election to fill such offices.

## **Compensation**

Several constitutional provisions affect the compensation of local officials. Sections 161 and 235 prohibit any change in compensation during a current term in office. Section 246 is the most controversial constitutional provision dealing with compensation. It is frequently referred to as the "salary limit section" or "amendment." From 1891 to 1950 it set the maximum compensation of county officials at \$5,000 per annum. In 1949 the voters approved an amendment effective in 1950 that raised compensation of the elected county officials to \$7,200 per annum.

Cases decided by the former Court of Appeals have permitted the \$7,200 maximum to increase as the purchasing power of the dollar decreases. In its 1962 opinion in *Matthews v. Allen*, the Court upheld a salary increase for circuit judges, stating:

The net result of our consideration is that the salary provisions of Section 246 of the Constitution may be interpreted and periodically applied to all constitutional officers in terms which will equate current salaries with the purchasing power of the dollar in 1949 when Section 246 was adopted.<sup>5</sup>

The Court was asked in 1965 to rule upon the constitutionality of a law passed by the 1964 General Assembly raising the maximum compensation of county clerks, circuit clerks, county judges, sheriffs and jailers to \$9,600. The act was held constitutional on the grounds that it was in conformity with the *Matthews v. Allen* decision. The consumer price index in March 1964 disclosed that the purchasing power of the dollar had decreased approximately one-third since the adoption of the 1949 salary limit. The 1964 salary increase was exactly one-third.<sup>6</sup>

Prior to the 1998 General Assembly, the Department for Local Government was responsible for computing in February of each year a maximum annual rate of compensation for elected county officials. The appropriate governing bodies then set rates for the annual compensation of officials at no greater than that stipulated by the Department. The rate was based on the annual increase or decrease in the Consumer Price Index of the preceding year, using 1949 as the base year (KRS 64.527 and OAG 94-7). The maximum annual salary for elected county officials in 1998 was \$48,726.

However, HB 810 enacted by the 1998 General Assembly made significant changes in the way certain county officials, including sheriffs, county clerks,

county judge/executives, and jailers who operate a full-service jail are compensated.

HB 810 eliminated the maximum salary for the specified officers and established a new salary schedule, based on the varying population of the counties and the years of service of the officeholder. This amendment will result in salaries for some county officials ranging from \$49,567 to \$82,612, beginning the first Monday in January of 1999.

Some controversy has erupted over the provisions of HB 810. Several county officials have voiced opposition to the new salary schedule, citing inadequate funding for the raises in already strained county budgets.

A lawsuit was filed in the Campbell County Circuit Court, challenging the salary provisions in HB 810. In September 1998, the Campbell County Circuit Court ruled that HB 810 is "...declared unconstitutional to the extent that it declares the offices in issue (county clerks, sheriffs, county judge/executives, and jailers operating a full-service jail) to have duties or jurisdiction co-extensive with that of the Commonwealth without specifying said duties or jurisdiction..." and "...that the Defendant and the parties aligned with the Defendant, Commonwealth of Kentucky, are permanently enjoined from implementing and enforcing these provisions of HB 810 as being in excess of the limits set forth in the Constitution of Kentucky Section 246" (Campbell Circuit Case No. 98-CI-00604 Fisher and Chandler vs. Commonwealth of Kentucky).

The Department for Local Government, among others, has requested that this case be heard by the State Supreme Court and that decision is still pending.

The provisions of 98 HB 810 establish a salary schedule for county judges/executive, county clerks, jailers who operate a full-service jail, and sheriffs in all counties. The schedule establishes nine levels of salary based upon the population of the county in the year prior to the election of county officials as determined by the United States Department of Commerce, Bureau of the Census annual estimates. To implement the salary schedule, the Department for Local Government shall, by November 1 of each year preceding the election of county officials, certify for each county the population group applicable to each county based on the most recent estimates of the United States Department of Commerce, Bureau of the Census. The salary schedule for county judges/executive, county clerks, jailers who operate a full-service jail, and sheriffs shall remain as determined by the Department for Local Government regardless of changes in the population estimates or the actual census count that may occur during the term for which the official has been elected or appointed. The salary schedule provides four (4) steps for yearly increments within each population group. County officers named in this

section shall be paid according to the first step within their population group for the first year or portion thereof they serve in office. Thereafter, each officer, on January 1 of each subsequent year, shall be advanced automatically to the next step in the salary schedule until the maximum salary figure for the population group is reached. Prior to assuming office on the first Monday in January, 1999, or thereafter, any person assuming any of the offices for which the salary is determined by this section must certify to the commissioner of the Department for Local Government the total number of years, not to exceed four (4) years, that the person has previously served in the office. The department shall place the officer in the proper step based upon a formula of one incremental step per full calendar year of service:

TABLE I  
SALARY SCHEDULE

<u>County Population by Group</u>	<u>Steps and Salary for Affected Officers</u>			
	Step 1	Step 2	Step 3	Step 4
Group I				
0-4,999	\$ 6,600	\$ 6,800	\$ 7,000	\$ 7,200
Group II				
5,000-9,999	7,200	7,400	7,600	7,800
Group III				
10,000-19,999	7,800	8,000	8,200	8,400
Group IV				
20,000-29,999	8,100	8,400	8,700	9,000
Group V				
30,000-44,999	8,700	9,000	9,300	9,600
Group VI				
45,000-59,999	9,000	9,400	9,800	10,200
Group VII				
60,000-89,999	9,600	10,000	10,400	10,800
Group VIII				

90,000-499,999	9,900	10,400	10,900	11,400
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Group IX

500,000 and up	10,500	11,000	11,500	12,000
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Section 106 of the Kentucky Constitution recognizes the fact that county officials may be allowed fees for their services: "The fees of county officers shall be regulated by law." This section and KRS 564.350 also require circuit clerks, county clerks, sheriffs, and jailers in counties containing over 70,000 population to be paid by salary out of the state treasury. The salaries of these officers, and of their deputies, and their office expenses, are not to exceed seventy-five percent of the fees collected by the officers. Jailers and circuit clerks are no longer fee officers, but the fees collected by the sheriff and the county clerk must be paid to the Finance and Administration Cabinet. Salaries and expenses of these offices are paid by the state treasurer semimonthly upon the warrant of the Finance & Administration Cabinet made payable to the officer (KRS 64.345). Authorizations for county officials to collect fees are scattered throughout the *Kentucky Revised Statutes*. The chapters that follow will mention some of the fees county officials may collect for their services.

Elected county officials may be covered by the County Employees' Retirement System, if their county is participating in the system in accordance with statutory provisions and other statutory requirements are met (KRS 78.510 and 78.530). Time periods covered under the County Employees' Retirement System, the State Employees' Retirement System, the State Police Retirement System, the Teachers' Retirement System and the Legislators' Retirement System may be consolidated for the computation of retirement benefits (KRS 61.680). County officials are also covered by social security (KRS 61.420).



## **II. COUNTY JUDGE/EXECUTIVE**

### **Background**

Kentucky's Constitutions of 1792 and 1799 did not provide for a county judge. Justices of the peace were the most important local judicial officials during the time these constitutions were in effect. Their duties included responsibility for county administrative matters.<sup>7</sup>

Article IV, section 29, of the Kentucky Constitution of 1850 provided for a county judge. During the time this constitution was in effect the county judge presided over county court, the court of claims, and quarterly court. County court exercised appellate jurisdiction over justices' courts and functioned as the legislative and administrative authority for the county. Courts of claims were an aggregation of all of a county's justices of the peace sitting for the purpose of imposing the county tax levy and appropriating county funds. Quarterly courts exercised minor civil jurisdiction.<sup>8</sup>

Under the 1891 Constitution, the office of judge of the county court combined a number of judicial, legislative and administrative duties. Sections 139 and 140 made the county judge the chief judicial officer of the county and quarterly courts. He was also made the presiding officer of the fiscal court, the county legislative body (Section 144). Over the years, additional duties of an executive and administrative nature were assigned to the county judge by the General Assembly.<sup>9</sup>

### **The Office Today**

The 1975 Judicial Amendment to the Constitution, which reorganized the state's judicial system, stripped the office of the county judge of its judicial powers and responsibilities. While the county judge was no longer a judicial officer, the Judicial Amendment (Ky. *Const.*, sec. 124) left other aspects of the office intact. Section 124 says that "[n]othing...shall be construed to limit the powers otherwise granted by this Constitution to the county judge as the chief executive, administrative and fiscal officer of the county..." Also unchanged were numerous statutory powers and duties that have accumulated over the years.

During the 1976 Extraordinary Session, the General Assembly restyled the office of county judge by enacting legislation that strengthened and clarified its administrative and executive powers (KRS 67.710 and 67.715). The title of the office was changed from county judge to county judge/executive, underscoring the altered nature and duties of the position. Additional changes, primarily growth of the judge/executive's responsibilities for financial administration, were made by the General Assembly in 1978 and 1980.

## **Executive and Administrative Powers**

KRS 67.710 designates the county judge/executive the chief executive of the county. The judge/executive is specifically charged with the execution of all ordinances and resolutions of the fiscal court, all contracts entered into by the fiscal court and all state laws subject to enforcement by him or by officers under his supervision. KRS 67.083(4) provides further that the county judge/executive is empowered to exercise all executive powers pursuant to this "home rule" statute.

The county judge/executive has thus been assigned the primary responsibility for the administration of county government. In this regard, he has the authority to create, abolish, or combine any county department or agency and to transfer functions from one agency or department to another. Any plans for reorganization, however, must be submitted to the fiscal court; unless disapproved within sixty days, the plans become effective (KRS 67.715(1)).

A similar, though less extensive, power over special districts created by the fiscal court is granted in KRS 67.715(2). This statute allows the county judge/executive, subject to fiscal court approval, to create, combine or abolish any special district if the district was created solely by the county judge/executive or the fiscal court.

The preparation and periodic review of the county administrative code are sources of additional administrative duties (KRS 67.710). The administrative code is intended to spell out detailed procedures for the administration of county government and must include provisions for personnel administration, fiscal management, purchasing, and the general administration of county government (KRS 68.005).

The judge/executive is also responsible for keeping the fiscal court informed of the operations of county departments, boards and commissions (KRS 67.710). Further, as the chief executive of county government, the judge/executive is required to assure the representation of the county on all boards, commissions, special districts, and multi-county programs in which county participation is called for (KRS 67.715(3)).

The judge/executive has been granted substantial powers of appointment by KRS 67.710(7) and (8). The power of appointment is discussed in greater detail elsewhere in this chapter.

## **Financial Administration**

The judge/executive's responsibilities for the financial administration of county government have expanded substantially in recent years. These responsibilities now include preparation of the county budget, oversight of county funds, financial reports to fiscal court and fiscal record keeping.

The county judge/executive is responsible for preparing the county budget. This document proposes a broad outline for the expenditure of county funds, and details proposed spending by several broad classes of government activities, such as general government, highways and bridges, and health and sanitation. In preparing the budget the county judge/executive is aided by an estimate of property assessment levels provided by the property valuation administrator by April 1 of each year (KRS 68.245). The county judge/executive must include in the proposed county budget a proposed jail budget, which he prepares in cooperation with the jailer and the county treasurer (KRS 441.215). The judge/executive must submit his budget proposal and an estimate of receipts from federal, state and local sources to the fiscal court by May 1 of each year (KRS 68.240(1)).

The fiscal court examines the budget and may amend it as desired prior to giving tentative approval. Following this initial approval by the fiscal court, the budget is forwarded to the state local finance officer, who examines it for form and classification. If the budget conforms with state requirements, it is returned to the county for final approval by the fiscal court. Budgets not in the proper form are refused approval until amended (KRS 68.250).

The 1988 General Assembly added the following language to KRS 68.260(1): "The budget as presented and amended shall be adopted as of July 1." This was one of several changes made in an attempt to help prevent deadlocks by the fiscal court in the adoption of the county budget. (See 1988 Ky. Acts ch. 328.) The Attorney General has rendered an opinion that this language does not result in an automatic adoption of a budget where a fiscal court fails to agree to its final adoption (OAG 88-45).

Once the approval of the state local finance officer is obtained, the budget is ready for final approval by the fiscal court. Publication of the budget proposal is required at this time, and any taxpayer may ask the fiscal court to make changes in the budget. When the fiscal court meets to adopt the budget, it may change the amount of funds allocated to a specific area but not the form or classification of budget units (KRS 68.260). The judge/executive must certify the approval of the budget to the state local finance officer (KRS 68.270).

The judge/executive's responsibility for county financial administration does not end with the final adoption of the budget, however. He is also obligated to administer the budget as approved by the fiscal court (KRS 67.710(5)). He must present all claims to the fiscal court for review prior to payment, and the court, for good cause shown, may order that a claim not be

paid (KRS 68.275). The judge/executive co-signs, with the county treasurer, all warrants for the payment of funds from the county treasury (KRS 68.020).

As a part of his responsibility for the county's financial administration, the county judge/executive is required to keep the fiscal court advised of the financial needs and conditions of the county (KRS 67.710(6)). Similarly, the judge/executive must see that elected or appointed county officials whose offices utilize county funds, and all county boards, commissions and special districts submit an annual financial report to the fiscal court (KRS 67.710(4)).

SB 43, enacted by the 1998 General Assembly, amended KRS 68.275 to allow fiscal courts to adopt standing orders for the payment of recurrent monthly payroll and utility expenses only, unless otherwise permitted by the state local finance officer. Such standing orders expire after July 1 of each fiscal year unless the fiscal court adopts another standing order. KRS 68.360(2) more clearly defines the judge/executive's duties for preparing financial reports for the fiscal court. This statute requires him to prepare a quarterly report for submission to the fiscal court, the state local finance officer, and the public, showing detailed information on the condition of each fund of the county budget.

The judge/executive must ensure that during the first half of the fiscal year which begins on July 1 of the last year of his term of office, the county does not encumber or expend more than sixty-five percent of current funds budgeted for that fiscal year (KRS 68.310).

### **Uniform Financial Reporting**

Counties, cities and special districts must annually prepare a uniform financial information report. 1998 legislation amended KRS 65.905 to allow the Department for Local Government to use information obtained from forms or other reports filed by local governments in lieu of the uniform financial information report. These reports must include information relating to demographics, bonded indebtedness, debt service requirements, lease purchase agreements, tax rates and revenues, licenses, permits, fees, utilities, intergovernmental revenues, miscellaneous revenues, and charges for services. The Department for Local Government must use the uniform financial information report to replace as many as possible of the financial information forms which are required by state or federal government by consolidating the required information into the uniform report. The Department for Local Government is required to prescribe the format of the report by administrative regulation (KRS 65.900-920).

### **Appointive Powers**

#### **County Personnel**

The county judge/executive has the authority, under KRS 67.710(7), to appoint, supervise, suspend, and remove county personnel, with fiscal court approval, unless state law provides otherwise. KRS 67.711(1) gives the county judge/executive the express authority to appoint a deputy county judge/executive and a reasonable number of other clerical workers and assistants. The fiscal court does have the authority to limit the number of such personnel and provide for their salary, as long as it is reasonable (KRS 67.711(1)). A list of specific appointments which various statutes empower him to make is found in TABLE II.

### **Constraints on Political Considerations in the Appointment of County Officials and Personnel**

The tenure of county employees is at the will of the county judge/executive and fiscal court. The term of employees ends when the term of the outgoing county judge/executive ends, and the new county judge/executive has the right to hire employees for his administration, subject to approval by the fiscal court. This interpretation of the Kentucky statutes has been recognized by the Attorney General (OAG 82-63) and a federal circuit court (*Christian v. Belcher*, 888 F. 2d 410, 6th Circuit 1989). Decisions by the U.S. Supreme Court have made it clear, however, that ordinary county employees may not be terminated on the basis of their political activities, because such action violates their constitutional rights to political expression under the first amendment.

The cases determining what counties may or may not do with respect to employee tenure and political activity are *Rutan v. Republican Party of Illinois*, 110 S. Ct. 2729 (1990), which concluded that an employee in a county position for which party affiliation is not an appropriate job requirement may not be hired, fired, promoted, transferred, or recalled based upon expression of political opinions; and *Branti v. Finkel*, 100 S. Ct. 1287 (1980), which concluded that whether a position is political depends on whether the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved.

These Supreme Court decisions have placed no restrictions on counties' management of their employees with respect to job performance. In this arena county employment is still at the pleasure of the county judge/executive and the fiscal court. But the logical conclusion to be drawn is that, if an employee in a position which is not politically sensitive has been politically active, the county judge/executive should dismiss (or hire, promote, transfer or recall) the employee, and the fiscal court should approve the action, only if they can link their decision to job performance or potential.

It is not always clear which county employees or officials are in positions where partisan affiliation is an appropriate requirement for the effective performance of duties. In 1989, a federal circuit court determined in a case relating to a Kentucky county that political loyalty was not essential to performing responsibilities as a flood plain administrator and building inspector (*Christian v. Belcher*, 888 F. 2d 410, 414 (6th Cir., 1989)). But in 1992, the Kentucky Court of Appeals determined that the office of county treasurer vests its holder with discretionary power, considerable responsibility, confidence and supervisory authority. Therefore, the appointment may be made on a political basis (*Garrard County Fiscal Court v. Harold Layton*, 92 W.L. 85 966 (Ky. App.)). Since there is some uncertainty about which county employees or officials may be appointed on a political basis, county judge/executives and fiscal courts should proceed with caution and seek the advice of the county attorney or other legal sources.

### **Boards, Commissions and Administrative Positions**

KRS 67.710(8) provides in part that the county judge/executive may "[w]ith the approval of the fiscal court, make appointments to or remove members from such boards, commissions, and designated administrative positions as the fiscal court, charter, law or ordinance may create." This statute grants no exceptions for other statutes which may provide for a different appointing authority. However, KRS 67.710(8) also provides, "The requirement of fiscal court approval must be designated as such in the county administrative code or the county charter." However, in *Fiscal Court Commissioners v. Jefferson County Judge/Executive*, the Kentucky Court of Appeals held that the requirement of fiscal court approval of appointments made by a county judge/executive to boards, commissions and designated administrative positions was effective despite non-compliance with that portion of KRS 67.710(8) requiring that such fiscal court approval be made part of the county administrative code or county charter.<sup>10</sup>

KRS 67.710(8) further directs the county judge/executive in counties containing cities of the first class to appoint to a board or commission an equal number of members from each district, as defined in KRS 67.045, into which the authority of the board or commission extends, excluding any seats subject to a prior qualification. He must use his best efforts to balance representation on boards and commissions from various interested groups and backgrounds.

### **Tiebreaking In The Appointment Process**

KRS 67.040(3) provides that when there is a tie vote in the fiscal court in the selection of any officer or employee to be selected by the fiscal court, and a deadlock continues for 15 days, the county judge/executive shall cause the facts of the matter to be entered upon the minutes of the fiscal court, and he

shall make the appointment. If the fiscal court consists of three commissioners, the procedure is quite similar, except that the fiscal court is given a final opportunity to select the officer or employee just prior to appointment by the county judge/executive (KRS 67.070(3)).

## **TABLE II**

### **COUNTY JUDGE/EXECUTIVE APPOINTMENTS**

Air Board (KRS 183.132).

Air Pollution Control Board, counties containing a city of the first or second class (KRS 77.070).

Alcoholic Beverage Control Administrator, investigator or clerk (KRS 241.110).

Building Code Local Appeals Board (KRS 198B.070).

Children's Home Board, Louisville and Jefferson County (KRS 201.020).

Community Improvement District Board of Commissioners (KRS 107.340).

County Board of Assessment Appeals (KRS 133.020).

County Building Commission, (KRS 67.450).

County Police Force Merit Board, (KRS 78.410).

Custodian of Property for property which is the proceeds of crime or is otherwise related to law enforcement (KRS 67.592).

Drainage Directors (KRS 267.090).

Drainage District Commissioners (KRS 269.120).

Elisor, (KRS 70.200).

Extension District Board (KRS 164.635).

Fire District Trustees (KRS 75.031).

Flood Control District Board (KRS 104.580).

Health Board, counties containing a city of the first class  
(KRS 212.380, 212.390).

Hospital District Board (KRS 216.323).

Housing Authority, city-county (KRS 80.266).

Industrial Development Authority (KRS 154.50-326).

Levee Commissioners (KRS 266.100).

Library Board of Trustees (KRS 173.340).

Library District Board of Trustees (KRS 173.480, 173.725).

Metropolitan Sewer District Board (KRS 76.030).

Parking Authority, city-county (KRS 94.815(2)).

Planning Commission (KRS 100.133, 100.137, and 100.141).

Police, auxiliary county (KRS 70.542).

Police, county (KRS 70.540).

Police, county: chief, assistant chief, any officer above the  
rank of captain, in counties with a population of 600,000 or  
more (KRS 78.428).

Probation Officer, assistant probation officers, professional and  
clerical personnel, in counties containing a city of the  
first or second class (KRS 605.050).

Processioners (KRS 73.180).

Public Improvements Finance Board (KRS 66.513).

Recreation Board (KRS 97.030, 97.035).

Regional Integrated Waste Treatment and Disposal Facility  
Siting Board (KRS 224.46-820(4)).

Regional Jail Authority (KRS 441.810).

Riverport Authority, (KRS 65.540).

Riverport Authority, counties containing a city of the first class,  
secretary-treasurer, (KRS 65.570).

Road District (KRS 184.060).

Road Engineer (KRS 179.020).

Sanitation District Board (KRS 220.140).

Sanitation Tax District Board (KRS 76.277).

Sewer Construction District Commissioners (KRS 76.315).

Subdivision Road District (KRS 179.715).

Surveyors, deputy (KRS 73.030).

Tourist and Convention Commissions (KRS 91A.360, 91A.370, and 91A.380).

Transit Authority Board (KRS 96A.040).

Transit Authority, executive director or secretary-treasurer,  
counties containing a city of the first class (KRS 96A.070).

Treasurer, county (KRS 68.010, 67.710(8), OAG 90-46).

Urban Renewal and Community Development Agency (KRS 99.350).

Urban Services District Board (KRS 108.110).

Vacancies in office, sheriff, coroner, surveyor, county clerk, county attorney, jailer or constable (KRS 63.220). Peace officer vacancy created by declaration of the Governor (KRS 63.150).

Waste Management District Board (KRS 109.115).

Water District Board of Commissioners (KRS 74.020).

Waterworks Board, county containing a city of the first class (KRS 96.240).

Zoning Board of Adjustment (KRS 100.217).

### **County Alcoholic Beverage Administrator**

The county judge/executive becomes county alcoholic beverage administrator when the fiscal court of a county in which the sale of alcoholic beverages is permitted decides to supplement the regulations of the State Alcoholic Beverage Control Board. However, if the judge/executive does not want to assume this duty, he may appoint someone to take his place (KRS 241.110).

### **County Police Force**

Two statutory sections authorize a county police system. The fiscal court may, by order, establish a county police force merit system administered by a merit board (KRS 78.405). The board consists of the county judge/executive and four persons appointed by him, subject to the approval of fiscal court (KRS 78.410). There is a provision for the county police to organize for collective bargaining in any county with a population of 300,000 or more (KRS 78.470). In other counties the fiscal court, at its discretion, may recognize collective bargaining agreements (OAG 82-79 and OAG 82-141).

The second procedure for organizing a county police force is found in KRS 70.540, which authorizes the county judge/executive to appoint the members. Appointments by the county judge/executive are for one year only, after which they may be renewed.

### **Welfare Duties of the County Judge/Executive**

Relief of the poor is one of the oldest county functions. At one time all poor relief in the state of Kentucky was under the direction of the county court or fiscal court.<sup>11</sup> With the passage of the 1935 Social Security Act and the subsequent establishment of the state-federal categorical assistance programs

(aid to the blind, needy aged, dependent children and later the totally disabled), virtually all of Kentucky's relief to the poor shifted to the state level.

### **County Jail and Prisoners**

The county judge/executive has several responsibilities related to the county jail and prisoners. He may inspect the jail at any reasonable time (KRS 441.045(1)). If the fiscal court has a written policy on working prisoners on community-service-related projects, the jailer may permit certain prisoners to participate. The county judge/executive or his designee must approve each prisoner's participation. He must consider the physical and mental ability of the prisoners, and not assign them to unduly hazardous work. A prisoner may decline to work for a valid medical reason. The county judge/executive determines the place of working prisoners, and he enters an order in his order book, specifying the manner in which the prisoner may be worked (KRS 441.125).

### **Board Memberships**

The statutes also direct that the county judge/executive be a member of various boards and commissions. A few of these boards and commissions have already been mentioned. All county judges/executive are members of their respective county health boards except in Fayette County, where the mayor assumes the duties of the county judge/executive on the board (KRS 212.020, 212.380, 212.640, and L-F Urban Govt. Charter, 7.16). KRS 100.137 requires the county judge/executive, or his designee, to be a member of the planning commission in counties having a population of 300,000 or more. The county judge/executive also serves on the police force merit board (KRS 78.410).

### **Special Districts**

Recent sessions of the General Assembly have resulted in growth of the supervisory and administrative powers of elected county officials over special districts. The county judge/executive in particular has come to play a larger part in such oversight. KRS 67.715(2) gives the judge/executive a general power to create, combine or abolish any special district which he or the fiscal court has created, subject to fiscal court approval. Other statutes make specific grants of authority.

A number of special districts are governed by boards appointed wholly or in part by the judge/executive. In most cases, appointments must also be approved by the fiscal court. When the judge/executive has the power to appoint district board members, he will generally also have the authority to remove such members (under KRS 65.007). Again, this authority will be subject to fiscal court approval.

KRS 65.060 requires special districts to file uniform financial information reports by May 1, to the Department for Local Government.

### **Water Districts**

The county judge/executive has a number of duties relating to water districts, including appointment of the board of commissioners (KRS 74.020) and setting hearings on and determining the necessity of adding or striking territory from a water district (KRS 74.110). All of the judge/executive's responsibilities toward water districts are found in KRS Chapter 74.

### **Fire Districts**

The county judge/executive appoints three of the trustees of a fire district (KRS 75.031) and plays an important role in the annexation or striking off of territory by a fire district (KRS 75.020). When regular members of the fire department in a district exercise law enforcement powers, they are subject to the orders of the county judge/executive (KRS 75.160).

### **Metropolitan Sewer Districts**

The county judge/executive has a number of procedural responsibilities relating to metropolitan sewer districts, sanitation tax districts and sewer construction districts. These responsibilities are described in KRS 76.030 to 76.375.

## **Miscellaneous Executive Duties**

### **Marriages**

County judges/executive have the power to perform marriage ceremonies. They may also authorize justices of the peace and fiscal court commissioners within their respective counties to perform marriages (KRS 402.050). In the absence of the county clerk, the county judge/executive may issue a marriage license (KRS 402.240).

### **Taxes**

At least once each month the county judge/executive receives a report of the state and county taxes collected by the sheriff. When the sheriff makes this report, he pays the county taxes to the county treasurer. The treasurer gives him a receipt for the amount paid. He files a copy of this receipt with the county judge/executive (KRS 134.300).

The county judge/executive has a number of responsibilities related to property assessment and assessment appeals. He appoints members of the

county board of assessment appeals (KRS 133.020) and convenes the board to hear and determine any appeals from emergency assessments (KRS 132.660). He certifies the assessment of property omitted from assessment and its value, and the amount of penalty and cost of assessment, to the Revenue Cabinet and to the sheriff, in order that taxes, penalties and costs may be collected (KRS 132.340).

Upon written recommendation of the county judge/executive, the county board of assessment appeals may review and change any assessment made by the property valuation administrator. If the board decides to increase an assessment, it must give the taxpayer notice, pursuant to KRS 132.450(4), of the date when it will hear the taxpayer. The Revenue Cabinet may be present at the hearing and present evidence pertaining to the appeal (KRS 133.120).

### **National Guard**

The Governor of Kentucky may order the commanding officer of the National Guard to report to a county judge/executive for the accomplishment of a specific task (KRS 37.240).

### **Deductions from County Attorney's Salary**

KRS 61.120 provides for deductions from the county attorney's salary if he fails or neglects to perform his duties. These deductions are enforced by order of the county judge/executive. Before enforcement of the order, notice and a hearing are required. A hearing commissioner may be appointed to conduct the hearing. The county attorney may appeal to the Court of Appeals (KRS 61.130).

### **Oaths**

KRS 62.020 permits the county judge/executive to administer oaths of office. A number of statutes require the county judge/executive to administer oaths. For example, KRS 70.010 requires the sheriff, and KRS 75.170 requires each member of the fire department in fire protection districts to take an oath before the county judge/executive. TVA peace officers execute bond before and have their oath administered by the county judge/executive (KRS 61.889).

### **Election Duties**

A county judge/executive receives petitions calling for elections on local questions and is responsible for setting the dates for these elections. For example, statutes direct that petitions calling for elections on changing the composition of the fiscal court from the magisterial system to the commissioner system or vice versa (KRS 67.050), and elections to consolidate one county with

another (KRS 67.190 to 67.250) be filed with the county judge/executive. Once these petitions are filed, the judge/executive sets an election date in accordance with statutory provisions. The county judge/executive, among others, may request that the Kentucky State Police patrol voting precincts in the county during the hours the polls are open on election day, for the purpose of maintaining order and enforcing election laws (KRS 117.237).

### **Creation of Commissioner Districts**

If the voters of the county have voted in favor of a fiscal court composed of the county judge/executive and three commissioners, then it is the responsibility of the county judge/executive to divide the county into three districts as nearly equal in population as practicable, so that each district is an unbroken area not split by another commissioner district (KRS 67.060).

### **Striking Territory From The County**

The county judge/executive shall call an election on the question of striking territory from the county upon the receipt of a petition signed by a majority of the voters living in the territory (KRS 67.030).

### **Land Condemnation For Road Purposes**

The county judge/executive has the power to condemn land for county road purposes, under the provisions of KRS 178.110, by proceeding under the Eminent Domain Act of Kentucky (KRS 416.100).

### **Thistle Control**

The county judge/executive must take action to control and eradicate Canada and nodding thistles on all lands, rights-of-way and easements occupied or controlled by the county (KRS 249.195).

### **Places Of Entertainment**

The county judge/executive has the power to issue a permit for the operation of a place of entertainment outside the corporate limits of a city (KRS 231.020), and to fix reasonable hours of operation (KRS 231.100).

### **Fireworks Display**

The county judge/executive may grant permits for supervised public displays of fireworks outside of cities in the county (KRS 227.710).

### **Other Duties**

A number of outdated statutes confer duties upon county officials. Old statutes describe the duties of the county judge/executive with respect to the administration of Confederate pensions (KRS Ch. 206) and vacant, unappropriated land within the county (KRS 56.210).

### **Legislative Functions**

Section 144 of the Constitution establishes the county judge/executive as a member and presiding officer of the fiscal court. The courts have consistently held that as a member of the fiscal court, the county judge has all the power of any other member of the court, including the right to vote on all matters coming before the fiscal court.<sup>12</sup> (See Chapter III for a more complete discussion of the powers and duties of the fiscal court and its members.)

The fiscal court is required by law to hold a regular meeting each month at dates set by the county judge/executive. However, the judge/executive may also call special meetings of the fiscal court at any time (KRS 67.090).

### **Qualifications**

Constitutional age and residence requirements are the only qualifications for the office of judge/executive: any person who is twenty-four years of age, a citizen of Kentucky, has been a resident of the state for two years, and has resided for one year in the county in which he seeks office may become a candidate (Ky. *Const.*, sec. 100). Before assuming office a judge/executive takes the constitutional oath of office (Ky. *Const.*, sec. 228).

Section 103 of the Constitution requires the county judge/executive to give bond before taking office. KRS 67.720 prescribes the manner of executing bond, directing the judge to execute a bond of a minimum of \$10,000 with sureties approved by the fiscal court for the faithful performance of the duties of the office. Premiums on the judge/executive's bond are paid from county funds.

### **Salary**

Section 246 of the Kentucky Constitution establishes the maximum salary for elected county officials at \$7,200. This maximum, however, increases as the Consumer Price Index rises. The 1998 General Assembly made significant changes in the way county judge/executives are compensated. 98 HB 810

defines their duties as coextensive with jurisdictions and duties of the Commonwealth, changing their constitutional salary rate from \$7,200 to \$12,000 per annum, as adjusted for any increase in the Consumer Price Index. In addition, HB 810 establishes a new salary schedule that is graduated according to county size and the experience of the county judge/executive. This amendment will result in salaries for some county officials ranging from \$49,567 to \$82,612 beginning the first Monday in January of 1999. The maximum for fiscal year 1998 was \$48,726. In September 1998, the Campbell County Circuit Court ruled that 98 HB 810 is "...declared unconstitutional to the extent that it declares the named offices in issue, including county judge/executives, to have duties or jurisdiction co-extensive with that of the Commonwealth without specifying said duties or jurisdiction..." and "that the Defendant and the parties aligned with the Defendant, Commonwealth of Kentucky, are permanently enjoined from implementing and enforcing these provisions of HB 810 as being in excess of the limits as set forth in the Constitution of Kentucky Section 246" (Campbell Circuit Court Case No. 98-CI-00604 Fisher and Chandler vs. Commonwealth of Kentucky).

Additional information on the new salary schedule implemented by 98 HB 810 is located in Chapter I of this publication.

### **Expense Allowance**

The county judge/executive receives an annual expense allowance of \$3,600 for performing his duties and fulfilling his responsibilities in the administration of the local county road program. Payment is made quarterly in a lump sum amount of \$900 (KRS 67.722). The county judge/executive does not have to submit any receipts or proof of expenses for the receipt of these funds.

### **Vacancy**

Vacancies in the office of the county judge/executive are filled by the Governor. When a vacancy occurs, the county clerk is responsible for notifying the Governor that the office is vacant (KRS 63.210). A county judge/executive appointed to fill a vacancy serves in accordance with Section 152 of the Kentucky Constitution.

### **Deputy County Judge/Executive**

The county judge/executive may appoint a deputy. This appointment does not need the approval of the fiscal court. The deputy county judge/executive may take on all the administrative powers and responsibilities of the judge/executive, but he may not act for the officeholder at meetings of the fiscal court (KRS 67.711).

The Attorney General has held that a deputy county judge/executive has no authority to solemnize a marriage in Kentucky (OAG 82-145).

KRS 67.730 to 67.745 deal with the absence or disability of the county judge/executive during extraordinary situations. These statutes provide a line of succession during emergencies.

### **Restrictions and Penalties**

Penalties may be imposed upon the county judge/executive for receiving personal benefit from contracts let by the fiscal court. KRS 61.210(2) provides that:

No county judge/executive...shall directly or indirectly, receive any benefits or emoluments from, furnish any material or other thing of value to be used in, or be interested in any contract let by the fiscal court for the construction of any roads, bridges or parts thereof, or any other public or internal improvement.

A judge/executive may be fined not less than \$50 nor more than \$200 for violating this law. He might also be imprisoned in the county jail for not less than ten nor more than forty days, or both, and shall forfeit his office (KRS 61.210(3)).

If the judge/executive, as a member of the fiscal court, becomes directly or indirectly interested in any contract for work to be done or material to be furnished for the county or any district of the county or becomes interested in any claim against the county or state, he may be fined not less than \$500 nor more than \$5,000 for each offense. If a judge/executive is by the same act guilty of a violation of this law and KRS 61.220(2), "he shall be punished as provided in KRS 61.210" (KRS 61.220).

If a fiscal court willfully fails to perform any duty required by the two chapters of the *Kentucky Revised Statutes* (Chapters 178 and 179) relating to the construction and maintenance of county roads, every member of such court concurring in the failure may be fined not less than \$10 nor more than \$100 by the circuit court of the county (KRS 178.990(5) and 179.990(15)).

As a member of the fiscal court, the county judge/executive is subject to fines and small jail sentences for violating certain specific provisions of the county budget law (KRS 68.210 to 68.360). For specific enumeration of these penalties, see KRS 68.990. If the county judge/executive fails to perform the duties required of him when the county issues general obligation bonds for the construction of county buildings, he may be fined up to \$100 (KRS 66.990(1)).

Any county judge/executive who willfully neglects to perform a duty imposed upon him under the election laws, for which no other penalty is provided, or who willfully performs such duty in a way that hinders the objects of the election laws, shall be guilty of a Class B misdemeanor (KRS 119.265).

### **III. JUSTICES OF THE PEACE AND COUNTY COMMISSIONERS: THE FISCAL COURT**

#### **Background**

The office of justice of the peace dates from Medieval England, from the reign of King Edward III in the early fourteenth century. In England the justices of the peace were four or five responsible men of a county with some knowledge of the law. Justices of the peace were appointed to keep the peace and try felonies and trespasses. However, this judicial authority could only be exercised when two or more justices acted in concert. Justices of the peace constituted a very important agency in the administration of local affairs in England. Their duties related to support of the poor, repair of roads, imposition and levying of parochial rates, as well as the trial of felonies and trespasses.

The office was established in America by the English colonists as part of our early legal system and is presently provided for in most of the states by constitution or statute. However, the importance and authority of the office has greatly declined from that of its colonial predecessor.

The office of justice of peace was established in Kentucky while it was still a part of the state of Virginia. These early justices were appointed. The first legislature after Kentucky achieved statehood in 1792 continued the practice of appointing justices. It authorized the appointment of 125 justices for service on two minor trial courts.<sup>14</sup>

The first and second Kentucky constitutions provided for appointive justices of the peace (Kentucky *Constitution* (1792), Art. V, sec. 6, and Kentucky *Constitution* (1799), Art. IV, sec. 6). The third Kentucky constitution made the office of justice elective [Kentucky *Constitution* (1850), Art. IV, sec. 34].

Our present constitution, Section 144, requires that each county have a fiscal court made up of either the county judge and from three to eight justices of the peace or the county judge and three county commissioners. The most important difference in the two types of fiscal courts is the manner of election of their members: justices of the peace are elected in districts, while commissioners are elected by the county at large. The legislature has enacted procedures for allowing the voters of a county to choose their form of fiscal court (KRS 67.050).

The counties with a justice of the peace form of fiscal court far outnumber counties with the county commissioner form. In 105 of Kentucky's 120 counties, the fiscal court is made up of justices of the peace. The fifteen

counties with a commissioner form of fiscal court include, however, many of Kentucky's most populous counties, so that the number of Kentuckians living under each type of fiscal court is approximately equal. The counties with a county commissioner type of fiscal court are: Bath, Boone, Boyd, Campbell, Daviess, Graves, Greenup, Jefferson, Johnson, Kenton, McCracken, Marshall, Mason, Montgomery, and Scott.

The structure of local government in Fayette County is unique in the Commonwealth. There the city and county governments have merged, as permitted by KRS Chapter 67A, to form an urban-county government and the Lexington-Fayette Urban-County Council has assumed most of the powers of the fiscal court. KRS 67.712 provides that statutory grants of rights, powers and responsibilities to the fiscal court are to be considered grants to the legislative body of the urban-county government in counties operating under KRS Chapter 67A.

### **Justices of the Peace/Magistrates**

In counties with a magisterial form of fiscal court the most important function of the justice of the peace or magistrate is service on the fiscal court. The terms "justice of the peace" and "magistrate" are synonymous (OAG 85-30). However, the office of justice of the peace or magistrate, unlike that of county commissioner, is a constitutionally required office that must be filled regardless of the form of the fiscal court. Although the Constitution mandates their election, magistrates in counties with a commissioner form of fiscal court have few duties. Before 1978, justices possessed important judicial duties, but the Judicial Amendment to the Constitution abolished the magisterial courts and stripped magistrates of their judicial duties. In counties with a county commissioner form of fiscal court, about the only duties remaining are the solemnization of marriages and the acceptance of applications for notaries public. Justices of the peace or magistrates may perform marriages if so authorized by the Governor or the county judge/executive (KRS 402.050). A justice of the peace may accept applications from persons desiring to be appointed a notary public (KRS 423.010). No statutory fees exist for either of these duties.

### **Qualifications**

To qualify for the office of justice of the peace or magistrate, one must be at least twenty-four years of age at the time of his election, a citizen of Kentucky, a resident of the state for at least two years immediately preceding election, and a resident of the county and district he is to represent for at least one year immediately prior to election (Ky. *Const.*, sec. 100). Justices of the peace or magistrates also must continue to reside in the district they represent during their term of office (Ky. *Const.*, sec. 142).

## **Election and Term**

The Constitution requires that each county be divided into three to eight districts in a manner determined by the General Assembly. One justice of the peace or magistrate must be elected from each district (Ky. *Const.*, sec. 142). Justices or magistrates serve four-year terms (Ky. *Const.*, sec. 99, and *Kentucky Acts 1992*, Chapter 168, sec. 19).

## **Reapportionment**

KRS 67.045 provides for the reapportionment of districts in counties with magisterial fiscal courts and those with county commissioners. Districts must be drawn so that they are compact and contiguous, and the population of districts must be as nearly equal as is reasonably possible. The 1998 General Assembly amended KRS 67.045 to add justices of the peace in counties having a fiscal court composed of the county judge/executive and three county commissioners to the definition of "district."

The fiscal court must initiate reapportionment proceedings in February of the second year following the decennial census of the United States. The fiscal court may review district boundaries at other times and initiate reapportionment if necessary, but there shall be no reapportionment during the period beginning thirty days prior to the last date to file for county office and ending with the regular election for county office (KRS 67.045(3) & (5)).

To initiate reapportionment, the fiscal court must publish notice in accordance with KRS Chapter 424, and appoint three competent citizens and the county clerk as reapportionment commissioners. The county clerk serves as a non-voting member. The other commissioners must be at least twenty-one years old, and must reside in different districts (KRS 67.045(4)).

In counties with a magisterial fiscal court, the commissioners may reapportion the county into three to eight justices' districts. In counties with the commissioner form of government, there shall be three commissioners' districts. When necessary, precinct lines must be redrawn in accordance with KRS 117.055. No precinct shall be in more than one magistrate's or commissioner's district (KRS 67.045(4) & (6)). According to the Attorney General's office, justice of the peace districts are coextensive with commissioners' districts in a county with the commission form of government (OAG 93-40).

In counties where the fiscal court consists of the county judge/executive and three county commissioners, the justice of the peace districts shall be coextensive with the three county commissioner districts.

The reapportionment commissioners must lay off the boundary lines of the districts within sixty days after their appointment. They must file a written report showing the boundary line and estimated population of each district with the office of the county clerk and with each member of the fiscal court. The fiscal court must consider the report of the commissioners within sixty days of receipt, and establish the districts by adopting or amending the report (KRS 67.045(5)).

Any registered voter of the county who believes that the fiscal court has not complied with KRS 67.045 may bring an action in circuit court to enforce compliance within twenty days of the establishment of the districts. If the circuit court finds that the fiscal court has violated the provisions of KRS 67.045, it shall remand the matter to the fiscal court. If the citizen who brought the suit prevails in court, the court may allow him a reasonable attorney's fee, to be paid from the county treasury (KRS 67.045(7)).

### **Compensation**

Justices of the peace or magistrates are among the county officials included in KRS 64.527 whose maximum compensation is computed by applying the change in the Consumer Price Index to the 1949 compensation base of \$7,200 set by Section 246 of the Constitution. For 1998, the Department for Local Government has determined the maximum compensation of magistrates to be \$48,726.

The Attorney General has cautioned that in counties where the justices of the peace work only part-time in their official capacity, they may not qualify for the rubber dollar maximum salary and that the compensation of magistrates should be adjusted according to the number of hours devoted to county business during a normal week. Only where magistrates work full-time at county business can the maximum salary be justified (OAG 77-774 and OAG 82-16).

The compensation of justices of the peace must be set by the first Monday in May in the year they are elected and may not be changed during their term of office (KRS 64.530(4)). However, their salary may be adjusted according to the rubber dollar adjustment formula, to reflect changes in the Consumer Price Index.

Fiscal courts are allowed to pay justices of the peace an additional amount of up to \$300 per month as an expense allowance for serving on committees of the fiscal court (KRS 64.530(6)).

HB 810 enacted in 1998 allows justices of the peace, except in counties that contain an urban-county form of government, to be eligible for training

approved and certified by the Department for Local Government, and an increase of \$100 per forty-hour unit increase.

### **County Commissioners**

County commissioners are elected only in counties where a majority of the voters have adopted a commission form of fiscal court at an election held pursuant to KRS 67.050. County commissioners hold no other powers or duties outside of those held as members of the fiscal court, except that they may perform marriages if authorized by the Governor or the county judge/executive (KRS 402.050).

#### **Qualifications**

To be eligible for the office of county commissioner, a person must be at least twenty-four years of age, a resident of the county for two years preceding the election, and a Kentucky citizen. In order to represent a particular district, one must have lived in that district for at least one year immediately preceding the election. Further, a commissioner must continue to reside within the district from which he was elected or forfeit the office (KRS 67.060(4) & (6)).

#### **Election and Term**

**Primary Elections.** In the primary, candidates for county commissioner seeking the nomination of a political party run exclusively in the district they seek to represent, except in counties containing a city of the second or third class but not a city of the first class. In these counties commissioners are elected in primaries from the county at large (KRS 67.060(3)).

**General Elections.** In all counties except those containing a city of the first class, all three commissioners are elected by the voters of the entire county at the regular election for county officials (KRS 67.060(1)). In counties containing a city of the first class, the commissioners' districts are designated A, B and C for identification purposes. The commissioner from district A runs every four years beginning in the year 1973, and the commissioners in B and C are elected every four years beginning in the year 1975 (KRS 67.060(2)). All commissioners normally serve a four-year term, but those elected in 1993 and 1995 will serve five-year terms (Kentucky Acts 1992, Chapter 168, sec. 19).

#### **Compensation**

KRS 64.530 and KRS 64.527 are in conflict regarding the compensation of county commissioners.

KRS 64.530(6) establishes a salary schedule for county commissioners as follows:

- County commissioners in a county containing a city of the first class, \$9,600 per year;
- County commissioners in a county containing a city of the second class, \$9,000 per year;
- County commissioners in a county containing a city of the third or fourth class, salaries not to exceed twenty percent more than commissioners received in that county in the calendar year preceding 1974;
- County commissioners in all other counties may receive salaries not to exceed the maximum allowable under KRS 64.527, or \$48,726 in 1998.

All salaries listed above are the maximum amounts permissible under KRS 64.530. As with justices of the peace, county commissioners working only part-time on county business may not qualify for maximum salary permitted by law (OAG 77-774 and OAG 79-189).

The compensation of county commissioners is also set by KRS 64.527, which includes county commissioners among the county officials whose maximum compensation is computed by applying changes in the Consumer Price Index to the 1949 base year salary of \$7,200 (see Chapter I on compensation of county officials). Under KRS 64.527, commissioners working full-time on county business are eligible for a maximum salary in 1998 of \$48,726. A proportionately smaller salary could be justified for commissioners working only part-time on county business (OAG 77-774 and OAG 82-16). Salaries of county commissioners are payable monthly.

The Office of the Attorney General takes the view that KRS 64.527 should govern the compensation of county commissioners (OAG 79-189).

County commissioners may receive an expense allowance of up to \$300 per month for serving on committees of the fiscal court (KRS 64.530).

## **Reapportionment**

County commissioners' districts must be reapportioned under KRS 67.045 in the same manner as magistrates' districts.

Any registered voter in a county may challenge redistricting by filing an action in the circuit court within twenty days of the action by the fiscal court. If the circuit court finds that the reapportionment was improper, it remands the matter to the fiscal court and may award the challenging party a reasonable attorney's fee (KRS 67.045(7)).

## **Vacancy**

A vacancy in the office of magistrate, justice of the peace, or county commissioner shall be filled by appointment by the Governor (KRS 63.190).

## **Fiscal Court**

The fiscal court consists of the county judge/executive and either the justices of the peace or the county commissioners. The county judge/executive is a member and the presiding officer of the fiscal court, by virtue of Section 144 of the Constitution. The courts have consistently held that as a member of the court, the judge/executive has the same powers as any other fiscal court member, including the right to vote on all matters coming before the court. The county judge/executive also has numerous other executive duties and powers, however, independent of his membership on the fiscal court (see Chapter II for a full discussion). By contrast, the other fiscal court members have official power only when fiscal court is in session. When the fiscal court is adjourned, magistrates or commissioners possess no administrative or executive power in relation to county government (OAG 78-402 and OAG 78-529). Magistrates and commissioners may solemnize marriages when authorized by the Governor of Kentucky or the county judge/executive of their county (KRS 402.050).

## **Laws Governing the Fiscal Court**

The General Assembly has provided that, except as specifically provided by law, the laws governing fiscal courts composed of justices of the peace are applicable to fiscal courts composed of county commissioners (KRS 67.070). Exceptions to this general rule are procedures for calling special meetings of the fiscal court and the method of breaking tie votes in the selection of officers and employees. If the county judge/executive is unable to call a special session, or refuses to do so on the request of two commissioners, two commissioners can call the session if they believe the need exists (KRS 67.070(2)). In the case of tie votes in the selection of an officer or employee, the fiscal court composed of commissioners must be given a last chance to resolve the deadlock prior to the appointment by the county judge/executive (KRS 67.070(3)).

## **General Powers and Duties**

KRS 67.080 establishes a general outline of the fiscal court's responsibilities. Under this statute the fiscal court is permitted to appropriate county funds for lawful purposes, buy and sell county property, supervise the fiscal affairs of the county and county officers, and exercise all other corporate powers of the county. Further, the fiscal court may investigate all activities of

county government and establish appointive offices and define their duties (KRS 67.080).

This statute also mandates certain fiscal court duties. The fiscal court must appropriate county funds for various purposes required by law. Additionally, the fiscal court is responsible for the construction, operation and maintenance of county buildings, roads and other property, and for the incarceration of prisoners. Incarceration of prisoners may be accomplished either by maintaining a jail or by contracting with another county to provide jail space. Finally, the fiscal court is directed to adopt an administrative code for the county (KRS 67.080).

### **Bonds For Faithful Performance Of Duties**

The county jailer (KRS 71.010), constables (KRS 70.310), the county clerk (KRS 62.055), the coroner (KRS 72.010), and the sheriff (KRS 70.020 and 134.230) must give bond before the fiscal court. Prior to 1996, the county judge/executive handled that duty.

### **Specific Powers Under County Home Rule Law**

Historically, the fiscal court has served as the administrative and legislative body of county government. However, its administrative and legislative powers have depended on specific delegations of authority by the General Assembly and these have often been limited and narrowly defined.

A clearer definition and a significant strengthening of the fiscal court's powers was provided by a 1978 amendment to KRS 67.083, frequently called the "County Home Rule Statute," which recognized the fiscal court's powers to "carry out governmental functions necessary for the operation of the county" and granted the fiscal court the authority to enact ordinances, issue regulations, levy taxes, issue bonds, appropriate funds, and employ personnel in the performance of the following public functions:

- (a) Control of animals, and abatement of public nuisances;
- (b) Regulation of public gatherings;
- (c) Public sanitation and vector control;
- (d) Provision of hospitals, ambulance service, programs for the health and welfare of the aging and juveniles, and other public health facilities and services;
- (e) Provision of corrections facilities and services, and programs for the confinement, care and rehabilitation of juvenile law offenders;
- (f) Provision of parks, nature preserves, swimming pools, recreation areas, libraries, museums and other recreational and cultural facilities and programs;
- (g) Provision of cemeteries and memorials;

- (h) Conservation, preservation and enhancement of natural resources including soils, water, air, vegetation and wildlife;
- (i) Control of floods;
- (j) Facilitating the construction and purchase of new and existing housing; causing the repair or demolition of structures which present a hazard to public health, safety or morals or are otherwise inimical to the welfare of residents of the county; causing the redevelopment of housing and related commercial, industrial and service facilities in urban or rural areas; providing education and counseling services and technical assistance to present and future residents of publicly assisted housing;
- (k) Planning, zoning and subdivision control according to the provisions of KRS Chapter 100;
- (l) Adoption, by reference or in full, of technical codes governing new construction, renovation or maintenance of structures intended for human occupancy;
- (m) Regulation of commerce for the protection and convenience of the public;
- (n) Regulation of the sale of alcoholic beverages according to the provisions of KRS Chapters 241 through 244;
- (o) Exclusive management of solid wastes by ordinance or contract or by both and disposition of abandoned vehicles;<sup>15</sup>
- (p) Provision of public buildings, including armories, necessary for the effective delivery of public services;
- (q) Cooperation with other units of government and private agencies for the provision of public services, including but not limited to training, educational services and cooperative extension service programs;
- (r) Provision of water and sewage and garbage disposal service, but not gas or electricity; including management of onsite sewage disposal systems;
- (s) Licensing or franchising of cable television;
- (t) Provision of streets and roads, bridges, tunnels and related facilities, elimination of grade crossings, provision of parking facilities, enforcement of traffic and parking regulations;
- (u) Provision of police and fire protection;
- (v) Regulation of taxis, buses and other passenger vehicles for hire;
- (w) Provision and operation of air, rail and bus terminals, port facilities, and public transportation systems;
- (x) Promotion of economic development of the county, directly or in cooperation with public or private agencies, including the provision of access roads, land and buildings, and promotion of tourism and conventions;
- (y) Preservation of historic structures. (This power may be exercised only with the voluntary written consent of the owner of the structure.); and
- (z) Regulation of establishments or commercial enterprises offering adult entertainment and adult entertainment activities.

KRS 67.083(8) was amended in 1988 to permit these enumerated powers, except for the power to tax, to be exercised cooperatively by two or more counties, or by a county with a city, special district, or the Commonwealth, through joint contracts, joint ownership of property, the exchange of services (including personnel and equipment), or other means. In cooperative provision of public service, benefits to the participating governmental units must be relative to costs. Where one governmental unit provides personnel or equipment to another, the provider must receive full compensation through reciprocal services or monetary reimbursement.

In addition to the general powers and duties assigned to the fiscal court by KRS 67.080 and 67.083, state law permits and directs fiscal court activity in a number of areas.

### **County Fiscal Affairs**

The fiscal court has the authority to control and supervise most aspects of the financial affairs of the county, including the county budget, tax levies, payments from the county treasury, and bond issuances.

**County Budget.** Through its approval power over the county budget the fiscal court controls the appropriations to various programs and activities of county government. A proposed county budget, which is prepared by the county judge/executive, must be submitted to the fiscal court for comment prior to the time that it is sent to the state local finance officer for approval as to form. The fiscal court may change the budget proposal at this time (KRS 68.240).

Following approval by the state local finance officer, the budget proposal is returned to the fiscal court for final approval. The fiscal court may at this time amend the amount appropriated to a given fund, but may not alter the form of the budget (KRS 68.260). The fiscal court may also provide for the expenditure of unanticipated revenue (KRS 68.280) and, by ordinance, transfer money from one budget fund to another to provide for emergencies or increases or decreases in county employment (KRS 68.290).

### **County Treasury**

Routine financial transactions of receipts and disbursements and financial record-keeping are handled for the fiscal court by the county treasurer. Fiscal court appoints a county treasurer during its June term every four years beginning with June, 1982 for a four-year term (KRS 68.010).

The county treasurer is responsible for receiving money due the county and for disbursing county funds in a manner and for purposes authorized by the fiscal court. He may invest the funds of the county pursuant to KRS

66.480, and he shall invest such funds if directed to do so by the fiscal court. The treasurer must keep a detailed accounting of receipts and expenditures and report to the fiscal court at least annually (KRS 68.020).

### **Bonding Authority**

The fiscal court may issue bonds for county buildings, county roads, and the construction of public buildings as authorized by statute. On November 8, 1994, the voters of Kentucky approved an amendment to Section 157 of the Kentucky Constitution to eliminate the requirement of two-thirds approval by the voters at a regular election in order for local governments to incur general obligations debt for a term exceeding one year. In 1996, the General Assembly made several statutory changes to allow full implementation of the 1994 amendment to Section 157 of the Kentucky Constitution (KRS Chapter 66).

### **Road Construction and Maintenance**

The fiscal court is responsible for the county road program and has the power to "open, establish or alter" roads (KRS 178.115) and to appropriate county funds for road work (KRS 67.080 and OAG 80-368). The fiscal court may condemn land for this purpose, if necessary (KRS 178.120). The fiscal court may provide for construction of roads either by the county or by contract. Contracts must be awarded to the "lowest and best" bidder (KRS 178.140).

A number of roads are constructed in each county and maintained by the State Rural Secondary Highway Fund and the State Rural Highway Fund. These funds are under the control and supervision of the Department for Local Government and the Department of Rural and Municipal Aid. Money from these funds is allocated among the counties according to a statutory formula (KRS 179.410 and 177.360). Each year the Department of Rural and Municipal Aid and the fiscal court, by agreement, plan the road construction and maintenance to be done during the year with the funds appropriated to the county from the Rural Highway Fund (KRS 177.330).

### **Planning and Zoning<sup>16</sup>**

There are several planning units in which counties may participate, and approval of the fiscal court is necessary before a county joins or establishes any planning unit.

KRS 100.117 provides that a county which desires to establish a planning unit must invite the cities within its boundaries to participate. If the cities refuse the county may establish an independent planning unit. KRS 100.121 provides for the establishment of a joint city-county planning program by legislative bodies of the cities and the fiscal court. The legislative bodies of the

cities and counties that make up two or more adjacent planning units may form a regional planning unit. The agreement to form a regional planning unit may permit the continuation of the joint units and their planning commissions, or may serve to replace them (KRS 100.123).

The fiscal court must approve appointments made by the county judge/executive to planning commissions (KRS 100.141). Fiscal courts may also appropriate money to planning units for expenses and accommodations (KRS 100.177).

### **County Jail**

If the county maintains a jail, responsibility for the maintenance and operations of the jail, as with other county buildings and properties, falls to the fiscal court (KRS 67.130). While the jailer operates the jail on a daily basis, the fiscal court may, as the county governing body, prescribe rules for the county jail and the treatment of prisoners, as long as such rules are consistent with state law. The Department of Corrections has promulgated minimum standards for jails, including standards relating to health, fire safety, administration, care and treatment of prisoners and medical care (501 KAR chs. 3, 4, 7, and 9).

### **Public Advocate**

Each county with a judicial district containing ten or more circuit judges is required to establish an office of district public advocate (KRS 31.060). The fiscal courts of other counties may provide for the representation of needy persons who are subject to proceedings involving, or are detained in connection with, serious crimes. Alternatives for providing representation, including the establishment of an office of public advocate, are available to fiscal courts (KRS 31.160).

### **Miscellaneous Powers**

Statutes delegate the fiscal court a variety of other powers. KRS 64.530(1) confers upon the court authority to set the salaries of county officials and county employees other than those specifically exempt by KRS 64.530 and KRS 64.535. A resolution of the fiscal court is necessary to set salaries of county road employees, county park employees, and county firemen. The fiscal court of any county containing a city of the first class in which the offices of sheriff and jailer have been consolidated may establish a metropolitan correctional services department (KRS 67B.010 to 67B.080). The legislative body of any county containing an urban-county government in which the offices of sheriff

and jailer have been consolidated may establish a correctional services division (KRS 67A.028). Unless precluded by a vote of its citizens against the establishment of a county department of health, the fiscal court may by resolution establish such a department (KRS 212.060). Fiscal courts of all counties within geographical boundaries established by the state Cabinet for Health Services may unite to establish a district health department (KRS 212.840 and 212.850). County governments may also expend funds or enter into associations to provide liability insurance for county officers and employees (KRS 65.150, 67.180, and 67.186).

The powers cited above are but a few of the many delegated to the court. Specific delegations of power are scattered throughout the *Kentucky Revised Statutes*.

### **Fiscal Court Meetings and Procedures**

Sessions of the fiscal court are held at the county seat or sometimes at other county government centers in the county, following required public notice. The fiscal court is required by law to meet at least once each month at dates set by the county judge/executive. However, the judge/executive may also call special meetings of the fiscal court at any time (KRS 67.090).

A majority of the members of a fiscal court composed of magistrates may call a special term of the court if the county judge/executive will not or can not call the court in session (KRS 67.090). Where the fiscal court is made up of county commissioners, two commissioners may call a special meeting if the judge/executive is unable or unwilling to do so (KRS 67.070(2)).

Meetings of the fiscal court are within the scope of the state Open Meetings Law (KRS 61.805 to 61.850) and are thus under most circumstances open to the public. Under this law closed meetings are permitted only for a limited number of situations listed in KRS 61.810. In addition to permitting access, the open meetings statutes also require the fiscal court to make a schedule of regular meeting dates available to the public and to give public notice of called special meetings (KRS 61.820 and 61.823). Actions taken by a fiscal court in a session in violation of the Open Meetings Law may be rendered void by the courts (KRS 61.848).

### **Quorum**

A majority of the members of the fiscal court constitutes a quorum for the transaction of business (Ky. *Const.*, sec. 144). A majority of the quorum is sufficient to take most types of action, but only a majority of the fiscal court may enact a county ordinance (KRS 67.078).

### **Records and Documents**

The fiscal court is a court of record. Minutes must be kept of its meetings and submitted for approval at the next succeeding meeting. The county budget, county ordinances and other official actions of the fiscal court are a part of the permanent records of the county and must be kept in the office of the county clerk (KRS 67.100). In keeping its records, the fiscal court is aided by the fiscal court clerk, who may be the county clerk or, if the county clerk chooses not to serve, a person hired by the court (KRS 67.120).

As a general rule, the records of the fiscal court, as well as those of other county agencies and offices, are open to public inspection. KRS 61.835 specifically opens the minutes of the fiscal court to such inspection. Kentucky's Open Records Law (KRS 61.870 to 61.884) is of general application. These statutes apply broadly to public agencies, including the fiscal court, and open most records to the public as a matter of right, provided that certain limits of reasonableness and agency procedures are observed (KRS 61.872 and 61.876). However, some records of a confidential nature, such as personal matters and trade secrets, are accessible only upon court order (KRS 61.878).

### **Tie Votes**

The statutes provide methods for resolving tie votes in the selection of county employees, but are silent as to deadlocks over other matters. Where the fiscal court consists of magistrates, tie votes on personnel matters continuing longer than fifteen days are resolved by the judge/executive's appointment of the employee (KRS 67.040). The procedure is identical for the county commission form, except that the fiscal court must be given a last chance to resolve the deadlock prior to the appointment by the judge/executive (KRS 67.070).

### **County Ordinances**

By statutory definition, a county ordinance is an official written action of the fiscal court which is general and lasting in effect or which is an appropriation of money (KRS 67.075). State law sets forth procedural rules for enacting fiscal court ordinances. These procedures do not apply to counties which have adopted the urban-county or the charter county form of government (KRS 67.077(5)).

Proposed ordinances must be in writing and must contain a title and an enacting clause (KRS 67.076). No ordinance may be enacted until it has been read on two separate days, but it may be read by title and summary only. Publication of ordinances in full or in summary is required both before and after passage. KRS 424.130 governs publication requirements. The notice published before an ordinance is acted upon must indicate the time, date and

place where the ordinance will be considered for passage. If ordinances are published in summary only, the notice must indicate a place in the county where the full text of the ordinance is available for inspection (KRS 67.077).

An ordinance proposal before the fiscal court may be amended following its first reading and prior to its adoption. Amendments must be proposed in writing, and by setting out in full each amended section. Amendments to proposed ordinances must also be published (KRS 67.077). Once an ordinance has been enacted, it can only be amended by ordinance (KRS 67.076(5)).

### **Fiscal Court Clerk**

Except in counties containing a city of the first class, the county clerk has the option of serving as the clerk of the fiscal court (KRS 67.120(1)). See discussion under the duties of county clerks in Chapter V of this work.

In counties where the county clerk declines to serve as fiscal court clerk and in Jefferson County, the fiscal court appoints its own clerk, who serves at its pleasure. It may also appoint a deputy clerk and a stenographer, who shall also serve at the will of the court. These employees must attend the meetings of the court, keep a full and correct record of its proceedings, and perform such other duties as it may prescribe (KRS 67.120(2)).

### **County Administrative Code**

Under KRS 68.005(1), the fiscal court is also required to adopt a county administrative code which includes, but is not limited to, procedures and designation of responsibility for:

1. General administration of the office of county judge/executive, county administrative agencies and public authorities;
2. Administration of county fiscal affairs;
3. Personnel administration;
4. County purchasing and awarding of contracts; and
5. Delivery of county services.

The fiscal court is required to review the county administrative code annually during the month of June and may by a two-thirds majority of the entire fiscal court amend the code. The county judge/executive may at other times prepare and submit amendments to the code for the approval of a majority of the fiscal court (KRS 68.005(2)).

### **Limitations and Penalties**

Members of the fiscal court are subject to a number of statutes which impose limits on their actions. Failure to observe such limits may make the

members of the fiscal court liable for fines or jail sentences. Most of these limitations and penalties are related to the fiscal court's responsibilities for county funds.

KRS 61.210 prohibits justices of the peace who serve on the fiscal court from holding a personal interest in contracts let by the county for road work or any internal improvements. This statute specifically forbids magistrates to work on, supervise work on, or to furnish materials for roads or bridges. Violations of this statute are punishable by fine, jail term and forfeiture of office. Similarly, KRS 61.220 places a general prohibition on personal interest in county contracts by fiscal court members, and provides that any direct or indirect interest in a contract for work, material or claim against the county is punishable by a fine of from \$500 to \$5,000.

Fiscal court members and other public servants are forbidden to take a pecuniary interest, speculate, or aid another to take an interest in transactions based on confidential information obtained in their official capacity. Misuse of confidential information is a felony (KRS 522.040).

Fiscal court members may also be liable for violations of several statutes pertaining to the levy of county taxes and expenditure of county funds. KRS 68.100 directs that each order or resolution which imposes a county tax must state the purpose of the tax. Failure to comply with this statute invalidates the tax. Additionally, expenditure of funds for a purpose other than that stated may make any fiscal court member who voted for the expenditure personally liable for the money expended.

The fiscal court is prohibited from spending in excess of county revenue (KRS 68.110). Violations of this statute are punishable by fines of up to \$500 and jail sentences of up to twelve months (KRS 68.990(3)). The state local finance officer has the power to investigate and examine the accounts and operations of county governments. If he determines that a county is incurring more obligations than it will have revenues to pay for, he may supervise the financial affairs of the county, and order it to take necessary actions to restore the county to financial solvency (KRS 68.210).

Fines or jail sentences may also be imposed for the fiscal court's failure to follow the steps outlined by the statutes for the preparation and approval of the county budget. Penalties for violations of budget procedures are listed in KRS 68.990.

KRS 178.990 and 179.990 establish penalties for members of fiscal courts who fail to lawfully discharge their responsibilities relating to county roads.

KRS 61.170 provides that justices of the peace and other county officials convicted of "misfeasance or malfeasance in office or willful neglect in the

discharge of official duties shall be fined and expelled from office." This broad statutory prohibition encompasses the doing of wrongful acts (malfeasance), the performance of a lawful act in an unlawful manner (misfeasance), and willful failure to carry out official duties. By action of the General Assembly in 1988, failure to attend fifty percent of the regular terms of the fiscal court within a six month period or two consecutive terms of the fiscal court, without good cause, shall result in a charge of neglect of office, and upon conviction, the member of the fiscal court shall forfeit his office (KRS 61.170(3)).



## **IV. COUNTY ATTORNEY**

### **Background and Qualifications**

The office of county attorney was first made a constitutional office under the Kentucky Constitution of 1850 [Ky. *Const.* (1850), Art. VI, sec. 1]. The present Constitution requires the election of a county attorney in each county for a term of four years, except that those elected in 1993 must serve a term of five years (Ky. *Const.*, sec. 99, and Ky. *Acts 1992*, Chapter 168, sec. 19). He must be twenty-four years of age, a citizen of Kentucky, a resident of the state for two years, a resident of his county one year prior to his election, and a licensed practicing attorney for two years prior to his election (Ky. *Const.*, sec. 100).

Legislation of the 1976 Extraordinary Session of the General Assembly modified the office of county attorney. The county attorney became a part of the unified and integrated prosecutorial system under the direction of the Attorney General (KRS 15.700). Further, the county attorney became, *ex officio*, a special prosecutor of the Commonwealth, who may be required to perform duties coextensive with the Commonwealth, as directed by the Attorney General (KRS 15.730). While the nature of the office has been changed, the duties remain substantially the same and may be classified as follows: the prosecutorial function, civil advising to county government, and miscellaneous duties for the state and county.

### **Prosecutorial Duties**

The county attorney must attend the district court in his county and prosecute all violations of criminal and penal law within the court's jurisdiction. Further, the county attorney and the Commonwealth's attorney are required to cooperate in the enforcement of laws and, when necessary, to assist each other in prosecution within their respective courts. These two officers may agree to share or redistribute their prosecutorial duties in the Circuit and district courts (KRS 15.725). In 1988, the Revenue Cabinet was authorized to employ attorneys in lieu of the county and Commonwealth's attorneys to prosecute violations of criminal and penal laws relating to revenue and taxation (KRS 131.130(5)).

KRS 69.210(2) directs the county attorney to carry out prosecutorial duties for the Commonwealth in the juvenile session of district court in proceedings pursuant to KRS Chapter 600. The county attorney may move in district court that a child be proceeded against as a youthful offender in circuit court if the child is charged with certain serious offenses, has met certain age criteria and has been adjudicated on prior occasions (KRS 635.020). It is the responsibility of the district court to determine, after a hearing, whether to transfer the child to the circuit court (KRS 640.010). A child of fourteen or

older who is charged with a felony in which a firearm is used will be transferred to the circuit court for trial as an adult if, following a preliminary hearing, the district court finds probable cause to believe that the child committed a felony, that a firearm was used, and that the child was fourteen years of age or older at the time of the commission of the alleged felony. If convicted in the circuit court, the juvenile will be subject to the same penalties as an adult offender (KRS 635.020).

The Attorney General may take action to disqualify a county attorney in a particular case and may direct any county attorney to act as a special prosecutor in cases which would normally be outside his jurisdiction (KRS 15.715, 15.730, and 15.735). Specific guidelines for the conduct of the county attorney's prosecutorial duties are contained in the *Rules of Criminal Procedure*, promulgated by the Supreme Court of Kentucky.

The county attorney possesses, as do the Attorney General and the Commonwealth's attorney, the jurisdiction to investigate and prosecute violations of the election laws. He must notify the Registry of Election Finance of such an investigation or prosecution of election law violations (KRS 15.242). The county attorney must, when requested by the Attorney General, give all possible assistance to the Attorney General in the enforcement of election laws (KRS 15.243). When a voter is challenged at the polls, he must sign an oath as to his qualifications before he is permitted to vote. The county attorney and Commonwealth's attorney must investigate these oaths and cause to be summoned before the grand jury the witnesses they deem proper (KRS 117.245).

The county attorney must bring action in the district court to determine paternity when a request is made by the mother, putative father, child, person or agency substantially contributing to the support of the child. If paternity has been determined, the county attorney or the Cabinet for Health Services must bring action to enforce liabilities upon the request of an authorized complainant (KRS 406.021).

The county attorney shall distribute to crime victims and witnesses a pamphlet, prepared by the Attorney General, which explains how the criminal justice system works, how the victim or witness may protect himself from intimidation, and how the victim or witness can be notified of the release of a person from a juvenile detention facility, jail, or prison (KRS 15.245 & Chapter 196).

If a coroner declines to order an autopsy and the county attorney believes the decedent may have died as a result of a criminal act, he may petition the District or circuit court to order an autopsy (KRS 72.445).

## **Unified and Integrated Prosecutorial System**

As briefly mentioned above, the county attorney is a member of the unified and integrated prosecutorial system, established to promote uniform enforcement of the criminal law of the Commonwealth (KRS 15.700). The system is directed by the Attorney General, the chief law enforcement officer of the Commonwealth, and administered by the Prosecutors Advisory Council, composed of Commonwealth's attorneys, county attorneys, non-attorney citizens, and the Attorney General. The council may direct the county attorney to submit such written reports as are deemed necessary (KRS 15.720).

### **County Legal Adviser**

County attorneys serve as legal counsel for county government. Their general duties in this capacity are to attend the fiscal court and conduct all business of that body touching the rights or interests of the county. When the fiscal court so directs, the county attorney must conduct civil actions in which the county is a party before any of the courts of the Commonwealth (KRS 69.210(1)).

The county attorney is also obliged to give legal advice to the fiscal court and county officers in all matters concerning county business (KRS 69.210(3)).

In addition to his services for general county government and its officers, the county attorney also acts as legal representative to many county boards, commissions and special districts. He is to furnish the legal services needed by the board of county drainage commissioners, should that board fail to hire an attorney to represent itself (KRS 267.410). If a proposed sanitation district in his county is called into circuit court on a hearing concerning its creation, or if an existing sanitation district is involved in a protest against annexation of land into the district, the county attorney will represent the district in circuit court (KRS 220.100 and 220.537).

County housing commissions may secure legal aid from the county attorney (KRS 80.450). A county attorney acts as counsel for a sewer construction district (KRS 76.385), and he may also act as counsel for a water district (KRS 74.030). If requested, the county attorney of a county in which a fire protection district lies must advise and represent the district's board of commissioners (KRS 75.250). He must also advise and represent the board of a subdivision road district at the request of the board (KRS 179.730). When a county has activated a local air pollution control district, the county, Commonwealth, and city attorneys must prosecute enforcement actions taken by the district (KRS 224.20-130). The county attorney also represents the watershed conservancy district board of directors in upholding the validity of proposed bond issues (KRS 262.778) and assessments (KRS 262.748).

### **Fiscal Duties for County**

KRS 69.210(3) requires the county attorney to supervise the payment of claims against the county treasury. When claims are approved by the fiscal court, the county attorney is responsible for opposing payment of illegal or unjust bills. In fact, he may go to court against the fiscal court in order to stop payment of an unjust claim. The county attorney must represent the county when the sheriff makes his annual settlement for county and district taxes with the fiscal court (KRS 134.310). When excess fee money is owed the county by fee officers, the fiscal court is required to direct the county attorney to bring suit, if necessary, to collect the funds (KRS 64.820(2)).

All county taxes are levied by the fiscal court by order or resolution; the purpose for a tax must be specified in the resolution levying the tax (Ky. *Const.*, sec. 180). If any county tax revenue is expended for a purpose other than that for which the tax was levied, each officer, agent or employee who, by refusal to act, could have prevented the expenditure, and each member of the fiscal court who voted for the expenditure, shall be jointly and severally liable to the county for the amount of county tax revenue so expended. The county attorney shall prosecute to recover all such actions, and if he fails to do so for six months after the money is expended, any taxpayer may prosecute such action for the use and benefit of the county (KRS 68.100).

If the fiscal court decides to ask for a review of the Revenue Cabinet's aggregate equalization of any class or subclass of property, it directs the county attorney to prosecute an appeal to the Kentucky Board of Tax Appeals (KRS 133.170).

### **Miscellaneous Duties for County**

A county attorney, a Commonwealth's attorney, the state Attorney General, or any three citizens, may petition in equity for the removal of a nonelective peace officer who is serving in violation of the statutes (KRS 63.180).

No place of entertainment may be operated outside the corporate limits of a city unless its owner or manager has a permit, issued by the county judge/executive in the county in which the place of entertainment is located, granting the privilege to operate in that county (KRS 231.020). When application is made to the county court to operate such a place of entertainment, the county attorney must investigate the applicant and file a written report with the county judge/executive. The report should set forth the facts revealed by his investigation and recommend the granting or the denial of the permit (KRS 231.070). If a permit is denied and the applicant appeals to circuit court, the county attorney must resist the appeal, and he must represent the county judge/executive granting a permit in any court proceedings (KRS 231.090).

If any building or structure is or is proposed to be erected, constructed, reconstructed, relocated, remodeled, altered, repaired, maintained or used in violation of any reasonable regulations adopted pursuant to the enforcement of building standards, the county attorney of the affected county, or any property owner or occupant who would be damaged by such violation, may in addition to other remedies provided by law, institute injunction, mandamus, abatement, or other appropriate action to prevent, enjoin, abate or remove such unlawful action (KRS 67.420).

The county attorney must bring civil action in the name of the county to recover possession of, or for injury to, county property (KRS 67.130).

The Commonwealth's attorney or the county attorney may maintain action in the name of the county to enjoin perpetually any house of prostitution or any person owning or maintaining such a place (KRS 233.030). A Commonwealth's attorney or county attorney may bring suit for the forfeiture of property or a vehicle used for the purpose of unlawfully selling, transporting, or possessing intoxicating liquors in a dry territory (KRS 242.320).

If the county judge/executive is considering adopting a particular method of indexing mortgages, wills, marriage records, and other public documents, the county attorney is one of the persons responsible for a report to the judge/executive on the accuracy of the proposed index. He and the county clerk and a licensed attorney appointed by the judge/executive make up a commission which inspects the proposed index and reports to the judge/executive on the accuracy of the index (KRS 382.205).

Before any accumulations from a county sinking fund, created to retire county road bonds, are loaned by the fiscal court on first mortgage real estate security, the county attorney must check on all titles to the affected property (KRS 178.200). When it is necessary for the fiscal court to condemn land for county roads, the county attorney assists in the condemnation proceedings (KRS 178.120 and 416.110). The county attorney must oppose the wrongful opening, alteration or discontinuance of any public road (KRS 69.230).

If the county clerk refuses to issue a license for a going-out-of-business sale or fire sale and the applicant asks for a hearing, the county attorney must appear in opposition to the issuance of the license (KRS 365.435). Similarly, if the county clerk refuses to issue a transient business permit and the applicant asks for a hearing in district court, the county attorney must appear in opposition to the issuance of the permit (KRS 365.685). The county attorney or the Attorney General may enforce the law relating to transient merchants and business by civil action for injunctive relief (KRS 365.690).

No solid rubber or rubber compounded tire on any vehicle other than a vehicle actually being used in the construction or maintenance of a highway,

may be less than one inch thick, measured from the steel flange of the rims. A person violating this regulation is civilly liable for any damage done to any state or county highway. The county attorney of the county in which the damage is done must institute actions necessary to reimburse the state or county for the damage suffered (KRS 189.190(5)).

For each election the county attorney and the county clerk must prepare a sufficient number of instruction cards containing a diagram showing the front of the voting machine as it will appear on the day of the election. The card must also contain instructions as to the proper method of voting with the machine (KRS 117.175). The county attorney must attend training sessions for county election officers conducted by the county board of elections, to assist in explaining duties and penalties for failure to perform (KRS 117.187).

### **Duties for State Agencies**

A number of statutes authorize state administrative agencies to call upon the county attorney for legal assistance. Sometimes these authorizing statutes state that the agency may receive legal assistance from the state Attorney General, the Commonwealth's attorneys, or the county attorney. A few of these statutes specify only the county attorney.

### **Revenue Cabinet**

The 1988 General Assembly amended KRS 131.130 to authorize the Revenue Cabinet to employ attorneys, who must be approved by the Attorney General under KRS 15.020, to prosecute violations of the revenue and taxation laws. These attorneys have all the powers of prosecuting attorneys for these purposes (KRS 131.130(5)). In the event of the incapacity of cabinet attorneys or at the request of the secretary, the Attorney General or his designee may perform these prosecutions (KRS 131.130(6)).

KRS 131.130(7) states that the Revenue Cabinet "may require the Commonwealth's attorneys and county attorneys to prosecute actions and proceedings and perform other services incident to the enforcement of law assigned the department for administration." Other sections of the statutes authorize the county attorney to perform specific duties for the Revenue Cabinet. He must prosecute or assist in the prosecution of cases involving the assessment of omitted property (KRS 132.350). He also prosecutes in circuit court to recover delinquent taxes and penalties from sheriffs who fail to collect or pay over the taxes or penalties (KRS 134.340). He is to assist the cabinet in actions to declare tax sales invalid (KRS 134.540), and to prosecute for any unsatisfied or uncollected tax bills (KRS 135.040). The county attorney may contract with the Revenue Cabinet to collect certificates of delinquency and delinquent personal property tax bills. If so, he or she is entitled to a commission of twenty percent of the amount due to the taxing unit. The

county attorney may retain an additional thirteen percent of the delinquent amount if he or she files a court action that results in contested litigation (KRS 134.500). The county attorney may also handle, for the State Treasurer, the legal actions essential to escheats (KRS 393.180). He or she represents the Revenue Cabinet in all hearings before the county board of assessment appeals and all appeals from its decisions (KRS 133.120(11)).

### **Transportation Cabinet**

The county attorney can perform a great many services for the Transportation Cabinet. KRS 176.280 provides that: "The county attorneys shall each render legal service to the cabinet in carrying out its duties." When it is necessary for the Transportation Cabinet to condemn land for a bridge or bridge approach, the state Attorney General, assisted by the county attorney, handles the condemnation proceedings (KRS 180.030). If it is necessary for the cabinet to institute condemnation proceedings in order to obtain a ferry, the cabinet is represented by the Attorney General and by the county attorney of the county in which the proceedings are filed (KRS 180.270). After the Transportation Cabinet has designated the route, location, or relocation of a highway, limited access highway, bridge, roadside park, borrow pit, quarry, garage or other property or structure deemed necessary for construction, reconstruction, or maintenance of an adequate system of highways, it may, if unable to purchase the land or materials, condemn them (KRS 177.081). The cabinet may direct the county attorney or any attorney authorized to represent the Commonwealth to institute the condemnation proceedings. If an attorney other than the county attorney institutes the proceedings, the county attorney must prosecute or assist in the prosecution of the action (KRS 177.082).

Upon request of the Department of Vehicle Regulation, the state Attorney General, any Commonwealth's attorney, or any county attorney may represent the department within his jurisdiction in any action or proceeding relating to the Kentucky law regulating motor carriers (KRS 281.800).

### **State Property and Buildings Commission**

The Property and Buildings Commission may condemn any land or any interest in land within areas designated by the United States for park sites. This action is brought by the state Attorney General in the circuit court where the property lies. The county attorney of that county, at the direction of the Attorney General, is to assist in the prosecution of the action in the courts (KRS 148.121).

### **Cabinet for Human Resources**

The county attorney, Commonwealth's attorney, and the Attorney General, within their respective jurisdictions, must represent the Cabinet for Health

Services and local boards of health in all matters relating to the enforcement of health and medical laws. However, when the Secretary of Health Services deems it necessary, the cabinet may employ at its discretion special attorneys and inspectors to assist the county and Commonwealth's attorneys (KRS 212.270).

The Attorney General, the Commonwealth's attorney, and the county attorney are to assist the Kentucky Board of Pharmacy in enforcing the laws and regulations on pharmacists, pharmacies, and drugs (KRS 315.230). The county and Commonwealth's attorneys and the Attorney General are required to enforce the provisions of the Kentucky Controlled Substances Act of 1972 (KRS 218A.240(1)).

The officials in charge of the enforcement of the pure food laws of the Commonwealth, the Cabinet for Health Services, the local health officers, and the duly appointed agents of these officials and boards must enforce the Kentucky laws regulating food establishments. When a person fails to comply with the orders of persons authorized to enforce the laws relating to food establishments and does not request a hearing on his violation, the facts of his violation are certified to the Commonwealth's attorney, or the county or city attorney in whose jurisdiction the violation occurred. If the violation is certified to the county attorney, he must proceed against the person for the abatement of the nuisance and for the applicable fines and penalties (KRS 217.380).

It shall be the duty of each Commonwealth's attorney, county attorney, or city attorney to whom the Cabinet for Health Services or its agents report any violation of KRS 217.005 to 217.216 (the Kentucky Food, Drug and Cosmetic Act) to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law. The person against whom such proceeding is contemplated may be given appropriate notice and an opportunity to present his views before the cabinet or its designated agent, either orally or in writing, in person, or by an attorney, with regard to such contemplated proceeding before being reported to the Commonwealth's attorney, county attorney, or city attorney for the institution of a criminal proceeding (KRS 217.185).

Unless they decline, the county attorney is considered the designee of the Cabinet for Health Services for recovering child support payments (KRS 205.712).

County and Commonwealth's attorneys are required to enforce the provisions of the Kentucky Mobile Home and Recreational Vehicle Park Act of 1972, when violations are reported to them by the Cabinet for Health Services or local department of health (KRS 219.380).

All criminal actions for violation of any provision of the Kentucky Unemployment Compensation Law or any rules or regulations issued under it are prosecuted by the Attorney General or, at his request and under his direction, by the county attorney or Commonwealth's attorney of any county in which a violator resides, has a place of business, or has filed a claim (KRS 341.570).

### **State Board of Medical Licensure**

The county and Commonwealth's attorneys must be notified by the county boards of health of their counties of all violations of the Kentucky Medical and Osteopathic Practice Act of 1972 (KRS 311.605).

### **Board of Podiatry**

County attorneys, Commonwealth's attorneys, and the Attorney General are to prosecute all violations of the penal provisions of the Kentucky law regulating the practice of podiatry. When requested they are to represent the state Board of Podiatry in matters relating to enforcement of the laws affecting the practice of podiatry (KRS 311.495).

### **Department of State Police**

If an investigation conducted by the Department of State Police reveals that a fire was caused by arson or a related offense, the State Police Commissioner may request the county attorney of the county in which the fire took place or the Commonwealth's attorney in that district to institute such criminal proceedings as the evidence warrants (KRS 227.290).

### **Department of Education**

When the chief state school officer finds mismanagement, misconduct, violation of law, wrongful and improper use of any district or state school fund, or neglect in the performance of duty on the part of any official, he must report the violation to the state Board for Elementary and Secondary Education. The board, through the chief state school officer or one of his assistants, calls on the county attorney or the Commonwealth's attorney in the district where the violation occurred to assist in the indictment, prosecution, and conviction of the accused (KRS 156.210(3)).

### **Department of Mines and Minerals**

If the Department of Mines and Minerals orders a mine closed for safety reasons and the owner of the mine appeals this decision to the circuit court, the Attorney General, the Commonwealth's attorney of the circuit court district,

or the county attorney of the county in which the mine is situated must appear for the state and defend the department's action (KRS 352.430(4)).

### **Natural Resources and Environmental Protection Cabinet**

When any action is instituted on behalf of the Natural Resources and Environmental Protection Cabinet, the county and Commonwealth's attorney must represent it in the county in which the action is brought (KRS 149.070). County or Commonwealth's attorneys must initiate and prosecute appropriate abatement proceedings by injunction, or otherwise, for the prevention or correction of any condition constituting or threatening to constitute a violation of KRS 149.360 to 149.430, which are statutes designed to protect forests (KRS 149.410).

The county attorney must represent the secretary of the Cabinet for Natural Resources and Environmental Protection in circuit court when the secretary is named a defendant in a petition opposing the creation of a water district (KRS 104.540).

### **Department of Fish and Wildlife Resources**

All county attorneys and Commonwealth's attorneys must prosecute violations of the Kentucky Fish and Wildlife Law and the regulations adopted under it (KRS 150.130).

### **Department of Agriculture**

When violations of the laws regulating commercial feeds are reported to a county attorney, he is to institute prosecutions without delay (KRS 250.601).

### **Workers' Compensation Board**

Upon request of the Workers' Compensation Board, the Attorney General, or, under his direction, the Commonwealth's attorney or county attorney may institute and prosecute an action necessary for the enforcement of the state Workers' Compensation Law. These officials, in like manner, must defend all actions or proceedings brought against the board, the members of the board, or administrative law judges in their official capacity (KRS 342.425).

### **Consumer Protection**

The state Attorney General is responsible for enforcing laws relating to consumer protection within the Commonwealth, and he may request the assistance of the county attorney in enforcing the laws. Commonwealth's attorneys have the same duties under the Consumer Protection Act (KRS 367.300).

## **Department of Housing, Buildings and Construction**

County, city and Commonwealth's attorneys must represent the department, within their respective jurisdictions, in the enforcement of the state plumbing code (KRS 318.180).

### **Miscellaneous Duties for State**

The county attorney must investigate the condition of all unsatisfied judgments in his county in favor of the Commonwealth. He must take all necessary steps to collect unsatisfied judgments and cause them to be paid into the state treasury (KRS 69.240).

The 1982 General Assembly enacted various new sections of KRS Chapter 387 that substantially changed the law relating to the appointment and duties of conservators and guardians for disabled persons. Under this act the county attorney has a duty to assist the petitioner, the person seeking the appointment of a conservator or guardian, in court proceedings. The county attorney is also directed to represent the interest of the Commonwealth and to aid the court's inquiry by the presentation of evidence (KRS 387.560).

In counties containing a city of the first or second class and in counties with an urban-county government, the county attorney has additional duties. In these counties, the county attorney must "attend all civil cases and proceedings in his county in which the Commonwealth is interested" and "advise the collector of money due the Commonwealth in the county in regard to motions against delinquent collecting officers for failing to return executions and...prosecute the motions" (KRS 69.210(4)).

County attorneys, as well as Commonwealth's attorneys, city attorneys, and the state Attorney General, within their respective jurisdictions, must represent certain persons in the enforcement of the State Tuberculosis Control Act of 1970 (KRS 215.580).

If a person charged with or convicted of a crime in Kentucky has left the state, either a Commonwealth's attorney or a county attorney may petition the Governor of Kentucky for extradition of the convicted or accused person (KRS 440.370).

The Justice Cabinet must issue regulations developed in conjunction with several state agencies concerning child sexual abuse. Commonwealth's attorneys and county attorneys may serve on "multidisciplinary teams" with law enforcement officers, social workers and related professionals to carry out these regulations. Local protocols must be developed in each county to specify how the state plans will be carried out. If adequate personnel are available,

each Commonwealth's attorney's office and each county attorney's office must have a child abuse specialist. Commonwealth's attorneys and county attorneys must take an active part in interviewing and protecting children who are alleged to have been abused (KRS 431.600 and 620.040). Each Commonwealth's attorney and county attorney must attend in-service training on child abuse and related issues (KRS 15.944).

In 1996, legislation was enacted to require the Attorney General to provide domestic violence training for county attorneys. As a result of this legislation, each county attorney must successfully complete, at least once every two years, continuing education courses concerning the effects of domestic violence and legal remedies addressing domestic violence.

### **Compensation**

State law requires that the county attorney receive a salary paid out of the state treasury for performance of his prosecutorial duties. The state salary must be at least equal to the compensation received by the county attorney in calendar year 1976, but no less than \$20,000. However, beginning January 1, 1990, the annual state salary of each county attorney shall be equal to that of each Commonwealth's attorney who is not prohibited from the private practice of law, as provided in KRS 15.755(5) (KRS 15.765(1)).

At its discretion, the fiscal court may compensate the county attorney for his legal advice to county government (KRS 64.530). No minimum compensation is set by statutes. A maximum level of compensation from the county exists, in that the salary from the county plus the county attorney's state salary may not exceed \$73,411 in 1994 (KRS 15.765(3) and 64.530; OAG 94-7). County attorneys may engage in the private practice of law in addition to the performance of their official duties (KRS 15.765(4)). Commissions earned by the county attorney for his tax collection work pursuant to KRS 132.350, 134.340, 134.400, 134.500, 134.540, and 135.040 may be used only for the payment of operating expenses (KRS 134.545).

A county attorney must be reimbursed by the state if he or she personally suffers financial loss, unreimbursed from any source, from a court judgment for monetary damages involving an act or omission in the course of duty (KRS 15.753).

### **Expense Allowances and Office Expenses**

For expenses incurred in performing his duties for the state, each county attorney is entitled to a monthly expense allowance of \$250 to be paid out of the state treasury (KRS 15.765(2)). The Attorney General in OAG 78-241 has expressed the view that this is a lump sum allowance which cannot be

considered as compensation and, therefore, would not be included in determining the total compensation of the office.

KRS 15.750(3) provides that the state must pay any office expenses incurred by the county attorney in the performance of his duties as criminal prosecutor. Office expenses from the county attorney's duties as the county's legal adviser are required to be paid by the fiscal court or the urban county council (KRS 15.750(4)). The Prosecutors Advisory Council is authorized to purchase liability insurance on behalf of county attorneys and their employees to insure them against malpractice or other claims related to their official duties. (KRS 15.750(5)).

Under several statutes enumerated in KRS 134.545 the county attorney is obligated to perform various duties in relation to the collection of delinquent taxes and is entitled to receive a fee for his work. Such fees are to be used for the payment of the county attorney's office operating expenses. Additionally, if a county attorney issues notice to a maker that a drawee has refused to honor an instrument due to lack of funds, he may charge a ten dollar fee to the holder, if the instrument is paid. This fee may be used only for office operating expenses. Excess fees held by the county attorney on June 30 of each year must be turned over to the county treasurer for use by the fiscal court (KRS 514.040(4)(c)).

### **Budget**

Each county attorney must submit a proposed budget for his office to the Prosecutors Advisory Council to then be submitted as part of the budget of the Office of Attorney General in accordance with KRS Chapter 48 (KRS 15.750(1)). Local governmental units may, however, provide additional financial support.

### **Assistants and Staff**

Each county may, with the approval of the Prosecutors Advisory Council, appoint one assistant county attorney for every district judge (in excess of one) in his judicial district. The council has the power to approve more assistants, if needed (KRS 15.770(1)). Assistant county attorneys are not prohibited from engaging in the private practice of law (KRS 15.770(3)).

The number of assistant county attorneys, stenographic, secretarial, clerical, and other personnel positions is determined with the advice and consent of the Prosecutors Advisory Council on the basis of "real need" (KRS 15.770(2)). All staff positions are paid for by the state treasury to the extent that they assist in state prosecutorial duties (KRS 15.770(5)). Assistant county attorneys may be removed at the discretion of the county attorney (KRS 15.770(4)).

Any county attorney who employs persons paid from a funding source that is not subject to the control of the fiscal court must participate as an employer in the County Employees Retirement System or the Kentucky Employees Retirement System (KRS 78.5302).

### **Vacancy**

A vacancy in the office of county attorney is filled by the county judge/executive as provided in Section 152 of the Constitution and KRS 63.220. The Attorney General or his designee performs the duties of the office until the county judge/executive makes his appointments (KRS 15.715(4)).

### **Penalties and Restrictions**

Penalties are set by Kentucky law for misconduct on the part of the county attorney and other public officials (KRS 519.030, 521.030, 521.040 and ch. 522). Also, any county attorney failing to prepare a notice concerning tax delinquency, provided for in subsection (2) of KRS 134.500, is to be fined not less than \$10 nor more than \$100 (KRS 134.990(10)). Should he purchase or speculate in any claim allowed by the fiscal court of the county, he is to be fined twice the amount of the purchase or speculation (KRS 61.240). For failure to prosecute any officer who has failed to levy an execution, the county attorney may be fined not less than \$10 nor more than \$500 (KRS 135.990). Also, deductions may be made from the salary of the county attorney for neglect of duty (KRS 61.120).

Should the county attorney fail to take action regarding unsatisfied judgments in the name of the state within sixty days, he is to forfeit all rights to the fines and penalties otherwise paid him (KRS 69.990). For being interested in a contract in which the fiscal court takes part, or for gaining benefits from any project which the fiscal court supervises, the county attorney is to be fined between \$50 and \$200 or imprisoned for ten to forty days, or both. In such case, he must also forfeit his office (KRS 61.210).

Any county attorney who willfully conceals or destroys any record with the intent to violate the provisions of KRS Chapter 61 relating to open records shall be guilty of a Class A misdemeanor for each separate violation. Any official of a public agency who fails to produce any record after entry of final judgment directing that such records be produced shall be guilty of contempt (KRS 61.991(2)).

Any county attorney who willfully neglects to perform a duty imposed upon him under the election laws, for which no other penalty is provided, or who willfully performs such duty in a way that hinders the objects of the election laws, is guilty of a Class B misdemeanor (KRS 119.265).

In the event a county attorney or an assistant county attorney is indicted by a duly impaneled state or federal grand jury on any felony charge, the charge shall result in his immediate disqualification from further acting as a prosecuting attorney during the pendency of the action in any state or federal court. Such charge or charges shall in no way limit his right to practice civil law, unless the right to do so would contravene some other statute or existing canon of legal ethics, nor shall the charge alone prevent the attorney from receiving the usual salary or allowances for expense of the office, which would otherwise be payable (KRS 15.734(1)).

Upon certification of disqualification by the circuit judge or district judge of the jurisdiction in which the county attorney has been elected, the Attorney General shall name an attorney to serve as special prosecutor for the Commonwealth for the duration of that disqualification. This attorney need not be a county attorney or Commonwealth's attorney, as provided in KRS 15.730 (KRS 15.734(3)).

Nothing in KRS 15.734 prohibits the duly elected county attorney from being a candidate for re-election if the election is to be held during the period of disqualification, as long as the county attorney has not been found guilty of a felony or entered a plea of guilty to a felony at the initial trial level. A final conviction or a plea of guilty at the trial court level to a felony acts as a bar to being a candidate for re-election (KRS 15.734(4)).

## **V. COUNTY CLERK**

Kentucky's 1850 Constitution was the first to mention the office of county court clerk, providing for a clerk's election in each county for a term of four years (Ky. *Const.* (1850), Art. VI, sec. 1). The fourth and present Constitution requires the election of a county court clerk in each county for a term of four years (Ky. *Const.*, sec. 99).

Prior to the institution of the unified state court system, the county court clerk served as the clerk of the juvenile, county, and quarterly courts. With the replacement of these courts with the district court, the clerk no longer has any judicial duties and the name of the office has been abbreviated to county clerk, to more accurately reflect the nature of the office.

The duties of the county clerk are numerous and varied, falling into the general categories of clerical duties of the fiscal court, issuing and registering, recording and keeping records of various legal instruments, voter registration and purgation, election duties, and tax duties.

### **Fiscal Court Clerk**

In all counties except counties containing a city of the first class, the county clerk has the option of serving as the clerk of the fiscal court. If the county clerk chooses to serve in this capacity, he will be obligated to attend all meetings of the fiscal court and to keep a complete record of its proceedings, with an index. For these services, the county clerk receives an annual salary set by the fiscal court and paid in monthly installments from the county treasury (KRS 67.120).

Regardless of whether the county clerk serves as the clerk of the fiscal court, his office serves as a repository for various fiscal court documents. KRS 67.100(5) requires that the minutes of the fiscal court and the county ordinances, including the county budget ordinances, be stored in the office of the county clerk.

### **Notary Power**

The county clerk possesses the power of notary public in the exercise of the official functions of the office of clerk within his county (KRS 423.010). The county clerk may delegate the power of notary to his deputy (KRS 61.035).

### **Licensing Duties**

Under state law the county clerk acts as a licensing agent for state and county government. In this capacity he issues licenses and collects fees for a number of activities.

## **State Licensing**

Perhaps the most important and most time-consuming licensing duty performed by the clerk is the registration of motor vehicles, covered by KRS Chapters 186 and 186A. Under these statutes, the clerk must register all motor vehicles owned by persons residing in the county, issue automobile licenses to the residents of the county, and make reports to the Transportation Cabinet. The circuit court clerk issues drivers' licenses (KRS 186.400).

KRS Chapter 186A requires the Transportation Cabinet to equip each county with a video telecommunications terminal and associated devices which will enable county clerks to produce certificates of registration in their office and certificates of title in Frankfort. Vehicles, including motorcycles, registered or whose registrations have been renewed after January 1, 1983, have been placed on a year round registration schedule, based upon the birth month of the owner (KRS 186A.035).

All watercraft used for a residence or a business upon any navigable water course within Kentucky must be licensed. This license is obtained from the county clerk of the county of the residence or in which the business is to be carried on (KRS 182.140). Annual motorboat registrations and licenses are also issued by the county clerk (KRS 235.050, 235.060). Legislation passed during the 1998 session requires motorboat registration fees to be prorated, at a rate of one-twelfth of the appropriate annual registration fee set out in KRS 235.090 per month of the remaining registration period, if an application for title and registration is filed with the county clerk prior to the annual registration date established by the Transportation Cabinet.

If a county imposes the alcoholic beverage license fee permitted by KRS 243.060, such fees are paid to the county clerk (KRS 243.600).

No proprietor, lessee, or manager of a public grain warehouse may transact any warehouse business until he has obtained a grain warehouseman's license for the current year from the county clerk (KRS 359.050).

A number of professional people licensed by the state must register copies of their license with the county clerk. Every person licensed to be a chiropractor must file his license with the county clerk of the county in which he practices, before beginning to practice (KRS 312.135). Every licensed optometrist must register his license with the clerk of the county in which he practices (KRS 320.290).

The county clerk acts as an agent of the Department of Fish and Wildlife Resources for selling hunting and fishing licenses. A clerk may be exempted from this duty, however, by applying in writing to this department (KRS 150.195).

Marriage licenses are issued by the county clerk (KRS 402.080). All marriage certificates are filed and recorded by the county clerk (KRS 402.220 and 402.230). Military discharges may also be recorded in the county clerk's office (KRS 422.090). On or before the tenth day of each month, the county clerk reports to the state registrar of vital statistics all marriage licenses issued and all marriage certificates returned to him (KRS 213.116). Each county clerk is required to furnish each applicant for a marriage license with a copy of a marriage manual to be prepared and printed by the Human Resources Coordinating Commission of Kentucky (KRS 402.270).

### **County Licensing**

State law permits county government to regulate certain types of retail and entertainment establishments through licensing. Application for such licenses is made to the county clerk. The fiscal court of any county may impose a license fee on restaurants, retail soft drink and ice cream outlets, billiard rooms, bowling alleys, and places where tobacco is sold at retail. These licenses are purchased from the county clerk (KRS 137.115).

Permits to operate a roadhouse or fortune telling business outside the corporate limits of a city are obtained through the county clerk's office. Before a person may operate either of these businesses, he must apply at the county clerk's office for a permit. The clerk must advertise this application pursuant to KRS Chapter 424. If the county judge/executive rules favorably upon the application, the clerk grants the permit (KRS 231.010 to 231.090).

### **Recording and Keeping Permanent Records of Legal Instruments**

County clerks record a number of documents relating to real estate, liens, and use of personal property as collateral. Every county clerk must record all deeds, real estate mortgages, and powers of attorney that are lodged for record, properly certified, or that are acknowledged or proven before him as required by law (KRS 382.300). He records easements (KRS 382.300), real estate options (KRS 382.090), and contracts for the sale of real property (KRS 382.100). Affidavits of descent are recorded by the county clerk (KRS 382.120). Leases are also recorded by the clerk (KRS 382.080). The most frequently recorded leases are surface real estate leases and mineral leases. Maps, surveys, and plats are also recorded in the clerk's office (KRS 73.250). The clerk must keep an alphabetical cross-index of the deeds, mortgages, and leases he records (KRS 382.200). The clerk is required to record and index

instruments containing clauses of a mortgage under the name of the person causing it to be recorded (KRS 382.295).

The county clerk is prohibited from receiving or permitting the recording of instruments which affect the title to or an interest in real estate by conveyance, grant, assignment or otherwise, unless the instrument contains the mailing address of the grantee or assignee. The instrument must also comply with the official indexing system of the county. Recently installed indexing systems must allow computer searches of the county clerk's records. If a clerk requires parcel identification numbers on written instruments, the clerk must make a computer terminal available to the public at no charge (KRS 382.335). No clerk may record any deed which does not list the mailing addresses of the grantor and grantee and a statement of the full consideration. Certain exceptions to this requirement for a statement of full consideration are listed in KRS 382.135(2). In the case of a transfer other than by gift or with nominal or no consideration, the grantor and grantee must sign a sworn, notarized certificate that the consideration reflected in the deed is the full consideration paid for the property. If the transfer is by gift or with nominal or no consideration, the grantor and grantee must sign a sworn notarized certificate setting forth the estimated fair cash value of the property. If the transfer is an exchange of properties, the fair cash value of the property being exchanged must be stated in the body of the deed. If the transfer is by will or by interstate succession, the personal representative of the estate must file an affidavit with the clerk of each county in which any of the property is located containing the names and addresses of the persons receiving each property, and the full or fair market value of each property if estimated or established (KRS 382.135).

Mechanics liens, liens which give security for those who have contributed labor or materials for improvement of property and which run against the land as well as the improvements on the land where the labor was performed or the material furnished (KRS 376.080, 376.230 and 376.440); federal tax liens and other federal liens (KRS 382.480), lis pendens, notice of lien on real estate (KRS 382.460); and financing statements affecting a motor vehicle (KRS 186.045) are filed with the county clerk. When liens by deed or mortgage are satisfied, the clerk records their satisfaction either on the margin of the record, or in a separate marginal entry record which shall be linked to referenced instruments in the indexing system for the referenced instruments, or by preparing and filing a separate written release (KRS 382.360).

Recording of debts secured by personal property, such as chattel mortgages, pledges, conditional sales, trust receipts, assignment of accounts and the like, is the responsibility of the county clerk under Article IX of the Uniform Commercial Code (KRS 355.9-101 to 355.9-507). [KRS 355.9-401(c) provides that when a debt is secured by personal property by a nonresident, the debtor must file his financing statement with the secretary of state.] The records filed with the clerk include financing statements (KRS 355.9-401),

continuation statements (KRS 355.9-403), termination statements (KRS 355.9-404), and statements of assignments (KRS 355.9-405).

Under the 1988 revisions of Kentucky's Business Corporation Act, one of the three copies of all documents filed with the Secretary of State must subsequently be filed with the county clerk in the county of the corporation's registered office (KRS 271B.1-200(10)). Chapter 271B requires the filing of a number of corporate documents, including, among others, articles of incorporation (KRS 271B.2-010), articles of amendment (KRS 271B.10-060), restated articles of incorporation (KRS 271B.10-070), articles of merger or share exchange (KRS 271B.11-050), and articles of dissolution (KRS 271B.14-030). The filing fees to be paid to the county clerk are specified in KRS 64.012 (KRS 271B.1-220(4)). Failure to file a copy of a corporate document with the county clerk does not render the document ineffective (KRS 271B.1-230(3)).

Nonstock, nonprofit corporations are required to make similar filings (KRS 273.252(10), 273.2522, 273.368(2)).

County clerks also perform record-keeping tasks for special districts. They receive and store petitions, reports and other documents for a number of different types of districts. Standard budget forms for special districts are distributed by the clerk and files containing information about certain districts are kept in the clerk's office (KRS 65.065 and 65.070). Petitions for a referendum for the dissolution of some districts are filed with the county clerk (KRS 65.170).

All special districts, agencies, authorities, or political subdivisions of the state, other than cities, counties or school districts, that exercise less than state-wide jurisdiction, must file upon their creation a written notice of existence, or of any legal change in the district, with the county clerk. The clerk must send a duplicate copy of notification to the state local finance officer and the state local debt officer in return for a \$2 fee (KRS 65.005).

### **Registration and Election Responsibilities**

The county clerk has an important role in the administration of the election laws and the registration and purgation of voters within the county.

#### **County Board of Elections**

The county clerk serves as chairman of the county board of elections. He is entitled to vote on matters before the board and, in case of a tie, may cast an additional vote (KRS 117.035(3)). In addition to the clerk, the board consists of the sheriff and two appointed members designated by the state board of elections. The appointed members must be at least twenty-one years of age, qualified voters in the county from which they are appointed, and may not have been convicted of any election law offense. The sheriff may not serve on the

board in any year in which he is a candidate, and must recommend to the board a temporary replacement to serve in his place. The county clerk may continue to serve on the board during a year in which he is a candidate, but if he elects not to serve he also must recommend a temporary replacement (KRS 117.035(2)). Appointments of the two appointed members are made for a term of four years from lists of five names submitted by the county executive committee of each of the two political parties that polled the largest number of votes in the last preceding election for presidential electors (KRS 117.035(2)).

Records of the board are public, and they are required to be kept at the office of the county clerk. The board must meet at least once a month and may meet more frequently if necessary. The board must stay in session on election days to correct clerical errors and rule on questions regarding voter registration, and it may make to the election officers such certifications as may be necessary. Appeals from decisions of the board may be made to the circuit judge, but a ruling of the board shall be reversed only upon a finding that it was arbitrary and capricious. In counties containing cities of the first and second class, the board may employ a bipartisan staff to carry out its duties (KRS 117.035).

### **Voter Registration**

The county clerk receives applications for voter registration (KRS 116.045), maintains custody of voter registration records (KRS 116.095), and reports registrations to the state board of elections (KRS 116.075).

Any person may register to vote or may change his party affiliation in person, by mail, or by such other methods of registration, or reregistration, as approved by the State Board of Elections, including the use of voluntary interested groups and political parties, under the proper supervision and directions of the county board of elections. Any group or individual shall have access to a reasonable number of registration forms, including mail-in application forms prescribed by the Federal Elections Commission, in the county clerk's office. (KRS 116.045(4) & (6)).

Completed forms are returned to the county clerk for official registration. The county board of elections closes registration the fourth Tuesday preceding through the first Monday following any primary or general election, and twenty-eight days prior to and seven days following any special election. County clerks may process voter registration applications received while the voter rolls are closed but voters making such applications are prohibited from voting in the upcoming election, except for voters who have changed their place of residence from one precinct to another in the same county (KRS 116.025, 116.045(2), and 116.085).

Following public notice, the county clerk in any county may maintain branch offices for receiving voter registrations, transfers, or changes of party affiliation (KRS 116.045(3)).

In order to comply with the National Voter Registration Act of 1993, Kentucky has declared that applications for drivers' licenses also serve as applications for voter registration if they are properly signed. The voter-registration portion of the application must be sent to the applicant's county clerk within ten days after it is accepted by the circuit clerk (KRS 116.0455).

Voter registration forms must be provided by the county clerk to public high schools, to area vocational schools, and, upon request, to private schools for registration programs at the schools (KRS 116.046(1)).

### **Verification of Application**

Each applicant for registration, change of affiliation, transfer of registration, or absentee ballot must be verified by a written declaration made under the penalties of perjury (KRS 116.065).

### **Transfer of Registration**

When a voter changes his place of residence to another location within the county, the clerk, upon application of the voter in person, by mail, or through a circuit clerk, transfers the voter's registration record to the proper precinct. If such a voter moves after the registration books have closed, he or she may vote at the new location by signing an affidavit, signing the precinct list, and confirming his or her address and identity. When the boundaries of a precinct are changed and a voter is placed in another precinct, the clerk automatically transfers the voter's registration record to the proper precinct and mails the voter a notice of the change. Any voter who changes his name may indicate the change at the precinct on election day by completing the form supplied by the state board. The form is returned to the county clerk by the precinct officer (KRS 116.085).

### **Copying Registration Records**

The county clerk must let any citizen, at any reasonable hour, inspect or make copies of any registration record, without cost. He must, upon request, furnish to any person a copy of the registration records, for which he may charge necessary duplicating costs not to exceed \$.50 per page (KRS 116.095).

If an individual desires copies of precinct lists for voters, he may obtain these, within certain restrictions, from the state board of elections for a reasonable price. The board may not furnish precinct lists for commercial use (KRS 117.025(3)(h)).

## **Election Duties for Election of Judges**

KRS Chapter 118A provides for the election of judges under the Judicial Article. Specific duties and responsibilities are outlined in this chapter.

The county clerks print ballot labels for the voting machines with the names of candidates for offices in the court of justice. Titles, ranks or "spurious phrases" shall not be printed on the ballots as part of the candidate's name. However, nicknames, initials and contractions of given names may be acceptable (KRS 118A.060(3), 118A.100(4)). The clerk of each county must publish, pursuant to KRS Chapter 424, and post at the courthouse, by district or circuit and numbered division, the names of all persons certified to him by the secretary of state as candidates for judicial office. The names must be published in the order in which they are to appear on the voting machines. The county must pay the cost of printing (KRS 118A.120). No clerk may knowingly print on the ballot labels or absentee ballots the name of a candidate for an office of the court of justice who has not been certified in the manner specified in Chapter 118A (KRS 118A.150). If, after the certification of candidates who will appear on the ballot, any candidate whose name appears on the ballot should withdraw or die, the county clerk shall provide notices to the precinct election officers, who shall see that a notice is conspicuously displayed at the polling place advising voters of the change and that the votes for that candidate will not be tabulated or recorded (KRS 118A.150(7)).

Following a primary or regular election, the board of elections of each county must make out duplicate certificates of the total number of votes received by each candidate, by circuit or district and numbered division (if existing), and deliver the certificates to the county clerk, who must keep one certificate in his office and, within three days of their receipt, shall forward the other certificate by mail to the secretary of state, who shall deliver it to the state board of elections (KRS 118A.190).

## **City Election Duties**

General election law prescribing duties of county clerks and KRS 83A.170 and 83A.175 set forth the basic responsibilities of county clerks for non-partisan city elections (KRS 83A.170). KRS 83A.045(1)(a) requires that nominating papers for candidates for city offices in partisan elections be filed with the county clerk no earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot and no later than the last Tuesday in January before the day fixed by KRS Chapter 118 for holding a primary election for the office sought. If the city is contained in more than one county, however, the papers are filed with the Secretary of State (KRS 83A.047). Other provisions of Chapters 83A and 116 to 121 control partisan elections of city officers.

## **Primary Elections**

Candidates for offices to be voted for by the electors of one county or of a district less than one county, except members of Congress and members of the General Assembly, must file their nomination papers with the county clerk no earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot and not later than the last Tuesday in January preceding the primary election (KRS 118.165(1)). The secretary of state or county clerk must examine the notification and declaration form of each candidate to determine whether it is regular on its face. If there is an error the proper official must notify the candidate by certified mail within twenty-four hours of filing. (KRS 118.165(2)).

The county clerk keeps a book entitled "Register of Candidates for Nomination in the Primary Election," and enters on different pages for different political parties the title of the office sought and name and residence of each candidate and the date of receiving his nomination papers. The book must be so kept that the names of all candidates of the same political party are on the same or successive pages and the names of candidates of no two political parties appear on the same page. The books are public records (KRS 118.205).

The order in which the various county offices appear on the ballot is specified in KRS 118.215(1). Candidates for county offices are listed in the following order: commonwealth's attorney, circuit clerk, property valuation administrator, county judge/executive, county attorney, county clerk, sheriff, jailer, county commissioner, coroner, justice of the peace, and constable (KRS 118.215(1)).

For all offices for which nomination papers and petitions are filed with the county clerk, the order in which the names of candidates appear on the ballot is determined by lot at a public drawing in the county clerk's office at 2 p.m., standard time, on the Thursday following the last Tuesday in January before the primary election or on the Thursday following the second Tuesday in August preceding the general election (KRS 118.225(3)).

If it appears that after the time for filing papers there is only one candidate who has filed the necessary papers for a place on the ballot of any party, the officer with whom the papers are filed immediately issues and files in his office a certificate of nomination, and sends a copy to the candidate (KRS 118.185).

Candidates for offices to be voted for by the electors of more than one county and for Congressional and General Assembly seats must file their nomination papers with the secretary of state no earlier than the first Wednesday after the first Monday in November of the year preceding the year the office will appear on the ballot and not later than the last Tuesday in January preceding the primary election (KRS 118.165(1)). The county clerk of

each county must then publish, pursuant to KRS Chapter 424, and post notice at the courthouse, the names of all persons certified to him by the secretary of state, in the order in which they were certified, and of all persons for whom nomination papers have been filed with the county clerk. Only the names of persons who have substantially complied with provisions of KRS 118.125 to 118.165 may be published. The names must be published in the order in which they are to appear on the voting machine. The county pays the cost of printing (KRS 118.235).

Under KRS 64.012, the county clerk receives a fee of fifty dollars for most notifications, declarations and petitions filed with him. In the case of candidates for office in cities of the fifth or sixth class, candidates for conservation district boards, and candidates for boards of education, the clerk receives a fee of twenty dollars. In the case of candidates for Commonwealth's attorney, district court or circuit court, the clerk receives two hundred dollars. The fee is paid by the candidate at the time of his filing. The county clerk must forward the amount of the fees received, minus twenty dollars for each notification and declaration or petition filed, to the state treasurer for deposit in the election campaign fund. The county clerk pays the cost of mailing the certification of nomination, declaration, and petition from the fee collected from the candidate (KRS 118.255).

## **Regular Elections**

The time for filing with the county clerk certificates and petitions of nomination issued by the county board of elections is contained in KRS 118.365. County clerks are required to preserve in their respective offices all certificates and petitions of nomination filed therein for six months after the election for which the nominations were made (KRS 118.385).

Not less than three days before any primary or regular election the county clerk is required to publish in a newspaper a copy of the face of the voting machines, or, where an electronic voting system is used, a copy of the ballot cards or supplementary material on which the names of the candidates appear. Where the voting machine faces differ for various precincts within the county, the county clerk shall cause to be published only one voting machine face with notations showing the differences in various precincts (KRS 424.290).

For regular elections the county clerk of each county must have printed for the voting machines and on absentee ballots the names of all candidates entitled by KRS 118.305 to have their names placed on the ballot as follows:

- (1) (a) Candidates of a political party (as defined in KRS 118.015) who have received certificates of nomination at the preceding primary election, or certificates of nomination under KRS 118.185, and whose certificates of

nomination have been filed with the secretary of state or the appropriate county clerk.

- (b) Candidates of a political party (as defined in KRS 118.015) who have been nominated for an unexpired term in a manner determined by the governing authority of the party, as provided in KRS 118.115, and whose evidences of nomination have been filed with the secretary of state or the appropriate county clerk within the time prescribed.
- (c) Candidates of a political party (as defined in KRS 118.015) who have been nominated by the governing authority of the party to fill a vacancy in the candidacy of a person nominated at the preceding primary election, as provided in KRS 118.105, and whose certificates nomination have been filed with the secretary of state or the appropriate county clerk by the date provided by the election law generally for such filing.
- (d) Candidates who have been nominated by a political organization, as provided in KRS 118.325, and whose certificates or petitions of nomination have been filed with the secretary of state or the appropriate county clerk within the time prescribed.
- (e) Independent candidates who have been nominated by petition, as provided in KRS 118.315, and whose petitions of nomination have been filed with the secretary of state or the appropriate county clerk within the time prescribed.
- (f) Successful nominees of all nonpartisan primaries which shall have been conducted.
- (g) Candidates who have filed a petition of candidacy as shall be required to fill a vacancy which shall appear on the ballot.
- (h) The county clerk must determine whether the name of any replacement who has been nominated under KRS 118.105(5) may be placed on the machine ballot or ballot cards, whether the voting machine may be reprogrammed, and whether the ballot must be reprinted. If there is no time to reprint the entire ballot, the county clerk must request approval to have supplemental ballots printed.
- (i) Candidates for president and vice president of the United States, of those political parties and organizations who have nominated presidential electors as provided in KRS 118.325, where the certificate of nomination of such elections has been filed with the secretary of state within the time prescribed.

- (j) Candidates for soil and water district supervisors who have been nominated by petition, as provided in KRS 262.210.
  - (k) Candidates for city office for which no nonpartisan primary has been conducted in a city which requires nonpartisan elections.
- (2) A candidate for city office who is defeated in a primary is ineligible to run for that office in the regular election.
  - (3) Candidates for members of boards of education shall have their names printed on ballot labels and absentee ballots for the regular election only after filing as provided in KRS 160.220.
  - (4) Except as provided in KRS 118.105 and 118.115, the name of no candidate shall be printed upon the ballot labels and absentee ballots for any regular election as the nominee of any political party, as defined in KRS 118.015, or under the emblem of any political party, as so defined, except those candidates who have been duly and regularly nominated as nominees of that party at a primary election held as provided in Chapter 118.
  - (5) No county clerk shall knowingly cause to be printed, upon the ballot labels or absentee ballot for any regular election, the name of any candidate of a political party, as defined in KRS 118.015, who has not been nominated in the manner provided in the primary election laws, or the name of any candidate who is not in compliance with the restrictions concerning party registration and candidacy provided in subsection (1) of KRS 118.315.
  - (6) The names of candidates for president and vice-president shall be certified in lieu of certifying the names of the candidates for presidential electors.
  - (7) Whenever a vacancy occurs in an elective office which is required by law to be filled temporarily by appointment, the officer or body designated by law to make the appointment, or in the case of an office to be filled by appointment from a list of nominations, the officer or body designated by law to make the nominations, shall immediately notify in writing both the county clerk and secretary of state of the vacancy.

When an amendment to the Constitution has been proposed by the General Assembly, the substance of the amendment, as stated by the General Assembly or the Attorney General, must be certified by the Secretary of State to the county clerk of each county. The certification must be made not later than the second Monday after the second Tuesday in August before the next regular election at which members of the General Assembly are to be chosen in a year in which there is not an election for President and Vice President of the United States, or not later than the Thursday after the first Tuesday in September preceding a regular election in a year in which there is an election for President

and Vice President of the United States, and the clerk must indicate the substance of the amendment, as certified, on the voting machines (KRS 118.415).

All campaign treasurers of candidates, slates of candidates, campaign committees or political issues committees who accept or expend more than three thousand dollars in any one election, and all fund raisers who secure contributions in excess of three thousand dollars in any one election, are required to file periodic campaign finance reports with the Registry of Election Finance (KRS 121.180(3)). A duplicate copy of the reports is filed with the county clerk by the candidate or executive committee in the county in which the candidate resides at the time. County clerks must maintain these reports for public inspection for a period of one year from the date the last report is required to be filed (KRS 121.180(8)). Treasurers whose campaigns accept or expend no more than three thousand dollars are exempted from filing the pre-election finance reports required by KRS 121.180(3). Campaigns which accept or expend no more than two hundred and fifty dollars are further exempted from filing post-election finance reports required by KRS 121.180(1)(a) and (4).

## **Voting Machines**

The county clerk retains custody of all voting machines acquired by the county except when they are in use at an election or when they are in the custody of a court or court officer during an election contest. The clerk is charged with seeing that the machines are properly protected and preserved from damage or unnecessary deterioration, and that unauthorized persons are not permitted to tamper with them (KRS 117.135).

At least fifteen days before any special election, and at least fifty days before any primary or regular election, the county clerk is required to have printed and ready for use ballot labels for each candidate and each question to be voted upon in the election. Each county clerk shall also have printed paper absentee ballots of a sufficient number and the ballot stubs shall be consecutively numbered. The absentee ballots are used for voting by absent voters, by precinct officers who have been assigned to a precinct other than their own, by members of a county board of elections, by voters unable to appear at the polls because of disability from age, infirmity or illness, and for voting in an emergency situation. The county clerk must equip voting machines with the necessary supplies for write-in votes no later than the Friday preceding a special or regular election. (KRS 117.145).

When the printed ballot labels are received, the county clerk places them in the ballot frames of the voting machines in accordance with the arrangement prescribed by the secretary of state. He sees that the counters are set at zero, and he locks the machines and the devices protecting the counters and ballot labels. The clerk is required to keep a record showing the number of each precinct with the number of the machine to be used therein set opposite it (KRS 117.155). When the preparation of the machines has been completed, and not later than the Thursday before the day of the election, the county clerk must notify the members of the county board of elections that the machines are ready for use. If, after examination, the board finds the machines to be in proper order, the members endorse their approval on the county clerk's record, and the clerk then delivers all of the keys to the machines to the county board of elections, taking from the board a receipt for the keys (KRS 117.165).

The county clerk, with the county attorney, is responsible for preparing a sufficient number of instruction cards relative to the proper method of voting by use of the machine. The card must contain a diagram showing the front of the voting machine as it will appear on the day of the election. The cards must be examined and approved by the county board of elections at the time the voting machines are examined. The cards are then delivered to each election clerk by the county clerk when other election supplies are delivered (KRS 117.175).

At least one hour before the opening of the polls, the county clerk must deliver each machine to the clerk of the precinct in which it is to be used. The

operating device and mechanism and the device covering the registering counters of the voting machines must be securely locked, and the county clerk must take a receipt for each machine delivered. In polling places in which machines for multiple precincts are located, the county clerk shall post a sign near each machine identifying the precinct for which the machine has been designated (KRS 117.195). If the machine indicates that it has been operated or if the ballot labels are not arranged as specified on the printed instruction cards, the election officers shall not unlock the operating devices, but shall immediately secure the attendance of the county clerk and one member of the county board of elections, who shall reset the counters to zero and relock the device or properly arrange the ballot labels (KRS 117.205). If a member of the county board of elections is not available to reset and relock the machine, the election officers are required to notify the county clerk and obtain from him a reserve voting machine (KRS 117.205). The county clerk is also required to furnish a reserve machine when, during the conduct of an election, a voting machine becomes inoperable (KRS 117.215(1)). In the event an emergency arises during the conduct of an election, the county clerk must provide supplemental paper ballots for use at the precinct, and a ballot box, locked with two locks, in which to deposit the voted ballots (KRS 117.215(2)).

County clerks and deputy county clerks may enforce the election laws and maintain law and order at the polls and within 500 feet of the entrance to any building where voters are using voting machines (KRS 117.235).

KRS 117.255 was amended by the 1996 General Assembly to allow illiterate or disabled voters who require assistance to apply to the county board of elections for voting assistance. The county board of elections must determine whether the applicant requires voting assistance on a permanent or annual basis. A voter who has been certified as requiring assistance may select a person at the polls to assist him in voting or, if the voter does not do so, two (2) election judges will assist the voter.

After the completion of the vote count, the county clerk is required to have the voting machines properly boxed or covered and removed to a secure place for storage (KRS 117.275(6)).

If a proper request is made to the county board of elections before 6:00 p.m. on the Tuesday following a primary or regular election, or within twenty-four hours after the close of the polls in a special election, to check and recanvass the voting machines in one or more precincts, and a discrepancy is unaccounted for, the board shall note the discrepancy, reset the registering counter of the candidate who requested a recanvass and the counter of the candidate's opponent at zero, and test the machine by operating it at least one hundred times. If it appears that the original canvass was incorrect, the returns shall be corrected accordingly, but only if any candidate whose total has been changed has actually been notified. (KRS 117.305)

## **Paper Ballots**

The county clerk must notify the state board of elections by the last Tuesday in February before the primary or the last Tuesday in August before the general election if he determines that the number of certified candidates cannot be placed on a ballot which can be accommodated by the voting machines currently in use by the county. The state board of elections will then meet within five days of receiving that notice to review the ballot conditions and determine whether supplemental paper ballots are necessary for the election. Upon approval of the state board of elections, supplemental paper ballots may be used for nonpartisan candidates or slates of candidates for an office or offices, and for public questions submitted for a yes or no vote. All candidates or slates of candidates for a particular office must be voted for in the same way. The ballot position of a candidate or slate of candidates may not be changed after the ballot position has been designated by the county clerk (KRS 118.215(5) & (6)).

When supplemental paper ballots have been approved, the voting instruction cards, prepared by the county clerk and the county attorney, must indicate the offices, candidates, and questions which will appear on the paper ballots and the instructions for marking and depositing the ballots (KRS 117.175).

When supplemental paper ballots are to be used in an election, the county clerk must deliver to each precinct enough paper ballots for each voter and sufficient voting booths for voting paper ballots. These ballots must have stubs which are numbered consecutively (KRS 117.145(4)). He must also supply string and rubber stamps for marking "spoiled" and "unused" ballots and a locked ballot box for each precinct. The clerk is required to take a receipt for the number of ballots issued and the ballot box for each precinct. The county clerk retains the keys to all ballot boxes (KRS 117.195(3)).

The two judges return the locked ballot box, all ballot stubs, spoiled ballots, and unused ballots, to the county clerk's office after the closing of the polls. The county clerk then issues a receipt for the number of ballot stubs, unused ballots, spoiled ballots, and the ballot box. After the results of the election are certified by the county board of elections, the county clerk must retain the paper ballots for sixty days, after which time they should be burned by the county board of elections if no contest or recount action has been filed (KRS 117.275(8)).

The county clerk must have the paper ballots published in a newspaper at the same time the face of the voting machine is published (KRS 424.290).

## **Oaths of Challenged Voters**

When the qualifications of a voter are challenged at the polls, the voter may be required to sign a written oath regarding his qualifications before being permitted to vote. The subscribed oaths are returned to the county clerk, who must deliver them to the Commonwealth's Attorney. The Commonwealth's Attorney shall investigate the oaths and bring them before the grand jury. The foreman of the grand jury is responsible for returning to the county clerk all oaths upon which no indictments were found, and the clerk is required to keep them as records of his office, and make them available to any subsequent grand jury when required (KRS 117.245).

### **Absentee Ballots and Early Voting**

Some persons who cannot be present at the polls on election day are allowed to vote either by casting paper absentee ballots or by voting early.

The following voters may use paper absentee ballots:

1. Qualified voters who are unable to appear at the polls because of age, infirmity, or illness, and qualified voters with medical emergencies.
2. Kentucky residents who are members of the armed forces, dependents of members of the armed forces, and citizens residing overseas.
3. Students and other voters who live outside the state but who are still eligible to vote in Kentucky.
4. Persons in jail who are charged but not convicted.

Any voter listed above, except one with a medical emergency, must apply to the county clerk at least seven days before the election in order to receive an absentee ballot. The request for an application may be transmitted by telephone, by fax machine, by mail, or in person (KRS 117.085).

The members of the County Board of Elections may serve as precinct election officers, without compensation, during absentee voting. If the members of the County Board of Elections do not serve in this capacity, the county clerk is required to do so (KRS 117.085).

County clerks prepare and compile absentee ballots according to rules in KRS 117.085 and 117.086. Each ballot must be marked by the voter, sealed in an inner envelope, and then placed in an outer envelope. Those returned by mail must be received by the time set for closing the polls, not including any extension permitted to accommodate people who are waiting in line at closing time. Upon receipt, ballots, still in their outer envelopes, must be placed in a

ballot box with three locks. The box must remain locked until the ballots are counted.

Some people are allowed to vote before election day. Any qualified voter who will be absent from the county on election day, but who is not permitted to vote by absentee ballot, may vote at any time during normal business hours, on one of the twelve or more working days before the election. The voter must apply in person to the county clerk and must vote on a machine located in the county clerk's office or in some other place designated by the county board of elections and approved by the State Board of Elections (KRS 117.085). A county board of elections may permit absentee voting to be conducted on a voting machine for a period longer than twelve working days before the election.

Certain election workers may also vote early. This privilege is granted to members of the county board of elections, precinct election officers appointed to serve outside their home precincts, and alternate precinct election officers (KRS 117.085(1)).

The county clerk must keep a list of all persons who return their absentee ballots by mail or who vote early. The list must be sent to the State Board of Elections after election day. The county clerk and the Secretary of State must keep a record of the number of these votes as part of the official returns of the election (KRS 117.086).

Absentee ballots returned by mail and votes cast before election day are counted and challenged according to instructions in KRS 117.087.

### **Retention of Election Records and Materials**

KRS 117.027 empowers the state board of elections to promulgate administrative regulations and procedures governing the nature, manner, place, and time for retaining election records and materials. Records must be retained no less than twenty-two months (KRS 117.027(4)).

### **Grand Jury Materials**

After each election, the county clerk is required to present to the grand jury, on the first day it convenes after the election, all voter assistance forms, and all applications for absentee ballots from the immediately preceding election. The county clerk may submit certified photocopies to the grand jury instead of the originals (KRS 117.365).

## **Tax Duties**

### **Reports to the Property Valuation Administrator**

A county clerk has several duties in connection with property tax administration. He makes various reports to the property valuation administrator. He makes a monthly report of real estate conveyances (KRS 132.480). Each week he furnishes the property valuation administrator a copy of the registration certificates for each motor vehicle, recreational vehicle or mobile home registered during the week (KRS 132.485). The clerk makes an annual report to the property valuation administrator listing all purchase money notes, mortgage notes, and other obligations due, as shown by the conveyances, mortgages, and liens recorded in his office (KRS 132.490).

### **Preparation of Tax Bills**

When the property valuation administrator has completed his assessments and they have been certified by the state Department of Revenue, the county clerk prepares the county tax bills. The Revenue Cabinet shall furnish each clerk with tax bill forms in sufficient number to cover the taxable property on the rolls. After receiving the forms, the clerk makes out, for the use of the sheriff or collector, a correct tax bill for each taxpayer in the county (KRS 133.220). The completed tax bill forms must be delivered to the sheriff or collector by September 15 of each year. When the bills are delivered, the clerk takes a receipt showing the number of bills and the total amount of tax due each taxing district. The sheriff or collector must sign and acknowledge the receipt. It is then filed with the county judge/executive and recorded in the order book in the manner required by law for recording the official bond of the sheriff (KRS 133.220). House Bill 568, enacted by the 1998 General Assembly, amended KRS 133.220 to require that all notices returned as undeliverable shall be submitted no later than the following work day to the property valuation administrator. The property valuation administrator shall correct inadequate or erroneous addresses, if the information to do so is available, and, if the property has been transferred, shall determine the new owner and current mailing address. The property valuation administrator shall return the corrected notices to the sheriff or collector on a daily basis as corrections are made, but not later than fifteen days after receipt. Upon receipt of a certification of omitted property by the property valuation administrator, or by the Department of Revenue, the clerk makes out a tax bill for the omitted taxes. He delivers the bill to the sheriff or collector (KRS 133.230).

### **Clerk of the County Board of Assessment Appeals**

The county board of assessment appeals hears the complaints of landowners pertaining to the inclusion of property on the tax rolls or the assessed value of their property. The county clerk, or an authorized deputy, serves as a clerk for this board, maintaining records that show the name of the objecting party, the property and assessment levels, and any adjustments made by the board (KRS 123.125(1)). If a taxpayer is aggrieved by an

assessment, he may, after a conference with the property valuation administrator, file a petition with the county clerk, stating the reasons for the appeal, and the taxpayer's opinion of the fair cash value of the property. The appeal must be filed no later than one work day following the conclusion of the inspection period provided for in KRS 133.045. The county clerk shall notify the Revenue Cabinet of all assessment appeals and of the dates and times of the hearings (KRS 133.120). The county clerk must give the property valuation administrator a copy of each appeal and a summary of appeals filed within three working days of the expiration of the inspection period provided for in KRS 133.045 (KRS 133.125(1)). After the board adjourns, the clerk has five days to report any actions to the property valuation administrator so that he may change the tax roll in accordance with the board's actions. The clerk is paid out of the state treasury for these services (KRS 133.125(1)).

### **Clerk's Recapitulation**

When the Department of Revenue has completed its action on the assessment of property it must immediately certify to the county clerk the assessment and the amount of taxes due. The clerk affixes the certification to tax books and enters it in the order books. This action is the sheriff's or collector's warrant for the collection of taxes (KRS 133.180). The clerk must correct the tax books to comply with any changes made by the Department of Revenue in their certification of the assessment (KRS 133.181).

### **Tax Collection Duties**

The county clerk collects a use tax of six percent of the retail price of every motor vehicle not exempted under KRS 138.470 and in cases of trucks of a gross weight in excess of 10,000 pounds, the tax is collected upon 90 percent of the retail price of the vehicle. The tax is collected by the clerk when he collects the fees for registering and licensing the vehicle the first time it is registered in this state and each time ownership of a previously registered vehicle is transferred (KRS 138.460). The use tax is remitted to the Revenue Cabinet on forms provided by the cabinet and on such forms as the cabinet may prescribe (KRS 138.460). The county clerk is entitled to retain an amount equal to three percent of the tax collected and accounted for.

There are several other taxes that the county clerk actually collects. KRS Chapter 142 imposes a small tax on certain legal processes and legal instruments. The tax on processes issued by him and on documents recorded in his office is collected by the county clerk (KRS 142.015). The county clerk is responsible for collection of the real estate transfer tax. The tax is based on the value of property transferred and must be imposed at a rate of \$.50 per \$500 of value or fraction thereof. The clerk must impose the tax prior to the recording of the deed, and he must certify the date and the amount of the tax collected. The county clerk retains five percent of the tax as his collection fee. Every

three months, the remainder must be transferred to the county treasurer for deposit in the county general fund (KRS 142.050).

Delinquent taxes on motor vehicles and house-trailers are collected by the clerk in connection with his duty to record tax liens and take receipt of lien payments. At the time of the sheriff's annual settlement of his accounts with the fiscal court, the clerk receives a list of taxpayers who have not paid their motor vehicle or trailer tax. The clerk then files a lien against each such vehicle on behalf of the various taxing authorities. The lien, which includes the amount of the tax, the clerk's filing fee and interest at a rate of 1% per month, attaches to the property until payment is made to the clerk. After payment of the lien, the clerk must give each taxing authority its share of the tax collected (KRS 134.148). The county clerk is required by KRS 134.800 to be the collector of all state, county, city, urban-county government, school, and special taxing district ad valorem taxes on motor vehicles. These taxes will be due and payable on or before the earlier of the last day of the month in which registration renewal is required by law for a motor vehicle or the last day of the month in which a vehicle is transferred (KRS 134.810(1)). The clerk will receive a commission of 4% of all taxes which he collects (KRS 134.805).

If a motor vehicle ad valorem tax bill becomes delinquent, the state and each local taxing unit have a lien on all motor vehicles owned or acquired by the person who owned the particular motor vehicle when tax liability arose; the lien, however, does not attach to a vehicle transferred while taxes are due on it (KRS 134.810(7)). This lien is filed and released through the automatic entry of data into the computerized, statewide vehicle registration system. A one-dollar fee is added to the delinquent tax account on affected vehicles, and the county clerk who collects the delinquent tax receives this amount (KRS 134.810(8)).

The clerk must report and pay to the appropriate taxing authorities, by the tenth of each month, all the motor vehicle taxes he has collected during the preceding month. Prior to making payment, the clerk deducts his collection fee (KRS 134.815). Each county clerk must make an annual settlement with each taxing authority by January 31 for all the ad valorem taxes on motor vehicles which he has collected during the prior tax period (KRS 134.820).

The county clerk is prohibited from issuing a replacement plate, decal, or registration certificate or a registration for renewal to a person who on January 1 of any year owned a motor vehicle with delinquent ad valorem taxes. A person other than the owner may pay delinquent taxes on a motor vehicle when applying with the county clerk to transfer the vehicle's registration (KRS 186.021).

The clerk may not transfer registration on a vehicle unless evidence of payment of all excise taxes is presented, except where the transferor is a dealer, as defined by KRS 190.010 (KRS 186.192(1)). Nor may he or she

transfer registration on any motor vehicle or trailer on which a tax lien has been filed but not released (KRS 186.232). The clerk is also prohibited from issuing or transferring a registration for any motor vehicle which is not insured in compliance with KRS 304.39-080 (KRS 186.021(2), 186.232, and 186.190). Each applicant for registration or transfer must present proof of compliance to the county clerk in a manner prescribed in regulations issued by the Department of Insurance. KRS 134.148 makes special provisions for automobile dealers and good faith purchasers of motor vehicles subject to tax liens.

The clerk is custodian of certificates of tax delinquency on real estate and personal property, unless a special delinquent tax collector is appointed. If no delinquent tax collector is appointed, these certificates of delinquency may be redeemed at the county clerk's office (KRS 134.470, 134.480 and 134.450).

Except in cases involving a single-family dwelling or where proceeds are less than \$10,000, an insurer must pay off any existing tax liens on real property damaged by fire prior to making payments to the policy holder. The insurer inquires of the county clerk whether any liens exist and the clerk must, within 15 days, notify the insurer of any liens. The clerk's notice is to be conclusively relied on by an insurer and ends the tax lienholder's claim to the insurance proceeds (KRS 304.20-210).

## **Miscellaneous Duties**

County clerks have a number of duties that do not fit into any of the previously mentioned categories. Some examples of these duties are discussed below.

The county clerk is charged in numerous statutes with the duty of giving public notice. Notice may relate to purgation and elections, fiscal court actions, the county budget, and other items. Each notice requirement is covered not only by its particular law but it is also covered generally by KRS Chapter 424 relating to publication of legal notice. This chapter sets forth what matters must be published and how they must be published in newspapers. Every clerk must familiarize himself with the requirements of KRS Chapter 424.

The fiscal court in counties having a population less than 75,000 and an assessed valuation of more than \$100,000,000 and containing a city of the second class may in its discretion direct the county clerk to have made general indexes of all records in the office of county clerk according to a system approved by the fiscal court. The county clerk shall keep the indexes up to date by indexing therein the records of all property within one month from the date they are lodged for record (KRS 382.225).

A person doing business under an assumed name is required to file the name in the office of the county clerk of each county wherein business will be conducted or transacted under that name. The certificate of assumed name for a general or limited partnership, business trust or corporation must be filed with the secretary of state and with the county clerk of each county wherein business will be conducted or transacted under that name. The certificate is required to include the assumed name under which the business will be conducted or transacted, the real name of the person, partnership, business trust or corporation, and his or its address, including street and number (KRS 365.015).

A petition for a referendum on consolidating city and county governments or their services must be filed with the county clerk (KRS 67A.020, 67.830).

A county clerk has to make several reports to the state and county. Many of these reports are in connection with his tax duties. He must report to the Revenue Cabinet the legal process tax he has collected (KRS 142.015). He also must make reports of his collections on land redemptions and delinquent personal tax collections to the Revenue Cabinet (KRS 134.480).

The county clerk must report and remit each Monday to the Revenue Cabinet all motor vehicle usage tax moneys collected during the previous week, with a duplicate of all receipts issued by him during the same period. The clerk

must deposit motor vehicle usage tax collections not later than the next business day following receipt in a Revenue Cabinet account in a bank designated as a depository for state funds. The clerk may be required to then cause the funds to be transferred from the local depository to the State Treasury in the manner and time prescribed by the secretary of the Revenue Cabinet. Failure to forward duplicates of all receipts issued during the reporting period or failure to file the weekly report of moneys collected is punishable by a penalty of two and one-half percent of the amount of moneys collected during the reporting period for each month until the documents are filed. Failure to deposit collections or to transfer receipts, if required, is punishable by a penalty of two and one-half percent of the amount not deposited for each day until the collections are deposited. The Revenue Cabinet may, in its discretion, grant a county clerk a reasonable extension of time to file his report or make his deposits (KRS 138.464).

The county clerk reports to the county treasurer the county occupational license fees he collects (KRS 137.115).

The county clerk is mandated by KRS 134.800 to be the collector of all state, county, city, urban-county government, school, and special taxing district and valorem taxes on motor vehicles. The clerk may accept payment of taxes due by any commercially acceptable means, including credit cards. The county clerk must also see that the provisions of KRS 186.005 to .260 (licensing and registration of motor vehicles) are enforced (KRS 186.230).

The clerk must also report to the Transportation Cabinet all motor vehicles he has registered (KRS 186.230).

All special districts, agencies, authorities, or political subdivisions of the state, other than cities, counties or school districts, that exercise less than state-wide jurisdiction, must file upon their creation a written notice of existence, or of any legal change in the district, with the county clerk. The clerk must send a duplicate copy of notification to the state local finance officer and the state local debt officer, in the Department for Local Government, in return for a \$2 fee (KRS 65.005).

KRS 80.690 requires complaints or orders relating to closing or demolition of unfit dwellings by cities to be recorded in the county clerk's office.

When the term of county clerk expires in counties of 75,000 population or over, or he dies, resigns, or is removed from office, he or his personal representative, trustee or committee, as the case may be, shall at once deliver to his successor in office all accounts, claims and fees due him in his official capacity. The successor shall have such fees, claims and accounts collected, or the Department for Local Government may, in its discretion, when said accounts, fees and claims are so delivered to the successor, appoint a person to

collect them. If a collector is appointed, the successor shall at once, or when demanded by the collector, deliver to him all accounts, fees and claims uncollected. Sixty days after receiving such accounts, fees and claims, the successor or collector, as the case may be, shall report to the Department for Local Government, under oath, the amount so collected thereon, and at the same time pay to the department the amount so collected, and shall continue to so report for three years, unless the accounts, fees and claims are sooner collected (KRS 64.050).

### **Qualifications**

In order to qualify for the office of county clerk a person must be twenty-one years of age, a citizen of Kentucky, a resident of the state for two years, and a resident of the county in which he is a candidate for one year preceding his election. He must also procure from a judge of the court of appeals, or a judge of the circuit court, a certificate that he has been examined by the clerk of the court under the judge's supervision and is qualified for the office (Ky. *Const.*, sec. 100). Before entering upon the duties of his office he must take the constitutional oath of office prescribed by Section 228 of the Constitution as well as execute bond as required by KRS 62.055.

### **Compensation**

HB 810 enacted by the 1998 General Assembly made significant changes in the way certain county officials, including sheriffs, county clerks, county judge/executives, and jailers who operate a full-service jail are compensated.

HB 810 eliminated the maximum salary for the specified officers and established a new salary schedule, based on the varying population of the counties and the years of service of the officeholder. This amendment will result in salaries for some county officials ranging from \$49,567 to \$82,612 beginning the first Monday in January of 1999.

Some controversy has erupted over the provisions of HB 810. Several county officials have voiced opposition to the new salary schedule, citing inadequate funding for the raises in already strained county budgets.

A lawsuit was filed in the Campbell County Circuit Court, challenging the salary provisions in HB 810. In September 1998, the Campbell County Circuit Court ruled that HB 810 is "...declared unconstitutional to the extent that it declares the offices in issue (county clerks, sheriffs, county judge/executives, and jailers operating a full-service jail) to have duties or jurisdiction co-extensive with that of the Commonwealth without specifying said duties or jurisdiction..." and "...that the Defendant and the parties aligned with the Defendant, Commonwealth of Kentucky, are permanently enjoined from implementing and enforcing these provisions of HB 810 as being in excess of

the limits set forth in the Constitution of Kentucky Section 246" (Campbell Circuit Case No. 98-CI-00604 Fisher and Chandler vs. Commonwealth of Kentucky).

The Department for Local Government, among others, has requested that this case be heard by the State Supreme Court and that decision is still pending.

### **Over 70,000 Population**

According to Section 106 of the Kentucky Constitution and KRS 64.345, the county clerks in counties having a population of 70,000 or over receive an annual salary paid out of the state treasury in accordance with the provisions of the salary schedule set out in the 1998 legislation HB 810. The county clerks of these counties must send all fees and compensation collected for official duties to the Finance and Administration Cabinet. The amount allowed the clerks for their salaries, the deputy clerks' salaries, and office expenses may not exceed seventy-five percent of the amount paid to the department by the clerks during their official terms.

Any of the seventy-five percent not spent for expenses of the office reverts to the state treasury and is added to the remaining twenty-five percent of fees turned into the Finance and Administration Cabinet. This sum is then returned to the county from which it came and becomes part of the county's general fund (KRS 64.350).

In counties containing a city of the first class or in counties operating under the urban-county form of government, the amount (if any) allowed for necessary office expenses of each officer must be approved by the fiscal court in counties containing a city of the first class and by the legislative body in counties containing an urban-county form of government. This approval must be signed by the county judge/executive in a county containing a city of the first class and by the executive authority in a county having an urban-county form of government. Approval by the fiscal court or urban-county legislative body does not include oversight of expenditure of the funds. This oversight is retained by the Office of the Controller created pursuant to KRS 42.0201.

The amount allowed for office expenses is fixed by the fiscal court in all other counties with a population of over 70,000 (KRS 64.345).

### **Under 70,000 Population**

Kentucky law permits county clerks to receive a maximum salary of \$7,200 in 1949 purchasing power (\$48,726 in 1998), which is paid solely out of the statutory fees and salaries they have received during the year (KRS 64.535). In some Kentucky counties county clerks may receive less than the

maximum, since the fees of their office may not be sufficient to support the maximum amount and the county cannot afford to supplement the statutory fees and salary with a salary paid by the fiscal court (OAG 65-785).

Under KRS 64.530(3), the fiscal court in a county of fewer than 70,000 inhabitants must annually fix the maximum amount, including fringe benefits, which the clerk may expend for deputies and assistants. The clerk himself determines the number of deputies or assistants to be hired and their individual compensation.

The county clerk in one of these smaller counties must annually pay the fiscal court any income of the office, including investment income, that exceeds the sum of his or her maximum salary and other reasonable office expenses, including compensation of deputies and assistants. This settlement for excess fees is subject to correction by audit (KRS 64.152).

**Fees**

Pursuant to KRS 64.012, county clerks receive the following fees:

Recording deed of trust or assignment for the benefit of creditors, provided the entire record thereof does not exceed three pages	\$ 8.00
Exceeding three pages, for each page	2.00
Copy and certification of same when ordered.	5.00
Each bond required to be taken or prepared by the clerk	3.00
Copy of any bond when ordered	2.00
Recording a bond, each bond	8.00
Receiving the acknowledgment or proof of any deed, mortgage or agreement, power of attorney, or other written instrument required by law to be done and certifying same	2.00
Taking the acknowledgment or proof of a deed of real estate, certifying and recording the same and recording his own certificate, provided the entire record thereof does not exceed three pages	8.00
Exceeding three pages, for each page	2.00

Certified copy of deed	5.00
Recording a mortgage of real estate, certificates, and all services connected with the same, provided the entire record thereof does not exceed three pages.	8.00
Exceeding three pages, for each page	2.00
Certified copy of real estate mortgage	5.00
Recording deed of assignment of real estate mortgage	8.00
Noting release of any lien, mortgage or redemption other than a deed of release	3.00
Receiving the acknowledgment, recording and certifying each deed of release of a mortgage or lien under KRS 382.360	8.00
Each additional marginal notation relating to same instrument	3.00
Making a record for the establishment of a city, recording the plan or plat thereof, and all other services incident	8.00
Recording survey of a city, or any part thereof, or any addition to or extensions of the boundary of a city	8.00
Every order concerning the establishment, changing, closing or discontinuing of roads, to be paid out of the county levy when the road is established, changed, closed or discontinued, and by the applicant when it is not	2.00
Administering an oath and certificate thereof	2.00
Issuing license for which no other fee is fixed by law	5.00
Marriage license, bond, certificate and recording	24.00
For filing and indexing an original or continuation financing statement, and noting the security interest on the required receipt for one motor vehicle	8.00

For filing and indexing an assignment of a financing statement	8.00
For filing and noting a statement of release of collateral under a financing statement	5.00
Issuance of a certification as provided in KRS 355.9-407	5.00
Certified copy of financing statement or statement of assignment as provided in KRS 355.9-407	5.00
Recording real estate options, provided the entire record thereof does not exceed three pages	8.00
Exceeding three pages, for each page	2.00
Recording power of attorney or revocation of power of attorney, provided the entire record thereof does not exceed three pages	8.00
Exceeding three pages, for each page	2.00
Recording plats, maps and surveys, not exceeding 24 inches by 36 inches, per page	15.00
Recording all leases which are recordable by law,	8.00
Exceeding three pages, for each page	2.00
Marginal notation to same instrument	3.00
Filing or recording of certification of intention to operate a business under an assumed name.	8.00
Filing a lien on a delinquent motor vehicle or trailer bill	8.00
Releasing a lien on a delinquent motor vehicle or trailer bill	2.00
Filing or recording of mechanic's and artisan's liens under KRS Chapter 376	8.00
Filing or recording of notice of lien issued by the Internal Revenue Service	8.00

Filing or recording of notice of lien discharges issued by the Internal Revenue Service	8.00
Filing or recording of lis pendens notice concerning proceedings in bankruptcy and other lis pendens notices, provided the entire record thereof does not exceed three pages	8.00
Exceeding three pages, for each page	2.00
Filing or recording United States liens, provided the entire record per lien does not exceed three pages	8.00
Exceeding three pages, for each page	2.00
Filing or recording release of a United States lien, provided the entire record per lien does not exceed three pages	8.00
Exceeding three pages, for each page	2.00
Filing or recording state tax or other state liens, other than liens on delinquent motor vehicles or trailers	5.00
Filing release of a state tax or other state lien, other than a lien on a delinquent motor vehicle or trailer	5.00
Filing notification and declaration and petition of candidates for Commonwealth's attorney, district court, and circuit court	200.00
Filing notification and declaration and petition of candidates for office in cities of the fifth or sixth class and candidates for county and independent boards of education	20.00
Filing notification and declaration and petition of candidates for boards of soil and water conservation districts	20.00
Filing notification and declaration and petition of candidates for other offices	50.00

Filing declaration of intent to be a write-in candidate for office other than municipal office in a city of the fifth or sixth class	50.00
Filing declaration of intent to be a write-in candidate for municipal office in a city of the fifth or sixth class	20.00
Recording wills or other probate documents under KRS 394.300	8.00
Registration of licenses for professional persons required to register with the county clerk	8.00
Recording and issuing articles, statements, or reports of corporations pursuant to KRS Chapters 271B, 272 and 273, including articles of incorporation, amendment, restatement of incorporation, merger, consolidation, or dissolution and statements of establishment of a series of shares, cancellation of a series of shares, reduction of capital, intent to dissolve, revocation of voluntary dissolution, or any other statement or report of a foreign or domestic corporation, provided the entire record thereof does not exceed three pages.	8.00
Exceeding three pages, for each page	2.00
Miscellaneous recordings for which no specific fee is set, provided the entire record thereof does not exceed three pages (except military discharges)	8.00
Exceeding three pages, each additional page	2.00
Filing miscellaneous documents for which no specific fee is set, provided the entire record thereof does not exceed three pages	8.00
Exceeding three pages, each additional page	2.00
Filing petitions other than nominating petitions, provided the petition does not exceed three pages	8.00
Exceeding three pages, each additional page, except that the total fee for filing a petition other than a nominating petition shall not exceed \$50.00	8.00

Filing certification required by KRS 65.070(1)(a)	5.00
Certification of franchise tax assessment	5.00

Additional statutory fees of the county clerk are numerous and widely scattered throughout the statutes. A few examples follow. The clerk receives numerous fees in connection with his motor vehicle registration duties: \$3.00 for the issuance of a certificate of registration and a plate or, if the registration exceeds a twelve-month period, the clerk shall receive \$4.00 (KRS 186.040), \$3.00 for the issuance of a duplicate receipt and plates (KRS 186.180), and \$3.00 for a transfer of registration (KRS 186.190). He also receives three percent of the amount of motor vehicle usage tax collected (KRS 138.460).

The clerk is paid fees in connection with his property tax administration duties. He receives fifteen cents for computing the amount owed by each taxpayer (KRS 132.550), thirty cents for preparing each tax bill (KRS 133.240), and one dollar for preparing omitted tax bills (KRS 133.240). One-half of the amount for computing tax bills is paid by the county and the other half by the state. For reporting to the property valuation administrator records of personal indebtedness and real estate conveyances, he receives "reasonable" sums fixed by the fiscal court (KRS 132.480 and 132.490). For collecting money owed on delinquent tax claims owned by the state and county, he receives a sum equal to ten percent of the amount collected (KRS 134.480). In each instance where the clerk collects a legal process tax he receives five percent of the amount collected (KRS 142.015). He receives the same compensation per day that he receives for serving as clerk of the board of assessment appeals to make corrections in the tax books following equalization. One-half of this amount is paid by the state and the other half by the county for as many days as necessary, not to exceed ten days (KRS 133.181).

Many of the clerk's fees were raised by the legislature in 1994. Every county clerk must post a permanent notice stating that the new fees were requested by the Kentucky County Clerks' Association (KRS 186.245).

**Expense Allowance**

In addition to other lawful expense payments, KRS 64.017 authorizes the county clerk to receive a maximum annual expense allowance, not to exceed \$3,600, to be paid from the fees collected by the office. If the fees collected will not fund the full amount of the expense allowance, the fiscal court may, at its discretion, pay a portion of the clerk's expense allowance.

**Office Administration**

**Deputies and Office Expenses**

In counties containing a city of the first class or in urban-county governments, the number of deputies, their salaries, and the amount allowed for office expenses must be approved by the fiscal court in counties containing a city of the first class and by the legislative body in counties containing an urban-county form of government. This approval must be signed by the county judge/executive in a county containing a city of the first class and by the executive authority in a county having an urban-county form of government. Approval by the fiscal court or urban-county legislative body does not include oversight of expenditure of the funds. This oversight is retained by the Office of the Controller (KRS 64.345(2) & (5)).

In counties of less than 70,000, the fiscal court fixes a maximum amount for office expenses and sets a maximum amount for personnel expenses, including fringe benefits. The county clerk determines the number of deputies or assistants to be hired and the amount of compensation each will receive (KRS 64.530(3)).

### **Health Insurance for Deputies**

KRS 61.405 permits the county clerk to purchase health insurance or health maintenance organization coverage for employees by using excess fees if the county does not provide coverage. The clerk may use a combination of excess fees and employee contributions to purchase coverage if excess fees are not sufficient, and may cooperate with other governmental units under KRS 79.080.

The Attorney General has advised in OAG 92-108 that KRS 61.405 is unconstitutional because it arbitrarily divides county employees into different classes, and treats the different classes unequally.

### **Liability for Deputies**

KRS 62.210 makes the office of the county clerk, rather than the individual officeholder, liable for the acts or omissions of deputy clerks. This statute also provides that a deputy is liable to the clerk for damages and costs for any acts or omissions discharged by the clerk.

### **Branch Offices**

County clerks in counties with a land area of more than 750 square miles may maintain a branch office in any incorporated or unincorporated city of the county other than the county seat, if the fiscal court authorizes such an office by resolution. The clerk may appoint deputies for the branch offices. The branch offices may be used for the same purposes as those at the county seat,

but all records must be kept at the county seat. The provision also applies to sheriffs (KRS 67.035).

The county clerk may maintain branch offices in each legislative district for the purpose of issuing motor vehicle registration plates. The branch offices may be located in buildings used for a public purpose (KRS 186.014).

Following public notice, the county clerk in any county may maintain branch offices for voter registration (KRS 116.045(3)).

### **Vacancy**

A vacancy in the office of the county clerk is filled by the county judge/executive until a successor is elected, as provided in Section 152 of the Kentucky Constitution (KRS 63.220).

### **Penalties**

The county clerk is forbidden to have a partnership for the practice of law (KRS 61.098).

Any clerk who knowingly issues a marriage license in violation of his duty under KRS Chapter 402 shall be guilty of a Class A misdemeanor. Any clerk who knowingly issues a marriage license to any persons prohibited by KRS Chapter 402 from marrying shall be fined not less than \$500 nor more than \$1,000 and removed from office by the judgment of the court in which he is convicted (KRS 402.990).

Any county clerk who violates any of the provisions of KRS 137.115 relating to county license taxes, or any regulation of the Revenue Cabinet, shall be fined not less than \$50 nor more than \$1,000 for each offense (KRS 137.990).

For failure to report and pay over to the state all funds collected for the state, the county clerk is required to apply a penalty of ten percent on all funds not paid (KRS 46.990). If he fails to use the books, blanks, and records supplied to him by the Department of Finance, he is subject to indictment in the Franklin Circuit Court and, upon conviction, may be fined not less than \$25 nor more than \$500 for each offense (KRS 46.990).

Any county clerk who purchases or speculates in any claim allowed by the fiscal court of his county may be fined a sum twice the amount purchased or speculated in by him (KRS 61.240).

Any county clerk who willfully fails to perform any of his duties in voter registration shall be fined not less than \$50 nor more than \$100 for each

offense. Each day's failure to carry out the duties as prescribed by law constitutes a separate offense (KRS 116.995).

Any officer who willfully or neglectfully fails to prepare or furnish ballot labels or absentee ballots or fails to allow a qualified voter to cast his vote on the machine as required of him by law shall be guilty of a Class A misdemeanor (KRS 117.995(3)).

Any county clerk who knowingly causes to be printed on such ballot labels or absentee ballots the name of any candidate of a political party who has not been nominated in the manner provided in the primary election laws, shall be guilty of a Class D felony (KRS 118.995(4)).

Any county clerk who tampers with or disarranges a voting machine in any way, unlawfully opens such machine, prevents or attempts to prevent its correct operation, or causes it to be used, or consents to its being used, for any election, knowing that the machine is not in proper order, shall be guilty of a Class D felony (KRS 119.115).

Any county clerk who knowingly and willfully violates any of the provisions of the regulation of election laws, KRS Chapter 117, shall be guilty of a Class D felony (KRS 117.995(2)).

Any county clerk who knowingly and willfully opens any ballot box and removes any ballot, or destroys or tampers with a ballot box, or ballots left in his care and custody, or permits any person to do so, during the period the boxes are in his office, shall be guilty of a Class D felony (KRS 119.195).

Any county clerk who refuses to permit an inspector designated under KRS 117.275 and 117.315 to exercise free and full action in witnessing the count of ballots, or interfere with the right of such an inspector to have a free and full opportunity to witness the count of ballots, shall be guilty of a Class A misdemeanor (KRS 119.225).

Any county clerk who willfully neglects to perform a duty imposed upon him under the election laws, for which no other penalty is provided, or who willfully performs such duty in a way that hinders the objects of the election laws, shall be guilty of a Class B misdemeanor (KRS 119.265).

Any county clerk who fails to make out, for the sheriff or collector, the books of tax bills and stubs, and deliver them by September 15 of each year, must pay a penalty of \$10 for each day's delay (KRS 133.990). He may also be fined for failure to return to the Department of Revenue copies of any books, papers or records it requires (KRS 133.990).

Any county clerk who willfully records any deed upon which a real estate tax should be imposed without collecting the proper amount of tax and certifying the date and amount of collection on the deed, may be fined \$50 for each offense (KRS 142.050).

Any county clerk who willfully conceals or destroys any record with the intent to violate the provisions of KRS Chapter 61 relating to public records shall be guilty of a Class A misdemeanor for each separate violation. Any official of a public agency who fails to produce any record after entry of final judgment directing that such records be produced shall be guilty of contempt (KRS 61.991).



## **VI. PROPERTY VALUATION ADMINISTRATOR**

The office of property valuation administrator is a successor in Kentucky to the office of county tax commissioner and the office of county assessor. The office of county assessor first became a constitutional office in the Kentucky Constitution of 1850 (Art. VI, sec. 11). The assessor was elected for a term of four years and had the power to appoint such assistants as were "necessary and proper."

The present Kentucky Constitution also provides for the election of a county assessor every four years (Ky. *Const.*, sec. 99). However, it includes a provision allowing the General Assembly to abolish the office of assessor (Sec. 104). It is apparent from remarks found in the Constitutional Debates of 1890 that this provision was included for the sake of those who favored a system by which the justices of the peace would take over the duties of the assessor.<sup>18</sup>

The office of county assessor was abolished by the General Assembly in 1918 and was replaced by the office of county tax commissioner. Apparently this was done to get around the constitutional provision against two consecutive terms for the county assessor (Ky. *Const.*, sec. 104), rather than to effect a change in the system such as was envisaged by certain delegates of the 1890 Constitutional Convention.<sup>19</sup>

The 1968 General Assembly changed the title of "county tax commissioner" to "property valuation administrator," effective December 1, 1969 (KRS 132.370).

There is some controversy over the exact classification of this officer. The Kentucky Court of Appeals has classified him as a divisional officer of the Revenue Cabinet, therefore a state officer.<sup>20</sup> Others contend, however, that for all practical purposes he is a county officer, since his election by county voters makes him amenable to local control.<sup>21</sup> Obviously, both views have merit, and he may be viewed as both a state and local official. In 1988, the General Assembly added language to KRS 132.370(1) expressly providing that "[p]roperty valuation administrators shall be state officials."

### **Elections and Qualifications**

A property valuation administrator enters upon the duties of his office on the first Monday in December, after his election in November, and continues in office for a period of four years (KRS 132.370). A property valuation administrator elected in 1993 serves for five years (*Kentucky Acts 1992*, Chapter 168, sec. 19). After completion of his term in office the property valuation administrator is eligible for re-election (KRS 132.370).

To be eligible for election, the property valuation administrator must be twenty-four years old, a citizen of Kentucky, a resident of the state for two years, and a resident in the county from which he is a candidate one year preceding his election (Ky. *Const.*, sec. 100).

Before a candidate's name may be placed upon the ballot for the office of property valuation administrator, he must be examined by the Revenue Cabinet and awarded a certificate showing that he is qualified to fill the office of property valuation administrator. This requirement applies to primaries, as well as general elections, but does not apply to a candidate who is attempting to succeed himself in office. Certificates are issued only upon successful completion of written examinations and expire one year from the date of issuance. The Revenue Cabinet holds such examinations in at least one place in each Supreme Court district during the month of October in each year immediately preceding the year in which property valuation administrators are to be elected. Special examinations may be held whenever there is a vacancy in the office (KRS 132.380). Notice of an examination is posted by the county attorney. All such examinations are given and graded in accordance with the rules of the Revenue Cabinet (KRS 132.380).

Contributions to the political campaigns of property valuation administrators are sharply limited by Kentucky law, due to the peculiar capacity of the office in regard to the fair and equal assessing of property for tax purposes (KRS 121.045).

The property valuation administrator must execute a performance bond before entering upon the duties of his office. The bond must be executed with a surety to be approved by the Revenue Cabinet. A \$100,000 bond must be executed in counties that contain a first-class city. In counties containing a second-class city the bond must be for \$50,000. In all other counties the bond must be for \$20,000 (KRS 132.400).

### **Powers and Duties**

Subject to the direction, instruction and supervision of the Revenue Cabinet, a property valuation administrator must make the assessment of all property in his county, prepare property assessment records and perform such other duties relating to assessment as may be prescribed by law or by the Revenue Cabinet (KRS 132.420).

The property valuation administrator assesses property for the state, the county, and other districts. Any city may elect to use the annual county assessment for property situated within the city, except for levying and collecting ad valorem taxes on motor vehicles, in which case cities are required to use the assessment completed under the supervision of the Revenue Cabinet pursuant to KRS 132.487(5) (KRS 132.285).

## **Taxable Property**

The Kentucky Constitution provides that all property not exempted by the constitution itself is subject to taxation (Ky. *Const.*, section 172). The Court of Appeals has defined "property" as follows:

...The term [property] is therefore said to include everything which is the subject of ownership, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal, chosen in action as well as in possession, everything which has an exchangeable value, or which goes to make up one's wealth or estate.<sup>22</sup>

Thus, according to Kentucky's Constitution and statutes, all real and personal property within Kentucky is taxable. All intangible personal property owned by residents of this state and by corporations organized under the laws of Kentucky, unless it has acquired a business situs outside Kentucky, and all intangible personal property owned by non-residents and corporations not organized under the laws of this state that has acquired a business situs within the state is taxable (KRS 132.190).

The 1996 General Assembly enacted the "Bank Franchise and Local Deposit Tax Act." This legislation repealed the bank shares tax authorized by KRS 136.270 and imposed a new framework for local taxation of all banking institutions doing business in Kentucky. The franchise tax is in lieu of all local taxes except the real estate transfer tax, real property and tangible personal property tax, utility taxes and the local franchise tax. Chapter 136 sets the franchise tax rate at 1.1% of net capital, after apportionment. Cities and counties may levy a tax on the deposits located in the jurisdiction at a rate not to exceed 0.025% of the deposits. Urban-counties may levy a tax at a rate not to exceed 0.50%.

Taxable property, therefore, includes real estate; tangible personal property, such as automobiles, boats, machines, business furniture and fixtures, livestock and all other goods and chattels; and intangible personal property, such as money, bonds, stocks, notes, accounts receivable, copyrights, patents, trademarks, and royalty agreements (KRS 132.020).

All property exempted from taxation is specified in the Kentucky Constitution, Sections 170-171. The following is a list of these exemptions:

1. Public property used for public purposes
2. Places of religious worship
3. Parsonages or residences owned by a religious society and occupied by their minister as his home

4. Institutions of purely public charity
5. Nonprofit educational institutions
6. Public libraries
7. Household goods of a person used in his home
8. Places of burial not held for profit
9. Crops grown in year assessment is made, and in hands of producer
10. Bonds of state, county, municipality, taxing and school districts
11. Single unit residential property maintained by an owner sixty-five years of age or older, or by an owner classified as totally disabled under a program authorized or administered by an agency of the United States government, up to \$6,500 of the assessed valuation.

Mobile homes and manufactured houses qualify for the homestead exemption. So do recreational vehicles if they are classified as real property under KRS 132.751. The \$6,500 exemption is construed to mean \$6,500 in 1972 purchasing power. The exemption is adjusted every two years if the cost-of-living index of the U.S. department of labor has changed by one percent (KRS 132.810). The value of the homestead exemption for 1995-96 is \$23,100.

### **Assessment Levels**

The property valuation administrator assesses all property in his county, except as may otherwise be provided by law (KRS 132.420). Section 172 of the Kentucky Constitution states that all property not exempted from taxation must be assessed at fair cash value. Kentucky law requires the property valuation administrator to make every possible effort to assess property at fair cash value (KRS 132.450). In June 1965 the Kentucky Court of Appeals held in *Russman v. Luckett* that all property must be assessed for taxation purposes at one hundred percent of fair cash value, as required by the Kentucky Constitution.<sup>23</sup>

Section 172A of the Kentucky Constitution, a constitutional amendment approved by the voters in 1968, provides for the assessment of agricultural and horticultural land according to its fair cash value for such uses, instead of its full fair cash value for nonagricultural uses. The effect of this amendment is to protect farm owners from high assessments resulting from rises in real estate value and thus to perpetuate the use of property for farming.

KRS 132.450 and 132.454 carry out the mandate of Section 172A. If land is classified as agricultural, this classification remains on the tax rolls until the property is transferred or its use changes. When the land use is no longer agricultural, the taxpayer is liable for taxes on the fair cash value.

Section 172B of the Kentucky Constitution, a constitutional amendment approved by the voters in 1981, permits the General Assembly to provide by general law for counties, cities and urban-county governments to declare assessment or reassessment moratoriums for up to five years for qualifying units of real property for the purpose of encouraging the repair, rehabilitation or restoration of existing structures. The 1982 General Assembly implemented this Constitutional provision in KRS 99.595 through 99.605, KRS 132.010 and 132.190, which allow a city, county or urban-county government to accept applications for property assessment or reassessment moratorium certificates from owners of residential property and owners or lessees of commercial property. The property valuation administrator and the administering agency for the local government must maintain a record of all applications, and the property valuation administrator must reassess the property within thirty days of such application (KRS 99.605).

In determining the fair cash value of stocks and bonds that are regularly bought and sold through stock exchanges, the price at which such property closed on the last regular business day preceding the assessment day is considered evidence of its fair cash value (KRS 132.450).

### **Listing of Property and Valuation**

Between January 1 and March 1 of each year, all persons owning or having any interest in any real property taxable in this state are required by law to list or to have such property listed with the property valuation administrator of the county where it is located. It is also the duty of all persons owning or having any interest in any intangible personal property or tangible personal property taxable in the Commonwealth to list or have listed such property with the property valuation administrator of the county of taxable situs or with the Revenue Cabinet between January 1 and May 15 of each year, except as otherwise provided by law (KRS 132.220(1)). All real property exempt from taxation by Section 170 of the Constitution must also be listed with the property valuation administrator during the prescribed period. He must keep an inventory record of such tax-exempt property but does not place it on the tax rolls. A copy of the tax-exempt inventory must be filed annually with the Revenue Cabinet. The law requires property valuation administrators, under the direction of the Revenue Cabinet, to review annually the real property claimed as exemptions under Section 170 of the Constitution and to place on the tax rolls those properties which are not expressly exempted (KRS 132.220(6) and (7)).

When an owner lists property, the property valuation administrator or his deputies must read and administer the following oath: "You swear that the list of taxable property given by you contains a full and complete list of all of your property in your possession which is not otherwise listed as of the assessment

date, and that a fair cash value has been placed on all such property required to be valued" (KRS 132.440).

The property valuation administrator assesses the property at its fair cash value, unless otherwise specified, as of January 1 of each year. He is required to assess all property located within his jurisdiction, even if the owner fails to list the property, and he may swear witnesses in order to ascertain the person in whose name to make the list (KRS 132.220(1) and (3)).

The property valuation administrator must annually revalue each parcel of real property at its fair cash value. Additionally, at least once in every four years the property valuation administrator or his assessors must physically examine each parcel of real property in the county for revaluation. They may physically inspect and revalue land and buildings in the absence of the owner or resident. The property valuation administrator must establish an assessment schedule and submit it to the Revenue Cabinet. He must also maintain a record for each parcel of real property in order to document physical examinations and revaluations by specifying the dates of inspections (KRS 132.690(1)).

The property valuation administrator may at any time list and assess any real property which may have been omitted from the regular assessment. He shall notify the taxpayer of the amount of assessment immediately upon such listing and assessing (KRS 132.310(2)).

Kentucky law forbids the property valuation administrator to assess the property of any one person at a lower or higher relative value than he assesses the same class of property of another person. Exception is made for agricultural and horticultural assessments (KRS 132.450), and for property assessed to encourage rehabilitation, pursuant to Section 172B of the Constitution. Any "grossly" discriminatory valuation is considered intentional discrimination (KRS 132.450).

The property valuation administrator is required to assess his own property, and that of his deputies, in the same manner as the property assessment of other taxpayers. The county board of assessment appeals has review power in relation to the assessment of that property (KRS 132.470).

At the order of the Revenue Cabinet, emergency assessments may occur under certain extraordinary circumstances, such as the absence of a regular valuation, the destruction of records or the finding of grossly inequitable assessments. In such instances, any existing assessment is voided and the Revenue Cabinet is empowered to appoint persons to make the assessments (KRS 133.660).

If the property valuation administrator assesses any property at a greater value than that listed by the taxpayer or assesses unlisted property, he must notify the taxpayer by first-class mail or as provided in the *Kentucky Rules of Civil Procedure* (KRS 132.450(4)).

It should be noted that an informality or irregularity in the making of an assessment or tax bill does not void the assessment or tax bill. Nor will failure of the property valuation administrator to call on each taxpayer for an assessment list or to finish the assessments or other duties on time make the assessment void (KRS 132.650).

### **Motor Vehicle Tax**

Property valuation administrators assess motor vehicles, recreational vehicles and mobile homes for taxation by the state, county, city and other taxing authorities.

The Revenue Cabinet administers a centralized ad valorem tax system for all motor vehicles as defined in KRS 186.010. The Transportation Cabinet provides access to all records of motor vehicle registrations to the Revenue Cabinet and the property valuation administrators. The property valuation administrator has the responsibility, under the supervision of the Revenue Cabinet, for assessing all motor vehicles other than those assessed under KRS Chapter 136 as part of public service companies. The property valuation administrator, by December 1 of each year, must provide the Revenue Cabinet a recapitulation of motor vehicles to be assessed as of January 1 of the next year (KRS 132.487).

### **Timberland Assessment**

Any owner of timberland located within the county is required to list such property with the property valuation administrator in the same manner as other listings of real property. The property valuation administrator must include on the regular property tax roll an accurate record of the acreage of timberland listed in the name of each owner in the county (KRS 149.550 and 149.560).

### **Fire Protection District Assessment**

In counties in which the trustees of a fire protection district or a volunteer fire prevention district have levied a tax for the operation of a fire department, the property valuation administrator is required to note on the tax rolls the taxpayers and valuation of the property subject to such assessment (KRS 75.040).

### **Mobile Homes and Recreational Vehicles**

Every person providing rental space for the parking of mobile homes and recreational vehicles must report to the local property valuation administrator by February 1 of each year, the name of the owner and type and size of all mobile homes and recreational vehicles registered in this state under KRS 186.655 on his premises on the prior January 1 (KRS 132.260).

The property valuation administrator may make a personal inspection and investigation of the premises on which mobile homes and recreational vehicles are located, for the purpose of assessing such property. No person in charge of such property may refuse to permit the inspection (KRS 132.260).

### **Estimate of Assessed Valuation**

By April 1 of each year, the property valuation administrator is required to submit an official estimate of real and personal property and new property assessment growth, as defined in KRS 132.010, to the county judge/executive. The judge/executive uses this estimate as a measure of anticipated receipts in preparing the county budget (KRS 68.245).

### **County Clerk's Duties With Regard to Tax Assessments**

The county clerk is required, on or before the fifteenth day of each month, to provide to the property valuation administrator a copy of all conveyances transferring real property made during the preceding month (KRS 132.480).

The county clerk must, by March 1 of each year, make and certify to the property valuation administrator complete statements of all purchase money notes, mortgage notes, and obligations for money due, except those owned by banks, trust companies or real estate title insurance companies, as shown by the conveyances, mortgages and liens in his office. These statements are to be sent to the property valuation administrator of the county in which the persons owning or holding the notes or other evidences of indebtedness reside or have their principal place of business. Upon receiving the statements of indebtedness from the county clerk, the property valuation administrator must fix the value of the notes at the price they would bring at a fair sale and enter the amount in his tax book against the name of the owner or beneficial holder (KRS 132.490 and 132.500).

### **Tax Rolls**

The property valuation administrator must prepare the property tax rolls in legible form according to taxing districts. He must make additions to each column to show the aggregate amount, value and number of each column on the tax rolls, and prove the accuracy of such rolls before he returns them for collection purposes (KRS 132.530).

The property valuation administrator must complete the tax roll of all real property in his county before the first Monday in April of each year, in accordance with Kentucky law, and on or before that date he must file with the Revenue Cabinet, on cabinet forms, a recapitulation of all property assessed on the tax roll with his official certificate attached. This listing must show the assessment of property by types and by taxing districts. Within fifteen calendar days after receiving the recapitulation and schedules, the Revenue Cabinet must direct the property valuation administrator to make any changes that are necessary to correct the assessment. After the property valuation administrator has made the necessary corrections, the Revenue Cabinet photographically preserves all recapitulations for a period of seven years from assessment date (KRS 133.040(1)).

At the same time that he files his recapitulation with the Revenue Cabinet, the property valuation administrator must also file copies of such records with the county judge/executive, officers of special districts and school district superintendents (KRS 133.040(2)).

Beginning with the 1995 assessment year, the Revenue Cabinet must investigate any property valuation administrator who has not submitted an acceptable recapitulation by the first Monday in August. The cabinet may conduct its own emergency assessment and, if the failure to submit was not reasonably justified, may suspend the property valuation administrator's compensation. The property valuation administrator may appear before the Secretary of Revenue during an investigation and may request an administrative hearing if compensation is to be suspended. All hearings must be conducted in accordance with KRS Chapter 13B (KRS 133.040).

After submission of the final real property recapitulation or personal property certification, the property valuation administrator may correct clerical, mathematical or procedural errors in assessments. These changes are subject to review by the Revenue Cabinet and may not be based on appraisal methodology or opinion of value (KRS 133.110).

A person who claims to have been charged with tax on property he or she does not own may offer evidence to the property valuation administrator, who may release the person from payment of the improperly charged tax. The property valuation administrator must then assess the property against the rightful owner (KRS 133.130).

The real property tax roll must be open for inspection in the property valuation administrator's office for thirteen days, beginning on the first Monday in May of each year. The Revenue Cabinet, in cases of necessity, may order a reasonable extension of time for inspection or it may order that the inspection period be held at a different time. The inspection period is required by law to

cover six days in each of two weeks, including holding the office open on two Saturdays. The final day of the inspection period may not be Saturday, Sunday or a legal holiday (KRS 133.045(1)).

During the week preceding the first Monday in May, the property valuation administrator must arrange for published notice of the forthcoming inspection period. The notice should contain information on the dates and times of the inspection period and procedures for taxpayer appeals of assessments. The expense of this publication is to be borne by the fiscal court. In addition to published notice, notice must be posted on the courthouse door (KRS 133.045(2)).

Objections to assessments are heard by the county board of assessment appeals. Review of assessments may originate with a real property owner or with the Revenue Cabinet, county judge/executive or the official of other taxing authorities seeking an increase in assessments. To bring an appeal, a taxpayer must request a conference with the property valuation administrator or a deputy. After the conference, the taxpayer may file an appeal, but it must be filed no later than one workday following the thirteen-day inspection period. The appeals board holds public hearings, gathers evidence and makes a determination regarding objections to assessments (KRS 133.120). When faced with questions about the taxability of property, the county board must obtain and follow the advice of the Revenue Cabinet, but the board has full authority to set the fair cash value of property (KRS 133.123).

The county clerk must provide the property valuation administrator with a summary of the appeals filed with the county board of assessment appeals. Within three days after receiving this summary, the property valuation administrator must submit to the Revenue Cabinet a final recapitulation of the real property tax roll (KRS 133.125).

The Revenue Cabinet then equalizes assessments between counties by comparing data from each county on land sale prices, assessed values and other information. The cabinet is empowered to increase or decrease aggregate assessments of various counties in equalizing assessments and seeking fair cash value (KRS 133.150). After the disposition of any appeals of the cabinet's actions, the assessment and amount of taxes due are certified to the county clerk (KRS 133.170 and 133.180). On receipt of this certification, local taxing authorities may set their tax rates and begin preparation of tax bills (KRS 133.185).

When the county attorney collects delinquent taxes, the property valuation administrator must assist by correcting erroneous addresses on notices of delinquency that have been sent and returned as undeliverable (KRS 134.500).

## **Safe Deposit Boxes**

The Revenue Cabinet may require the property valuation administrator to be present when safe deposit boxes or similar receptacles are opened under the provisions of KRS 140.250 (KRS 132.420).

### **City Use of County Assessment**

Any city may by ordinance elect to use the annual county assessment for property situated within the city as a basis of ad valorem tax levies. A city making such election is required to notify the Revenue Cabinet and the property valuation administrator prior to the next succeeding assessment to be used for city levies. Each city which elects to use the county assessment must annually appropriate and pay to the office of the property valuation administrator one-half of one cent for each one hundred dollars of assessment. The sums paid may not be less than two hundred fifty dollars, nor more than forty thousand dollars in a city having an assessment of less than two billion dollars, nor more than fifty thousand dollars in a city having an assessment of more than two billion dollars. Cities which elect to use county assessments for ad valorem taxes in 1996 and subsequent years must pay the property valuation administrator the same amount as paid in 1995, or the amount the property valuation administrator would have otherwise received, whichever is greater (KRS 132.285).

For purposes of the levy and collection of ad valorem taxes on motor vehicles, cities are required to use the assessment pursuant to KRS 132.487(5).

The property valuation administrator shall permit the city assessor of a city of the first class (Louisville) and any other taxing bodies of the various governments to examine records furnished by public utilities of the names of all persons, firms, or corporations which installed, removed or discontinued services (KRS 132.275).

### **Appeals to the County Board of Assessment Appeals**

Any taxpayer desiring to appeal an assessment on real property must first request a conference with the property valuation administrator or a designated deputy. A taxpayer still aggrieved by the assessment after the conference has been held may appeal to the board of assessment appeals by filing in person or sending a letter and stating to the county clerk the taxpayer's opinion of fair cash value of the property. The Revenue Cabinet shall be notified by the county clerk of the dates and times of the assessment appeals.

The board of assessment appeals may review and change any assessment made by the property valuation administrator upon recommendation of the Revenue Cabinet, the county judge/executive, the mayor of a city using the county assessment or the superintendent of any school district in which the

property is located. If the board decides to increase an assessment, it must give the taxpayer notice, pursuant to KRS 132.450(4), of the date when the board will hear the taxpayer.

Any real property owner who has listed his property at fair cash value may ask the county board of assessment appeals to review the assessments of properties he believes to be assessed at less than fair cash value, but he may not request a blanket review of properties.

The board of assessment appeals shall hold a public hearing for each individual taxpayer appeal and, after hearing all the evidence, shall fix the assessment at its fair cash value. The Revenue Cabinet may be present at the hearing and present evidence pertaining to the appeal. The taxpayer must provide factual evidence to support the appeal.

The board of assessment appeals shall report to the property valuation administrator any real property omitted from the tax roll. The property valuation administrator must assess the property and give notice, pursuant to KRS 132.450(4), specifying a date when the board will hear the taxpayer, if he so desires (KRS 133.120).

Any individual aggrieved by a decision of the board, the property valuation administrator or the Revenue Cabinet may appeal a decision of the county board of assessment appeals to the Kentucky Board of Tax Appeals (KRS 131.340, 133.120). Appeals of the decisions of the state board are heard by the Franklin Circuit Court or the circuit court of the county in which the taxpayer resides or has his place of business, in accordance with KRS Chapter 13B (KRS 131.370(1)).

The property valuation administrator or an authorized deputy is required to attend all hearings before the county board of assessment appeals and before the Kentucky Board of Tax Appeals relative to his assessment. He must fully disclose any information he may have (KRS 132.460).

The property valuation administrator is prohibited from divulging any information acquired by him of the affairs of any person, or regarding the tax schedules, returns or reports required to be filed with the Revenue Cabinet, or any information having to do with the affairs of a person's business produced from a hearing or investigation. This prohibition does not extend to information required in prosecutions for infractions of the tax laws (KRS 131.190).

### **Compensation**

Under the provisions of KRS 132.590, the compensation of property valuation administrators is based on a point system which allots points for the

total area of a county, the county population, and the assessed value of property in the county. Points are assigned as shown:

- one point per each ten square miles of area in the county;
- one point per one thousand population in the county;
- one point per million dollars of assessment on the first one hundred million dollars; and
- one-half point per million dollars of assessment over one hundred million dollars.

After the number of points for each category is determined, a county's points are totaled and a grade classification assigned, according to the following scales:

<b>Number of Points</b>		<b>Grade Classification</b>
At Least	But Less Than	
5,000	---	15
1,000	5,000	14
350	1,000	13
300	350	12
225	300	11
150	225	10
125	150	9
100	125	8
---	100	7

The points awarded for the assessed value of property for the calculation of the compensation of the property valuation administrator in 1996 and subsequent years must be equal to the number of points awarded in 1995 (KRS 132.590).

An alternative grade classification system was authorized by the 1996 General Assembly to supersede the provisions of KRS 132.590(1) if adequate funding for the alternative grade classification system for the property valuation administrator compensation scale is provided in the biennial budget (KRS Chapter 132).

The grade classification of property valuation administrator is equivalent to the grade classification for state employees, as established by the Personnel Cabinet (KRS 132.590(2)).

Property valuation administrators taking office for the first time without prior experience are assigned to the first step in a grade (KRS 132.590(4)). When a new property valuation administrator has experience as a full-time deputy or assistant in a property valuation administrator's office, the Revenue Cabinet may approve the assignment to the second or third step of a grade classification (KRS 132.595).

Effective on the first day of January, each property valuation administrator who has served at least twelve months shall annually be advanced one step in grade. Any person appointed or elected to fill a vacancy in the office of property valuation administrator shall be eligible for advancement one step in grade, effective January 1, following the completion of at least six months service. The Revenue Cabinet is authorized to make grade classification changes corresponding to any approved for cabinet employees in comparable positions,

so long as such changes do not violate the integrity of the classification system. Subject to availability of funds the cabinet may extend cost-of-living increases approved for cabinet employees to the property valuation administrators by advancement in grade (KRS 132.590(4)).

Upon becoming a "certified Kentucky assessor" or a "senior Kentucky assessor," a property valuation administrator must receive a five percent salary increase if sufficient funds are available (KRS 132.385).

Should a property valuation administrator for any reason vacate the office in any year during his term, he shall be paid only for the calendar days actually served during the year (KRS 132.590(1)).

The property valuation administrator of each county is paid one-twelfth of his annual compensation each month from the State Treasury. This compensation is computed by the Revenue Cabinet, as provided in KRS 132.590. The administrator's December compensation is computed by subtracting from his annual compensation those amounts previously paid (KRS 132.645).

Whenever the county board of assessment appeals, the Kentucky Board of Tax Appeals, or a court of competent jurisdiction determines that an unauthorized or excessive assessment has been made, the Revenue Cabinet is authorized to recover from the property valuation administrator all compensation paid to him for the assessment (KRS 132.620).

If the property valuation administrator fails to render the services required of him or he performs any of his duties in such a manner as to fail to comply with the requirements of the law, he is required to pay a sum that will reasonably compensate the Commonwealth of Kentucky for its costs in rendering those services (KRS 132.620).

Any sum that is due from any property valuation administrator by reasons covered in the two preceding paragraphs may be deducted from any amount that the Commonwealth is obliged to pay him, or it may be collected from his bondsman (KRS 132.620).

A reduction of fifty cents is made from the property valuation administrator's compensation for each list he accepts from individuals or corporations upon which there is an omission of the face value of any intangible property, except stocks, cash or bank deposits (KRS 132.240).

The property valuation administrator is entitled to reimbursement from the county for any expenses incurred in official business outside the boundaries of the county. If the Revenue Cabinet directs the property

valuation administrator to perform official duties outside the county, the cabinet must pay the incurred expenses (KRS 132.460).

The amount appropriated and paid by each county fiscal court to the office of the property valuation administrator must be equal to the amount paid in 1995 or the amount they would have otherwise received in 1996, whichever is greater (KRS 132.590).

The property valuation administrator is required to attend an annual conference of all property valuation administrators conducted by the Revenue Cabinet. Instruction is given at the conference in the fair and just valuation and assessment of property. Any property valuation administrator who willfully fails to attend the conference may be removed from office by the circuit court of his home county. If the property valuation administrator participates in all sessions of the conference, the state pays one-half of the expenses involved in attending the conference, and the county pays the other half (KRS 131.140).

### **Expense Allowance and Training Requirement**

The property valuation administrator of each county receives an annual expense allowance of \$3,600, to be paid from the State Treasury in monthly installments of \$300 (KRS 132.597). This expense allowance must be used by the property valuation administrator for expenses incurred in the performance of his duties. The allowance is to provide the necessary funds for payment of all expenditures of the property valuation administrator not directly associated with the assessment of property in his particular county.

Each property valuation administrator is required, within each calendar year, to participate in a minimum of thirty classroom hours of professional instruction conducted by the Revenue Cabinet. This annual requirement is reduced to fifteen hours for any property valuation administrator who has earned the "senior Kentucky assessor" professional designation. Any property valuation administrator failing to meet the Cabinet's requirements for any calendar year shall not receive the \$3,600 annual expense allowance for the subsequent calendar year (KRS 132.597).

### **Retirement and Insurance Benefits**

Property valuation administrators and full-time deputies and assistants are eligible for participation in state programs for life and health insurance (KRS 18A.205), public employees deferred compensation and annual salary increment plans (KRS 18A.230 to 18A.355), and the Kentucky Employees Retirement System (KRS 61.510 through 61.705) (KRS 132.370(3)).

### **Funding of Office and Office Administration**

The Revenue Cabinet must prepare a biennial budget request for staffing PVA offices. This is based upon comparative assessment work units and provides for an equitable allocation of employee positions statewide (KRS 132.590(6)). Beginning with the 1996-1998 biennium, assessment work units are based on parcel count per employee. The property valuation administrator must prepare and submit a budget request for his office by June 1 of each year based upon the number of allocated employees and other factors, and the cabinet must return an approved budget by no later than July 1 (KRS 132.590(7)).

Each fiscal court must appropriate and pay its cost for use of the assessment (KRS 132.280). KRS 132.590(9) requires counties to pay amounts determined as follows:

**ASSESSMENT SUBJECT TO COUNTY TAX OF:**

<b>AT LEAST</b>	<b>BUT LESS THAN</b>	<b>AMOUNT</b>
---	\$100,000,000	\$.005 for each \$100 of the first \$50,000,000 and \$.002 for each \$100 over \$50,000,000.
\$100,000,000	\$150,000,000	\$.004 for each \$100 of the first \$100,000,000 and \$.002 for each \$100 over \$100,000,000.
\$150,000,000	\$300,000,000	\$.004 for each \$100 of the first \$150,000,000 and \$.003 for each \$100 over \$150,000,000.
\$300,000,000	---	\$.004 for each \$100.

The total sum to be paid by the fiscal court to any property valuation administrator's office, determined from KRS 132.590(9), shall not exceed the limits in the following table:

**ASSESSED VALUE OF PROPERTY SUBJECT TO COUNTY TAX OF:**

<b>AT LEAST</b>	<b>BUT LESS THAN</b>	<b>LIMIT</b>
---	\$ 700,000,000	\$ 25,000
\$ 700,000,000	\$1,000,000,000	\$ 35,000
\$1,000,000,000	\$2,000,000,000	\$ 50,000
\$2,000,000,000	\$2,500,000,000	\$ 75,000
\$2,500,000,000	\$5,000,000,000	\$100,000
\$5,000,000,000	---	\$175,000

This allowance shall be based on the assessment as of the previous January 1 and shall be used for deputy and other personnel allowances, supplies, maps and equipment, travel allowance for the property valuation administrator and his deputies and other authorized personnel, and other authorized expenses of the office (KRS 132.590(10)).

Following the county's annual appropriation of funds required for the use of the property valuation administrator's assessment and no later than August 1, the property valuation administrator must file a claim with the county for the amount specified in his budget for the compensation of deputies and assistants, including the employer's share of FICA and state retirement. The county must pay this amount into the State Treasury by September 1, or to the property valuation administrator, to be submitted by the property valuation administrator to the State Treasury by September 1. These funds must be expended by the Revenue Cabinet only for the compensation of deputies and assistants. Money not expended from this fund must be returned to the county (KRS 132.590(11)).

The remainder of the county assessment for use for non-personnel related office expense is due in four equal quarterly payments from the fiscal court on or before the first day of September, December, March, and June. Any unexpended funds at the close of a fiscal year may be retained, except as provided by KRS 132.601(2). During county election years no more than forty percent of the allowances available to a PVA office from county funds may be spent during the first five months of the fiscal year in which the general election is held (KRS 132.590(12)).

The fiscal court of each county may purchase and supply to the property valuation administrator any maps, lists, charts, materials, supplies, equipment or instruments which are reasonably necessary for a complete and accurate assessment of property in the county. The Revenue Cabinet is also authorized to purchase and loan any property valuation administrator such maps, lists, charts, materials, supplies, equipment or instruments as are urgently needed by him (KRS 132.605).

When an urban-county government is formed through the merger of existing city and county government as provided in KRS Chapter 67A, the annual county assessment shall be presumed to have been adopted as if the city had exercised the option to adopt as provided in KRS 132.285.

### **Financial Control and Audits**

KRS 132.601(2), enacted in 1988, empowers the property valuation administrator to maintain a bank account to manage the local funds received by his office. Any funds in excess of the greater of the total local annual appropriation for the ending fiscal year or \$5,000 must be returned proportionately to affected local governments by August 1. Funds below this amount may be retained and carried over to the next fiscal year.

Non-personnel expenses from local funds must comply with the county procurement code required by KRS 68.005. The fiscal court may not question the necessity of expenditures included in the budget approved by the Revenue Cabinet. Audit responsibility for locally appropriated funds rests with the auditor of public accounts, not the Revenue Cabinet (KRS 132.601(3)).

The Revenue Cabinet is required to conduct a biennial performance audit of each office and to prepare a report on the equity and quality of each county's assessment, based on this audit (KRS 132.140(3)).

### **Deputies**

The property valuation administrator may appoint deputies to assist him in the discharge of his duties. A deputy must be more than twenty-one years of age. The salaries of deputies and other authorized personnel are fixed by the property valuation administrator, in accordance with the grade classification system established by the Revenue Cabinet, and are subject to the approval of the Revenue Cabinet. Any deputy property valuation administrator employed, or promoted to a higher position, may be examined by the Revenue Cabinet, in accordance with standards of the Department of Personnel for the position to which he is being appointed or promoted. No state funds available to any property valuation administrator's office as compensation for deputies and other authorized personnel, or for other authorized expenditures, may be paid, without authorization of the Revenue Cabinet, prior to the employment of deputies or other authorized personnel, or the incurring of other authorized expenditures. Deputies serve at the pleasure of the property valuation administrator (KRS 132.590(8)).

KRS 64.530(4) permits fiscal courts to review and adjust the annual compensation of "deputies and assistants" of elected county officials every year, under certain conditions. This statute, however, does not apply to the deputies

or assistants of property valuation administrators. Property valuation administrators and all of their employees are considered in this respect employees of the state.

### **Office Hours and Space**

The county fiscal court must provide the property valuation administrator with suitable space and furniture at the county seat. The property valuation administrator's office serves as storage for all records pertaining to the assessment of property, except such records as are required by law to be placed in the custody of other officials (KRS 132.410).

Kentucky law requires the property valuation administrator to engage in his official duties at least five days a week during regular working hours, and to keep scheduled office hours at least five days a week (KRS 132.410).

### **Vacancy**

A vacancy in the office of property valuation administrator is filled through the appointment, by the Secretary of Revenue, of a qualified Revenue Cabinet employee, to carry out the duties of the office until the vacancy is filled by appointment or by election. The cabinet employee designated to fill the vacancy shall be compensated from the Revenue Cabinet in the same manner and rate as compensated prior to his receiving the designation. He is also entitled to receive necessary expenses, including travel. The designee shall have all the powers and be subject to all regulations applying to property valuation administrators (KRS 132.375).

### **Penalties and Removal from Office**

A property valuation administrator may be removed from office by the circuit court of his county upon petition of any taxpayer, or by the Secretary of Revenue, for willful disobedience of any just or legal order of the Revenue Cabinet, misfeasance or malfeasance in office, willful neglect in the discharge of official duties, intentional underassessment or overassessment of properties, or through a finding by the Revenue Cabinet of chronic underassessment of property (KRS 132.370).

Chronic underassessment is defined as a widespread pattern and practice of assessing property at levels substantially below fair market value which persists for a period of two or more years. The Revenue Cabinet shall conduct a special audit to determine whether underassessment has occurred in a county when sales-assessment ratio studies conducted under KRS 133.250 indicate a ratio below 80% for two consecutive calendar years (KRS 134.385).

If the Revenue Cabinet finds that a property valuation administrator's failure to submit an acceptable recapitulation was not justified, the cabinet must suspend his compensation. The property valuation administrator may request a hearing and must be repaid with interest if the hearing officer finds that the failure was justified. Beginning with the 1995 assessment year, a property valuation administrator who does not submit an acceptable recapitulation to the Cabinet by the first Monday in August will be investigated by the Cabinet (KRS 133.040). The Cabinet may declare an emergency assessment if its investigation finds that the property valuation administrator's failure to submit an acceptable recapitulation was not reasonably justified (KRS 132.660).

Any officer, or other person authorized to assess property for taxation purposes, who willfully commits an error in the performance of his duty, will be deemed guilty of misfeasance, and upon conviction of such an act, will forfeit his office. He may also be otherwise punished as provided by law (Ky. *Const.*, Sec. 172).

Any property valuation administrator who willfully fails or neglects to perform any of his legal duties may be fined up to \$500 for each offense (KRS 132.990).

Any property valuation administrator who willfully conceals or destroys any record with the intent to violate the provisions of KRS Chapter 61 relating to public records shall be guilty of a Class A misdemeanor for each separate violation. Any official of a public agency who fails to produce any record after entry of final judgment directing that such records be produced shall be guilty of contempt (KRS 61.991).

A property valuation administrator who violates the restrictions concerning political campaign contributions of KRS 121.055 is guilty of a Class D felony (KRS 121.990(3)).

In addition to these penalties, if a property valuation administrator is removed from office pursuant to KRS 132.370, he shall be ineligible to serve in the office at any future date and he shall forfeit any and all certification from the Revenue Cabinet pertaining to the office (KRS 132.370(8)).

A property valuation administrator may appeal his removal from office pursuant to KRS 132.370(5), and upon appeal, an administrative hearing will be conducted in accordance with KRS Chapter 13B.

## **VII. SHERIFF**

### **Background**

The office of the present day sheriff traces back to England before the Norman Conquest of 1066. During the reign of William the Conqueror, the sheriff had almost unlimited power. He was virtual ruler of the county, responsible for its revenues, military force, police, jails, courts, and the execution of its writs. The importance of the office resulted not only from the scope of the sheriff's duties, but from his direct relationship to the central government.<sup>24</sup> English sheriffs were appointed by the crown.

English colonists brought the office of sheriff to America as part of county government. In the South, where the county system was strong, the office of sheriff was more important than in those areas where local government centered in towns or townships.<sup>25</sup>

Under the first Kentucky Constitution, the office of sheriff was elective and the term of office was three years (Art. VI, sec. 1). Under the second Constitution, the sheriff was nominated by the county court and appointed by the Governor from the court's list of nominees. The term of office was two years (Ky. *Const.* (1799), Art. III, sec. 31). In 1850, under the third Constitution, the sheriff's office was again made elective. The term of office was two years (Art. VI, sec. 4).

### **Qualifications and Term**

The present Constitution requires the election of a sheriff in each county. His term is normally for four years, but a 1992 constitutional amendment relating to elections requires a sheriff elected in 1993 to serve a five-year term (Ky. *Const.*, sec. 99, and *Kentucky Acts 1992*, Chapter 168, sec. 19). The Kentucky Constitution also requires the sheriff to be twenty-four years of age, a citizen of Kentucky, a resident of the state for two years, and a resident of the county in which he is elected one year prior to his election (Ky. *Const.*, sec. 100). Before taking office, he must execute bond as provided in KRS 70.020, 134.230 and 134.250. The bond required by KRS 70.020 must be for a minimum of \$10,000 and relates to the faithful performance of all of the sheriff's duties. The bond required by KRS 134.230 relates to the faithful performance of his tax collection duties. The premium on this bond should be paid by the county, according to the Attorney General's office (OAG 83-293). The fiscal court may require the sheriff to enter into a bond under KRS 134.230. The sheriff must also take the constitutional oath of office (Ky. *Const.*, sec. 228) and a statutory oath of office (KRS 70.010).

## **Powers and Duties**

The sheriff's duties fall into four categories: tax collection, election duties, services to courts, and law enforcement. He spends the majority of his time on civil duties, as opposed to his criminal or law enforcement duties.<sup>26</sup>

### **Law Enforcement**

The sheriff and three other elected county officials--coroners, jailers and constables--are peace officers, possessing law enforcement powers (KRS 446.010). These powers include a broad grant of authority to make arrests. Under the authority of KRS 431.005, any peace officer may make an arrest:

- (a) In obedience to a warrant;
- (b) Without a warrant when a felony is committed in his presence;
- (c) Without a warrant when he has probable cause to believe the person arrested has committed a felony;
- (d) Without a warrant when a misdemeanor, as defined in KRS 431.060, has been committed in his presence; or
- (e) Without a warrant when harassment, criminal trespass in the 3rd degree and certain traffic violations are committed in his presence, or if he has probable cause to believe that a person is driving under the influence of alcohol or any other substance which may impair his driving ability.

Where a misdemeanor has been committed in an officer's presence, he may issue a citation instead of making an arrest, if he has reasonable grounds to believe the person cited will appear in court (KRS 431.015). Citations may be issued in lieu of a physical arrest for violations committed in the presence of an officer. The officer may make a physical arrest for a violation committed in his presence if he has reasonable grounds to believe the defendant will not appear at the required time or if the violation is one of the several set out above from KRS 431.005(1)(e). If the defendant does not appear, a warrant for his arrest may be issued (KRS 431.015).

Offenses are either violations, misdemeanors or felonies, depending on the nature and length of punishment that may be prescribed. These terms are defined in KRS 431.060.

In addition to the instances cited above, certain peace officers, including sheriffs and full-time paid deputy sheriffs, may make warrantless arrests in some narrowly defined cases of domestic abuse (KRS 431.005(2)).

When in actual pursuit of a law violator, a peace officer may cross corporate or county lines for the purpose of making an arrest (KRS 431.045).

In actual practice, powers of arrest are exercised only by the sheriff and constable. Jailers and coroners rarely make arrests. The law specifically authorizes sheriffs and constables to carry concealed deadly weapons when necessary for their protection in discharging their duties (KRS 527.020).

Specific statutory duties devolve upon all peace officers. All peace officers must seize untaxed cigarettes and notify the state commissioner of revenue that they have done so (KRS 138.165). Peace officers and deputy sheriffs must enforce all controlled substances laws (KRS 218A.240) and must arrest and return any children who have escaped from a reform institution (KRS 440.060).

Upon request from the Kentucky Board of Agriculture, a peace officer must aid in destroying diseased livestock (KRS 246.210). Any Kentucky peace officer may destroy a suffering, abandoned, or diseased animal (KRS 257.100). He must also impound unlicensed dogs (KRS 285.215). A peace officer may order funds derived from the sale of an animal of questionable ownership held until ownership is established (KRS 253.070).

Peace officers must enforce all truck weight limit and size laws (KRS 189.223). They must seize any automobile transporting alcoholic beverages in dry territory and make all necessary arrests (KRS 242.360). Peace officers must serve any subpoena issued by the state parole board (KRS 439.390). On being informed or having reason to believe that an unlawful professional prize fight or wrestling match is about to take place, peace officers must prevent the match (KRS 229.240).

All peace officers must cooperate with the Justice Cabinet in the fingerprinting and identification of prisoners (KRS 17.115). A peace officer may arrest without a warrant any military personnel in his jurisdiction who has violated the military code of justice<sup>27</sup> (KRS 35.035).

The sheriff has the traditional power of commanding a posse comitatus: "Any sheriff, deputy sheriff or other like officer may command and take with the power of the county, or a part thereof, to aid him in the execution of the duties of his office, and may summon as many persons as he deems necessary to aid him in the performance thereof" (KRS 70.060). If a riot or insurrection occurs, the Governor may call any part of Kentucky active militia or the National Guard to active service and he may order these military forces to report to certain local officials, including the sheriff, who may advise the commanding officer regarding the specific objectives to be accomplished by the forces, although tactical command must remain in the control of the military (KRS 37.240 and 38.030).

The sheriff is responsible for selling property used for unlawful sale, transportation, or possession of alcoholic beverages in dry territory (KRS 242.330 and 242.360). As a peace officer, he is authorized to seize and destroy any gambling instruments, with or without a warrant (KRS 528.100).

Any peace officer is required to enforce laws relating to motor vehicles (KRS 281.765). The sheriff and his deputies have the following specific duties: (1) they must patrol all public roads in the county and direct the traffic on such roads so as to maintain maximum safety; (2) they must investigate all accidents and wrecks on the road, and record their observations and findings; (3) when a person is injured or killed, or there is reason to believe that criminal negligence caused the accident, the sheriff must take affidavits from witnesses, subpoena them, and return the affidavits and his report to the county attorney (KRS 70.150).

In the course of his duties, the sheriff is authorized to arrest violators of federal laws and military deserters (KRS 35.040), those illegally transporting or holding liquor (KRS 242.370), those promoting gambling machines or games (KRS 528.020 and 528.030), and owners of property where gambling takes place (KRS 528.070).

The sheriff or his deputies must make monthly inspections of each public place which permits music or dancing, sells intoxicating beverages, or furnishes men and women rooms for lodging. Reports of these inspections are to be sent to the county attorney and the county clerk (KRS 70.160). They are also required to visit places of entertainment regularly. The sheriff may arrest the owners or managers for violations of law committed within his presence (KRS 231.130) The sheriff must designate certified vehicle inspectors, certified by the Bureau of Vehicle Regulation, who will inspect vehicles brought into Kentucky and required to be titled in Kentucky, prior to submission of an application for title to the county clerk (KRS 186A.115).

A cooperative effort exists between the Department of Juvenile Justice, the Administrative Office of the Courts, the Cabinet for Health Services, and the Department of Corrections, under the direction, control and supervision of the commissioner of the Department of State Police, a centralized criminal history record information system (KRS 17.151). All law enforcement officers and every other person or criminal justice agency concerned with crimes or criminals or with delinquency or delinquents, except the Court of Justice, are required to maintain and report data requested by the Justice Cabinet (KRS 17.150). Intelligence and investigative reports maintained by criminal justice agencies are subject to public inspection, provided prosecution is completed or a determination not to prosecute has been made. However, portions of such records may be withheld from inspection if the inspection would disclose:

(a) The name or identity of any confidential informant, or information which may lead to the identity of any confidential informant;

(b) Information of a personal nature, the disclosure of which will not tend to advance a wholesome public interest or a legitimate private interest;

(c) Information which may endanger the life or physical safety of law enforcement personnel; or

(d) Information contained in the records to be used in a prospective law enforcement action (KRS 17.150).

Citizens applying for a permit to carry a concealed deadly weapon must obtain an application from the sheriff's office and submit the completed application to that office (KRS Chapter 237).

### **Tax Collection and Investment of Idle Funds**

Kentucky sheriffs collect property taxes for the state, the county, school districts, and sometimes cities, if the sheriff has contracted with them for this service. In addition, almost every sheriff collects taxes for some other special taxing district or special function, such as a fire protection district, a library, or a county health unit. Table II lists many of the statutes pertaining to collection of special taxes and summarizes information on the time and manner of collection and any commission received by the sheriff.

**TABLE III**

**TAXING DISTRICT AND SPECIAL FUNCTION  
TAXES COLLECTED BY THE SHERIFF**

<b>Statutory Citation</b>	<b>Levied By</b>	<b>Time &amp; Manner of Collection</b>	<b>Delivered To</b>	<b>Commission</b>
KRS 134.020	State & County; property taxes	Due Sept. 15 Delinquent on Jan. 1	Dept. of Revenue State & County Treasurer or some person Fiscal Court designates	Four and one-quarter percent (KRS 134.290)
KRS 75.040(4)	Fire protection or volunteer fire dept. district trustees	State & County taxes	Treasurer of District	One percent
KRS 76.278	Sanitation Tax District	State & County Taxes	Board of Sanitation Tax District	One percent

KRS 104.670	Flood Control District Directors	State & County Taxes	County Treasurer	None
KRS 107.350	Fiscal Court When requested by Community Improvements District Board	With County Taxes	Board of Community Improvement District	**
KRS 108.100	Referendum on Ambulance Service District	With County Taxes	Ambulance Service District Board of Directors	One percent
KRS 147.660(1)	Area Planning Commission	State & County Taxes	Respective City Treasurers	May not exceed four percent
KRS 149.580(1)	Fiscal Court; county forest fire protection	State & County Taxes	*	**
KRS 160.500	Board of Education; school tax	Local Taxes	Depository selected by the Board of Education	Fee to equal expenses but not less than 1.5 percent and not to exceed 4 percent of the school taxes collected
KRS 165.175(3)	2nd Class City Municipal College Support District	State & County Taxes	College Board of Trustees	May not exceed four percent
KRS 173.470	Referendum on Library District	With County Taxes KRS 173.470	Library District Board of Trustees KRS 173.470	**
KRS 173.720	Petition for Library District	With County Taxes	Library District Board of Trustees	**
KRS 178.200(1)	Fiscal Court; road bond retirement	State & County Taxes	*	Four percent
KRS 178.210(1)	Fiscal Court; special road construction tax	State & County Taxes	As Fiscal Court Directs (178.230)	One percent (178.230)

KRS 179.720	Subdivision Road District Trustee	With State & County Taxes	Treasurer of the District	Four percent
KRS 210.480	Community Mental Health-Mental Retardation Board	With County Taxes Mental Retardation Board	Community Mental Health	**
KRS 212.725 & 212.755	Public Health Taxing District	County Taxes	County or City-County Board of Health	**
KRS 216.317	Hospital District	County Taxes	Board of Hospital District	**
KRS 220.360	Sanitation District	State & County Taxes	County Treasurer	None
KRS 262.770	Watershed Conservancy District, Board of Directors	State & County Taxes	District Treasurer	May not exceed four percent
KRS 266.150	Levee District, Board of Commissioners	County Taxes	Board Treasurer	**
KRS 268.180	Drainage, Levee and Reclamation District, Board of Commissioners	Preliminary tax payable when levied delinquent Dec. 1	Board Treasurer	**
KRS 268.420 & 268.470	Drainage, Levee and Reclamation District Board of Commissioners	Assessment collected with State & County Taxes	Treasurer of District	Four percent
KRS 269.050	Board of County Drainage Commissioners	State & County Taxes	Treasurer of District	Four percent

\* In all instances where no person has been specified to receive certain taxes, the sheriff is to deliver these taxes either to the fiscal court or to a person designated by the fiscal court.

\*\* **No compensation specified.** Preparation of tax bills is the duty of the county clerk. According to statutory law, the county clerk is required to deliver completed tax bills to the sheriff before September 15 of each year. The sheriff is then responsible for mailing notice to each taxpayer, showing the amount of tax due the taxing authority and the amount of discount available for early payment (KRS 133.220).

State, county, and district taxes, unless otherwise provided for by law, are due on September 15 following the assessment. The sheriff must allow anyone who pays these taxes by November 1 a two percent discount. All such

state, county and district taxes become delinquent on January 1 following the assessment, unless otherwise provided by law. When taxes become delinquent, the sheriff must collect all penalties for delinquency along with the taxes (KRS 134.020).

Property owners make payments of their tax bills to the sheriff. The payment of the tax is recorded on the sheriff's books and the original tax bill delivered to the taxpayer (KRS 134.170).

The sheriff may invest money subject to his control, including tax dollars, in investments permitted by KRS 66.480. Taxes may be invested until the time of distribution to the proper taxing authorities, as required by KRS 134.300, 134.320 and 160.510. When distributing taxes to schools, the sheriff must also distribute the earnings from school taxes, but he may keep 4% of the monthly school investment income, in addition to his commission for collecting taxes, for his administrative costs. In those counties where the sheriff is funded in whole or in part by fees and commissions, the sheriff may keep and use for the expenses of his office the investment earnings from other taxes until his annual settlement with the fiscal court. In those counties where the sheriff pays his fees and commissions to the county and the salaries and expenses of his office are paid by the county, the sheriff must pay investment earnings to the county treasurer along with his monthly distribution of taxes. Investment of idle funds is optional for the sheriff unless the fiscal court directs him to invest, in which case it becomes mandatory (KRS 134.140).

By the tenth day of each month the sheriff must pay to the county treasurer and report to the judge/executive all county taxes and other monies collected. The judge/executive may require more frequent reports and payments, if amounts collected exceed the sheriff's bond (KRS 134.300). Similarly, the sheriff must also report and submit to the Revenue Cabinet any state taxes collected (KRS 134.320). A settlement of the sheriff's accounts occurs in October of each year. At that time, the sheriff makes a report showing total ad valorem tax collections and disbursements, to a person appointed by the fiscal court. Upon final settlement, the sheriff must pay to the county treasurer all money that remains in his hands, and take receipts as provided in KRS 134.300. In counties of less than 70,000 population the sheriff files with his final settlement a complete statement of all funds received, including tax collection commissions and income for other services rendered. He must also provide a statement of all expenditures of his office, including salaries and reasonable expenses. He must pay to the fiscal court any fees, commissions and other income of his office, including income from investments, which exceed the sum of his maximum salary, as permitted by the Constitution, and other reasonable expenses, including compensation of deputies and assistants. The settlement for excess fees and commissions and other income is subject to correction by an audit conducted pursuant to KRS 43.070 or 64.810 (KRS 134.310). In counties of 70,000 or more population all

the sheriff's fees are paid to the State Treasury. The salaries of the sheriff, his deputies, and the sheriff's necessary office expenses are paid out of 75% of these fees. The other 25% is paid to the fiscal court. A settlement of any excess in the 75% of fees allowable for operation of the sheriff's office is made at the end of the sheriff's term of office, when the excess is paid by the State Treasurer to the fiscal court (KRS 64.350).

An annual settlement with the Revenue Cabinet for state taxes collected is due by April 30 (KRS 134.325).

When the sheriff makes his settlement with fiscal court, he may also give the county clerk a list of taxpayers who have failed to pay taxes on their motor vehicles or trailers. The clerk will then file a lien against these vehicles for the amount of the delinquent taxes (KRS 134.148).

After a sheriff has made every effort to collect delinquent taxes on real property, he must advertise the sale of the tax claims. The advertisement is required to be published pursuant to KRS Chapter 424. He must also mail the delinquent taxpayer a notice of the time and place of the sale. After three consecutive weeks have passed, the sheriff offers for sale at the courthouse door, at the time advertised, all claims which have not been paid before the date of the sale (KRS 134.440 and 134.450).<sup>28</sup>

## **Election Duties**

The sheriff performs several important election duties. He is a member of the county board of elections (KRS 117.035(2)), which appoints election officers and certifies elections, among other duties (KRS 117.045). The sheriff is disqualified from his election duties at all elections in which he is a candidate for office. When for any cause the sheriff cannot act as a member of the board, the two appointed members appoint a commissioner to serve during the period of his ineligibility (KRS 117.035(2)). The county sheriff publishes and advertises special elections to fill vacancies in the General Assembly (KRS 118.730 to 118.750) and vacancies in the United States House of Representatives (KRS 118.720). Some of the other special or local elections he advertises include elections held to consider a county road construction tax (KRS 178.240), elections for removal of a county seat (KRS 67.020), elections for changing county boundaries (KRS 67.030), and local option elections (KRS 242.040). Required newspaper advertisements are covered by the publication-of-legal notice laws (KRS Chapter 424).

## **Service to Courts**

The sheriff is an officer of the courts and renders administrative services to them. He or one of his deputies is required to attend and keep order in the fiscal court and any court of the Court of Justice, and to obey the courts' orders (KRS 70.140). He provides deputies and ordinary equipment which the Chief Circuit Judge deems necessary to provide security to the circuit court, and provides the same service to district court unless district court is held in city facilities (KRS 23A.090, 24A.140). The sheriff is required to execute and make due return of all notices and processes which come to him (KRS 70.070), and he may empower, by writing, any person to execute a process (KRS 70.050). However, if the sheriff is a party to any civil proceeding, the process must be directed to the coroner, jailer, constable, or other person the court appoints (KRS 454.140 and 454.145). It is the duty of the sheriff or one of his deputies to attend the clerk's office daily to receive any process that may be issued (KRS 70.075).

The sheriff must endorse every summons to indicate when he received it (KRS 70.076). An example of the processes directed to the sheriff is orders of attachments, which are legal orders authorizing seizure of property in payment of a debt. A sheriff having an order of attachment may enter any building or enclosure containing the property to take it, and may break in, if necessary, after having first publicly demanded the property (KRS 70.077). The sheriff may break and enter a building to execute an order of arrest (KRS 70.078). The sheriff may not return any process on the grounds that he was prevented by force from executing it (KRS 70.079). Neither may he return any process because the defendant was not found within the county, unless he has actually been to the defendant's residence (KRS 70.080). The sheriff is required to execute all processes and sentences of military courts when so directed (KRS 38.400).

A writ of possession is directed to the sheriff. The writ requires him to search for and seize specific property, either by removing the property to a place for safekeeping or by installing a keeper (KRS 425.046 and 425.091). An order of garnishment is served in accordance with the *Rules of Civil Procedure*. Orders of attachment or garnishment of earnings shall be served on the employer in triplicate by the sheriff (KRS 425.501 and 425.506).

The sheriff or his deputy convey all persons to the penitentiary or juvenile facility and execute the sentence of the court in other criminal and penal cases (KRS 70.130). The sheriff also transfers prisoners to a jail in another county whenever ordered by a judge to do so (KRS 441.040).

The sheriff must publish notices of abandoned property which have been reported to the state (KRS 393.110). If there is no personal representative,

public administrator, or guardian, the sheriff must administer the estate of a decedent (KRS 395.390).

The sheriff has responsibilities with respect to the service of process on nonresident motorists (KRS 188.030) and on nonresident owners or operators of watercraft (KRS 454.270).

### **Property Custodian**

In most counties, the sheriff serves as the custodian of property. This includes all property taken from the person of a prisoner; lost and abandoned property taken into the custody of any member of the sheriff's office, the county police, or the courts; property taken from persons supposed to be insane, intoxicated, or otherwise incapable of taking care of themselves; confiscated or forfeited property; or property obtained through or used in criminal activity. Such property, on being taken into custody, must be delivered to a property clerk or deputy clerks appointed by the sheriff. The fiscal court is empowered to prescribe regulations relating to the duties of the property clerk (KRS 67.592). KRS 67.594 and 500.090 set forth procedures for holding property in custody, disposing of property through public sale, and distributing the assets of such sales.

As an alternative to having the sheriff serve in this capacity, the county judge/executive (in counties with a county police force) may designate the chief of the county police as property custodian. The county property custodian has countywide jurisdiction, unless incorporated cities opt to appoint a city custodian (KRS 67.092 and 95.845).

The sheriff has various other duties. When commanded by the District Judge, he must prevent obstructions to mining surveys (KRS 352.500). At the order of the state fire marshal, the sheriff is to act as a deputy fire marshal for his county (KRS 227.230). The sheriff may attend the execution of condemned persons from his county (KRS 431.250), and repossess revoked alcoholic beverage licenses (KRS 243.530).

### **Compensation**

HB 810 enacted by the 1998 General Assembly made significant changes in the way certain county officials, including sheriffs are compensated.

HB 810 eliminated the maximum salary for the specified officers and established a new salary schedule, based on the varying population of the counties and the years of service of the officeholder. This amendment will result in salaries for some county officials ranging from \$49,567 to \$82,612, beginning the first Monday in January of 1999.

Some controversy has erupted over the provisions of HB 810. Several county officials have voiced opposition to the new salary schedule, citing inadequate funding for the raises in already strained county budgets.

A lawsuit was filed in the Campbell County Circuit Court, challenging the salary provisions in HB 810. In September 1998, the Campbell County Circuit Court ruled that HB 810 is "...declared unconstitutional to the extent that it declares the offices in issue (county clerks, sheriffs, county judge/executives, and jailers operating a full service jail) to have duties or jurisdiction co-extensive with that of the Commonwealth without specifying said duties or jurisdiction..." and "...that the Defendant and the parties aligned with the Defendant, Commonwealth of Kentucky, are permanently enjoined from implementing and enforcing these provisions of HB 810 as being in excess of the limits set forth in the Constitution of Kentucky Section 246" (Campbell Circuit Case No. 98-CI-00604 Fisher and Chandler vs. Commonwealth of Kentucky).

The Department for Local Government, among others, has requested that this case be heard by the State Supreme Court and that decision is still pending.

### **Counties of More Than 70,000 Population**

Section 106 of the Kentucky Constitution and KRS 64.350 require sheriffs in counties with a population of 70,000 or more to be paid a salary out of the State Treasury. Fees collected by sheriffs in these counties are sent to the state Finance and Administration Cabinet. Up to seventy-five percent of the fees sent to the Cabinet may be used for expenses of the sheriff's office, such as the sheriff's salary, deputies' salaries, and office expenses. The remaining twenty-five percent is returned to the county fiscal court and becomes part of the county general fund. Any of the seventy-five percent not spent for office expenses reverts to the county's fiscal court or the urban-county government (KRS 64.350 and 64.345).

### **Counties of Less Than 70,000 Population**

In counties of less than 70,000 population, office expenses and deputies' salaries are paid directly from fees and commissions collected. Money remaining after payment of such expenses makes up the sheriff's compensation. In many smaller counties this amount may fall short of the maximum allowable salary.<sup>29</sup> Any revenue remaining after the payment of expenses and the maximum salary of the sheriff goes to the county treasury as excess fees (KRS 134.310)).

### **Fees and Commissions**

Sources of revenue for the sheriff's office are as many and varied as the duties of the office.

A portion of the sheriff's fees is derived from his law enforcement duties. KRS 64.060(1) sets out fees for peace officers generally:

Apprehending a person charged with a felony or a fugitive from justice charged with a felony	\$10.00
Executing a process of contempt in a criminal case when the court excuses the contempt	\$ 1.60
Executing a summons upon a witness on behalf of the Commonwealth in a felony case	\$ 3.00
Summoning and attending a jury in a case of felony	\$ 2.50

For transporting prisoners to the state penitentiary and for moving persons charged with felonies the sheriff merely receives actual expenses plus a mileage allowance (KRS 64.070). A \$3,600 allowance, payable out of the state treasury in \$300 monthly allotments, is paid to the sheriff for patrolling public roads and inspecting roadhouses and dance halls. By statute this sum is to be considered an expense allowance, however, and not part of the compensation of the office (KRS 70.170).

Compensation for court-related duties is provided for by several statutes. KRS 64.090 pertains to fees for a number of such functions. Compensation rates for attending court are determined by KRS 64.092. In addition, the sheriff receives five dollars from each court cost for criminal cases in District and circuit court, for use in providing security services to the courts (KRS 23A.205, 24A.175).

Sheriffs also receive fees for the service of process for the courts. In civil cases, in district court (KRS 24A.170), and circuit court (KRS 23A.200), the fee for service of process is \$20.00. In district court cases the sheriff receives a fee of \$10 for serving process in misdemeanor cases (KRS 64.090). This fee can only be recovered, however, if the arrested party is convicted and pays the court costs (KRS 64.340).

Sheriffs receive the greater part of their compensation through commissions for tax collection. Because taxes are collected at the end of the calendar year and expenses are incurred from the beginning, the sheriff may find that he has insufficient funds to meet his expenses before taxes are

collected. In this case, he may apply for an advance from the Secretary of the Finance and Administration Cabinet. The sheriff may not borrow during any month more than one-twelfth of the total fees collected during the preceding year, and in no case more than \$30,000 per month. The sheriff must repay an advance at the end of the calendar year (KRS 64.140).

As compensation for collecting state taxes, sheriffs in counties where the state taxes charged to them for the year are less than \$75,000 receive ten percent of the first \$10,000 of state taxes collected, and four and one-quarter percent of the remainder of state taxes collected and paid into the State Treasury. In all other counties, sheriffs receive ten percent of the first \$5,000 and four and one-quarter percent of the remainder of the funds (KRS 134.290(1)).

The sheriff is compensated in the same manner for collecting county and special district taxes. In counties where county and special district taxes, excluding school taxes, charged to him for the year are less than \$150,000, the sheriff receives ten percent of the first \$10,000 and four and one-quarter percent of the remaining taxes collected and paid to the county. In all other counties, the sheriff receives ten percent of the first \$5,000 and four and one-quarter percent of the remaining funds (KRS 134.290(2)).

The sheriff's commission for 1996 and subsequent years is allowed to be equal to the commission received in 1995 or the amount that they would have otherwise received, whichever is greater (KRS 134.290).

By law (KRS 160.500) the sheriff is not supposed to realize a profit from his work in the collection of school taxes. Instead, his commission is only to meet his expenses, and in no instance is it to exceed 4% of the amount of taxes collected. The sheriff's commission may not be less than one and one-half percent of the taxes collected.

When any sheriff in a county of less than 70,000 dies or is incapacitated during his term in office, the fiscal court shall pay to the personal representative of the deceased or incapacitated sheriff sufficient sums to reimburse his estate for the salaries of his deputies and assistants and other necessary expenses of his office that were paid by the sheriff during the year of his death or incapacitation. The fiscal court shall also pay a sum of money for each month that the sheriff or his personal representative performed the duties of sheriff during the year of his death or incapacity. This payment shall be equal to one-twelfth (1/12) of the total salary received by the county's sheriff in the year prior to the year of the death or incapacity (KRS 64.121).

### **Consolidation of the Offices of Sheriff and Jailer**

Section 105 of the Constitution permits the General Assembly to consolidate the offices of jailer and sheriff in any county. In the event of consolidation, the office of sheriff is retained and the sheriff must perform the duties of jailer. KRS 71.110 requires the consolidation of the offices of sheriff and jailer in counties containing a city of the first class and in urban-counties.

The fiscal court in counties containing a city of the first class may create a metropolitan correctional services department. Upon such creation, all the duties and authority of jailers and sheriffs pertaining to the county jail or corrections are transferred to the correctional services department (KRS 67B.030). The sole remaining duty of the sheriff pertaining to jails is an annual inspection and report on county correctional facilities (KRS 67B.070). KRS 67B.050 lists the responsibilities and powers of a metropolitan correctional services department.

The legislative body of any urban-county government may create a correctional services division. The division shall be responsible for all duties, responsibilities and liabilities of the sheriff and jailer. The sheriff is responsible for an annual inspection and written report, to be given to the legislative body of the urban-county government and the commissioner of the Department of Corrections (KRS 67A.028).

### **Vacancies**

Vacancies in the offices of sheriff, coroner, constable, and jailer are filled by an appointment of the county judge/executive. The length of the appointment is governed by the Kentucky Constitution, Section 152 (KRS 63.220).

### **Deputies and Employees**

The sheriff may appoint one or more deputies to serve at his pleasure (KRS 70.030). In a county containing a city of the first class with a deputy sheriff merit board, the term of office of a deputy shall continue from sheriff to sheriff unless a deputy is removed according to the provisions of KRS 70.260 to 70.273. SB 13, enacted during the 1998 session of the General Assembly, amended KRS Chapter 70 to require merit boards to employ a chief examiner, who is responsible for the design, administration, and evaluation of written tests required for promotion and to require the examiner to select a panel to administer oral examinations. A candidate for promotion shall be selected by the sheriff from a list of no more than three of the candidates who obtained the highest combined scores on the written and oral examination, including any seniority points, and who demonstrates the physical fitness to serve in their new capacity. The deputies may perform any duties which the sheriff may perform (KRS 61.035). He may require his deputies to give bond for the faithful discharge of their duties relating to tax collection, and he is liable on his bond

for any misconduct or fault of his deputies in the collection of revenues (KRS 134.200). The sheriff is liable for the acts or omissions of his deputies, but the liability is that of the office of sheriff, and not that of the individual holder of the office (KRS 70.040). Liability is limited to a deputy's official act, or an act done by virtue of his office.<sup>30</sup>

In counties containing a city of the first class (Jefferson) and in counties having an urban-county form of government (Fayette), the fiscal court (in counties with first class cities) and the legislative body in a county with an urban-county government) approves the number and compensation of deputy sheriffs. In all other counties having a population of 70,000 or more, the fiscal court, upon motion of the sheriff, fixes the number and compensation of deputy sheriffs (KRS 64.345(5)).

In counties of less than 70,000 population, the fees and commissions collected by the sheriff are used to pay deputies' salaries. Each year the fiscal court is required to set the maximum amount, including fringe benefits, which the sheriff may expend for deputies and assistants. Subject to this maximum, the determination of the number of deputies and assistants and their individual compensation is left to the sheriff (KRS 64.530(4)).

The sheriff may appoint, have sworn in and entered on the county clerk order book one special deputy for each 2,500 residents or part thereof in his county, to assist him with general law enforcement and maintenance of public order (KRS 70.045). The sheriff is permitted to appoint additional special deputies to assist him in preparation for or during emergency situations. These special deputies cannot receive monetary compensation (KRS 70.045). A sheriff may also appoint nonsworn clerical, technical, professional and support personnel, who serve at the pleasure of the sheriff (KRS 70.030). HB 455, enacted during the 1998 session, amended KRS 70.030 to allow a sheriff's office, upon the written request of the sheriff, to participate in the Kentucky Law Enforcement Foundation Program fund (KLEFP), authorized by KRS 15.410 to 15.510, without the county establishing a deputy sheriff merit board.

If the employees of the sheriff do not receive health insurance coverage from the county, the sheriff may use excess fees earned by the office to purchase health insurance for them. The type and extent of the coverage is determined by the sheriff, who may be included under the plan. If the excess fees are not sufficient, in the sheriff's judgment, to provide a reasonable amount of insurance, employee contributions may be used to supplement the premiums (KRS 61.405). The Attorney General's office has expressed its opinion, however, that the statute allowing the sheriff to purchase employee health insurance from excess fees is unconstitutional (OAG 92-108).

Any county may enact an ordinance creating a deputy sheriff merit board consisting of five members--two appointed by the county judge/executive (or by the chief executive officer if the county has an urban-county form of government), two appointed by the county sheriff, and one elected by the deputy sheriffs of the county. In a county that adopts such a board, no deputy may receive or solicit contributions or gifts for a candidate or a political party. No deputy may be disciplined or threatened for failing to make contributions for political purposes.

Except during the first year of employment, no deputy sheriff in a county with a merit board may be suspended or removed unless the sheriff furnishes a written statement of the reason. The merit board may review dismissals and reductions in pay at the request of deputies. It may also review the sheriff's investigations of citizens' complaints against deputies. The board may remove or discipline a deputy, but only after a hearing at which the deputy has the right to confront witnesses. In a county containing a city of the first class with a deputy sheriff merit board, a deputy's term of office will continue from sheriff to sheriff (KRS 70.030).

All deputy sheriffs employed by a county that adopts a merit board must complete, within one year following their hiring or the creation of the board, at least 400 hours of training approved by the Kentucky Law Enforcement Council. Training approved by the Kentucky Law Enforcement Council received prior to the creation of the merit board may be used to satisfy all or part of this requirement (KRS 70.263). A deputy sheriff who provides court security satisfies the training requirement by taking a course approved by the Administrative Office of the Courts.

No sheriff whose county has adopted a merit board may appoint a member of his or her immediate family to serve as a deputy. Members of the sheriff's immediate family are also prohibited from serving on a deputy sheriff merit board (KRS 70.030, 70.260-70.273).

## **Branch Offices**

Sheriffs in counties with a land area of more than 750 square miles may maintain a branch office in any incorporated or unincorporated city of the county other than the county seat, if the fiscal court authorizes this by resolution. The sheriff may appoint deputies for the branch office. The branch offices may be used for the same purposes as the one at the county seat, but all records must be kept at the county seat. This provision also applies to county clerks and circuit clerks (KRS 67.035).

## **Penalties**

Penalties are provided by statute for neglect of duty or other illegal acts performed by the sheriff. Generally, he may be indicted for misfeasance or malfeasance in office, or for the willful neglect of any of his duties. If convicted, he may be fined from \$100 to \$1,000 and must vacate his office. Kentucky law is very broad in this respect, and is designed to cover all illegal or neglectful acts for which penalties are not provided (KRS 61.170).

Several penalties are provided for specific wrongful acts. Should the sheriff fail to renew the bond required of him in KRS 70.020 when ordered to do so by the county judge/executive, he may be suspended by the court until he complies. A sheriff who fails to keep order in the circuit court or fiscal court is guilty of a violation. For knowingly making a false or illegal return on any process, he is guilty of a Class A misdemeanor and liable for triple the amount of damage caused (KRS 70.990).

Any sheriff who refuses to execute process and sentence directed by a military court shall be fined not more than \$50 for each offense (KRS 38.990). Any sheriff who accepts compensation other than from public funds from any person while acting in the performance of his duties as sheriff or for participating in a labor dispute in off-duty hours may be removed from office, upon conviction, and be fined not less than \$500 nor more than \$5,000, or confined in jail for not more than one year, or both (KRS 61.310).

If the sheriff is given a writ of execution, and fails without a reasonable excuse to return it to the office from which it was issued within thirty days, he is liable to the plaintiff for the amount of the execution plus thirty percent damages (KRS 426.350). If he is found to be interested in or to be speculating in any public works or improvements in which the county or state is interested, he may be fined not less than \$500 nor more than \$2,000 (KRS 61.230).

If a sheriff should fail to enforce KRS 242.020 to KRS 242.990 (which deal with alcoholic beverages in dry territories) after hearing of information or knowing information concerning a violation, he may be fined from \$50 to \$200, and must vacate his office (KRS 61.170(2)).

Any sheriff who willfully violates any of the provisions of the regulation of election laws, KRS Chapter 117, shall be guilty of a Class D felony (KRS 117.995(2)).

Any sheriff who refuses to permit an inspector designated under KRS 117.275 and 117.315 to exercise free and full action in witnessing the count of the ballots, or interferes with the right of such an inspector to have a /free and full opportunity to witness the count of ballots, shall be guilty of a Class A misdemeanor (KRS 119.225).

Any sheriff who willfully neglects to perform a duty imposed upon him under the election laws, for which no other penalty is provided, or who willfully performed such duty in a way that hinders the objects of the election laws, shall be guilty of a Class B misdemeanor (KRS 119.265).

Should the sheriff fail to pay the tax money collected by him to the county as provided by law, he is to be penalized for each thirty-day period, or part of a period, an additional one percent plus the legal interest. The county judge/executive, however, may grant the sheriff an extra fifteen days in which to make his report on funds collected. This extension suspends the penalties and interests for the duration of the extension (KRS 134.300). Furthermore, the county treasurer may institute action against the sheriff if the sheriff becomes delinquent in turning in the county taxes.

For failure to record delinquent taxes he has collected, the sheriff is liable on his bond for the amount of the taxes, plus all costs, and a penalty of thirty percent of the taxes (KRS 134.340).

Any sheriff who fails to make his annual settlement of state taxes collected with the Revenue Cabinet, as required by law, is subject to indictment in the county of his residence and may be fined not less than \$500 nor more than \$5,000 (KRS 134.325).

Any sheriff who willfully conceals or destroys any record with the intent to violate the provisions of KRS Chapter 61 relating to public records shall be guilty of a Class A misdemeanor for each separate violation. Any official of a public agency who fails to produce any record after entry of final judgment directing that such records be produced shall be guilty of contempt (KRS 61.991).



## **VIII. JAILER**

### **Background**

The Kentucky Constitutions of 1792 and 1799 did not refer to the office of jailer. Article VI, Section 1, of the 1850 Constitution required each county to elect a jailer, and two provisions of the present Constitution refer specifically to the office. Section 99 provides for the election of a jailer in each county. Section 105 permits the legislature to consolidate the offices of sheriff and jailer in any or all counties, provided the office of sheriff is retained and the jailer's duties are assumed by the sheriff. This provision results from a compromise between two factions of the 1890 constitutional convention, one wanting to abolish the office of jailer, and the other urging retention of the offices of sheriff and jailer.<sup>31</sup>

The Kentucky constitutional provisions relating to the office of jailer are unique. No other state constitution refers to jailers.<sup>32</sup> In most states the sheriff or one of his deputies would perform the duties assigned to a Kentucky jailer.<sup>33</sup>

### **Qualifications**

A jailer's qualifications are prescribed by constitutional provision. He must give bond as required by law, must be at least twenty-four years of age, must have two years' residence in the state and a year in the county in which he is a candidate (Ky. *Const.*, Secs. 100 and 103). Before assuming office, he takes the oath prescribed by the Constitution (Sec. 228) and executes bond before the judge/executive of the county in which he is elected. Sureties for this bond are approved by the fiscal court for a minimum of \$10,000, and the bond is filed in the county clerk's office. No coroner, sheriff, sheriff's deputy, county judge/executive, circuit judge, county or circuit clerk, or attorney may be a surety for the bond (KRS 71.010).

A vacancy in the office of jailer is filled by an appointment of the county judge/executive. The length of appointment is governed by the Kentucky Constitution, Section 152, and KRS 63.220.

### **County Jail System**

The fiscal court of each county is required to provide for the incarceration of prisoners arrested in the county or sentenced or held by order of the courts in the county. This responsibility may be met in several ways. The fiscal court may provide and maintain a jail or contract with another county or a city for the incarceration and care of its prisoners. If the fiscal court contracts with another county or city, it must provide for the

transportation of prisoners, including provision of vehicles, drivers and guards. A county may provide facilities for holding prisoners for limited periods of time, and contract with another county or a city for longer periods of incarceration. A county may also enter into an interlocal agreement, pursuant to KRS 65.210 to 65.300 to provide or to use jail facilities (KRS 441.025). Thus a county has the flexibility to maintain its own jail, to contract with another county or a city for the use of its facilities, or to participate in a regional jail system, should such a system be established.

Providing for the incarceration of prisoners is an expensive undertaking for counties. County jails will become more expensive as Kentucky seeks to upgrade them, pursuant to its own standards and regulations and as a part of a nationwide response to federal court mandates for better jail facilities and correctional programs. State government does provide considerable assistance to counties to help them fund their jails. Under KRS 441.206, monies appropriated for county jails are required at least to equal those for fiscal year 1983-84 or, in the case of certain counties, the amount that should have been paid in 1983-84. Any additional amounts are to be allocated on the basis of the following formula:

- a) Sixty percent of the allocation shall be based on the amount of the 1983-84 funding formula each county received, or should have received;
- b) Ten percent of the allocation is to be based on each county's comparative ranking of median household income in inverse order, as determined by the 1980 federal census of population; and
- c) Thirty percent of the allocation is based on the proportion of each county's age at risk population (ages 18-34) to the state total, as determined by the 1980 federal census of population.

In no event shall any county receive less than \$24,000 from the state treasury for the care and maintenance of prisoners charged with or convicted of violations of state law (KRS 441.206(4)). The state will also provide training for jailers and their deputies through the Department of Corrections; a jailer's expense allowance of \$300 a month helps defray the cost of the jailer's participation in the training program (KRS 441.115). Finally, the state has imposed a \$5 court cost increment on criminal cases in district court to be paid to the county treasurer for jail operation costs and the transportation of prisoners, and an additional \$10 in court costs to be paid to the state treasury for the Kentucky Local Correctional Facilities Construction Authority (KRS 24A.175(5) & (6)).

The county may receive revenue from the federal government, cities or other counties for holding prisoners for those units of government (KRS 441.025, 441.035). In addition, if a Class D felon is sentenced to an

indeterminate term of five years or less, he will serve that term in a county jail. Counties which choose not to house Class D felons will be granted a waiver by the Commissioner of the Department of Corrections. Counties which do house Class D felons will receive a per diem amount determined according to KRS 431.215(2).

Prisoners in work release status may be charged up to twenty-five percent of gross daily wages, not to exceed forty dollars per day, nor be less than twelve dollars per day, for the costs of their imprisonment (KRS 439.179). The district court may assess a reimbursement fee, subject to the same maximums applicable to work release prisoners, payable to the county, urban-county, or charter county treasurer, on convicted misdemeanor offenders to help pay for their room and board in the jail (KRS 534.045).

### **Medical Expenses**

KRS 441.045 sets out the applicable law on health care in county jails. The county is required to pay for the cost of providing necessary medical, dental and psychological care for indigent prisoners in the county jail from the county jail budget. The cost of providing necessary medical, dental, or psychological care for prisoners held pursuant to a contractual agreement with another county or a city is paid as provided by contract between the counties or the city and county. When the cost of such care for a prisoner exceeds \$2,000, as calculated by using the maximum allowable costs to similar persons or facilities for the same or similar services under the Kentucky medical assistance program, the state is required to reimburse the county for that portion of the costs that exceeds \$2,000. The state reimbursement is subject to the following terms and conditions:

- (a) The care is necessary, meaning the care is of a nonelective nature that cannot be postponed until after the period of confinement without hazard to the life or health of the prisoner. The physician attending the prisoner shall certify, under oath, that the care was necessary;
- (b) The prisoner is indigent, as defined pursuant to KRS 31.120, or is uninsured; and
- (c) No state reimbursement to the county for care provided by physicians, hospitals, laboratories, or other health care providers shall exceed the maximum payments allowed to similar persons or facilities for the same or similar services under the Kentucky medical assistance program, except as otherwise provided by law.

### **Jail Standards and Inspections**

The state Department of Corrections promulgated regulations establishing minimum standards for jails of counties which elect to house state prisoners in their jails. These standards include provisions for health and safety conditions, fire safety, jail operations, recordkeeping and administration, curriculum of basic and continuing annual training for jailers and jail personnel, custody, care and treatment of prisoners, medical care and jail equipment, renovation and construction. The Department of Corrections provides technical assistance to local governments to help them comply with the standards (KRS 441.055). The Department must also adopt the standards of the Jail Standards Commission and promulgate regulations for those counties that elect not to hold state prisoners. However, these standards must be limited to health and life safety conditions. The fiscal court or urban-county council is also required to prescribe rules for the government, security, safety, and cleanliness of county jails and the comfort and treatment of prisoners, so long as such rules are consistent with state laws and regulations (KRS 441.045).

The Department of Corrections employs jail inspectors, who inspect each jail at least twice a year. The jailer must allow the department inspectors access to the jail or any part of the jail at any reasonable time, as well as access to all books, records and data pertaining to the jail which the department deems necessary to fulfill its jail regulation responsibilities (KRS 441.064). The department submits an annual report of its inspections to the jailer and the fiscal court. The county judge/executive may also inspect the jail at any reasonable time (KRS 441.045).

When the Department of Corrections finds violations of the state laws or regulations pertaining to jails housing state prisoners, the commissioner of the department or his designee must order that the violations be corrected. The commissioner may order that a jail or a part of a jail be closed, he may order that the jail not house certain types of prisoners, he may order that a county contract with another county for the incarceration of prisoners, or he may order that the jail cease housing state prisoners (KRS 441.075). A report of violations of the health and life safety regulations (KRS 441.055) in any jail by the Department to the commissioner will result in an order for immediate correction. The commissioner may order the jail closed until the violations are corrected.

### **Training for Jailers and Jail Personnel**

The Department of Corrections conducts a jail staff training program to instruct jailers and jail personnel in implementing state jail standards. Jailers will serve with professionals in jail administration on a curriculum advisory committee to advise the department on training needs. The state will provide each jailer with a \$300 monthly expense allowance to help pay for the cost of

training the jailer. In order to qualify for this allowance, the jailer must complete a basic training course within one year of taking office, and he must complete annual continuing training (KRS 441.115). However, in order to receive the expense allowance during their first year in office, jailers who have been elected to the office for the first time must, before taking office, successfully complete the basic jailer training program. Time extensions are permitted for illness (KRS 441.115).

## **Powers and Duties**

### **Keeping the Jail**

Each county jailer has custody, rule and charge of the county jail and all persons in the jail. If there is a residence in the jail, either he or one of his deputies may live in it (KRS 71.020). The jail must be kept comfortable, warm, clean, and free from vile odors. Prisoners confined in the jail must have sufficient bed clothing (paid for out of the county levy) (KRS 71.030).

At the time of booking, the jailer receives and keeps in jail all persons lawfully committed to his custody until they are discharged, unless prisoners are in need of emergency medical attention, in which case the arresting officer is required to obtain medical attention for them prior to their delivery to the jail. During their confinement, he must treat them humanely and furnish them proper food and lodging. If a prisoner dies during confinement, the jailer delivers his body to friends, if requested, or has it decently buried at the expense of the county (KRS 71.040).

### **Transportation of Prisoners**

KRS Chapter 441 mandates the fiscal court of each county to provide for the transportation of prisoners, as necessary, from the jail budget. All vehicles used for the purpose of transporting prisoners must be equipped with security screens and two-way radios. The fiscal court is not required to provide for the transportation of prisoners on work release or to prisoners being held out of the county at the time of their release.

KRS 441.510 establishes the procedures for the transportation of prisoners. Its provisions are as follows:

- (1) If an accused is confined in a detention facility, he shall be transported as necessary in accordance with the following provisions, unless otherwise ordered by the court:
  - (a) If he is lodged in an urban-county facility in the county where the trial is to be held, the jailer must carry out this duty.

- (b) In all other cases the sheriff or jailer of the county where the prisoner is incarcerated must carry out this duty.
- (2) If an accused is sentenced to confinement, the sheriff must deliver him to the proper detention facility, with the exception that:
- In the case of a sentence to an urban-county detention facility, the jailer must carry out this duty.
- (3) In each county the fiscal court, or the legislative body of a charter county government, as appropriate, must adopt a transportation plan which establishes the party responsible for transporting prisoners as necessary:
- (a) The fiscal court, or the legislative body of a charter county government, as appropriate, may require the jailer to serve as transportation officer, to be responsible for transporting prisoners as necessary; or
  - (b) The fiscal court, or the legislative body of a charter county government, as appropriate, may require the sheriff to serve as transportation officer, to be responsible for transporting prisoners as necessary; or
  - (c) The fiscal court, or the legislative body of a charter county government, as appropriate, may adopt any reasonable transportation plan, so long as the party responsible for transporting prisoners is specified.
- (4) In any county where there is no jail and the jailer does not transport prisoners, the jailer will serve as a bailiff to the circuit and district courts of the county, as provided for in KRS 71.050. The fiscal court may also employ the jailer as superintendent of county buildings and grounds, as provided for in KRS 67.130, but the jailer must agree, and compensation for these services shall be in addition to the regular salary paid the jailer.

### **Jail Budget**

The county jailer has statutory responsibilities in the preparation of the jail budget. Working with the judge/executive and treasurer, he must develop and provide to the fiscal court a proposed line item budget and an estimate of revenues from all sources. This must be done by April 1 of each year (KRS 441.215(1)). The fiscal court must consult with the jailer before making any amendments to the jail budget, and only the court has the authority to transfer funds between line items (KRS 441.215(3)). If the jailer feels that a proposed or amended budget is inadequate, he must notify the fiscal court and, if the jail

holds state prisoners, the Department of Corrections, in writing (KRS 441.215(4)).

KRS 441.235 mandates the county treasurer to keep books of accounts of all receipts and disbursements from the jail budget and to make such reports as are required by the state local finance officer. The county treasurer, in cooperation with the jailer, is required to make a monthly report to the fiscal court on:

- (a) All purchases from the jail account for the preceding month for final fiscal court approval; and
- (b) The current condition of the jail account, including all jail revenues received, expenditures for the month, expenditures for the year-to-date and unexpended balances by line item.

## **Reports**

Under KRS 441.105(2), the jailer must report monthly to the Department of Corrections the following information on each prisoner:

1. Whether the prisoner is charged with a felony or a misdemeanor;
2. The statute or ordinance the prisoner is charged with violating;
3. The unit of government whose law or ordinance the prisoner is charged with violating
4. Whether the prisoner is awaiting trial or has been convicted;
5. The age and sex of the prisoner; and
6. The county responsible for incarcerating the prisoner.

The jailer must also report quarterly to the fiscal court on the physical condition of the jail, the number of jail personnel, and personnel needs (KRS 441.105(1)).

## **Court Services**

The jailer is an officer of the circuit and district courts of his county. In any county where there is no jail and the jailer does not transport prisoners, the jailer is required to serve as a bailiff to the circuit and district courts (KRS 71.050). Summonses or orders for provisional remedies in a civil action or proceeding may be directed to the jailer at the request of the party in whose

behalf they are issued, provided the jailer is not an interested party (KRS 454.140).

### **Responsibility for County Buildings**

The fiscal court of each county is responsible for the maintenance and operation of all county buildings, grounds and other properties. The county judge/executive has the duty of carrying out or executing fiscal court policy in relation to county buildings and property. With agreement by the jailer, the fiscal court may hire the jailer as the superintendent of any buildings or properties at the county seat (KRS 67.130).

**Jail and County Property.** The jailer must take charge of furniture, bedding, and property belonging to the jail and any other county property for which he may act as superintendent. If any property is lost or destroyed by reason of the jailer's negligence, he may be liable on his official bond (KRS 67.170).

**Jailer's Residence.** If the county owns the jailer's residence, the fiscal court must make an annual appropriation sufficient to maintain it in clean, comfortable, and presentable condition. Funds appropriated for the jailer's residence are to be expended by the jailer (KRS 67.130).

### **Jail Canteen**

The jailer may operate a canteen for the benefit of the prisoners. He may assign jail employees or prisoners to work in the canteen. The jailer must maintain accounts on the receipts and disbursements of the canteen, and he must report to the county treasurer annually on the canteen account. Profits from the canteen may be used only for the benefit or recreation of the prisoners (KRS 441.135).

### **Preparing Bail Bond**

With the approval of the fiscal court, the jailer may prepare a bail bond pursuant to KRS 30A.060(3). He must collect a fee of five dollars from the defendant and provide the defendant a receipt. He must pay bonding fees to the county treasurer by the tenth day of each month. The treasurer must deposit the bonding fees in the jail fund (KRS 431.5305).

### **Work and Educational Release for Misdemeanants**

Persons sentenced to jail for a misdemeanor, non-payment of a fine or forfeiture, or contempt of court may be granted by the court the privilege of leaving the jail during reasonable hours for the purpose of seeking

employment, working, conducting business, attending an educational institution, obtaining medical treatment, or in the case of a woman, attending to the needs of her family. The jailer shall advise the court in establishing criteria to determine a prisoner's eligibility for work release. The jailer is required to notify the Cabinet for Human Resources of unemployed prisoners, and that Cabinet is required to seek employment for them. Every prisoner gainfully employed is liable for the cost of his board in the jail for an amount up to twenty-five percent of his gross daily wages, not to exceed forty dollars per day. The jailer may refuse to let the prisoner leave the jail for any breach of discipline or other violation of jail regulations, for a period not to exceed five days (KRS 439.179).

### **Community-Service Related Work**

When a defendant has been convicted of a crime and sentenced to the county jail, he may be worked at some community-service-related project in the county where he is imprisoned. A community-service-related project means a task for a county, city or a special district, or some agency of one of these units of government. The jailer may advise the fiscal court in the adoption of a written policy on community service work. After the adoption of this written policy, the jailer may permit prisoners to work on community service projects. The county judge/executive must give his written approval to each prisoner's participation in the work program. The county judge/executive selects the place where the prisoners shall work. The jailer and the county judge/executive must consider the physical and mental ability of each prisoner, and the security of the jail and the public, and not assign any prisoner to unduly hazardous work or work that would endanger others. Any prisoner with a valid medical excuse may decline to work at community-service-related projects without penalty or punishment (KRS 441.125).

### **Deputies**

Deputies have the same powers and are subject to the same penalties as the jailer (KRS 71.060). The jailer is liable on his official bond for the conduct of his deputies. KRS 71.060 also gives the jailer the responsibility for the appointment and removal of jail personnel. The jailer may dismiss his deputies at any time with cause. The number of jail personnel is set by the fiscal court in the jail budget. The fiscal court is mandated to establish education and training requirements for deputies as permitted by administrative regulations adopted by the Department of Corrections pursuant to KRS 441.055.

If in any county there is no jail, the jailer is not entitled to nor is he permitted to appoint any jail personnel (KRS 71.065).

Deputy jailers are compensated by a salary set by the fiscal court. Deputies' salaries must be initially set by the first Monday in May of the year in which county officials are elected, but the fiscal court may, by the first Monday in May of successive years, review and adjust such salaries on the request of the jailer (KRS 64.530(4)).

### **Federal, State and City Use of the County Jail**

The federal government may use the jail of any county, and any city within the county may use the county jail. A jailer must receive and confine in jail, until lawfully discharged, persons committed under the laws of the United States or the ordinances of any city within the county (KRS 441.035). The jailer must also receive persons ordered into confinement prior to trial and persons committed to confinement by the process or mandate of a military court (KRS 35.285 and 35.055).

A prisoner being moved from one state to another may be lodged in the county jail. The jailer must receive him and safely keep him until the person having custody of him is ready to proceed. Written evidence showing that the prisoner's extradition has been ordered must be presented by the officer having custody of him. Expenses of keeping the prisoner are charged to the officer responsible (KRS 440.260).

### **Transfer of Prisoners**

A circuit judge may, for security reasons, transfer prisoners from one county jail to another, or to the penitentiary most convenient to the county (KRS 441.520 and 441.540). When the circuit judge is not in the county, the district judge may order such transfers.

As soon as the sheriff receives an order to transfer prisoners, he makes the transfer designated by the order. He delivers with the prisoners a copy of the transfer order, and takes from the receiving jailer a receipt for the prisoners (KRS 441.530).

An order directing transfer is conclusive evidence that the transfer is proper and to the correct jail. Such an order justifies the jailer's holding of any prisoner and protects the jailer in any action against him for false imprisonment (KRS 441.530).

### **Duties of a Jailer on Going Out of Office**

When any jailer goes out of office, he must deliver to his successor the custody of the jail and all confined prisoners. He must give the incoming jailer all official papers by which prisoners were committed to his custody or released from his custody (KRS 71.100).

## **Compensation**

HB 810 enacted by the 1998 General Assembly made significant changes in the way certain county officials, including jailers who operate a full-service jail are compensated.

HB 810 eliminated the maximum salary for the specified officers and established a new salary schedule, based on the varying population of the counties and the years of service of the officeholder. This amendment will result in salaries for some county officials ranging from \$49,567 to \$82,612, beginning the first Monday in January of 1999.

Some controversy has erupted over the provisions of HB 810. Several county officials have voiced opposition to the new salary schedule, citing inadequate funding for the raises in already strained county budgets.

A lawsuit was filed in the Campbell County Circuit Court, challenging the salary provisions in HB 810. In September 1998, the Campbell County Circuit Court ruled that HB 810 is "...declared unconstitutional to the extent that it declares the offices in issue (county clerks, sheriffs, county judge/executives, and jailers operating a full-service jail) to have duties or jurisdiction co-extensive with that of the Commonwealth without specifying said duties or jurisdiction..." and "...that the Defendant and the parties aligned with the Defendant, Commonwealth of Kentucky, are permanently enjoined from implementing and enforcing these provisions of HB 810 as being in excess of the limits set forth in the Constitution of Kentucky Section 246" (Campbell Circuit Case No. 98-CI-00604 Fisher and Chandler vs. Commonwealth of Kentucky).

The Department for Local Government, among others, has requested that this case be heard by the State Supreme Court and that decision is still pending.

In addition, SB 396 amended KRS 441.245 to specify that no jailer holding office on or after January 6, 1999 shall receive an annual salary of less than \$20,000. The salaries of jailers who are not included in the salary schedule in KRS Chapter 64 may be set at a higher level, if the salary does not exceed the constitutional salary limit applicable to jailers. However, these jailers' salaries shall at least equal the prior year's level and may be adjusted by the fiscal court for the change in the prior year's Consumer Price Index.

## **Consolidation of the Offices of Sheriff and Jailer**

Kentucky's Constitution grants the General Assembly the authority to consolidate the offices of jailer and sheriff in any county, with the sheriff

performing the duties of the jailer (Ky. *Const.*, Sec. 105). The General Assembly has consolidated the offices of sheriff and jailer in counties containing a city of the first class and in urban-county governments (KRS 71.110).

### **The Jefferson County Jail**

KRS Chapter 67B grants fiscal courts in counties containing a city of the first class in which the offices of jailer and sheriff have been consolidated the authority to create a metropolitan correctional services department. Upon the creation of such a department, all the duties and authority of jailers and sheriffs in relation to the county jail or corrections are transferred to the department (KRS 67B.030). The sole remaining duty of the sheriff pertaining to jails is an annual inspection and report on county correctional facilities (KRS 67B.070). KRS 67B.050 lists the responsibilities and powers of a metropolitan correctional services department.

### **Lexington-Fayette Urban-County Jail**

KRS Chapter 67A grants the legislative body of any urban-county government in which the offices of sheriff and jailer have been consolidated the power to create a correctional services division. The division is responsible for all duties, responsibilities and liabilities of the sheriff and jailer with reference to the operation and maintenance of the county jail. The sheriff is responsible for an annual inspection and written report, to be given to the legislative body of the urban-county government and the commissioner of the Department of Corrections (KRS 67A.028).

### **Penalties and Restrictions**

A jailer may be indicted in the county in which he resides for misfeasance or malfeasance in office and for willful neglect in the discharge of his official duties. If convicted, he may be fined not less than \$100 nor more than \$1,000. Upon a judgment of conviction, he must vacate his office (KRS 61.170).

If a jailer denies the United States or a city within his county the use of the jail, or charges these jurisdictions any fees not authorized by law, such act will be considered misfeasance in office, for which he may be fined by the district court or indicted and fined at the discretion of a jury (KRS 441.990(1)).

The office of jailer is incompatible with other county offices (KRS 61.080). No jailer may be a state or city officer or employee at the same time he is serving as jailer (KRS 61.080). A jailer must vacate his office when he accepts an incompatible position (KRS 61.090).

For failing to take custody, rule, and charge of his jail and all persons in it, a jailer is subject to conviction for misfeasance in office. The district court may fine the jailer for misfeasance or he may be indicted by the grand jury (KRS 71.990).

A jailer is liable to the county upon his official bond for the value of any county property in his charge that is lost or destroyed by reason of his negligence or fault. The county may enforce this liability by notice and motion in the district court (KRS 67.170).

Any jailer who willfully conceals or destroys any record with the intent to violate the provisions of KRS Chapter 61 relating to public records shall be guilty of a Class A misdemeanor for each separate violation. Any official of a public agency who fails to produce any record after entry of final judgment directing that such records be produced shall be guilty of contempt (KRS 61.991).



## **IX. CORONER**

### **Background**

The ancient office of coroner originated in England about the eleventh century. The holder of the coroner's office had the important job of protecting the Crown's interest in certain forfeiture property. Most English counties had several coroners, including a chief coroner, who had jurisdiction throughout the kingdom.

The coroner's duties in the eleventh century were largely economic. However, if any person was murdered, or died suddenly while confined in prison, the coroner was required to travel to the place of death, and inquire into the conditions surrounding the death. The investigation was made by a jury over which the coroner presided. Such a judicial proceeding was called a coroner's inquest. If the jury found that foul play was involved in the death, the coroner would commit the accused person to prison to await formal trial. The coroner then examined the accused person's property, since it might become the property of the Crown. Without such an office, the Crown might have lost valuable forfeiture property. After the findings of the coroner's inquest were certified by the coroner, the evidence was given to the next higher court of the King's bench. In this way the coroner's inquest came to be considered a court of record.

Under English common law, the coroner was also to act as a substitute for the sheriff if the sheriff was unable to discharge his duties. If the sheriff was personally interested in a case or related to the participants, the coroner performed the sheriff's duties. The coroner, like the sheriff, was allowed authority to apprehend a felon within the county without the issue of a warrant.

In colonial America, the duties of the coroner essentially followed English tradition. After the American Revolution the relationship with the English Crown ended, but the coroner's office remained an important one in American local government. The functions of the office were largely related to the identification of unclaimed bodies, the administration of coroner's inquests to learn the causes of certain deaths, certification of the inquest's findings to the county court, and the performance of certain limited duties in regard to the office of sheriff.<sup>34</sup>

In Kentucky the office of coroner was elective under the first state Constitution [(1792), Art. VI, sec. 1], but under the second Constitution the Governor was allowed to appoint the coroner [(1799), Art. IV, sec.8]. In 1850 the coroner's office was again made elective (Art. VI, sec. 1). Section 99 of Kentucky's present Constitution establishes the office of coroner as an elected

county office with a four-year term except for those coroners elected in 1993 who will serve a five-year term of office to meet election changes mandated by a 1992 constitutional amendment.

### **Qualifications**

The coroner must be at least twenty-four years of age at the time of his election; a citizen of Kentucky; a resident of the state for at least two years preceding his election; and a resident, for at least one year, in the county in which he is elected (Ky. *Const.*, sec. 100). The Constitution also requires the coroner to take an oath of office (Sec. 228 and KRS 72.010) and execute bond insuring the proper discharge of duties (Sec. 103 and KRS 72.010). Premiums on the bond of the coroner may be paid from county funds when appropriated by the fiscal court. The bond must be in a minimum amount of \$10,000 (KRS 72.010).

A coroner must possess a current certificate of continuing education in order to perform a postmortem examination (KRS 72.405).

### **Powers and Duties**

Coroners and their deputies have the full power and authority of peace officers, including the power of arrest, the power to bear arms and to administer oaths. In performing investigations, the coroner or his deputy may enter onto public or private property, seize evidence, interrogate persons, and require the production of medical records, documents, or evidence. He may impound vehicles involved in fatal accidents. Further, the coroner may employ special investigators and photographers in making an investigation, and expend funds in carrying out his duties (KRS 72.415).

### **Determination of the Cause of Death**

A principal duty of the coroner is to determine the cause of death. In the case of deaths occurring from natural circumstances, the extent of inquiry into the death is left to the discretion of the coroner and he may authorize the physician of record to sign the death certificate (KRS 72.465). However, when a death meets the definition of a coroner's case, the coroner is required to perform an investigation (KRS 72.410) and to sign the death certificate (KRS 72.465).

A coroner's case (KRS 72.405(2)) is any one of the following:

- (1) When the death of a human being appears to be caused by homicide or violence;
- (2) When the death of a human being appears to be the result of suicide;

- (3) When the death of a human being appears to be the result of the presence of drugs or poisons in the body;
- (4) When the death of a human being appears to be the result of a motor vehicle accident and the operator of the motor vehicle left the scene of the accident or the body was found in or near a roadway or railroad;
- (5) When the death of a human being occurs while the person is in a state mental institution or mental hospital when there is no previous medical history to explain the death, or while the person is in police custody, a jail or penal institution, except pursuant to a sentence of death;
- (6) When the death of a human being occurs in a motor vehicle accident and when an external examination of the body does not reveal a lethal traumatic injury;
- (7) When the death of a human being appears to be the result of a fire or explosion;
- (8) When the death of a child appears to indicate child abuse prior to the death;
- (9) When the manner of death appears to be other than natural;
- (10) When human skeletonized remains are found;
- (11) When postmortem decomposition of a human corpse exists to the extent that external examination of the corpse cannot rule out injury or where the circumstances of death cannot rule out the commission of a crime;
- (12) When the death of a human being appears to be the result of drowning;
- (13) When the death of an infant appears to be caused by sudden infant death syndrome in that the infant has no previous medical history to explain the death;
- (14) When the death of a human being occurs as a result of an accident;
- (15) When the death of a human being occurs under the age of forty and there is no past medical history to explain the death;
- (16) When the death of a human being occurs at the work site and there is no apparent cause of death, such as an injury, or when industrial toxics may have contributed to the cause of death;

- (17) When the body is to be cremated and there is no past medical history to explain the death;
- (18) When the death of a human being is sudden and unexplained; and
- (19) When the death of a human being occurs and the decedent is not receiving treatment by a licensed physician and there is no ascertainable medical history to indicate the cause of death.

In performing his duties, the coroner must take possession of any objects, medical specimens or articles which, in his opinion, may be helpful in establishing the cause of death. If a criminal prosecution arises, the coroner must retain all such objects and articles and reports of any examinations made upon them until they are required by the prosecuting authority or the court (KRS 72.020).

In attempting to determine the cause of death, the coroner may order an autopsy, hold an inquest, and, when investigating a coroner's case, request the assistance of the district medical examiner and the Division of Kentucky State Medical Examiners Office (KRS 72.410).

Coroners are required to submit a monthly report to the Cabinet for Health Services if a child under the age of eighteen years has died within the county during the preceding month (KRS Chapter 211).

## **Autopsies**

Autopsies, defined by KRS 72.405 as postmortem examinations performed by a pathologist to ascertain the cause and manner of death, may be ordered by a coroner in any coroner's case and in several other instances. In the event of deaths not meeting the criteria of a coroner's case, consent to an autopsy must be obtained from the decedent (signed and acknowledged prior to death), his spouse, next of kin, or the person taking possession of the body (KRS 72.425).

Further, upon receipt of an affidavit stating that a person who is dead and buried may have died of illegal causes, the coroner may order the body exhumed and an autopsy performed (KRS 72.440). If a coroner refuses to order an autopsy or to have a body exhumed, the county or commonwealth's attorney may petition the district or circuit court with jurisdiction to order an autopsy (KRS 72.445).

Pathologists, toxicologists, chemists and other authorized personnel are not required to inquire into the authority of the coroner to order an autopsy. Such medical technicians, when performing an autopsy at the request of the

coroner, have immunity from any civil liability which might otherwise be incurred (KRS 72.430).

When a death certificate has been previously filed and an autopsy provides new evidence of the cause of death, the coroner must notify the Office of Vital Statistics of the Cabinet for Health Services of any necessary changes in the death certificate. The autopsy report is deemed the best evidence of the cause of death (KRS 72.465). Generally, costs of autopsies are paid by the fiscal court; however, the Division of Kentucky State Medical Examiners Office of the Department of Justice may, to the extent that its budget permits, contract with pathologists, toxicologists and chemists, and pay the cost of autopsies (KRS 72.460).

### **Inquests**

Inquests, or investigations into the causes and circumstances of a death, may be ordered in any coroner's case at the discretion of the coroner. A coroner's jury, consisting of six reputable citizens selected and sworn by the coroner, conducts the inquest. The coroner may issue subpoenas and subpoenas duces tecum in an inquest. If a witness fails to appear, the coroner may apply to the circuit court for punishment by contempt for failure to answer the subpoena (KRS 72.420(1)).

If the coroner's jury returns a verdict of manslaughter, murder, or other criminal act, the coroner must either arrest the named individual or notify the appropriate law enforcement authority. A copy of the verdict of the coroner's jury must be filed with the circuit court clerk (KRS 72.420(3)).

### **Notification of the Coroner**

Any person, hospital or institution, finding or having possession of the body of any person whose death occurred under any of the first twelve circumstances defined in KRS 72.025, is required to immediately notify the coroner, or his deputy, and a law enforcement agency. These persons must report to the scene within a reasonable time. No person shall remove the body or anything from the body until directed to do so by the coroner or his deputy, and the law enforcement agency has arrived. If the law enforcement agency fails to arrive within a reasonable period of time, the coroner or his deputy may order the removal of the body and its effects (KRS 72.020(1)).

When a licensed embalmer, funeral director or ambulance service attendant is the first person at the scene of death, he shall notify the coroner. If the death appears to fall within the first twelve categories of coroner's cases, he must also notify a local law enforcement agency (KRS 72.020(5)).

If the law enforcement officer at the scene has probable cause to believe that the death falls within the first twelve categories of coroner's cases, but the coroner refuses to order a postmortem examination, the officer must immediately notify the county or commonwealth's attorney (KRS 72.020(4)). The county or commonwealth's attorney may then petition the district or circuit court to order an autopsy (KRS 72.445).

## **Miscellaneous Duties**

**Unclaimed Bodies.** When in possession of a body, the coroner must make a bona fide attempt to locate the spouse or next of kin. If he is unable to do so, he may arrange for the body to be buried at the expense of the county, or he may, in accordance with KRS 311.300 to 311.350, deliver the body to a state medical school. Any money or other property found on the body must be delivered to the fiscal court or urban-county government, whichever is appropriate, to help defray burial expenses. Any excess funds shall escheat to the governmental unit one year later (KRS 72.450).

**Death Certificate.** The funeral director, or person acting as such, who first takes custody of a dead body is responsible for filing the certificate of death. He must, within five days of the death, present the certificate to the attending physician or health officer or coroner, as directed by the state registrar of vital statistics, for the medical certificate of the cause of death. When the coroner receives a certificate, he must complete and sign it within five days after receiving results of the inquiry required by KRS 72.400 to 72.475, and return it to the funeral director (KRS 213.076).

**Cremation.** Bodies may not be cremated or transported for cremation without a permit from the coroner, stating the cause of death and authorizing the cremation. A permit is not required in the case of cremation of fetal death remains if there is no indication of a criminal act (KRS 213.081).

**Anatomical Gifts.** When the coroner is in possession of a decedent who is defined as a coroner's case or upon whom an autopsy has been ordered, he may permit the removal of the decedent's cornea or corneal tissue for use in a transplant operation, provided several conditions are met. First, there must have been a request from an authorized donee (recipient) of an anatomical gift (a physician, hospital, medical school or others set forth in KRS 311.185). Such removal cannot be made if it would interfere with an autopsy or alter the decedent's facial appearance. Nor can a corneal removal be permitted if the coroner has knowledge of objections by the next of kin. If these conditions are met, the coroner is absolved of criminal or civil liability for a corneal removal (KRS 311.187).

## **Compensation**

KRS 64.185(1) provides that coroners are to be paid monthly out of the county or urban-county treasury, at a rate set by the fiscal court and subject to the following minimums:

<b>County Population</b>	<b>Monthly Minimum Compensation</b>
(a) 10,000 or less	\$ 200
(b) 10,001 to 20,000	\$ 300
(c) 20,001 to 40,000	\$ 350
(d) 40,001 to 60,000	\$ 400
(e) 60,001 to 100,000	\$ 450
(f) 100,001 to 150,000	\$ 800
(g) 150,001 or more	\$1,000

However, if the coroner holds a current certificate of continuing education issued jointly by the Bureau of Training and the Division of Kentucky State Medical Examiners Office of the Department of Justice, the following monthly minimum salaries apply:

<b>County Population</b>	<b>Monthly Minimum Compensation</b>
(a) 10,000 or less	\$ 300
(b) 10,001 to 20,000	\$ 400
(c) 20,001 to 40,000	\$ 550
(d) 40,001 to 60,000	\$ 650
(e) 60,001 to 100,000	\$ 750
(f) 100,001 to 150,000	\$1,000
(g) 150,001 or more	\$1,200

### **Continuing Education**

The initial course of continuing education consists of basic training prescribed by the Department of Justice. Annually thereafter coroners are required to attend and successfully complete at least eighteen hours of approved training in order to maintain the certificate of continuing education (KRS 64.185(3)).

A deputy coroner assuming the office of coroner after receiving the training is entitled to the increased monthly minimum compensation (KRS 64.185(4)).

## **Bond**

Coroners and their deputies are required to execute bond with sureties approved by the fiscal court. The bond must be recorded in the county clerk's office. No jailer, sheriff or sheriff's deputy, county judge/executive, clerk, or attorney may act as surety on the coroner's bond. The bonds shall be a minimum of \$10,000 (KRS 72.010).

## **Deputies**

Every coroner has the authority to appoint deputy coroners. Deputy coroners must execute a bond according to the same provisions as the coroner (KRS 72.010). Every deputy coroner must be a high school graduate and is required to complete the basic training course during the first year in office and annually complete at least eighteen hours of continuing education. Deputy coroners who are licensed physicians are exempted from the training requirements (KRS 72.415(2)).

Deputy coroners possess all of the powers of the coroner (KRS 72.410 through 72.475). The office of the coroner, rather than the individual holder of the office, is liable for acts or omissions of deputy coroners. When a deputy coroner fails to act or acts in such a way as to render the coroner responsible, and the coroner discharges such responsibility, the deputy shall be liable to the coroner for all damages and costs caused by the deputy's act or omission (KRS 72.045).

Under KRS 64.185(2), enacted in 1988, deputy coroners who meet continuing education requirements must receive monthly compensation which is no less than the following amounts, based upon the population of their counties:

<b>County Population</b>	<b>Monthly Minimum Compensation</b>
(a) 10,000 or less	\$ 100
(b) 10,001 to 20,000	\$ 150
(c) 20,001 to 40,000	\$ 175
(d) 40,001 to 60,000	\$ 200
(e) 60,001 to 100,000	\$ 300
(f) 100,001 to 150,000	\$ 800
(g) 150,001 or more	\$1,000

The number of deputy coroners in a county must not exceed one for each 25,000 inhabitants or fraction thereof, on the basis of the most recent

federal census, but every coroner may, subject to fiscal court approval, appoint two deputy coroners regardless of population (KRS 64.185(5)).

### **Expenses**

The fiscal court or urban-county government is required to pay all reasonable expenses incurred by the coroner and his deputy in carrying out their responsibilities under the provisions of KRS 72.410 through 72.470 (KRS 72.415). The statutes specifically require the county to pay for employing stenographic services for inquests (KRS 72.420), transporting or exhuming bodies (KRS 72.435), burying unclaimed bodies (KRS 72.450), conducting a search for a body (KRS 72.455), and performing an autopsy (KRS 72.460).

### **Penalties**

Any coroner who willfully conceals or destroys any record with the intent to violate the provisions of KRS Chapter 61 relating to public records shall be guilty of a Class A misdemeanor for each separate violation. Any official of a public agency who fails to produce any record after entry of final judgment directing that such records be produced shall be guilty of contempt (KRS 61.991).

Any coroner or deputy coroner who fails to perform a postmortem examination when death occurs under the circumstances outlined in KRS 72.025, or fails to enforce or violates the conditions of KRS 72.020 shall be fined no more than one thousand dollars or be removed from office, or both (KRS 72.992(2)).

Any person who fails to notify the coroner when necessary (KRS 72.020) or who interferes with the coroner in the lawful performance of his duties shall be fined not less than \$250 or be confined in jail for not more than ninety days, or both (KRS 72.992(1)).

## **X. CONSTABLE**

The office of constable dates from Medieval England. Constables were peace officers with wide powers of arrest and investigation. As time passed, their importance diminished. In 1856 the English finally abolished the office. Early English settlers transplanted the office to colonial America. It has survived to the present in most states, but its importance has steadily declined.<sup>35</sup>

Constables were first made constitutional officers under Article VI, Section 5, of the 1850 Constitution. The present Constitution requires the election of one constable in each justice of the peace district (Sec. 99). The number of justice's districts varies from county to county, no county having less than three nor more than eight (*Ky. Const.*, sec. 142).

In the past, Kentucky constables were declining in number. A 1963 study of Kentucky law enforcement revealed that several counties no longer elect the required number of constables.

The main function of the constable was to render service to the old justice courts, before the Judicial Article established district courts. Now that function has been taken away and the office of constable remains as a vestige of the system of justice established by the 1891 Constitution and replaced by the Judicial Article. It would be reasonable to expect that the number of constables would continue to decline, but this may not be the case. Twenty-one counties were randomly selected and surveyed for the 1993 revision of this publication. Of the twenty-one counties, fifteen had elected their full complement of constables. Only one elected no constables, and three were short only one constable. Many of the county clerks surveyed were puzzled as to why citizens were running for office. One suggested that the motive was to obtain the powers of a peace officer, in order to later seek employment as a security officer.

### **Qualifications**

Constables' qualifications are prescribed by constitutional provision. They must be twenty-four years of age, a citizen of the state for two years, and a resident of the county and district one year prior to election (*Ky. Const.*, sec. 100). Before taking office, constables must execute bond at a minimum amount of \$10,000, approved by the fiscal court. This bond is renewed biennially, or more often, if required by the fiscal court (KRS 70.310). A constable's term in office is four years (*Ky. Const.*, sec. 100), except for those elected in 1993 who will serve a five-year term to comply with the provisions of a 1992 constitutional amendment relating to elections.

A vacancy in the office of constable is filled by an appointment of the fiscal court. The length of the appointment is governed by the Kentucky Constitution, Section 152 (KRS 63.220).

## **Powers and Duties**

### **Law Enforcement**

Constables are peace officers with broad powers of arrest and authority to serve court processes. They may execute warrants, summonses, subpoenas, attachments, notices, rules and orders of the court in all criminal, penal and civil cases (KRS 70.350). Any constable may, upon approval of the fiscal court in the county of jurisdiction, equip vehicles used by him as emergency vehicles with one or more flashing, rotating or oscillating blue lights, visible under normal atmospheric conditions from a distance of five hundred feet to the front of such vehicle, and a siren, whistle or bell, capable of emitting a sound audible under normal conditions from a distance of not less than five hundred feet (KRS 189.950). (See Chapter VII for a more extensive description of the powers of peace officers.)

### **Service of Court Process**

Any process handed a constable must be carried out unless he is unable to find the person named, after actually looking for him (KRS 70.360). Executions, fee bills, orders of witnesses' attendance, distress warrants and attachments are carried out according to the priority of time in which they are received. The time of reception must be endorsed upon these processes (KRS 70.370). In the event action is taken against a constable for not serving a process, he cannot use as a defense the excuse that the execution was delayed, unless a stay of execution was authorized by the plaintiff, his agent or attorney in writing (KRS 70.380).

Constables in their home counties may execute any and all processes except those in which they are personally interested. However, they may not levy on or sell land. They may not be compelled to receive any fee-bill, order for witness attendance, or other claim against a person known to live outside their judicial district, unless the precept is in the name of the Commonwealth of Kentucky, or against property in their district. If a constable should accept such a claim, he and his sureties are responsible for it (KRS 70.350).

### **Distraintment**

Constables may distrain for the collection of fees due them or they may place fee-bills due them in the hands of other officers for collection (KRS 64.400). They are specifically authorized to go outside their district in order to collect claims owed them for services performed (KRS 70.350(2)).

### **Jurisdiction**

The Kentucky Constitution, Section 106, states that, "Constables shall possess the same qualifications as sheriffs and their jurisdiction shall be co-extensive with the counties in which they reside." The Kentucky attorney general has opined that "a constable may exercise jurisdiction in any part of the county, and that a city council cannot ban or limit the service of the constable within the city limits" (OAG 62-115 and 40-776).

The constable must, after the expiration of his term of office, execute and return all processes or precepts in his hands at the termination of his office, and may relevy or collect all executions and fee-bills then in his hands (KRS 70.340).

### **Special Duties in Counties of 250,000 Population**

KRS 70.430 requires all constables in counties with a population greater than 250,000 to make reports to the county clerk listing the duties they and their deputies have performed. These reports must show the sessions of court they have attended and the number of hours attended. Listed under civil matters is the total number of each kind of civil process and order received, and whether they were returned executed, returned unexecuted, or unreturned and unexecuted (KRS 70.430(1)).

Listed under criminal matters in the report are the names and addresses of all persons for whom warrants have been issued, as well as the name of the officer issuing the warrant. The warrants are listed in three categories: returned executed, returned unexecuted, and unreturned and unexecuted. In addition, all places for which search warrants have been issued must be listed, as well as all other acts performed for any authority, or under the color of authority (KRS 70.430(1)(b) & (c)).

Constables must swear to their listing reports, and copies of the reports are sent to the county judge/executive, the county attorney, and the commonwealth's attorney (KRS 70.430(2)).

Jefferson County is currently the only county within this classification.

### **Compensation**

In all counties except Jefferson County constables are compensated from the fees they collect. Under KRS 64.190, constables may collect the following fees for the following services:

Making arrests for violations involving a motor vehicle on the public highways	\$ .50
Taking up a vagrant	.50
Killing a mad dog	1.00
Killing and burying a distempered horse, ass or mule	3.00
Killing and burying any other cattle, per head	2.00
Altering a stud, jackass or bull	1.00
Any other services, the same fee allowed sheriffs for similar services (See the discussion on sheriff's fees in Chapter VII of this work.)	

Constables, along with other peace officers, may also receive fees from the state treasury, under KRS 64.060, for providing the following services:

Apprehending a person on charge of felony, or a fugitive from justice charged with a felony in this state	\$10.00
Executing a process of contempt in a criminal case when the court excuses the contempt	1.60
Executing a summons upon a witness on behalf of the Commonwealth in a felony case	3.00
Summoning a jury, on order of a court, in a county other than that in which the action is pending, a reasonable allowance to be fixed by the court.	2.50
Summoning and attending a jury in a case of felony.	2.50

Constables receive mileage and expenses for taking or assisting in taking adult prisoners to the penitentiary or another jail (KRS 64.070).

### **Compensation of Jefferson County Constables**

Jefferson County constables, as constables in a county of over 250,000 population, receive a salary of \$9,600 per annum to be paid out of the county treasury in equal monthly installments. Constables deliver daily to the recorder of their justice district all fees collected during the day and obtain receipts for this amount. Each month the recorders file with the fiscal court statements of all fees turned over to them by the constables. The money delivered goes into the county treasury (KRS 64.200). Jefferson County constables and their deputies who use their own cars for official duties receive an additional \$200 per month from the county treasury (KRS 64.210).

The \$9,600 salary has become a point of contention since, with the implementation of the Judicial Article, the office has few duties of any substance. The Attorney General has stated (OAG 77-257) that the county is prohibited from paying constables who do not perform a service by Section 3 of the Kentucky Constitution and KRS 64.410. The opinion states:

In simple words, a person cannot be paid out of the public treasury for work not performed. To the extent that any salary paid out in 1978 and thereafter to constables under KRS 64.200 (which requires a \$9,600 yearly salary for constables in Jefferson County) would not reflect payment for services rendered, such payment would be unconstitutional and in violation of KRS 64.410.

### **Compensation of Constables in Urban-County Governments**

The 1998 General Assembly enacted HB 630 to amend KRS 64.527 to require that the salary for constables in counties having an urban-county form of government shall increase at the rate of inflation, as computed by the Department for Local Government by the second Friday in February of every year.

### **Deputies**

In the counties containing first-class and second-class cities, constables, with the approval of the county judge/executive, may appoint one or more deputies (KRS 70.320). Each deputy constable must be an American citizen, at least twenty-one years of age, and must have resided in the county for two years. He may not have been a watchman, night guard or a detective for two years preceding his employment. A person convicted of or under indictment for a crime involving moral turpitude is also ineligible for the position of deputy (KRS 61.300). Constables are liable for all acts and omissions of their deputies and may remove them by filing a written direction with the county judge/executive (KRS 70.320).

### **Penalties**

If constables fail to renew bond or to give additional security when so ordered by the county judge/executive, they may be forced to vacate office. For executing any process in which they are personally involved, other than a fee-bill for their own service, constables shall be guilty of a violation. They may also be guilty of a violation for failing to collect or return a claim, as explained in KRS 70.390. A plaintiff may recover \$5 from a constable for failure to return a process by the return date. Constables failing (without a reasonable excuse) to return a process within twenty days after the return date may be fined the amount of the process plus a ten percent penalty (KRS 70.990).

Any Jefferson County constable making a false entry in his official books or records with intent to cheat or defraud the state, county, or any person shall be guilty of a Class D felony (KRS 70.990(7)).

Constables may be indicted in the county in which they reside for misfeasance or malfeasance in office, or willful neglect in the discharge of official duties, and if convicted, they shall be fined not less than \$100 nor more than \$1,000 and removed from office (KRS 61.170).

Any constable who willfully conceals or destroys any record with the intent to violate the provisions of KRS 61.870 - 61.884 relating to public records shall be guilty of a Class A misdemeanor for each separate violation. Any official of a public agency who fails to produce any record after entry of final judgment directing that such records be produced shall be guilty of contempt (KRS 61.991).

## **XI. COUNTY SURVEYOR**

The long standing office of surveyor exists, or has existed, in most states outside of New England. The primary duty of the surveyor is that of making land surveys and determining boundary lines and corners, when ordered to do so by the courts or upon the request of individual landowners. The second Constitution of Kentucky was the first to mention the office of surveyor. It provided for the appointment of a surveyor for any county when needed [(1799), Art. IV, sec. 8]. The third Constitution called for the election of a surveyor for each county for a term of four years ((1850), Art. VI, sec. 1).

The present Constitution also calls for the election of a surveyor in each county for a term of four years (Sec. 99). Currently, there are at least 61 surveyors in Kentucky and renewed interest has been shown in the office by a group of surveyors, as evidenced by the 1990 repeal of the fee schedule for compensation and substitution of reasonable compensation for services performed (KRS 64.320).

### **Qualifications**

To be eligible for the office, a person must be twenty-four years of age, a citizen of Kentucky, a resident of the state for two years, and a resident of the county in which he is elected for one year (*Ky. Const.*, sec. 100). Before taking office, he must give bond with sureties approved by the fiscal court (KRS 73.010). He must also file with the county clerk, a certificate from a college or from the circuit judge of his county that he is competent to perform the duties of the county surveyor's office (KRS 73.020).

### **Powers and Duties**

The county judge/executive, on recommendation of the county surveyor, may appoint one or more deputy surveyors. The surveyor is answerable for the conduct of his deputies and may remove them at his discretion (KRS 73.030).

A number of statutes describe the powers and duties of surveyors. A county surveyor must perform any business in the civil engineering profession that he is lawfully ordered to do by any court in his county and may select chairmen and other necessary assistants to aid him in carrying out the orders of the court (KRS 73.040). Courts may direct orders of surveys to any person, but in considering an application for the appointment of some other surveyor for a special work, the courts must give preference to the county surveyor (KRS 73.050). He must promptly and faithfully execute every order of survey made by any court in his county. He must make out and return a true plat (map) and certificate of his survey, accompanied by explanatory notes (KRS 73.060).

KRS 73.070 describes how a surveyor should conduct his surveys. Every survey must be made by horizontal measurement. In resurveying lands, the surveyor must execute the survey by the magnetic meridian. He must certify and show in his plat (map) the degree of variation in the magnetic needle from the true meridian at the periods of original survey and of the resurvey, if it can be done (KRS 73.070). The surveyor must append to the field notes of every survey the date of the survey and the variations of the needle from the true meridian at the time of making the survey (KRS 73.080).

The county surveyor must be made a member of committees or commissions appointed by the courts to locate, inspect, care for and report on bridges and other public improvements, and he may be made a commissioner to divide land, lay off dower or homestead, or open, alter or close a public road, or open or close a private passway (KRS 73.090). The surveyor or one of his deputies may administer oaths to commissioners appointed to divide land, to lay off dower or homestead, or to open, alter or close a public road or a private passway (KRS 73.100).

The county judge/executive must appoint three processioners for a term of four years. Processioners, on the application of any person producing his title papers, go around his land, or the part he may desire, and remark it, taking care that the new marks are on the old lines (KRS 73.190). The county surveyor may accompany processioners when they mark land boundaries. He must make out a plat and certificate of the land of the applicants (KRS 73.210).

The county surveyor may be employed as county road engineer or as county road supervisor, if he is qualified for either position, and for his services as engineer or supervisor, he may receive a salary in addition to fees allowed by law for his services as county surveyor (KRS 179.020).

The county surveyor is required to keep a record of plats and explanatory notes of all surveys made by him or his deputies; copies certified by him may be used as evidence in court (KRS 73.120).

### **Office and Records**

The county is no longer required to provide the county surveyor with an office but may elect to do so. Records of the county surveyor are county property and must be kept in the office of the surveyor or in the office of the county clerk (KRS 73.110).

### **Vacancy**

When the office of county surveyor is vacant, the county clerk, by order of the fiscal court, takes charge of the books and papers of the office of county surveyor, and may certify, for the appropriate fee, copies of those records to be used as evidence in court (KRS 73.140).

### **Compensation**

Historically, the surveyor was compensated by fees according to a fee schedule. The 1990 General Assembly abolished the statutory fee schedule and provided that any court shall pay or order payment of reasonable compensation for any services it orders the county surveyor and his agents to perform (KRS 64.320).

### **Penalties**

Any surveyor or deputy surveyor who does not faithfully execute every order of survey must forfeit \$20 to the person injured and is jointly and severally liable, with his sureties, to an action on his bond for damages. Any surveyor or deputy surveyor who does not conduct his survey in the prescribed manner (KRS 73.070) forfeits to the person injured \$15 and is liable, with his sureties, to the injured party for damages and costs (KRS 73.990).

Any surveyor who willfully conceals or destroys any record with the intent to violate the provisions of KRS 61.870 - 61.884 relating to public records shall be guilty of a Class A misdemeanor for each separate violation. Any official of a public agency who fails to produce any record after entry of final judgment directing that such records be produced shall be guilty of contempt (KRS 61.991).



## ENDNOTES

Chapter I, "Introduction."

<sup>1</sup>*County Government in Kentucky*, Legislative Research Commission Informational Bulletin No. 115 (Frankfort: 1988)"; see also, *Kentucky Municipal Statutory Law*, Legislative Research Commission Informational Bulletin No. 145 (Frankfort: 1989) for a description of the duties of city officials.

<sup>2</sup>*Talbott v. Burke*, 287 Ky. 187, 152 S.W.2d 586 (1941), and *Jefferson County Fiscal Court v. Trager*, 302 Ky. 361, 194 S.W.2d 851 (1946).

<sup>3</sup>*Fiscal Court of Jefferson County v. City of Louisville, Ky.*, 559 S.W.2d 478 (1977).

<sup>4</sup>*Broughton v. Pursiful*, 245 Ky. 137, 53 S.W.2d 200 (1932).

<sup>5</sup>*Matthews v. Allen*, Ky., 360 S.W.2d 135 (1962).

<sup>6</sup>*Commonwealth v. Hesch*, Ky., 395 S.W.2d 362 (1965).

Chapter II, "County Judge/Executive."

<sup>7</sup>*Historical Development of Kentucky's Courts*, Legislative Research Commission Research Report No. 63 (Frankfort: 1958).

<sup>8</sup>*Historical Development of Kentucky's Courts*, Chapters II and III.

<sup>9</sup>See Gillenwater, James E., *My Job...As I See It: The County Judge* (Bowling Green: Western Kentucky State College, 1961) for an account of the office of county judge prior to the Judicial Amendment.

<sup>10</sup>*Fiscal Court Commissioners v. Jefferson County Judge/Executive*, Ky. App., 614 S.W.2d 954 (1981).

<sup>11</sup>Constantine Curris, "State Welfare Administration in Kentucky," unpublished Master's thesis (University of Illinois: 1965), pp. 184-191.

<sup>12</sup>*Bath County v. Daugherty*, 68 S.W. 436 (1902), and *Walker v. Fox*, 216 Ky. 33, 287 S.W. 228 (1926).

<sup>13</sup>"[KRS 67.705] and KRS 67.710 shall not apply in counties having an urban county form of government. In such counties, the duties of the county judge/executive shall be as prescribed by the comprehensive plan of such government and his salary shall be fixed by the legislative body of such government." 1982 Ky. Acts, ch. 384, sec. 4.

Chapter III, "Justices of the Peace and County Commissioners."

<sup>14</sup>*Justice of the Peace*, Legislative Research Commission Informational Bulletin No. 26 (Frankfort: 1959), and *Historical Development of Kentucky's Courts*.

<sup>15</sup>KRS 109.041 states that "In the implementation, acquisition, financing and maintenance of solid waste management facilities, and in the enforcement of their use, counties will be performing state functions duly delegated to them for the public welfare. counties shall be subject to standards set by regulations promulgated by the Department on Waste Management pursuant to KRS Chapter 224."

<sup>16</sup>For an overview of Kentucky's planning and zoning laws, see *Planning and Zoning: KRS Chapter 100*, Legislative Research Commission Informational Bulletin No. 156 (Frankfort: 1988).

Chapter V, "County Clerk."

<sup>17</sup>*Commonwealth v. Hesch*, 395 S.W.2d 362 (1965).

<sup>18</sup>Constitutional Convention of 1890-1891, *Proceedings and Debates of the Convention*, Vol. III, (Frankfort: E. Polk Johnson, 1890) pp. 4116-4125.

<sup>19</sup>Simon F. Leland, "Taxation in Kentucky," *Studies in Economics and Sociology* I, No. 1 (March, 1920), p. 35.

<sup>20</sup>*Jefferson County Fiscal Court v. Trager*, 302 Ky. 361, 194 S.W.2d 851 (1946).

<sup>21</sup>Kenneth E. Vanlandingham, *The Fee System in Kentucky Counties*, (Lexington: Bureau of Government Research, University of Kentucky, 1951).

<sup>22</sup>*Button v. Drake*, 302 Ky. 517, 195 S.W.2d 66 (1946).

<sup>23</sup>*Russman v. Lockett*, Ky., 391 S.W.2d 694 (1965).

Chapter VII, "Sheriff."

<sup>24</sup>*Financial Administration of the Office of Sheriff*, Legislative Research Commission Informational Bulletin No. 22 (Frankfort: 1959), pp. 1-2.

<sup>25</sup>*Kentucky Law Journal*, 52, No. 1 (1963-64), pp. 7-8.

<sup>26</sup>*Kentucky Law Journal*, 52, No. 1 (1963-64), pp. 15-17.

<sup>27</sup>*Kentucky Law Journal*, 52, No. 1 (1963-64), pp. 121-123.

<sup>28</sup>*Property Assessment Administrative Manual*, Department of Revenue, Property Valuation Division (Frankfort, KY., Revised Edition, (1981).

<sup>29</sup>*Commonwealth v. Hesch*, Ky., 395 S.W.2d 362 (1965), and OAG 65-785.

<sup>30</sup>*Commonwealth v. Vincent*, 282 Ky. 95, 137 S.W.2d 1091 (1940).

Chapter VIII, "Jailer."

<sup>31</sup>Constitutional Convention of 1890-1891, Vol. III, p. 4035.

<sup>32</sup>Legislative Drafting Research Fund of Columbia University, *Index Digest of State Constitutions* (New York: Columbia University, 1959), p. 158.

<sup>33</sup>Paul Wager, *County Government Across the Nation* (Chapel Hill: University of North Carolina Press, 1950), p. 15.

Chapter IX, "Coroner."

<sup>34</sup>Committee on the Administration of Justice, Department of Justice, "Law Enforcement in Kentucky," *Kentucky Law Journal*, 55, No. 1 (1963-64).

Chapter X, "Constable."

<sup>35</sup>Committee on the Administration of Justice, p. 29.



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*Bell County Fiscal Court v. Helton*, 258 Ky. 219, 79 S.W.2d 683 (1945).

*Branti v. Finkel*, 100 S. Ct. 1287 (1980).

*Broughton v. Pursiful*, 245 Ky. 137, 53 S.W.2d 200 (1932).

*Brummel v. Jackson*, 145 Ky. 630, 140 S.W. 1016 (1911).

*Button v. Drake*, 302 Ky. 517, 195 S.W.2d 66 (1946).

*Christian v. Belcher*, 888 F. 2d 410, (6th Circuit 1989).

*Commonwealth v. Hesch*, Ky., 395 S.W.2d 362 (1965).

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*Fiscal Court Commissioners v. Jefferson County Judge/Executive*, Ky. App., 614 S.W.2d 954 (1981).

*Fiscal Court of Jefferson County v. City of Louisville*, Ky., 559 S.W.2d 478 (1977).

*Fisher and Chandler v. Commonwealth of Kentucky*, No. 98 C.I. 00604 (Campbell Circuit 1998)

*Funk v. Milliken*, Ky., 269 S.W.2d 499 (1958).

*Garrard County Fiscal Court v. Harold Layton*, 92 W.L. 85 966 (Ky. App.).

*Jefferson County Fiscal Court v. Trager*, 302 Ky. 361, 194 S.W.2d 851 (1946).

*Lynch v. Commonwealth*, 115 Ky. 309, 73 S.W. 745 (1903).

*Matthews v. Allen*, Ky., 360 S.W.2d 135 (1962).

*Russman v. Lockett*, Ky., 391 S.W.2d 694 (1965).

*Rutan v. Republican Party of Illinois*, 110 S. Ct. 2729 (1990).

*Talbott v. Burke*, 287 Ky. 187, 152 S.W.2d 586 (1941).

*Walker v. Fox*, 216 Ky. 33, 287 S.W. 228 (1926).